

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: March 2018 – O-400

DATE: March 16, 2018

TO: Subcommittee on Educational Standards

FROM: Natalie Leonard, Program Manager, Admissions

SUBJECT: John F. Kennedy University College of Law – Major Change Request re Opening of Branch Campus in San Jose

EXECUTIVE SUMMARY

John F. Kennedy College of Law (JFKCOL), a California Accredited Law School (CALS), submitted a Major Change Request seeking Committee of Bar Examiners (Committee) approval to open a provisionally approved branch campus in San Jose offering the J.D. degree starting in August 2018. (See Attachment A).

This is the first branch campus request to be considered under the current *Guidelines for Accredited Law Schools Rules*, adopted effective October 2016.

This agenda item will provide a historical context of the development of the Rules and Guidelines related to branch campus requests in order to assist the Committee in its evaluation of JFKCOL's request.

BACKGROUND

A. John F. Kennedy College of Law Seeks to Open a San Jose Branch Campus

JFKCOL submits its Major Change Request under Rule 4.164, as defined by Rule 4.165(B) of the *Accredited Law School Rules* (Rules), and detailed in Rule 4.160(H) and Guidelines 15.1 – 15.4 (Division 15. Opening and Operating a Branch or Satellite Campus) of the *Guidelines for Accredited Law Schools Rules*, adopted effective October 2016 (Guidelines). As the Committee prepares to apply the current Guidelines for branch campuses for the first time, it may be helpful to review the process by which the Guidelines have been developed, as well as the ways that prior versions of the Rules and Guidelines have been applied to branch campus requests in the past.

B. The Process for Creating the Guidelines Applied to this Request

Since 2013, the Rules and Guidelines governing branch campus requests have evolved from a single Rule to a set of Rules plus interpretive Guidelines, 15.1-15.4. The Guidelines were created in their initial version in 2015 and amended to the current version in 2016.

When the Committee decided that guidelines were needed to interpret the Rule governing branch campus requests, and later when those guidelines were amended, the Committee used a structured process to create and adopt the changes. The Committee stated its goals for the guidelines at a public meeting and asked staff to create an initial draft that would meet those goals. Staff then researched a proposal, sought feedback from the Advisory Committee on California Accredited Law School Rules (known as the Rules Advisory Committee or, RAC), and returned a proposal to the Committee where it was discussed and posted for further review and solicitation of public comment.

RAC's purpose is to provide advice to the Committee on matters relating to the promulgation of new rules, guidelines and amendments to the *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*. RAC consists of six members, three selected by the deans of the California-accredited law schools and three appointed by the Chair of the Committee. The specific qualifications for members and their terms of office are set forth in the attached RAC Functions and Procedures. (See Attachment B). RAC's role is not to act as a rule-making body, but rather to provide comments and recommendations which the Committee may consider when exercising its rule-making authority. RAC may also develop related proposals for the Committee to consider, though the Committee is not required to consider them.

C. The Creation and Application of the First Set of Guidelines Related to Branch Campuses

Up until 2015, the only authority relating to branch campuses was Rule 4.165, which required a CALS to submit a Major Change Request when "changing the location of the school or the location of a branch or opening a new branch." Several CALS campuses had operated multiple campuses for years, but branch campus requests were rare.

In 2013, however, the Committee received a new kind of request for a branch campus. San Francisco Law School applied to open a branch campus in San Diego on property owned by the multi-campus Alliant University, which had purchased San Francisco Law School. Up to that time, no CALS had submitted a request to open a branch campus that far away from its home campus. No guidelines had been promulgated to assist the Committee on how to interpret Rule 4.165. Further, the Rules were silent in providing any direction to the Committee as to whether the branch campus should be fully accredited in its own right, what continuing responsibilities the school would have in order to maintain the Committee's approval, or the amount of time the Committee had to make its decision whether to approve the branch campus. There were other logistical

issues as well, such as whether resources could be shared between the campuses. Ultimately, the Committee approved San Francisco Law School's branch campus after significant discussion, negotiation, and a pre-opening inspection of the campus.

