



OPEN SESSION

AGENDA ITEM O-405

APRIL 2022

COMMITTEE OF BAR EXAMINERS

DATE: April 22, 2022

TO: Members, Committee of Bar Examiners

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

SUBJECT: Action on Major Change – Monterey College of Law Empire Branch Campus and Empire College School of Law Closure

EXECUTIVE SUMMARY

Accredited law schools Monterey College of Law (MCL) and Empire College School of Law (ECSOL) submit a joint major change request, seeking Committee approval “to transition Empire [College School of Law] from a stand-alone, private California accredited law school into an accredited branch campus of MCL.” (Attachments A-I). Staff recommends the proposal be approved.

BACKGROUND

APPLICABLE AUTHORITY

This request for major change and branch campus was submitted on November 15, 2021, and filed under the prior accredited law school rules and guidelines in effect until December 31, 2021; all subsequent addenda and clarifications relate back to that original proposal. Therefore, unless otherwise stated, rules and guidelines referenced in this memorandum are those prior accredited law school rules and guidelines.

The full request is clarified and set forth in Attachments A-I. Because there has been an evolution of parts of the proposal as staff have engaged with the law schools, there are some differences in the information initially set forth in the request and the most recent version. To

the extent such difference exist, the facts and requests provided in the latest submission control.

This request is subject to the major change rules and guidelines as to the full request, as well as the branch campus rules and guidelines as to the proposed opening of MCL's new branch campus.

When considering a major change, a law school must seek prior approval under accredited law school rules 4.164 and 4.165 as follows: "[a]n accredited law school contemplating a major change must notify the Committee . . . [and t]he notice must explain in detail any effect the change might have on the law school's compliance with the rules." (Rule 4.164).

When considering the opening of a branch campus, details are defined in Rule 4.164, as further explained in Rules 4.165(B) and 4.160(H) and Guidelines 15.1 – 15.4 (Division 15. Opening and Operating a Branch or Satellite Campus), summarized below.

Guideline 15.2(A) describes the elements of the branch campus that must be established in advance, including both the rationale for opening the campus and logistics of doing so. Specifically, "[n]o less than 180 days before the proposed first day of classes of a branch or satellite campus, the law school must provide the Committee with notice of its intention to open a new branch or satellite campus," including the type, location, name, and proposed opening date of the new campus. It must also provide the Committee a "comprehensive explanation" for its decision to open the new campus, that includes: "a) a narrative discussing any research or planning regarding the new campus; b) projected financial impact of the new campus on the law school; and c) proposed resources to be allocated to the new campus." The law school must also ensure that each new branch campus operates with a qualified administrator who, under Guideline 4.1(B), must be a graduate of either an ABA-approved or Committee-accredited law school. Under this Guideline, if a branch opens with 30 or fewer students and offers only first or second-year classes, it may operate with only a part-time administrator.

Finally, the Dean must certify that "upon its opening," the new campus will be in at least substantial compliance with all relevant academic and operational requirements." At the same time, MCL overall must maintain compliance with the governing rules across all its campuses.

Guideline 15.2(B) requires the Committee, "[n]o less than 120 days before the proposed first day of classes at the branch or satellite campus, [to] approve or deny the law school's proposal."

After the Committee's initial approval, the law school must take additional steps as provided by Guideline 15.2(C), "within 90 days of the first day of classes of the branch or satellite campus," to submit a report "certified by the Dean," confirming that the new campus is in "substantial compliance."

Under Guideline 15.3, an approved branch campus is considered "provisionally approved" until it is shown to be in full compliance with "all accreditation standards and operational requirements."

Finally, under Guideline 15.3(C), “[w]ithin two years of operating a provisionally-approved branch campus, the law school must seek confirmation from the Committee that the campus is in compliance with all accreditation standards” found in the Rules and Guidelines. To make this determination, the Committee will conduct an inspection to determine whether the branch campus is to be “deemed approved, continue to be provisionally approved or denied continued provisional approval.”

GENERAL BACKGROUND ABOUT MONTEREY COLLEGE OF LAW

Monterey College of Law is a California accredited law school whose main campus is located in Seaside, California in Monterey County. It is a California 501(c)3 nonprofit corporation. The law school also maintains branch campuses in Bakersfield (Kern County College of Law) and San Luis Obispo (San Luis Obispo College of Law), and offers a hybrid JD program available from any campus. According to its 2021 Annual Report, as of September 15, 2021, MCL enrolled 213 JD students across all of its campuses and its hybrid program, including 68 first-year JD student sand 64 second-year JD students. The law school also offers a Master of Laws non-JD program to which the Committee has acquiesced, but that is not regulated by the Committee. MCL’s 2021 Minimum, Cumulative Five-Year Bar Exam Passage Rate was 55.4 percent. The law school was last inspected in 2018 and found to be compliant.

