



The State Bar *of California*

OPEN SESSION

AGENDA ITEM O-400

MARCH 2021

COMMITTEE OF BAR EXAMINERS

DATE: March 26, 2021

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst

SUBJECT: Action on Major Change Request for Change of Ownership – Empire College School of Law

EXECUTIVE SUMMARY

Empire College School of Law (Empire) seeks the Committee of Bar Examiners' (Committee) approval of this Major Change Request seeking: 1) a change of ownership; 2) a change of entity status from a for-profit corporation to a California public benefit corporation. (Attachment A)

BACKGROUND

Empire College is currently a privately owned California stock corporation that has, since 1981, owned and operated Empire College School of Law, which offers Juris Doctor and Master of Legal Studies Programs. The law school is accredited by the Committee of Bar Examiners and was last inspected in 2017.

Empire submits this motion because an accredited law school contemplating a major change must notify the Committee and obtain its approval at least ninety days before making the change. The notice must explain in detail any effect the change might have on the law school's compliance with the rules and be submitted with the fees specified in the Schedule of Charges and Deadlines, and the Committee may then require submission of additional information or an inspection. (Rule 4.164)

Here, the major changes at issue are "changing from a nonprofit to a profit-making institution or vice versa" and "changing the ownership of the school." (Rule 4.165 H, I)

DISCUSSION

Empire seeks approval of a change of ownership in association with a gift transfer of assets from its current owner, a for-profit California stock corporation, to Empire College Foundation (the Foundation), a California nonprofit public benefit corporation. The Foundation was formed in 1994 to support education and related academic programs. Its activities have included the award of scholarships to students to attend Empire College, grants to charitable organizations and a no-cost GED test preparation program available to the public.

As part of the transition, the Empire Foundation will adjust its status to allow for operation of the school as described in its attached application so that it may continue its charitable purpose and may also directly operate a law school.

The main benefit of this change is that the law school will be able to receive direct charitable contributions from the public in support of its mission.

The Board of Trustees of the Empire Foundation plan to continue in their current roles. Collectively, the Board members have experience in business, law, education, and charitable pursuits, and a summary of their experience was included in the application.

Other than the gift transfer and related administrative adjustments, the law school asserts that it plans to continue its JD program as it currently operates. The attached application describes its plan for all aspects of continued compliance with the Committee's requirements.

In order to confirm the plan as it is carried out, the law school should be required to update the Committee as to the completion of the transfer, and it is suggested that the school next be inspected in 2022 in order to confirm continued compliance.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

It is recommended that the Committee receive and file Empire's application for major change. It is further recommended that the Committee grant approval for Empire to proceed with its proposed change of ownership transferring the assets from a for-profit California stock corporation to Empire Foundation, a California public benefit corporation, and to advise the Committee when the conversion is complete. This change will not only be a change of ownership, but also a change from for-profit to nonprofit status. It is further recommended that the law school's next periodic inspection be set for fall 2022 to confirm continued compliance after the transfer.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with staff recommendations, the following motion should be made:

MOVE, that the Committee of Bar Examiners receive and files Empire's application for major change. It is further recommended that the Committee grants approval to proceed with the proposed change of ownership of Empire College School of law, transferring its assets via gift transfer from its current owner, a for-profit California stock corporation, to Empire Foundation, a California public benefit corporation, and to advise the Committee when the conversion is complete. It is further recommended that the law school's inspection schedule be maintained and that an inspection be set for fall 2022 to confirm the law school's continued compliance after the transfer and otherwise complete the law school's periodic inspection.

ATTACHMENT LIST

- A.** Empire College of Law Application for Major Changes



To The Committee of Bar Examiners:
 Notice of Major Changes and Major Change Proposals
 Change of Ownership, and
 Change From a For-Profit to a California Non-Profit Public Benefit Corporation,
 January 11, 2021

Pursuant to Rule Four, Section 4.164 of the Accredited Law School Rules, Empire College hereby gives the Committee of Bar Examiners the required 90 day notice of two Major Changes and requests the approval of the Committee of these changes. Empire College's major changes are two of the categories specifically defined in TITLE 4. ADMISSIONS AND EDUCATIONAL STANDARDS Adopted July 2007 DIVISION 2. ACCREDITED LAW SCHOOL RULES, Chapter Four, Rule 4.165: (H) changing from a nonprofit to a profit-making institution or vice versa, and (I) changing the ownership of the school.

I. Executive Summary

Empire College is a privately owned California stock corporation (the "Corporation") that has, since 1981, owned and operated Empire College School of Law, which currently offers Juris Doctor and Master of Legal Studies Programs (the "College").