Following its experience with San Francisco Law School's request to open a San Diego branch campus, the Committee came to believe that branch campus requests might become more frequent. As a result, in January 2014, the Committee asked staff to begin creating guidelines that would set forth timelines and requirements for future branch campus applications, with the intent to "make clear that if a California-accredited law school wants to establish a three or four-year branch campus, the new campus must meet the criteria for accreditation independently, although certain requirements may be shared, such as the dean, and that a satellite branch campus may be established for a limited purpose, such as providing a portion of the education at another location."

In March 2015, after more than one year of discussion and input, the Committee adopted Guidelines 15.1-15.4. These new Guidelines defined branch and satellite campuses, set out timelines for approval with multiple checkpoints, and set forth a specific list of materials to be included in any branch campus application. Guideline 15.1 distinguished full branch campuses from more limited satellite campuses. Guidelines 15.2, 15.3 and 15.4 set forth a timeline for consideration, with applications to be received at least 180 days before the opening of a branch campus, a Committee decision rendered at least 120 days before the opening of the branch campus, a dean's certification that the branch is in substantial compliance 90 days before the opening of the branch campus, and, ultimately, the scheduling of a final inspection within two years after the opening of the branch campus to determine whether the branch's provisional approval be continued, converted to a permanent approval, or denied and terminated.

Guideline 15.2(A) indicated that a branch campus request should include "copies of all academic and operational documentation to be used by the staff, faculty and students at the new campus." This Guideline was the Committee's first attempt to clearly request the type of information needed to help it determine whether the branch campus would be operated in substantial compliance with the relevant *Accredited Law School Rules* and *Guidelines for Accredited Law School Rules*. The Committee looked only to the internal operations of the school, and not to the marketplace, the distance from the main campus, or other business choices that the school might make.

The Committee applied these initial Guidelines to five different branch campus requests in 2015 and 2016, rejecting two of the requests and approving three of the requests. In all cases, the framework and direction that the initial Guidelines provided clarified the process and timelines to be used.

The Committee denied two requests from San Francisco Law School to open branch campuses in Irvine and Sacramento. Unlike the school's successful request to open a branch campus in San Diego, these requests did not propose to provide onsite administrators at the new branch locations, and the Committee was concerned that this

reduced staffing would result in the students at those branch campuses having an experience that was not equal to what they could expect at the home campus. While earlier guidance from the Committee had indicated that two campuses could share a dean, the Committee did not believe that four campuses could share a Dean. As a result, the Committee denied these requests.

Coincidentally, two of the branch campus requests approved under the initial Guidelines were submitted by two different CALS seeking to open two different branches at the same time in the same town of San Luis Obispo. The Committee evaluated each branch campus request independently, looking to see if each campus could establish its substantial compliance with the relevant *Accredited Law School Rules and Guidelines for Accredited Law School Rules*. In addition, the Committee did not inform either school about the other school's request. The schools learned of each other's plans when their respective branch campus requests happened to be placed on the same Committee agenda for action. Each of these schools was able to establish that its branch would have sufficient staffing and facilities compared to the home campus and would be in substantial compliance with the Accredited Law School Rules and Guidelines, so both schools' branch campus requests were approved. A similar situation occurred in 1996 when the Committee accredited the Southern California Institute of Law with its campuses in Santa Barbara and Ventura, when there was already an existing CALS operating in those same two communities, the Santa Barbara and Ventura Colleges of Law.

Though the Committee approved both law schools' requests to open branch campuses in San Luis Obispo, only Monterey College of Law ever opened its branch campus in that location. Santa Barbara and Ventura Colleges of Law ultimately decided not to open its approved San Luis Obispo branch campus, once it learned that it would not be in a position to do so until well after Monterey College of Law opened its branch; instead, the school decided to direct its resources and priorities elsewhere. The Committee did not play any role in these decisions.