GENERAL BACKGROUND ABOUT EMPIRE COLLEGE SCHOOL OF LAW

Empire College School of Law is a California accredited law school located in Santa Rosa that has been operating since 1981. The law school offers both Juris Doctor (JD) and Master of Legal Studies (MLS) programs. ECSOL’s authority to grant the JD degree stems from its California accreditation through the Committee. The Committee has also acquiesced to ECSOL’s MLS program, but the Committee does not regulate that program.

ECSOL teaches in both fixed-facility format and a hybrid format recently approved by the Committee which allows law students at ECSOL to attend classes together, with some students attending the class in-person, while others attend the same class via Zoom. The law school has purchased advanced cameras that swivel within the main classroom to clearly show the speakers in the classroom to those attending remotely so that those attending in-person and via Zoom can interact.

Empire College, the parent university, recently decided to close its business school, but not the law school. It also requested and received permission from the Committee last year to transition the law school from a for-profit status to a non-profit status. After determining that was not a viable option, ECSOL began exploring other avenues, which ultimately culminated in the request now before the Committee, which includes a teach out described further below.

According to ECSOL’s 2021 Annual Report, it enrolled 61 students in the JD program, including 26 first-year students and 13 second year students. ECSOL’s Minimum, Cumulative Bar Passage Rate (MPR) was 59.3 percent in 2021. The law school was last inspected in 2017 and found to be compliant.

ECSOL participates in Title IV federal loan programs through its institutional accreditation discussed below, and the current proposal has been constructed to address the requirements of both the State Bar and the law school's additional accreditor.

EMPIRE COLLEGE SCHOOL OF LAW'S ACCREDITATION BY ACICS

ECSOL'S authority to grant the JD degree stems from its California accreditation through the Committee, which has also acquiesced to the law school's two-year MLS program. In addition, ECSOL's MLS program is accredited through the Accrediting Council for Independent Colleges and Schools (ACICS), an accreditor that is authorized to accredit to the master's degree level, but not through the JD level. Because ECSOL's MLS program is accredited by ACICS, eligible students enrolled in that program can apply for Title IV federally guaranteed student loans to pay for the MLS degree. Therefore, many of ECSOL's students tend to enroll jointly in the MLS program and the JD program during in order to participate in the Title IV federal loan program for the first two years of study. ECSOL confirms that there is complete overlap between the MLS and the JD programs during those two years for core courses and MLS students can also take electives that are part of the JD program; no courses are unique to the MLS.

STATUS OF THE ACCREDITING COUNCIL FOR INDEPENDENT SCHOOLS AND COLLEGES

In June 2021, the Department of Education ceased its recognition of ACICS. ACICS appealed this determination in July 2021, but no timetable for hearing the appeal has been announced. If the appeal is unsuccessful, schools accredited by ACICS, including ECSOL, will no longer be able to offer Title IV federal loans due to ACICS accreditation. If that happens, it is expected that there would be a transition period of about 18 months during with the law school would still be eligible to participate in Title IV loan programs. So long as Title IV participation is authorized, institutions accredited by ACICS must maintain compliance with its requirements and those of the Department of Education in order to offer access to Title IV funds.

MONTEREY COLLEGE OF LAW DOES NOT PARTICIATE IN TITLE IV FEDERAL LOAN PROGRAMS

Because Monterey College of Law is only accredited by the State Bar of California and not by a regional or national institutional accreditor, its students are not entitled to participate in Title IV federal loan programs. The law school is not required to seek such accreditation to operate a JD program in California.

In fact, however, MCL has begun the process of seeking accreditation by the Western Association of Schools and Colleges and was recently declared a candidate for accreditation. In future years, the law school may earn that accreditation as well.

DISCUSSION

THE JOINT PROPOSAL

MCL and ECSOL's joint proposal involves beginning a teach out starting fall 2022 for ECSOL, with ECSOL planning to close after the summer trimester in 2026. MCL will purchase pertinent assets

of ECSOL and open a branch campus slated to open administratively in July 2022, and to begin pre-classes in early 2023 and start the full JD program class in fall 2023.

