

Date: October 16, 2020

To: Members, Committee of Bar Examiners

From: Paul Kramer and Michael Cao, Educational Standards Subcommittee Members

Subject: Recommendations In Response to Comments Made During the October 14, 2020, CSBARS Meeting

As you know, we have been working closely with staff to revise the Accredited Law School Rules presented to the Committee of Bar Examiners during its August meeting. We've attempted to produce a draft containing our recommendations regarding the various issues identified by the law schools and staff, to reconcile their positions where possible, to identify issues that remain for decision by the Committee, and to improve the organization of the Rules. As part of the process, we had an informal conversation with Deans Gardina and Pritikin to educate ourselves as to some of the issues. To that same end, we reviewed the Zoom recording of the August CSBARS meeting.

Our revised draft was circulated to the CSBARS members {and others??} on Friday, October 9, and later posted as an attachment to the CSBARS Wednesday agenda and the Committee's agenda.

Paul Kramer attended the CSBARS meeting in his new role as the Committee's representative on that body. Michael Cao also attended that meeting as an observer. During the meeting, comments on the draft rules were made by several persons, including Deans Winick, Frykberg, Pritikin, Purtill, and Brandes.

We considered their comments and **recommend** that the draft be revised in the manner indicated on the attached Rule excerpts. The revisions are shown as tracked changes.

#### **Amendments to the Proposal Referenced in O-400:**

##### **4.103 Interpreting and applying the rules; ~~transition from pre-existing rules~~**

The Guidelines for Accredited Law School Rules ("Guidelines"), as approved by the Committee of Bar Examiners to be effective on or after the date these rules go into effect, govern the interpretation and application of these rules. The Committee has the authority to amend the Guidelines, subject to a reasonable public comment period, and after consideration of any comments received. Except in extraordinary circumstances when time does not permit, the Committee shall seek the input of the Committee of State Bar Accredited and Registered Schools ("CSBARS") before circulating amendments for public comment.

#### Rule 4.120 Application for Provisional Accreditation

~~Unaccredited law schools or law schools that were approved by the Council~~ **A Law School provisionally or fully approved by the Council, or such a school which had approved status** within the prior twelve months, **or a registered, unaccredited law school** may apply for provisional accreditation. The Committee will grant provisional accreditation if it finds that the law school has demonstrated that it is in substantial compliance with these rules. A provisionally accredited law school may be subject to annual inspection and its students shall be subject to the First-Year Law Students' Examination requirement. Provisional accreditation shall be granted for a specified period to be determined by the Committee.

#### Rule 4.121 Application procedure

~~A law school that is registered with the Committee as an unaccredited law school, or a law school currently or previously approved by the Council~~ **Law School provisionally or fully approved by the Council, or such a school which had approved status at any point** within the ~~prior most recent~~ twelve months, **or a registered, unaccredited law school** may apply for provisional accreditation **by:-**

- A. completing and submitting the Application for Provisional Accreditation with the fee set forth in the Schedule of Charges and Deadlines;
- B. submitting a self-study of its educational program and other information as required by the Committee;
- C. agreeing to allow the Committee to make any inspection it deems necessary; and
- D. agreeing to timely pay all fees incurred whether or not the law school receives provisional accreditation.

#### Rule 4.140 Application for accreditation

~~A registered, unaccredited law school, a provisionally accredited law school, or a law school that has been approved by the Council~~ **Law School provisionally or fully approved by the Council, or such a school which had approved status at any point** within the prior twelve months, **a provisionally accredited law school, or a registered, unaccredited law school** may apply for accreditation. No later than 180 days before the expiration of provisional accreditation, a provisionally accredited law school must apply for accreditation. A provisionally accredited law school that does not apply for accreditation by this time will cease to be provisionally accredited and may apply to become registered with the Committee as an unaccredited law school.

#### Rule 4.141 Application procedure

~~A provisionally accredited law school, a law school registered with the Committee, or a law school that has been approved by the Council~~ **Law School provisionally or fully approved by the Council, or such a school which had approved status** within the most recent prior 12 months, **a provisionally accredited law school, or a registered, unaccredited law school may apply for accreditation by**

- A. completing and submitting the Application for Accreditation with the fee set forth in the Schedule of Charges and Deadlines;
- B. submitting a self-study of its educational program and other information as required by the Committee;
- C. agreeing to allow the Committee to make any inspection it deems necessary; and
- D. agreeing to promptly pay all expenses of the inspection.

#### Rule 4.147 Law schools approved by other accreditors

- A. ~~A law school provisionally or fully approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association~~ **Law School provisionally or fully approved by the Council** is deemed accredited by the Committee and exempt from these rules. If the Council withdraws its approval, or the law school voluntarily relinquishes its approval, the law school may apply for provisional accreditation or accreditation as described in 4.121 and 4.141 above.

