

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: October 2018 – O-400

DATE: October 10, 2018

TO: Committee of Bar Examiners

FROM: Natalie Leonard, Program Manager, Educational Standards

SUBJECT: **Thomas Jefferson School of Law Petition for California Accreditation and Acquiescence to Non-J.D. Programs**

BACKGROUND

Thomas Jefferson School of Law (TJSOL), an American Bar Association-Accredited Law School, seeks to earn California Accreditation and Acquiescence for its five non-J.D. programs from the Committee of Bar Examiners (Committee). TJSOL seeks California Accredited status as a precaution because the ABA placed the school on probation in November 2017. (See Attachment A – Notice of Probation and Specific Remedial Action). TJSOL disagrees with some of the ABA's findings, but it is actively taking steps to address all requests from the ABA, and hopes to maintain ABA accreditation and approval. TJSOL also wishes to be cautious and to ensure that, if the ABA accreditation should lapse, the school would continue to maintain an accreditation that would allow its students to be eligible to take the California Bar Examination.

Under Business and Professions Code section 6060(e), to be found eligible to take the California Bar Examination, applicants must be graduates of law schools approved by the American Bar Association or registered or accredited by the Committee. Therefore, if TJSOL's ABA approval lapsed, in the absence of California accreditation, TJSOL would lack accreditation status and, as such, its students who graduated after loss of accreditation would not be technically qualified to take the California Bar Examination.

TJSOL was founded in 1969 as part of the Western State University College of Law. It became an independent law school in 1995, and it has been approved by the ABA since 1996.

In an abundance of caution, in order to prepare for the possibility that it may not retain ABA accreditation and approval, TJSOL first seeks action by the Committee to confirm that the school is currently deemed accredited as a California Accredited Law School by virtue of its status as an ABA accredited law school.¹ It further seeks waiver of the

¹ Rule 4.102 of the *Accredited Law School Rules* provides that a "law school provisionally or fully approved by the American Bar Association is deemed accredited by the Committee and exempt from these rules, unless the American Bar Association withdraws its approval.

usual requirements and time limits associated with the provisional approval process, and instead requests to maintain California accreditation if its ABA accreditation should lapse but the school still substantially complies with all applicable Rules and Guidelines for Accredited Law Schools. This plan would allow TJSOL's students to receive credit for their law study and those who graduate from the law school would be found eligible to take the California Bar Examination.

TJSOL also seeks acquiescence to its non-J.D. programs from the Committee. While the Committee does not specifically approve non J.D. programs, a California Accredited school must gain the Committee's acquiescence to those degree programs, confirming that they will not negatively affect the J.D. program. Students in non-J.D. programs, particularly students who were otherwise educated outside the United States, have an interest in the school's maintenance of California Accreditation because they may be enrolled in these non-J.D. programs as part of their plan to establish eligibility to take the California Bar Examination.

DISCUSSION

As provided by Rules 4.120 through Rule 4.126 of the *Accredited Law School Rules*, the process that an accredited law school must normally follow to apply for accreditation, be granted provisional accreditation, and then seek full accreditation by the Committee generally takes several years. Accreditation is normally a two-stage process that requires at least two on-site inspections and then the drafting and submission of comprehensive inspection reports to confirm that an accredited law school was found first in substantial and then in full compliance with all of the Committee's accreditation standards. Given that the Committee (as noted in Rule 4.122) normally grants an accredited law school two years of provisional accreditation prior to taking action on its application for full accreditation, the time needed to proceed successfully through this process (including the time the Committee needs to take action on applications) typically approaches three full years.

That process, however, is designed for schools that are new or working to advance from unaccredited to accredited status. Usually, this means that the school is trying to develop additional capabilities in order to meet the California Accredited Rules and Guidelines for the first time. Here, however, TJSOL has met the more stringent ABA requirements for over two decades, and continues to make its best efforts to meet those requirements going forward. Staff reviewed the school's self-study, which suggests that TJSOL would be in substantial compliance with the more flexible Rules and Guidelines for California Accredited Law Schools.

Therefore, TJSOL believes that circumstances exist to support a waiver of provisional status under the Committee's waiver rule, and to "allow a law school a reasonable time to comply with the rule for which it has been granted a waiver." TJSOL believes it does not need the time to meet the standards, but rather would request the time simply to allow the Committee to schedule an inspection to confirm for itself that TJSOL is in substantial compliance with all California Accredited Rules and Guidelines.

In support of TJSOL's request for deemed accredited status and a waiver allowing continuing accreditation in the event of an ABA lapse, the law school prepared and has submitted a comprehensive self-study report and acquiescence application that addressed and discussed all the Committee's accreditation standards. TJSOL also agreed to provide further information on any area of interest.

It also submitted extensive documentation supporting its likely compliance with all rules and guidelines, including an estimated MPR of 70.5% using the Committee's form; this figure is well above the 40% MPR required of a California Accredited Law School. In addition, the school has programs in place to address bar passage and continues to strive to improve the pass rate, in alignment with its mission and with the directives from the ABA.