EMPIRE COLLEGE SCHOOL OF LAW'S PROPOSED TEACH OUT PLAN

ECSOL proposes to stop admitting and enrolling new students into its JD, MLS, and joint JD/MLS programs effective with the fall 2022 semester. It will then continue to teach out all currently enrolled students through and including the summer 2026 trimester, when the last JD students are expected to graduate, unless all students have transferred out prior to that date.

Eligible students who are enrolled in the JD/MLS program will have the opportunity to continue to participate in Title IV federal loan programs while they are completing their MLS degree during the first two years of the JD program.

ECSOL will teach 1L and 2L JD and MLS classes with its own faculty. It may lease some faculty from MCL to teach 3L and 4L courses; these will be experienced faculty who likely have taught at ECSOL before. ECSOL will also teach in facilities that will be leased back from MCL, which will be purchasing the assets of the law school to begin its MCL-ECL branch campus at ECSOL's current location.

The law school's request evolved to include a full teach out opportunity and ending admissions as of the fall semester as conditions leading designed to enhance the proposal's compliance. Therefore, they will be included in the staff recommendation below.

While the State Bar does not regulate the law school's compliance with ACICS or Department of Education requirements, it does require that schools be in compliance with all applicable federal, state, and local laws and regulations. (Rule 4.160(A)). Here, ECSOL will need to seek approval from ACICS as to its teach out. The State Bar received a letter from the president of ACICS indicating that they are aware of this proposal and understand that ECSOL will file the necessary paperwork at the appropriate time later in the year. (Attachment K). ACICS' campus closure/teach out rules do not allow for continued admissions. This is not expected to be an issue here in any case, as ECSOL has committed, as part of this request and proposal to the State Bar, that it will cease admissions as of fall 2022 and focus on its teach out plan.

ECSOL will also need to continue to maintain its current compliance as to its obligations to the Department of Education. In particular, schools participating in Title IV federal loan programs must ensure that no more than 90 percent of its revenues within its MLS program come from Title IV funds. (Institutional Eligibility for Participation in Title IV Funds, Updated February 2019). ECSOL's current ratio of 57/43 greatly exceeds the 90/10 ratio required, and the law school will need to take steps to maintain this its compliance as the teach out proceeds in order to maintain eligibility to participate in Title IV federal loan programs. (Attachment I).

As mentioned above, ECSOL will remain in its for-profit status through the completion of the teach out and closure, rather than electing to convert to nonprofit status as previously considered prior to developing this proposal.

MONTEREY COLLEGE OF LAW'S PROPOSED BRANCH CAMPUS

MCL already operates two compliant branch campuses in addition to its main campus, in both Kern County and San Louis Obispo County, and it opened those branches in full compliance. It has systems in place to share administrative services, access to administrators, remedial services, and classes across the branches.

Through this major change request, MCL proposes to open a new branch campus to be called Empire College of Law (MCL-ECL), and to be located on the present ECSOL campus in Santa Rosa. The MCL-ECL branch would officially open in July 2022, and would begin offering introductory pre-1L classes in spring 2023 and official 1L classes in July 2023. Each year, thereafter, it would add another year of the JD program until all four years of the part-time JD program are available at the MCL-ECL campus.

The branch campus would be located in the facilities currently utilized by ECSOL, as MCL would purchase pertinent elements of the physical and intellectual property of ECSOL. MCL also plans to execute new at-will employment agreements with some members of ECSOL's staff, but have them teach MCL's curriculum used across MCL's branch campuses. As a result, it is possible that MCL may be delivering some campus services to ECSOL during its teach out, such as teaching courses to 3L's or 4L's or offering its enhanced academic support services. If so, MCL is aware of the limitations imposed by ACICS that ECSOL may not deliver more than 25 percent of services via a management service agreement for the MLS degree students. A letter from ACICS was provided indicating that it is aware of the proposal and understands that if approval is needed, ECSOL will properly request and document that with ACICS promptly. (Attachment J).

MCL's application appears to satisfy the elements the rules and guidelines applicable to branch campuses. MCL provided all information required by guideline 15.2 (A). The law school provided notice of its intent no less than 180 days before the proposed day of classes by filing the initial application in November 2021. The law school advised that the branch campus will begin operation in July 2022, offer pre-1L classes starting in spring 2023, and begin the full JD program in July 2023. Both the initial application and the addenda describe the demand for a law school in the Santa Rosa area, the similarity between the MCL and ECSOL programs and class cohorts, and MCL's success operating other branch campuses. (Guideline 15.2(A)(a). MCL and ECSOL provided detailed financial projections regarding the effect of the change, and documenting sufficient financial, and physical resources. (Guideline 15.2(A)(b-c). These resources include hiring many of the ECSOL staff under new contracts and contracting with current ECSOL leadership, in addition to applying current MCL resources. As for physical facilities, MCL also plans to purchase and use some of the facilities and employ some of the staff of the existing ECSOL campus, which has been accredited successfully for many years, including the current dean of ECSOL, assisted by current MCL staff. Given these similarities with the current program in the region and MCL's experience opening branch campuses, it is expected that MCL will open the branch campus full compliance.