Empire College is seeking approval for a change of ownership in association with a gift transfer of assets to Empire College Foundation (the "Foundation"), a California nonprofit public benefit corporation. The Foundation was formed in 1994 to support education and related academic programs. Its activities have included the award of scholarships to students to attend Empire College, grants to charitable organizations and a no-cost GED test preparation program available to the public.

In order to directly offer education, the shareholders of the Corporation have determined that the Foundation will reclassify its foundation status to that of an organization described in Internal Revenue Code Sections 509(a)(1) and 170(b)(1)(A)(ii). The Foundation is currently classified as a public charity under Internal Revenue Code Sections 509(a)(1) and 170(b)(1)(A)(vi). Because it will be operating the College, this IRS Form 8940, Request for Miscellaneous Determination, is being submitted by the Foundation to complete the reclassification. This reclassification allows the Foundation to extend its organizational operations to include operation of the law school. This reclassification is important so that the Foundation can effectively raise funds to support the long-term operation of the College. As a California Public Benefit Corporation, the Foundation will retain its educational mission, while being publicly committed to achieve specific and measurable goals that serve the public.

Empire College is seeking approval of this change of structure and control in order to better fulfill its mission to provide a positive learning environment to achieve a quality legal education. The major benefit to Empire College School of Law, of these two major changes, is a renewed focus on the Law School to strengthen the existing programs and to allow for direct charitable contributions from the public to financially support and enhance the Law School's mission.

II. Privileged and Confidential Information

Approval by the Committee of Bar Examiners, State Bar of California of these proposed major changes are important accreditation requirements. The information and documents discussed in the two major changes in this submittal are covered by non-disclosure and confidentiality agreements. Naturally, an exception is made to the extent that information and documents are needed to appropriately inform the Committee during the process of providing advance notice and securing approval pursuant to the requirements of the Rules and Guidelines governing Accredited Law Schools. Accordingly, Empire College and Empire College Foundation ask the Committee to respect the privileged and confidential nature of these materials.

III. Overview of Empire College

Empire College is a privately owned, California stock corporation organized under the laws of the State of California. Founded in 1973, the School of Law has been accredited by the Committee of Bar Examiners of the State Bar of California since 1982 to offer a Juris Doctor program. Empire College School of Law's degree granting authority in connection with its students qualifying to take the California Bar Examination and obtain admission to the practice of law in California is based on accreditation by the Committee of Bar Examiners of The State Bar of California. Empire has continually maintained its CBE accreditation since 1982, completed its most recent 5-year CBE accreditation visit in 2017-2018, and obtained a re-accreditation grant effective until 2022.

IV. Overview of Empire College Foundation

Empire College Foundation is a California nonprofit public benefit corporation described in Section 501(c)(3) of the Internal Revenue Code (the "Foundation"). The Foundation was formed in 1994 to support education and related academic programs. Its activities have included the award of scholarships to students to attend Empire College, grants to charitable organizations and a no-cost GED test preparation program available to the public.

California Public Benefit Corporations are governed by California Corporations Code, Section 14601, et seq. [and must meet certain objectives with regards to governance structure and public accountability. A California Benefit Corporation must declare itself as a benefit corporation and state that its purpose is to provide a public purpose. It may also adopt a "specific public benefit". Examples include providing underserved individuals and communities with beneficial services; promoting economic opportunity; preserving the environment; improving human health;

promoting arts, sciences and the advancement of knowledge; increasing the flow of capital to entities with a public benefit purpose; and any other benefit for society or the environment.

While the Foundation has previously focused on educational support initiatives, the board composition and the administration of the law school have the capacity and knowledge to continue the operations of the school in a manner consistent with the current high academic standards.

The members of the Board of Trustees of Empire College Foundation include:

Robin Bartholow, Esq. – Director of the North Bay Construction Corps and Director of Workforce Development, North Coast Builders Exchange
Board Member, Sonoma County Workforce Investment Board
Empire College School of Law, Class of 2018

Brad Bollinger – Former Publisher, North Bay Business Journal and Business Editor at the Press Democrat (Polk award recipient for 2004 series on globalization)
Chair of the North Bay Leadership Council 2014-2015
Board Member, Santa Rosa Chamber of Commerce

Jeanne Browne, Esq. – Mediator, Collaborative Practice Family Law Attorney, Law Offices of Jeanne M. Browne
Empire College School of Law, Class of 1987

Daryl Reese, Esq. – Nonprofit and Business Law Attorney, Johnston | Thomas, Attorney at Law
Empire College School of Law, Class of 2014

Roy Hurd – Chairman, CEO and President, Empire College
Board and Executive Committee Member, Sonoma County Workforce Investment Board
Board Member, Center for Excellence in Higher Education, MTI College (Sacramento), Bergin University of Canine Studies

The collective experience of the Board of Trustees demonstrates strong operational experience and administrative capabilities.