The third branch campus request approved by the Committee under the initial Guidelines was Monterey College of Law's application to open the brand new Kern County School of Law, a branch campus of Monterey College of Law. This request was very detailed, describing the facilities, staff and support services to be provided at the new campus, which was helpful since the branch campus was proposed to be in new facilities with new faculty in a new town located about five-hours' drive from the main campus.

D. The Committee Began Revising the Guidelines Shortly after They Were Adopted

Even as these five requests were still being considered under the initial Guidelines, the Committee was already studying the initial Guidelines for possible refinement. Again, in January 2016, the Committee invoked the process described earlier, soliciting feedback from staff and the RAC and independent comment from the public.

The amended Guidelines went into effect in October 2016 and remain in effect today. The Committee will consider JFKCOL's request, as well as another pending request on the same agenda today, under these current Guidelines.

The current Guidelines retained essentially the same original timeline, but made two major changes to the list of materials that CALS are asked to include in their branch campus requests. The first change explicitly states the minimum staffing required at each branch, requiring a competent administrator with a J.D. from an ABA-accredited or California-accredited law school at each branch. The administrator can work part-time until the campus serves thirty students, and must be available full-time once the campus serves more than thirty students.

The second change was modifications to the supporting documentation that a CALS would need to include in its application to open a branch campus. The initial Guidelines required a CALS to submit "copies of all academic and operational documentation to be used by the staff, faculty and students at the new campus." This requirement turned out to be difficult to fulfill, and less informative than the Committee had expected. Prior to applying for approval for a branch campus, a CALS had to expend quite a bit of effort to create full documentation for campuses that might not be approved, and to do so at a time when some of the details might still be speculative due to unsigned leases for space, or inability to hire faculty until a campus was approved. In addition, each branch campus request seemed to have unique elements that were unlikely to be addressed by the documentation requested (otherwise referred to as "manuals"). Examples of such unique issues included opening a branch at a far distance from the home campus in new facilities, opening a branch that resulted from the purchase of the facilities of another school that was in the process of closing, and opening a large number of branch campuses.

The Committee removed the requirement to provide manuals and replaced it with a request for the branch campus applicant to include a "comprehensive explanation for its decision to operate a new branch or satellite campus that includes: a) a narrative discussing any research or planning regarding the new campus; b) projected financial impact of the new campus on the law school; and c) proposed resources to be allocated to the new campus." This more flexible requirement was designed to give a CALS the freedom to include what was necessary to describe the unique circumstances of each branch campus request, without the burden of creating manuals or other documentation that is speculative prior to a branch's approval. The Committee had considered an alternate option, replacing the requirement to deliver all manuals with a requirement to provide a specified list of detailed facts about the branch campus, but that was rejected as potentially inflexible or incomplete in light of the wide range of circumstances presented by various branch campus requests. Thus, branch campus requests submitted under the current Guidelines are in narrative form, and they do not require specific studies, lengthy reports, or extensive financial statements. There is no documentation suggesting the intent of the Guidelines was to have the school divulge marketing plans, describe the likely student population, or assess the branch campus's effect on any other school. Instead, a CALS is asked to use its judgment to ensure that

its “comprehensive explanation” includes the information needed to make the nature of the school’s plan apparent. It is also expected that these branch campus requests may be shorter, since they will not contain multiple manuals or operational guides. The Committee may ask for more detail or clarification as needed, and to approve or deny the request based on the material provided.

E. Further Refinement of the Guidelines Might Be Appropriate

The Guidelines related to branch campuses have been evolving as the Committee has more experience with the requests. After the first request was considered under the Rules alone, the Committee began working to establish Guidelines. As soon as the first round of branch campus requests was under consideration, the Committee again began to consider refinements to the initial Guidelines. Now, the amended Guidelines will be applied for the first time here, and to another branch campus request that is also on the Committee’s March 2018 Agenda. It would be consistent with past practice for the Committee to consider whether any refinements to the current Guidelines should be adopted to be applied to future branch campus requests, and a proposed recommendation to begin that process is included as part of this memorandum.

