



OPEN SESSION
AGENDA ITEM O-400
OCTOBER 2022
COMMITTEE OF BAR EXAMINERS

DATE: October 14, 2022

TO: Members, Committee of Bar Examiners

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

SUBJECT: Action on Amendment to Unaccredited Guideline 1.11 - Examination Preparation Classes as Part of the JD Program

EXECUTIVE SUMMARY

In response to the Committee of Bar Examiners' (Committee) request, the Committee on State Bar Accredited and Registered Schools (CSBARS) recommends that the Committee amend Unaccredited Law School Guideline 1.11 as set forth in Attachment A. to allow registered, unaccredited law schools to offer exam preparation courses for credit as part of a JD program, in appropriate circumstances.

BACKGROUND

ORIGIN OF TEMPORARY WAIVER

Since adoption of the original Guidelines for Unaccredited Law School Rules when the Committee began its regulatory oversight of registered, unaccredited law schools, and through today, the guidelines include the following provision:

**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 JD 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 waived a portion of guideline 1.11 to allow unaccredited law schools to offer bar exam preparation courses for credit, as follows:

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, unaccredited law schools were subject to Factors and Comments Governing the Interpretation and Application of the Standards (Factors) as well as the rules and guidelines. Since that time, the Factors are no longer used, and are not relevant to the discussion today.

REFERRAL TO CSBARS

There is no indication that the Committee reconsidered the temporary waiver subsequent to 2009. As a result, in 2022 the Committee asked CSBARS to study whether an amendment to Rule 1.11 was still warranted and, if so, to propose an amendment. The Committee determined that the waiver should remain in effect during the study period.

CSBARS discussed the issue at meetings in March, April, June, and August 2022. In August, CSBARS adopted a consensus proposal. (See Attachment A). After adopting a consensus proposal, CSBARS indicated it planned to review and possibly refine its consensus proposal at its October 2022 meeting, which is set to occur two days prior to the October CBE meeting. If CSBARS alters the consensus proposal adopted in August, staff will attempt to post the proposed changes on Thursday, October 13.

While public comment was held at each CSBARS meeting, and CSBARS informed the public that written public comment could be submitted at any time throughout the discussion period, no public comment was received.

DISCUSSION

Staff initially proposed 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.

In its examination of the guideline, CSBARS observed that both ABA approved law schools and accredited law schools are permitted to offer exam preparation courses for credit and have been doing so without issue. Law schools also indicated that requiring the students to take such courses or being able to offer the courses for credit would provide more structure for those law school students who might need it in order to pass the bar exam or First-Year Law Students' Examination, and properly emphasize the importance of investing time and practice to prepare for those exams.

As a result, CSBARS proposed a new guideline in place of the current 1.11 which:

- Defines test preparation courses as those which prepare a student for the First-Year Law Students' Examination or California Bar Examination and review subjects covered within the law school's curriculum that are tested on the exams.
- Includes similar language as the first 2 sentences of the initial staff proposal, above.
- Ensures that test preparation courses are described accurately and offered as part of a sound and balanced course of study
- Ensures that an ownership interest in any required or school-endorsed external test preparation course is disclosed transparently

CSBARS does not recommend a limit on the total hours of bar preparation classes that may be offered for credit. Instead, it proposes that law schools be provided with the freedom to incorporate the quantity, manner and frequency of bar preparation as each sees fit.

If the Committee does, however, believe that a limit on the amount of credit that may be granted for test preparation is appropriate, a limit is proposed in bracketed text in the proposal. The amount was determined after reviewing the limits placed on internships and is recommended at 15 percent of total JD program credits. Staff supports a limit for clarity, and to assist the Committee if it should determine that a school's proposed program relies too heavily on test preparation courses. The 15 percent of credits limitation identified by CSBARS is flexible enough to allow a student to replace all elective credit classes with examination preparation, so there should not be a foreseeable reason to exceed this maximum.

RECOMMENDATION

It is recommended that the Committee adopt the CSBARS proposed amendment to Guideline 1.11 including the bracketed limitation language.

It is further recommended that the Committee affirm the end of the temporary waiver of Guideline 1.11, because the waiver is unnecessary after the passage of the new guideline.

PROPOSED MOTION

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

MOVE, adopt the CSBARS proposed amendment to Guideline 1.11 including the bracketed language limiting the percentage of credits that may be granted for test preparation.

FURTHER MOVE, that the Committee affirm the end of the temporary waiver of Guideline 1.11.

ATTACHMENT LIST

- A. Current Unaccredited Guideline 1.11
- B. CSBARS' Proposed Amendment to Unaccredited Guideline 1.11

Guideline for Unaccredited Law School Rules 1.11

Current Guideline

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.

Proposed Amendment to Unaccredited Guideline 1.11

Recommended by CSBARS at August 17, 2022 CSBARS Meeting

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

First-Year Law Students' Examination and California Bar Examination test preparation courses are those which contain both of the following: 1) the review of subjects previously covered within the curriculum which are tested on the First-Year Law Students' Examination or California Bar Examination, and 2) a primary focus on preparing the student to take those exams (i.e., standardized, timed, closed book examinations that focus on general principles of legal doctrine).

A law school may offer and charge for courses designed to help law students prepare to take and pass exams required by the State Bar. Any such test preparation course may be part of the credit requirements to obtain a JD degree.

A test preparation course for which credit is granted may be taught by law school faculty or by an external commercial test preparation course provider, provided the law school provides oversight of the course to ensure that it meets the requirements of the Unaccredited Law School Rules and Guidelines, including Guidelines 2.2 (Honesty Regarding Finances), 2.9 (Fairness in Academic Standards and Student Assessment), 5.1 (Academic Program), 5.3 (Minimum Requirements for Award of Juris Doctor (J.D.) Degree), 5.9 (Quantitative Academic Requirements) and 5.11 (Balanced and Comprehensive Course of Study).

Law schools must not compel students to attend any particular external commercial test preparation course unless required as part of the JD program. In the interest of consumer protection, if a law school grants credit for, or promotes uniquely or specifically to its students, any particular external commercial test preparation course, a law school must disclose to students any ownership interest of the law school in the test preparation course(s) provided by the law school's owners, administrators, instructors or staff. [[A law school may grant credit for a maximum of 15 percent of the credits required to obtain a degree. This limit does not restrict a law school from covering legal analysis or exam practice in a course having a primary purpose that is not test preparation for the First-Year Law Students' Exam or California Bar Exam.]]*

*CSBARS does not recommend a limit on the total number of test preparation course credits, but if the Committee imposes a limit, the language in the [[]] represents what CSBARS would propose.