



OPEN SESSION
AGENDA ITEM O-402
JANUARY 2022
COMMITTEE OF BAR EXAMINERS

DATE: January 28, 2022

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst, Office of Admissions

SUBJECT: Action on Waiver of Unaccredited Guideline 1.11

EXECUTIVE SUMMARY

In 2009, the Committee of Bar Examiners (Committee) temporarily waived unaccredited law school guideline 1.11. This waiver allowed unaccredited law schools to offer course credit for bar exam preparation classes taught as part of a JD program. The waiver was to continue until the Committee amended guideline 1.11. It is appropriate for the Committee to determine the status of the temporary waiver and to refer potential amendment of guideline 1.11 to the Committee on State Bar Accredited and Registered Schools (CSBARS) for feedback.

BACKGROUND

THE COMMITTEE OF BAR EXAMINERS PASSED SEVERAL TEMPORARY WAIVERS IN 2009 TO TAKE EFFECT UNTIL THE UNDERLYING AUTHORITY WAS AMENDED.

The Guidelines for Unaccredited Law School Rules contain the following provision, which was part of the original guideline set adopted when the Committee gained oversight over registered, unaccredited law schools:

1.11 First-Year Law Students' Examination and Bar Examination Review Courses
Permitted; Limitations

A law school may offer and charge for a First-Year Law Students' Examination and bar examination review course. Any such review course must not be part of the credit requirements to obtain a J.D. degree. The law school may not condition any student's continued enrollment or graduation on the student taking a review course offered by the law school or otherwise. The law school may also permit commercial First-Year Law Students' Examination and bar examination review courses to post advertisements and promote their courses to law students. Law school administrators, instructors and staff must not compel or solicit students to attend any particular review course.

In 2009, the Committee adopted the following waiver of a portion of guideline 1.11 which allowed unaccredited law schools to offer credit for bar exam preparation courses:

It was moved, seconded and duly carried that Section 2.01(B).5 of the *Factors and Comments Governing the Interpretation and Application of the Standards (Factors)* and Guideline 1.11 of the *Guidelines for Unaccredited Law School Rules (Guidelines)* be temporarily waived so that all accredited and registered unaccredited law schools have approval to offer for credit and charge for bar examination review courses, and that this temporary waiver remain in effect until such time as the Committee adopts replacement provisions for both Section 2.01(B).5 of the *Factors* and Guideline 1.11 of the *Guidelines*.

At the time that the waiver was passed, the Committee utilized not only the Rules for Unaccredited Law Schools, but also the Factors and Comments Governing the Interpretation and Application of the Standards. Those standards have not been used by the Committee since 2009, and are not relevant to the discussion today.

THE COMMITTEE HAS NOT YET AMENDED UNACCREDITED GUIDELINE 1.11.

Unlike the sources of authority listed above, the Guidelines for Unaccredited Law School Rules remain in effect, and the Committee has not amended guideline 1.11.

In June 2009, State Bar staff sent the following letter to both unaccredited and accredited law schools informing them of the waiver and also including a confidentiality policy for documents from accredited and unaccredited law schools. (Attachment A). The Factors mentioned in the waiver are no longer enforced, and the privacy policy has been replaced by the California Public Records Act.

The waiver was not posted on the website or noted in the printed booklets of rules and guidelines given to deans and registrars.

In 2018, State Bar issued a paper booklet of the rules and guidelines referencing the waiver, but the online set of rules and guidelines did not reference the waiver.

Two law schools recently indicated that they modified their curriculum pursuant to the waiver (Irvine University College of Law and Pacific Coast University School of Law), while still other schools were unaware of the waiver.

ACCREDITED LAW SCHOOLS MAY OFFER BAR REVIEW CLASSES FOR CREDIT.

Both the prior accredited law school rules and the new rules implemented on January 1, 2022 allow accredited law schools to offer bar review courses for credit.

DISCUSSION

It may be helpful to clarify the status of the temporary waiver as well as to discuss whether to amend unaccredited guideline 1.11 after requesting feedback from CSBARS.

If the Committee does intend to discuss potential amendment of Guideline 1.11, it may be appropriate to affirmatively continue the waiver in place until that time. Those law schools utilizing the waiver should be describing their use of that waiver in the periodic compliance report each November, as they would with any other waiver.

It may be appropriate to seek feedback from the Committee on State Bar Accredited and Registered Law Schools, including taking public comment at one or more meetings, to help inform further Committee discussion.

Staff proposes the following amendment to unaccredited guideline 1.11 to incorporate the intent of the waiver:

1.11 First-Year Law Students' Examination and Bar Examination Review Courses Permitted; Limitations

A law school may offer and charge for a First-Year Law Students' Examination and bar examination review course. Any such review course ~~must not~~ may be part of the credit requirements to obtain a J.D. degree. ~~The law school may not condition any student's continued enrollment or graduation on the student taking a review course offered by the law school or otherwise.~~ The law school may also permit commercial First-Year Law Students' Examination and bar examination review courses to post advertisements and promote their courses to law students. Law school administrators, instructors and staff must not compel or solicit students to attend any particular review course.

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATION

It is recommended that the Committee reaffirm the temporary waiver of guideline 1.11 as passed in 2009, and direct all unaccredited law schools utilizing this waiver to describe its use in their periodic compliance report, including amending their 2021 periodic compliance report immediately if its use was not noted there.

It is further recommended that the Committee refer the possible amendment of unaccredited guideline 1.11 to CSBARS for feedback and return to the Committee at its June 2022 meeting for further discussion.

PROPOSED MOTION

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

MOVE, that the Committee of Bar Examiners affirms the temporary partial waiver of guideline 1.11 allowing unaccredited law schools to award credit for bar exam preparation courses, and direct all unaccredited law schools using this waiver to report its use in the appropriate section of the periodic compliance report, including amending their 2021 periodic compliance reports immediately if necessary.

FURTHER MOVED, that the Committee refers the waiver language to CSBARS for further feedback, to be returned to the Committee at its June 2022 meeting.

ATTACHMENT LIST

- A. Letter to Unaccredited Law Schools Regarding Credit for Bar Review Courses and Confidentiality, dated June 17, 2009



**THE STATE BAR
OF CALIFORNIA**

**THE COMMITTEE OF BAR EXAMINERS
OFFICE OF ADMISSIONS**

MEMORANDUM

DATE: June 17, 2009

TO: Deans, California Accredited and Unaccredited Law Schools
Registrars, California Accredited and Unaccredited Law Schools

FROM: Gayle Murphy *Gayle*

**SUBJECT: CREDIT FOR BAR REVIEW COURSES AND CONFIDENTIALITY
POLICIES AND**

During its May 2009 meeting, the Committee of Bar Examiners took the following action regarding awarding credit for bar review courses:

It was moved, seconded and duly carried that Section 2.01(B).5 of the *Factors and Comments Governing the Interpretation and Application of the Standards (Factors)* and Guideline 1.11 of the *Guidelines for Unaccredited Law School Rules (Guidelines)* be temporarily waived so that all accredited and registered unaccredited law schools have approval to offer for credit and charge for bar examination review courses, and that this temporary waiver remain in effect until such time as the Committee adopts replacement provisions for both Section 2.01(B).5 of the *Factors* and Guideline 1.11 of the *Guidelines*.

Also enclosed for your files are copies of the confidentiality policies regarding accredited and unaccredited law school documents.

If you have any questions, please feel contact me.

Thank you.