



The State Bar *of California*

**OPEN SESSION
AGENDA ITEM
APRIL 2020
COMMITTEE OF BAR EXAMINERS ITEM O-406**

DATE: April 24, 2020

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst

SUBJECT: Action on Termination of Accreditation Due to Noncompliance with Minimum, Cumulative Five-Year Bar Passage Requirement – Southern California Institute of Law

BACKGROUND

At its meeting on January 31, 2020, the Committee of Bar Examiners (Committee) voted to issue a Notice of Intent to Terminate Accreditation to Southern California Institute of Law (SCIL) due to the school's long-term sustained noncompliance with Rule 4.160(N) and Guideline 12.1. The school's Minimum, Cumulative Five-Year Bar Examination Passage Rate (MPR) has been below the minimum required value of forty percent since it was first reported in 2015. SCIL's most recent MPR, reported in 2019, is 21.1 percent, and its graduates' July 2019 bar examination results suggest that the school's 2020 MPR will decline further.

The Notice of Intent to Terminate Accreditation was emailed to SCIL on January 31, 2020, immediately after the conclusion of the CBE meeting, informing SCIL that the Committee would be terminating its accreditation, and that SCIL could request a hearing if it disagreed with the Committee's intent to terminate. SCIL sent several emails regarding the Notice of Intent to Terminate Accreditation, but did not request a hearing. The State Bar's Office of General Counsel responded to those emails, reminding the school of its option to request a hearing on this matter within fifteen days after receiving the notice, and confirming that SCIL did not request a hearing. This item is noticed for action today to allow the Committee to act on its intent to terminate the accreditation of Southern California Institute of Law pursuant to Rule 4.176.

The process for acting on noncompliance with the accredited rules and guidelines is set forth in Rule 4.170 et seq.

If the Committee concludes that an accredited law school has not complied with one or more applicable rules, the Committee issues a Notice of Noncompliance. (Rule 4.170(A)). The Committee has issued three Notices of Noncompliance to SCIL, in 2015, 2018, and 2019, indicating that the school was not in compliance with Rule 4.160(N), the MPR rule, during each of those years.

The school is permitted to file a response to a Notice of Noncompliance in an attempt to “demonstrat[e] that it ... is in compliance with these rules.” (Rule 4.170(B)). SCIL filed responses to each of the three notices, and the Committee reviewed these responses on October 7, 2015, December 7, 2018, and August 23, 2019, respectively. None of the school’s responses disputed that the school was out of compliance. Instead, the school questioned the value of the MPR as a measure of the quality of a legal education, sought a waiver from the rule, and sought a waiver of fees associated with noncompliance. The most recent response also detailed the steps the school was taking to improve its graduates’ bar examination results. The Committee did not grant the school’s waiver requests.

If the Committee finds the school’s response unsatisfactory because it does not demonstrate that the school is in compliance, “the Committee must schedule an inspection ... within sixty days of its consideration of the matter.” (Rule 4.170(B)(2)). In 2015, while the Committee found that the school was not in compliance, it declined to take further action during the time that the bar was not releasing pass-fail lists. The underlying MPR requirement remained in effect, however, and the State Bar sent a letter to SCIL dated February 7, 2017 reminding the school of its obligation to maintain a compliant MPR.

At its December 7, 2018 and August 23, 2019 meetings, the Committee found SCIL’s responses to the Committee’s Notices of Noncompliance unsatisfactory and instructed that an inspection be scheduled. That inspection was conducted telephonically on October 24, 2019 by Committee member Alex Chan, as well as staff members Natalie Leonard and Ron Pi; Committee member Alex Lawrence attended as an observer. Prior to the inspection, the school submitted an additional written response dated September 26, 2019, which the inspection team reviewed prior to meeting with PCU. (Attachment A). That document did not deny the school’s noncompliance, but did detail some steps the school was taking to address its graduates’ bar passage rate.

At the inspection, the school had an opportunity to present any and all information to supplement the written responses that the school had filed previously. The Inspection Team summarized the inspection in a written Inspection Report that was shared with the Committee at its January 31, 2020 meeting.