DISCUSSION

The Committee conducted preliminary discussions of this request at its meetings on February 2 and February 20. The Committee is charged with determining whether JFKCOL has provided sufficient detail to establish that it is prepared to open a substantially compliant branch campus in August 2018.

Guideline 15.2(B) requires that “no less than 120 days before the proposed first day of classes of the branch or satellite campus, the Committee must approve or deny the law school’s proposal.” In this case, because the first day of class is proposed to be August 13, 2018, the Committee’s deadline to act would be April 15, 2018.

Staff has confirmed that JFKCOL’s branch campus request addresses all of the requirements in the current Guidelines. This request differs in appearance from some past requests because the Guidelines have changed. For example, rather than the list of manuals that were previously required, JFKCOL presents the narrative that is newly required. The branch campus request is also shorter than some of the prior branch campus requests, in part, because there are fewer speculative elements since the school will be using an existing classroom space, as well as current administrators, faculty, and curriculum, and the school just completed an inspection in 2017. Summaries and excerpts from JFKCOL’s branch campus request are provided below, and the full branch campus request is available in Attachment A.

The required submissions are set forth in three portions of Guideline 15.2, and JFKCOL addresses each in turn. Guideline 15.2(A) requires JFKCOL to provide the Committee with notice of its intention to open a new branch or satellite campus, including the type, location, name and proposed opening date of the new campus. JFKCOL proposes to

open a branch campus, on August 13, 2018, to be called the John F. Kennedy School of Law, San Jose Branch, located at the current JFK University Campus at Tisch Way in San Jose.

Guideline 15.2(A) further requires JFKCOL to provide the Committee with a “comprehensive explanation” for its decision to open the new campus, that includes: “a) a narrative discussing any research or planning regarding the new campus; b) projected financial impact of the new campus on the law school; and c) proposed resources to be allocated to the new campus.” “Comprehensive explanation” is not defined further in the Guidelines, nor is there information from the time the Guidelines were adopted defining the level of explanation required. This application is the first attempt by a CALS to provide such a comprehensive explanation. JFKCOL has indicated its willingness supplement or clarify its explanation, if the Committee would benefit from additional information.

JFKCOL’s comprehensive explanation addresses each element listed in this portion of Guideline 15.2(A). JFKCOL has explained planning it engaged in related to all aspects of the proposed branch campus, which will use existing space, faculty, administration, support services and curriculum. Subdivision (a) does not actually require that a CALS have conducted research or planning, or that such research or plans be submitted to the Committee. Rather, the language requires a CALS to include “any research and planning regarding the new campus.” JFKCOL’s application discusses anecdotal student research, as well as its logistical plan to utilize existing space, services, faculty and administrators at the new branch. Subdivision (b) requires the school to include an explanation of the financial impact of the branch on the school, which JFKCOL expects to be positive because “the existing infrastructure is already in place ... [t]he additional costs include compensation for the teachers, law administrators, library books, and marginal costs associated for each law student,” whose costs will be offset by student tuition. Subdivision (c) has the school include a discussion of the resources to be allocated to the new campus; these resources include JFK University classroom space, as well as shared existing services designed to support the students who will be in the night program or, in future years, the day program at the branch campus. JFKCOL notes also that upon approval, it will immediately acquire the books and Westlaw and Lexis/Nexis access needed prior to the first day of class to meet accreditation standards.

Guideline 15.2(B) is directed at the Committee, noting that it will “no less than 120 days before the proposed date the branch or satellite campus is to open, . . . approve or deny the law school’s proposal.”

After the initial approval, JFKCOL is prepared as required by Guideline 15.2(C), “within 90 days of the first day of classes of the branch or satellite campus,” to submit a report certified by the dean, confirming that the new campus is, then in “substantial compliance” with the entirety of the rules and guidelines for accredited schools.