TJSOL also indicated that it has achieved candidacy status with the Western Association of Schools and Colleges (WASC), and it will be providing its next progress report in to WASC in 2019.

Finally, the school is actively taking steps to continue to comply at the level of the ABA Guidelines. It has undergone a major financial restructuring in several respects. For example, the school has reduced the size of its student body. As of Spring 2018, the school enrolled 353 full-time and part-time students, 123 part-time students, and a full-time faculty. The faculty-to-student ratio was reported at approximately 18.61 to 1.

The school also recently relocated from a prior facility to a less costly facility, with completion of the move expected by early 2019 according to a verbal conversation with Associate Dean for Strategic Initiatives Aaron Schwabach. During the move, the school has made arrangements for classes to continue and for students to have study spaces, as well as access to the nearby county law library in addition to the school library. The school was forced to choose between moving at a time that affected bar study or affected fall classes, and it prioritized bar study.

The school also seeks the Committee's acquiescence for five non-J.D. programs, all of which have received acquiescence from the ABA: Masters of Laws – American Legal Studies (LL.M.), Masters of Laws – Practice Skills (LL.M.), and three online programs that are part of the Walter H. & Dorothy B. Diamond Graduate Program of International Taxation and Financial Services, which are the Masters of Laws – Online (LL.M.) (originally called the Master of Laws in International Taxation and Financial Services at the time of ABA acquiescence); Masters of Science in Law (M.S.L.) (originally called LL.M. in International taxation and Financial Services at ABA acquiescence), and Doctor of Juridical Science - Online (J.S.D.) (originally called Doctor of Juridical Science in International taxation and Financial Services at the time of ABA acquiescence).

The ABA has acquiesced to all five of these degree programs and has not issued any warnings related to these programs. All of the non-J.D. programs are also pending WASC candidacy status. It should be noted that three programs are online programs that have operated for many years. TJSOL has provided full information about these programs and Committee acquiescence is recommended based upon the grant of ABA acquiescence.

RECOMMENDATION

It is recommended that the Committee affirm that TJSOL is deemed accredited as a result of its ABA accreditation and approval status, and grant Thomas Jefferson School of Law's application for California accreditation and acquiesce to the school's non-J.D. LL.M., M.S.L. and J.S.D. programs based the current ABA acquiescence of those programs. It is also recommended that the Committee should find that if TJSOL's ABA accreditation lapses, TJSOL's California accreditation should continue so long as it agrees to undergo and pay for a full inspection to verify the school's substantial compliance with the Rules and Guidelines for Accredited Law Schools within twelve months of the lapse. Such a course of action would strike a reasonable balance between protecting the students at TJSOL and holding TJSOL responsible for continued compliance with California accreditation standards.

PROPOSED MOTION

Should the Subcommittee on agree with the above recommendation, the following motion would be appropriate:

Move that the Application for Thomas Jefferson School of Law for Accreditation by the Committee of Bar Examiners, and its request for a waiver of all Rules found in the *Accredited Law School Rules* relating to the process and timing of Committee accreditation, be received and filed; that the Committee confirm that TJSOL is currently deemed accredited as a California Accredited Law School; that if TJSOL's ABA accreditation and approval is withdrawn, waivers of Rules 4.121 through 4.145 of the *Accredited Law School Rules* be granted; that the application for accreditation be granted, effective as the date of this action by the Committee; that the Committee acquiesce to the school's non-J.D. LL.M., M.S.L. and J.S.D. programs; and, that the school's name be included on the list of law schools accredited by the Committee effective immediately. This would be conditioned upon the school's agreement to undergo a full inspection within twelve months of any lapse of ABA accreditation and to pay all inspection fees assessed by the State Bar of California under the Schedule of Charges and Deadlines.



COUNCIL DECISION

NOTICE OF PROBATION AND SPECIFIC REMEDIAL ACTION

Thomas Jefferson School of Law

November 2017

Background

At its November 3-4, 2017 meeting, the Council of the Section of Legal Education and Admissions to the Bar (the “Council”) conducted a hearing pursuant to Rules 2, 3, 16, 22, 24, and 25 of the Rules of Procedure to with respect to the recommendation of the Accreditation Committee (the “Committee”) that the Thomas Jefferson School of Law (the “Law School”) be placed on probation and be directed to take specific remedial action with regard to its non-compliance with Standards 202(a) and (d), 301(a), 501(a) and (b), and Interpretations 501-1 and 501-2.

Following the hearing and a consideration of the record in the matter, the Council adopted the Committee’s findings of fact as supported by substantial evidence in the record and uncontested by the Law School. The Council affirmed the Committee’s conclusions as to non-compliance with the designated Standards and determined that the action recommended by the Committee is appropriate and warranted under the circumstances and applicable Standards and Rules of Procedure. The Council determined that the Law School’s present and anticipated financial resources, admissions practices, academic program, and bar passage outcomes have resulted in the Law School now being in a position where only immediate and substantial action can bring about sufficient change to put the Law School on a realistic path back to operating in full compliance within the time allowed by the Standards and Rules of Procedure.