V. Impact of the Proposed Changes

The Foundation will maintain Empire College's current mission and commitment to excellence that reflect the College's direction and focus. In addition, the Foundation plans to maintain continued compliance with all CBE standards through the transition and into the change of ownership.

Rule 4.160 of the CBE Standards requires an accredited law school to substantially comply with the standards. The proposed asset transfer from the College to the Foundation will not change the operational structure of the School of Law. As detailed below, there will be minimal changes to the operations of the law school.

- A. Lawful Operation. *The law school must operate in compliance with all applicable federal, state, and local laws and regulations.*

U.S. Department of Education

Under current procedures, Empire College will submit a pre-acquisition review to the Department of Education (USDE) no later than 45 days prior to the expected closing of the proposed change. ACICS approval is required for the Department to approve the change and to place any contingencies on the approval. Empire College will follow Department processes with care to ensure that there is no gap in financial aid for students.

State of California

Empire College is currently approved by the California Bureau of Private Postsecondary Education ("BPPE" or the "Bureau"). This approval is limited to programs outside of the jurisdiction of the CBE. Further, Empire College is in the process of teaching out the BPPE approved programs through the program discontinuation process with ACICS.

Accreditation

The Master of Legal Studies program was added in 2013 and is approved by the Accrediting Council for Independent Colleges and Schools, a nationally recognized accrediting agency by the United States Department of Education. Empire College has reviewed the standards and requirements for change of ownership and is submitting reports and documentation as required. As part of its most recent accreditation visit in October 2020, the Master of Legal Studies program was fully evaluated and, along with the rest of the College, it was granted an additional four years of accreditation through December 31, 2024.

- B. *Integrity. The law school must demonstrate integrity in all of its programs, operations, and other affairs.*

Empire College has a history of demonstrated integrity in the operation of all of its programs. The Foundation will continue to operate with the utmost integrity. Additionally, as a California Public Benefit Corporation, the Foundation must meet a "third-party standard" for defining, reporting and assessing its social and environmental performance. The third party that approves the standard must be independent from the Benefit Corporation and not dominated by the entities or persons from the same industry, in this case, higher education.

The governing board of the Benefit Corporation must issue an annual report specific to the accomplishment of the public benefits it provides. This report must describe the process for selecting the third-party standard, the ways in which the entity pursued and created public benefits, circumstances that may have hindered the provision of the benefits, and detailed information on ownership. The report must be provided to each shareholder and posted on the corporation's website.

- C. *Governance. The law school must be governed, organized, and administered so as to provide a sound educational program.*

By statute, governing boards and leaders of California Public Benefit Corporations must consider the impact of any proposed action on: 1) the shareholders of the benefit corporation; 2) the employees and workforce of the corporation; 3) the interests of beneficiaries of the public benefit purposes; 4) community and society; 5) the local and global environment; 6) the short and long-term interests of the benefit corporation; and 7) the ability of the corporation to accomplish its public benefit purposes. The code also provides for enforcement proceedings should the Benefit Corporation not meet statutory requirements or pursue its stated public benefits.

Empire College Foundation is governed by members of the Board of Trustees. As described in the revised bylaws, the number of Trustees is initially fixed at five. The Trustees shall be elected annually at the organizational meeting of the Board and serve for a two-year term. Trustees may serve for an unlimited number of consecutive terms. Vacancies in the Board of Trustees will be filled by a majority vote of the then remaining Trustees then in office.

- D. Dean and Faculty. *The law school must have at each campus, including any approved branch campus, a competent dean, a qualified administrator, an adequate administrative staff and a competent faculty that devote adequate time to administration, instruction and student counseling.*

There are no plans to make changes in the College's leadership, faculty, and staff positions relating to the School of Law as a result of the approval of this change or upon completion of the transaction.

- E. Educational Program. *The law school must maintain a sound program of legal education.*

There are no plans to make changes to the legal education program. Empire College School of Law anticipates no impact on its ability to provide a quality legal education as a result of this transition to non-profit status. Other law schools throughout the California Accredited Law Schools group have been operating as non-profit organizations, including, but not necessarily limited to: JFK School of Law, San Joaquin College of Law, Lincoln Law School of San Jose, Monterey College of the Law and The Colleges of Law (Ventura and Santa Barbara).

- F. Competency Training. *The law school must require that each student enrolled in its Juris Doctor Degree program satisfactorily complete a minimum of six semester units (or their equivalent) of course work designed to teach practice based skills and competency training. Such competency training must teach and develop those skills needed by a licensed attorney to practice law in an ethical and competent manner.*

There are no plans to make changes to the legal education program, including the practice-based skills and competency training.