WAIVER AND TIME LIMITS ESTABLISHING AND CERTIFYING THE BRANCH CAMPUS

Guideline 15.2(B) requires the Committee, “[n]o less than 120 days before the proposed first day of classes at the branch or satellite campus, [to] approve or deny the law school’s proposal.” Here, introductory pre-1L classes are not expected to begin until spring 2023, and the JD program is not expected to begin until July 2023. The law school has asked for assurance, however, that it will be able to begin MCL-ECL branch operations, including recruiting and community relations, in July 2022, which is less than 120 days from today. While no waiver is needed, the if the Committee decides today, the Committee can address the law school’s concern by affirming a start date for the branch campus in July 2022, with the start of classes in July 2023.

Guideline 15.2(C) requires MCL to submit a report certifying that the new campus is in substantial compliance within 90 days of the first day of classes. Here, those would be the pre-1L introductory classes, and the law school should be able to meet this timeline without a waiver.

ENSURING CLEAR, COMPLETE AND TRANSPARENT COMMUNICATION

The proposed name of MCL’s new branch campus is very similar to the name of the current law school: Empire College of Law, a branch campus of Monterey College of Law versus Empire College School of Law. The potential for confusion is increased because the law schools will be sharing facilities, resources, and staff for a period of time. MCL and ECSOL should be prepared to be extremely clear in their communication with current and prospective students so that students and the public understand the programs that each is offering. ECSOL will assist with this goal through its commitment to stop admitting or enrolling any new students once the fall 2022 semester begins.

RECOMMENDATION

It is recommended that the Committee of Bar Examiners receive and file the joint Request for Major Change from Monterey College of Law and Empire College School of Law “to transition Empire College School of Law from a stand-alone, private California accredited law school into an accredited branch campus of MCL,” and to begin a teach out process that will allow ECSOL to admit its final class cohort starting in fall 2022 and to close by the end of the 2026 summer trimester, after all students enrolled as of fall 2022 complete their degree programs or upon transfer of all previously enrolled students. It is also recommended that the Committee acknowledge ECSOL’s decision not to transition to nonprofit status, but rather to remain in its current, approved, for-profit status. Finally, it is recommended that both law schools provide an update on the implementation of this proposal along with their respective periodic compliance reports to be filed by November 15, 2022.

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 receive and file Monterey College of Law and Empire College School of Law's Joint Request for Major Change "to transition Empire College School of Law from a stand-alone, private California accredited law school into an accredited branch campus of MCL," as set forth in Attachments A-I, and approve the request.

MOVE, that the Committee approve Monterey College of Law's request to establish a branch campus at the current site of Empire College School of Law to be called Empire College of Law, a branch of Monterey College of Law, to open in July 2022, offer introductory Pre-1L classes beginning in spring 2023, and JD classes beginning in July 2023.

MOVE, the Committee grant Empire College of Law's request to admit its final JD and MLS class cohorts to begin class in fall 2022 and to begin a teach out of those students through graduation of the last MLS class, projected to be summer 2024, and the last JD class, projected to be summer 2026, allowing both the MLS and JD students the opportunity to complete their degrees at ECSOL; and to close upon the scheduled graduation or transfer of all students in that cohort on or before spring 2026.

MOVE, that the Committee further acknowledges and accepts that ESCOL has decided to voluntarily terminate its previous plan to convert to a nonprofit entity and to remain in its current, approved for-profit status.

MOVE, that the law schools are directed to provide status as to the operation of the new Empire College of Law branch campus and teach out at the existing Empire College School of Law in their respective periodic compliance reports due November 15, 2022.

ATTACHMENT LIST

- A.** Monterey College of Law - Empire College School of Law Major Change Initial Request
- B.** 010322 Email Regarding Request
- C.** 010522 Email Regarding Request
- D.** 031422 Email Regarding Request
- E.** 032422 Addendum
- F.** 042822 Addendum
- G.** 041422 Email Regarding Request
- H.** 041822 Email Regarding Request
- I.** 032522 Email Regarding Request
- J.** 022822 ACICS-State Bar email
- K.** 032322 Letter from ACICS