Guideline 15.3(A) contains the third element, which is also one of the major changes added in the 2016 amendments, requiring an administrator qualified under Guideline 4.1(B) to be on campus on at least a part-time basis until the school has 30 or more students, and then on a full-time basis. To satisfy this requirement JFKCOL has indicated that current JFKCOL administrator Matthew Taxman, J.D., will be present on campus for the requisite number of hours. JFKCOL's Dean and Assistant Dean also each plan to travel to the campus at least once per week.

JFKCOL also agrees to take the final step required under Guideline 15.3(C), "[w]ithin two years of operating a provisionally-approved branch campus," to "seek confirmation from the Committee that the campus is in compliance with all accreditation standards" contained in the Rules and Guidelines. After that inspection, the Committee will determine whether the branch is to be "deemed approved, continue to be provisionally approved or denied continued provisional approval."

In summary, the JFKCOL request to open a branch campus in San Jose has addressed each of the elements required by the applicable Rules and Guidelines, and its Dean has certified the request.

RECOMMENDATION

Based on staff's review of the Rules and Guidelines and the application provided by JFKCOL, staff believes that JFKCOL's explanation for its decision to operate a new branch campus is sufficiently comprehensive to satisfy Guidelines 15.2 and 15.3 and that JFKCOL has provided sufficient information to establish that it will be in substantial compliance with all accreditation standards and operations requirements found in the *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules* as of the date of its opening.

If the Committee agrees with this determination, based on the information JFKCOL has provided in response to all of the applicable Rules and Guidelines, it is recommended that the request of the JFKCOL for approval of a major change, the establishment and opening of a branch campus of the law school in San Jose, be received and filed; that the major change request be approved such that the San Jose branch campus of JFKCOL be permitted to open and operate as a provisionally-approved branch campus under the accreditation standards and operational requirements found in *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*; that, as required by Guideline 15.2(C), no less than 90 days before the expected first day of classes at the branch campus, that JFKCOL submit a certification by Dean Dean Barbieri confirming the substantial compliance of the branch campus with each of the relevant *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*; and, that following receipt of said certification, the provisionally-approved branch campus may open, enroll students and then begin offering classes.

If the Committee does not make such a determination, then denial of JFKCOL's request is appropriate.

Finally, apart from JFKCOL's current request, staff also recommends that it may be appropriate to re-evaluate the Guidelines applicable to branch campus requests to see if any refinements are appropriate. This step would be consistent with the Committee's past practice of evaluating the Guidelines once they have been applied. Such refinements, if adopted, would be prospective in nature, applying to future branch campus requests. The Committee will be able to reflect upon its experience evaluating the first several branch campus requests under these Guidelines, and to consider any additional feedback or research received during these discussions or during the rulemaking process described earlier. A proposed additional motion to allow this process to begin is provided below.

PROPOSED MOTIONS

Should the Subcommittee determine that JFKCOL's explanation is sufficiently comprehensive to establish that it will open a substantially compliant branch campus, the following motion would be appropriate:

Move, that the request of the JFKCOL for approval of a major change, which will allow it to establish and open a branch campus of the law school in San Jose, be received and filed; that the major change request be approved such that the San Jose branch campus of JFKCOL be permitted to open and operate as a provisionally-approved branch campus under the accreditation standards and operational requirements found in *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*; that, as required by Guideline 15.2(C), no less than 90 days before the expected first day of classes at the branch campus, a report be submitted, certified by Dean Dean Barbieri, that confirms the substantial compliance of the branch campus with each of the relevant *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*; and, that following receipt of said certification, the provisionally-approved branch campus may open, enroll students and then begin offering classes.

In addition, the following motion is recommended:

Move that the Committee, having received a request to open a branch campus under the current Guidelines, as well as additional public comment regarding the Guidelines, ask staff to begin the review process to determine whether any refinements may be needed to Guidelines 15.1-15.4 to assist the Committee in its determination of whether a CALS has offered a plan to open a branch campus that is substantially compliant with each of the relevant *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*.