- G. Scholastic Standards. *The law school must maintain sound scholastic standards and must as soon as possible identify and disqualify those students who lack the capability to satisfactorily complete the law school's J.D. degree program.*

The law school will continue to maintain its sound scholastic standards as demonstrated by its history and by the recent grant of continued accreditation. Students will continue to be evaluated regularly both in the admissions process and the early years of law school to assure only those with the capability of satisfactorily completing the J.D. program are admitted and allowed to continue in the program.

- H. Admissions. The law school must maintain a sound admissions policy. The law school must not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the degree program.

The law school will continue to maintain the current admissions policy and practices related to admissions. Admitted students are classified as "Regular," "Special" or "Transfer" students. Students may be provisionally admitted and allowed to begin classes pending receipt of all necessary documentation. The Law School strictly adheres to the admissions policy. Further, students will not be formally accepted until all of the necessary documentation has been received.

- I. Multiple locations.

The law school does not have multiple locations.

- J. Library. *The law school must maintain a library consistent with the minimum requirements set by the Committee.*

The law school will continue to maintain the current library facilities and resources. The law library is an integral part of the School of Law. The Law Library houses nearly 10,000 volumes along with extensive computerized legal resources. The library consists of California, Federal and other court reference works, reports, statutes and digests, as well as a growing collection of law reviews and treatises. Lexis/Nexis and Westlaw computerized legal research databases are available.

- K. Physical Resources. *The law school must have physical resources and an infrastructure adequate for its programs and operations offered at each campus.*

The law school will continue to maintain the current administrative, library and classroom physical resources and infrastructure. The building facilities and grounds for Empire College School of Law are located at 3035 Cleveland Avenue in Santa Rosa, California. The 55,000 sq. ft. campus building includes ample classroom, library, and administrative space to promote the legal learning environment, as well as space subleased to the State of California for two Sonoma County Superior Courtrooms. The Law School has access to the two Sonoma County Superior Courtrooms as classrooms for Trial Practice and Moot Court.

- L. Financial Resources. *The law school must have adequate present and anticipated financial resources to support its programs and operations.*

As a result of the transaction, the Foundation anticipates increased access to financial resources through direct charitable contributions from the public. Empire College submitted its most recent budget with the November 2020 Annual Report. The 2020 Budget is attached as Exhibit A.

- M. Records. *The law school must maintain adequate records of its programs and operations.*

The law school does not plan to make any changes to the maintenance of the records of its programs and operations.

- 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.*

California Accredited Law Schools (CALS) must “maintain a minimum, [five-year] cumulative bar examination pass rate” (“MPR”) of 40 percent or more, as calculated under Rule 4.160(N) and Guideline 12.1 of the Guidelines for Accredited Law School Rules.

The Empire College School of Law continues to maintain its cumulative pass rate within the requirements of the Accredited Law School Rules, and anticipates no impact on its ability to do so as a result of the transition to non-profit status.

- O. *Consistent with sound educational policy and these rules, a law school must operate in accordance with policies and procedures that comply with the Constitutions and all applicable laws of both the United States and the State of California so as to provide both equality of opportunity and to prohibit unlawful discrimination.*

As noted above in part V.A., the law school, under the Foundation will continue to comply with the Constitutions and all applicable laws of both the United States and the State of California so as to provide both equality of opportunity and to prohibit unlawful discrimination. This includes compliance with all state and federal laws on discrimination.

The Foundation is firmly committed to equal opportunity and prohibits unlawful discrimination. The Foundation will continue to adhere to the policies noted in the School catalog. Empire College School of Law grants students of any race, color, ethnic origin, age, sex, or sexual orientation all rights, privileges, programs, and activities generally made available to students of the School of Law. The School of Law does not discriminate in administration of its educational policies, admissions policies, scholarship and loan programs, or other school administered

programs. Empire College publishes the comprehensive nondiscrimination policy on its website, at <https://law.empcol.edu/student-consumer-information/>.

- P. Compliance with Committee requirements. *The law school must demonstrate its compliance with these rules by submitting required reports and otherwise complying with the rules.*

The law school will continue to demonstrate compliance with Committee rules by operating the law school in compliance with the rules and by filing with the Committee all required reports going forward.

VI. Conclusion

We appreciate the Committee's review of this Notice of Major Changes and Major Change Proposal. In seeking approval for this change of ownership, Empire College is confident that the proposed transaction and changes will strengthen the core mission of the law school and provide access to additional funding to further enhance the quality of the program and the student experience.