Probationary Status of Thomas Jefferson School of Law
and
Remedial Actions Required

Pursuant to Rules of Procedure 2(f), 16, and 25(b), the Council placed Thomas Jefferson School of Law on probation, effective November 13, 2017. Further, the Council directed the Law School to take the following specific remedial actions:

(1) The Law School shall develop a written reliable plan for bringing the Law School into compliance with Standards 202(a) and (d), 301(a), 501(a) and (b), and Interpretations 501-1 and 501-2. In developing its plan, the Law School must address, inter alia, each of the factors identified in Interpretation 501-1. The Law School shall submit that plan to the Managing Director by February 16, 2018.

(2) The Managing Director shall appoint a fact finder to visit the Law School to review the admissions data and admissions methodology provided by the Law School, the overall rigor of its program of legal education, and the financial resources reasonably expected to be available to the Law School. The fact-finding visit shall take place in conjunction with the Law School's regular sabbatical visit to be conducted in March 2018. The fact finder shall submit a report regarding these matters to the Managing Director. The fact finder shall pay attention to, and provide information concerning, the following matters:

- (a) In addition to the bar examination results of the Law School's graduates taking the California and other bar examination for the first time in July 2017, whether and the extent to which the Law School's graduates are ultimately able to achieve a passing score on the bar examination;
- (b) Any plan or program in addition to the reliable plan required above that the Law School has adopted to prepare its students to be admitted to the bar and become responsible members of the legal profession and the likelihood of the plan's success;
- (c) A description of the basis for the Law School's assessment of the impact of the proposed changes in admissions standards, if achieved, on the academic attrition rate of the Law School's students, the bar passage rate of its graduates, and the effectiveness of the Law School's academic support program;
- (d) The Law School's admissions policies, particularly the specific criteria used to evaluate whether to offer an applicant a place in a class, any written policies or unwritten practices on class size, the factors influencing those policies and practices, and the impact of these policies on the Law School's budgets;
- (e) A description of the Law School's plans in the event that the Law School's enrollment goals with the expected increases in 25th percentile, median, and 75th percentile LSAT cannot be achieved, and the impact of those plans on the Law School's budget;
- (f) A description of the basis for the Law School's belief that it can increase its entering Law School credentials as planned and replace the anticipated lost revenue because of smaller classes and increased financial aid;

- (g) A description of the basis for the Law School's expectation that it can generate the financial resources (or savings) to ensure the Law School's ability to maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession; and
- (h) A detailed description of the Law School's efforts to reduce its space costs and the impact of any reduction of space on the academic program.

(3) Until the Law School is determined by the Committee to be operating in compliance with Standards 202(a) and (b), 301(a), 501(a) and (b), and Interpretations 501-1 and 501-2, the Law School shall provide each applicant to the Law School, within 30 days of the submission of the application, an email or letter stating the Law School's first-time bar examination passage rates and California's first-time bar examination passage rates for the past four administrations of the California bar examination. The Law School shall provide evidence to the Managing Director's office, within five days of the matriculation of each class of students, that the required information has been appropriately and timely communicated.

(4) The Law School shall provide to all admitted students, within five business days of the date of the letter transmitting the Council's decision, an email or letter reporting the fact that the Law School has been placed on probation and that includes a copy of this statement outlining the specific remedial actions the Law School is required to take to bring itself back into compliance with the Standards. Additionally, the Law School shall post this statement or a link to the statement on the Law School's website in a form and place acceptable to the Managing Director's Office. This statement shall also be published on the website of the Section of the Legal Education and Admissions to the Bar.

(5) Pursuant to Rules 9 and 12(b), the fact finder shall produce a report regarding the above matters to the Managing Director. The report will be delivered to the Law School, which shall have 30 days to submit a response. The Committee will then evaluate the Law School's compliance with Standards 202(a) and (b), 301(a), 501(a) and (b), and Interpretations 501-1 and 501-2 based on the record, the fact finder's report, and the Law School's response. If, after considering the fact finder's report and the Law School's response, the Committee concludes that the Law School is not in compliance with Standards 202(a) and (b), 301(a), 501(a) and (b), and Interpretations 501-1 and 501-2, the Committee or Council may take any appropriate action pursuant to Rules 12(b) and 16-18.

(6) Pursuant to U.S. Department of Education regulation 34 C.F.R. § 602.26(b)(1), Section of Legal Education and Admissions to the Bar Rules 53(c)(4) and (5), and Internal Operating Procedure 4, the Managing Director is directed to provide public notification of this Decision of the Council to place the Law School on probation and to impose specific remedial action on the Law School within 24 hours of the time the Managing Director notifies the Law School of the Council's Decision.