After considering all of the information before it, the Committee selected termination of SCIL’s accreditation, rather than probation, because probation is only appropriate “[i]f the Committee decides that an accredited law school ... has not complied with these rules, but has made progress toward compliance.” (Rule 4.172(B)) Here, SCIL has neither complied nor shown progress toward compliance, reporting insufficient MPR values in 2015 (25.3 percent MPR), 2018 (26.4 percent MPR), and 2019 (21.1 percent MPR). Further, based on the fact that all SCIL

graduates who took the July 2019 administration of the California Bar Exam failed, the next MPR reported in 2020 is estimated to show further decline. As a result, the Committee found that there was no basis to impose probation.

Pursuant to Rule 4.173, because the Committee found that termination was the appropriate response, it voted to send “a notice that the Committee is considering termination of ... accreditation.” The Committee’s Notice of Intent to Terminate Accreditation was sent to SCIL on January 31, 2020.

Should the Committee plan to proceed with termination of accreditation at this meeting, Rule 4.176 provides that, “[t]he Committee will terminate accreditation or provisional accreditation on a specific date, at which time it will also terminate a law school’s degree-granting authority.” It further provides that “[u]ntil that date, students attending the law school are deemed enrolled at an accredited ... law school.”

DISCUSSION

The Committee has a duty to enforce the Rules for Accredited Law Schools, including the MPR. Any school that earns accreditation must continue to demonstrate compliance in order to maintain accreditation. Termination of accreditation is the appropriate remedy for noncompliance when a school has not shown progress toward compliance. (Rule 4.172). Here, the school’s MPR was lower in 2019 than in 2015, and it is estimated to decline further in 2020.

If the Committee terminates SCIL’s accreditation, the school can apply to the Committee to seek permission to operate as a registered, unaccredited law school. If it chooses to do so, it may proceed using the forms and procedures set forth for registration, and the school’s application can be considered at a future meeting. Prior to its accreditation, SCIL operated as a registered, unaccredited law school for a number of years.

RECOMMENDATION

It is recommended that the Committee terminate Southern California Institute of Law’s accreditation and its degree-granting authority effective June 1, 2020, and that it notify the school using the attached Notice of Termination enumerating the reasons for termination. (Attachment A).

It is hoped that the school will take all reasonable steps to allow its students to fully complete the semester, and, should a student request, that the school will respond promptly to requests for documents such as transcripts.

The school should advise students as soon as possible that the school’s accreditation is terminated effective June 1, 2020.

PROPOSED MOTION

If the Committee agrees with this recommendation, the following motion is suggested:

Move that the Committee of Bar Examiners finds that Southern California Institute of Law has not demonstrated compliance with Rule 4.160(N) and Guideline 12.1, and its long-term noncompliance warrants termination of accreditation; that the Committee terminates the accreditation of Southern California Institute of Law and the school's degree-granting authority effective June 1, 2020, pursuant to Rule 4.176; and that the attached Notice of Termination of Accreditation be transmitted to the school.

ATTACHMENT(S) LIST:

- A.** Notice of Termination of Accreditation of Southern California Institute of Law

**NOTICE OF TERMINATION OF ACCREDITATION
OF
SOUTHERN CALIFORNIA INSTITUTE OF LAW**

April 24, 2020

INTRODUCTION

Pursuant to Rule 4.171, subdivision (D), of the State Bar of California's ("State Bar") Accredited Law School Rules ("Rules"), the Committee of Bar Examiners ("Committee") finds that Southern California Institute of Law ("SCIL"), a California accredited law school, is not in compliance with Rule 4.160, subdivision (N), or Guideline 12.1 of the Guidelines for Accredited Law School Rules ("Guidelines"), which require the maintenance of the minimum, cumulative bar examination pass rate. Accordingly, the Committee terminates the accreditation of SCIL, effective June 1, 2020.

APPLICABLE AUTHORITY

Rules:

Chapter 4. Responsibilities of Provisionally Accredited and Accredited Law Schools

Rule 4.160 Standards

A provisionally accredited law school must substantially comply with these standards. An accredited law school must comply with them.

- (N) Minimum, Cumulative Bar Pass Rate. The law school must maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness of a law school's program of legal education. The minimum, cumulative bar examination pass rate for a law school with one or more branch campuses is to be calculated and reported as the combined rate of all such campuses.

Guidelines:

Division 12. Minimum, Cumulative Bar Examination Pass Rate

12.1 Criteria for Determining Compliance with Accredited Law School Rule 4.160([N]).

In evaluating the compliance of a law school with the accreditation standard set forth in Accredited Law School Rule 4.160(N), a law school must maintain a minimum, cumulative bar examination pass rate (MPR) of at least 40 percent for the most recent five-year reporting period. The rate will be calculated and reported annually to the Committee on or before July 1st of the year following each reporting period.