#### Rule 4.160 Programmatic Responsibilities of Provisionally Accredited and Accredited Law Schools

The purposes for accreditation are fourfold: Consumer Protection and Transparency; Student Success; Diversity, Equity, and Inclusion in legal education; and Preparation for Licensure. A law school shall maintain sufficient records between periodic inspections to demonstrate continuing compliance to the Committee.

- A. Consumer Protection and Transparency: A law school shall ensure that prospective and current students are timely informed of the rights, responsibilities, and limitations of attending the law school, the resources and requirements needed to earn a JD degree, and the law school's student outcomes with respect to retention, licensure, and career outcomes.

#### 10. Compensation Based on Number of Applicants, Enrollment and Students

~~Prohibited: A law school may not base the compensation paid to any employee of the law school (other than compensation paid to a student or associate for reading and correcting assignments, tutoring, or similar activity), including those engaged in work related to advertising, marketing, and admissions, on the number of persons enrolled in~~

~~any class or on the number of persons applying for admission to or enrolling at the law school.~~ **A law school may not base the compensation paid any employee of the law school engaged in work related to advertising, marketing, and admissions on the number of persons enrolled in any class or on the number of persons applying for admission to or registering to enroll in the law school.**

B. Student Success: Consistent with its mission and these rules, a law school must provide JD curriculum and teaching designed to promote student success, measured by the learning outcomes designated by the law school for its courses and programs. The law school must not award a JD unless the student has completed all student requirements set forth in these rules, all requirements set forth by the law school for graduation, and all legal education requirements to take the California bar exam.

11. Grading: Grading standards should seek to promote accuracy and consistency in the evaluation of student performance, as well as to reasonably assess the student's progress toward potential licensure. **The standards shall include** a policy on pass-fail grading and ~~exclude pass-fail grading~~ **for** bar-tested subjects.

12. Quantitative Academic Requirements:

- a. A JD program must include the completion of a minimum of 80 semester units or their equivalent. A JD degree should be completed in no less than 24 or no more than 84 months, except that the law school may allow a student to complete the JD program in more than 84 months under extraordinary circumstances at the law school's discretion, if the law school places a letter in the student's file documenting good cause and gives notice to the student that they have a responsibility to keep their knowledge current to pursue licensure, and provides adequate support to the student to do so.
- b. The 80 semester units or their equivalent may be satisfied through a combination of any of the following means: (i) student attendance in a classroom-based program; (ii) student participation in a synchronous or asynchronous curriculum offered through distance-learning technology; and (iii) student participation in an experiential or clinical program for up to 12.5 percent of the total time required to earn a JD degree.
- c. A "semester unit" includes at least 15 hours of verifiable academic engagement and a total of 45 hours of engagement.
- d. Students may earn credit for verifiable academic engagement via:
  1. physical classroom time;
  2. using distance learning technology in any manner, including, but not limited to, any of the following: (a) participating in a synchronous class session; (b) viewing and listening to recorded classes or lectures; (c) participating in a live or recorded webinar offered by the

law school; (d) participating in any synchronous or asynchronous academic assignment in any class monitored by a faculty member; (e) taking an examination, quiz or timed writing assignment; (f) completing an interactive tutorial or computer-assisted instruction; (g) conducting legal research assigned as part of the curriculum in any class; and (h) participating in any portion of an approved clinical or experiential class or activity offered through distance learning technology totaling no more than 12.5 percent of the hours required for graduation; and/or

3. student participation in an experiential or clinical program where the student's participation is pre-approved, a faculty member reviews the student participation to ensure educational objectives are achieved, the amount of credit is commensurate with the time spent, and the total credit does not exceed ~~40 percent of the hourly requirement in any one academic year or~~ 12.5 percent of the total hours required for graduation.

#### Rule 4.173 Termination of accreditation or provisional accreditation

A. The Committee may terminate provisional accreditation or accreditation if it finds one or more of the following:

1. the law school has failed, during a period of probation, to demonstrate substantial compliance or compliance, as applicable, for provisionally accredited or accredited law schools, respectively, with one or more of the rules or to meet the terms of its probation;
2. the law school is out of compliance a core requirement of Rule 4.147(C), and the Committee finds that a period of probation would not be appropriate;
3. the law school has engaged in, or may imminently engage in, serious misconduct that could harm the safety, health, education or financial condition of students or prospective students; or
4. the law school is provisionally accredited, and a probationary period would serve no purpose given the nature of the non-compliance or the proximity to the termination of the provisional accreditation period.

B. The Committee shall terminate accreditation or provisional accreditation on a specific date, at which time the law school's degree-granting authority shall also terminate. This date should generally coincide with the end of the current semester, though the Committee may terminate accreditation immediately in its discretion, **or at a later time if appropriate.** If the law school's accreditation is terminated, it may apply for registration with the Committee as an unaccredited law school. Any application for registered unaccredited status filed concurrently with proceedings related to a Notice of Noncompliance shall not be interpreted as an admission of noncompliance or prevent the Committee from making a finding of compliance with these rules.