To calculate and report its MPR accurately, the law school must use the following reporting period and methodology: The “reporting period” covers the five most-recent twelve-month periods (August 1 through July 31) prior to the calendar year in which the MPR is reported to the Committee.

For purposes of MPR calculation, a “qualified taker for the reporting period” includes any student who both graduates from the law school during the reporting period, and takes any administration of the California Bar Exam (CBX) during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation. A student who does not meet both requirements is not a qualified taker for the purpose of the MPR report and is not to be included in the calculation of a law school’s MPR.

A law school’s MPR is to be calculated as a fraction that is the sum of all qualified takers for the reporting period who passed any administration of the CBX during the reporting period or the first February administration after the reporting period that was no more than 10 administrations after the taker’s graduation (the numerator) divided by the sum of all qualified takers for the reporting period who, whether they passed or failed, took any administration of the CBX during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation (the denominator), with the resulting numeral being expressed as a percentage.

Termination of accreditation is the appropriate remedy for failure to comply with Rule 4.160 unless “the Committee decides that an accredited law school . . . has not complied with these rules, but has made progress toward compliance,” in which case, “the Committee may place the law school on probation for a specified time.” (Rule 4.172(B).)

BACKGROUND

In 2015, SCIL submitted an Annual Compliance Report (ACR) that reported an MPR of 25.32 percent for exam-takers graduating in the reporting period of August 1, 2009 through July 31, 2014. (**Exhibit 1** [2015 MPR Report from SCIL]; **Exhibit 2** [2015 Published MPRs].) As a result, the Committee found that SCIL failed to comply with Rule 4.160, subdivision (N), and on September 1, 2015, the Committee issued a Notice of Noncompliance pursuant to Guideline 12.2. (**Exhibit 3** [September 1, 2015 Notice of Noncompliance].) In its response to the Notice, SCIL did not dispute that its MPR was below the 40 percent required by Guideline 12.1. (**Exhibit 4** [September 10, 2015 Response from SCIL].) Rather, SCIL argued that the MPR was a poor indicator of the quality of the legal education offered by the school and requested that the Notice be withdrawn. At its October 17, 2015 meeting, the Committee denied SCIL’s request to have the Notice withdrawn. (**Exhibit 5** [October 19, 2015 Letter to SCIL].)

In 2016, the Committee temporarily suspended schools' MPR reporting requirements in response to newly-effective confidentiality requirements in California Business and Professions Code section 6060.25. Accordingly, SCIL submitted its 2016 ACR without MPR calculations. The underlying MPR accreditation standard remained in effect, however. (**Exhibit 6** [January 4, 2017 Agenda Item].) In its 2016 ACR, SCIL referenced the 2015 Notice of Noncompliance, and requested a formal waiver of Guidelines 12.1 and 12.2 pursuant to Rule 4.109(A), which allows a law school to request that the Committee waive enforcement of any rule. (*Ibid.*) The Committee denied this request for a waiver. (**Exhibit 7** [January 4, 2017 Public Minutes].) On February 7, 2017, the Committee sent SCIL a courtesy letter advising that, although the MPR reporting requirements had been temporarily suspended, internal reports prepared by the State Bar indicated that SCIL's cumulative bar passage rate for the five-year period ending in July 2015 was 22.5 percent. (**Exhibit 8** [February 7, 2017 Courtesy Letter to SCIL].)

In 2017, SCIL again submitted its ACR without MPR calculations. Following amendments to California Business and Professions Code section 6060.25 in late 2017, the State Bar reinstated the requirement that schools report MPRs beginning in 2018.

In 2018, SCIL reported an MPR of 26.4¹ percent for exam-takers graduating in the reporting period of August 1, 2012 through July 31, 2017. (**Exhibit 9** [2018 MPR Report from SCIL]; **Exhibit 10** [2018 MPRs].) The Committee again found that SCIL failed to comply with Rule 4.160, subdivision (N), and issued a second Notice of Noncompliance on September 27, 2018. (**Exhibit 11** [September 27, 2018 Notice of Noncompliance].) In its October 5, 2018 response, SCIL did not dispute that its MPR was below 40 percent. (**Exhibit 12** [November 26, 2018 Agenda Item Regarding SCIL's Response].) Rather, it argued that the MPR and its application to SCIL were unconstitutional, and asked for a waiver of the fees related to the Notice of Noncompliance. (*Ibid.*) At its December 7, 2018 meeting, the Committee denied SCIL's request for a waiver of fees. (**Exhibit 13** [December 12, 2018 Letter to SCIL].)

In 2019, SCIL reported an MPR of 21.1² percent for exam-takers graduating in the reporting period of August 1, 2013 through July 31, 2018. (**Exhibit 14** [2019 MPR Report from SCIL]; **Exhibit 15** [2019 MPRs].) On August 23, 2019, the Committee approved the scheduling of an inspection of SCIL and invited SCIL to update its written response to the Notice of Noncompliance. (**Exhibit 16** [September 17, 2019 Notice of Inspection Regarding Notice of Noncompliance].) SCIL sent an updated response outlining its plan to increase its 21.1 percent MPR. (**Exhibit 17** [September 26, 2019 Supplemental Response from SCIL].)

¹ While SCIL had initially reported an MPR of 26.7 percent, it was later determined through verification by the State Bar that SCIL's MPR for 2018 was 26.4 percent. SCIL agreed in writing that the revised rate of 26.4 percent was the correct rate.

² While SCIL initially reported an MPR of 25.33 percent, it was later determined through verification by the State Bar that SCIL's MPR for 2019 was 21.1 percent. SCIL agreed in writing that the revised rate of 21.1 percent was the correct rate.

The inspection of SCIL was held on October 24, 2019. During the inspection, SCIL did not dispute that it was out of compliance with Rule 4.160, subdivision (N). (**Exhibit 18** [October 24, 2019 Inspection Report].) Subsequent to the inspection, the State Bar released the results of the July 2019 California Bar Examination. None of the 25 SCIL graduates who sat for the July 2019 examination passed. (*Ibid.*)

On January 31, 2020, the Committee issued SCIL a Notice of Intent to Terminate Accreditation, which included notice of the school's right pursuant to Rule 4.173 to request a hearing before a panel of Committee members. SCIL did not request a hearing, but on February 14, 2020, SCIL provided a written response to the Notice of Intent to Terminate Accreditation. (**Exhibit 19** [SCIL's February 14, 2020 Response to Notice of Intent to Terminate Accreditation].) In its written response, SCIL did not dispute that it was out of compliance with Rule 4.160, subdivision (N), but argued that the MPR requirement is unconstitutional and asked the Committee to place the school on probation rather than terminate accreditation.

BASIS FOR TERMINATION

The Committee has reviewed SCIL's responses to the Committee's multiple Notices of Noncompliance, the results of the State Bar of California's October 24, 2019 inspection, and SCIL's February 14, 2020 Response to the Notice of Intent to Terminate Accreditation.

Under the applicable Rules and Guidelines, SCIL must maintain an MPR of at least 40 percent for each five-year reporting period. SCIL is not in compliance with this requirement, and has not been since Rule 4.160, subdivision (N), took effect in 2015. SCIL's own reporting demonstrates that it failed to meet the required MPR for any of the periods reported:

- 2015 (exam-takers graduating August 1, 2009 through July 31, 2014),
- 2018 (exam-takers graduating August 1, 2012 through July 31, 2017), or
- 2019 (exam-takers graduating August 1, 2013 through July 31, 2018).

SCIL has never reported an MPR of 40 percent or higher; all of its reported MPRs are below 27 percent.

Furthermore, when SCIL's MPR is calculated in 2020 (for exam-takers graduating in the reporting period of August 1, 2014 through July 31, 2019), it will include any applicable exam-takers who sat for the July 2019 California Bar Examination. Since none of the SCIL graduates who sat for the July 2019 examination passed, SCIL's MPR will most likely further decline.

Because SCIL's MPR has remained below the required 40 percent since reporting began, and has not demonstrated progress toward compliance, termination is appropriate. Accordingly, the Committee hereby terminates the accreditation of SCIL, effective June 1, 2020. The school is encouraged to fulfill all requirements to its students for the semester by that date and to cooperate fully with students seeking to transfer or apply for the bar examination.

Notice:

Pursuant to Rule 4.177, “[a] law school may seek review of termination of its accreditation before the California Supreme Court pursuant to its rules.”

PROPOSED