

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: O-402

DATE: January 17, 2014

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: **Proposed Interpretation of Guideline 12.1 of the *Guidelines for Accredited Law School Rules* to Support the Accurate Calculation by all California-Accredited Law Schools of Their Respective Cumulative Bar Examination Pass Rate**

BACKGROUND

Last year the Committee adopted a new accreditation standard that is based upon a “minimum, cumulative bar examination pass rate” (CBEPR). As now required by Rule 4.160(M) of the *Accredited Law School Rules*, all California-accredited law schools (CALs) “must maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness a law school’s program of legal education.”

To enforce this new standard, the Committee amended the *Guidelines for Accredited Law School Rules* by adopting two new Guidelines: Guidelines 12.1 and 12.2; each became effective January 1, 2013. Guideline 12.1 sets the current, minimum CBEPR at 40% and requires the CALs to calculate and report their respective rate as a five-year rolling, annual percentage. As described in Guideline 12.1, a CALs must calculate their CBEPR by dividing the total number of graduates who take and pass any administration of the California Bar Examination (CBX) over the past five years (a total of 10 administrations), by the total number of its graduates who take the CBX (whether they pass or fail) over the same period of time. Graduates who choose never to take the CBX are not to be counted in calculating a school’s CBEPR.

As adopted, Guideline 12.2 required each CALs to report its current CBEPR in its 2013 Annual Report. For those schools who failed to report a CBEPR of at least 40%, the Committee could have issued each a Notice of Noncompliance pursuant to Rule 4.170. Guideline 12.2 also provides notice to each CALs that if it fails to report a compliant CBEPR in its 2016 Annual Compliance Report, it “shall be placed on probation” and, if placed on probation and then it fails to meet the terms of its probation by the end of 2017, it “shall be subject to the loss of its accreditation.”

The Committee’s clear intent in adopting this new accreditation standard and each of its associated Guidelines was to have each CALs calculate and report a CBEPR that is

accurate, consistent and verifiable. Soon after the adoption of Rule 4.160(M) and Guidelines 12.1 and 12.2, however, several CALS deans expressed concern that the methodology described in Guideline 12.1 is unclear in identifying both which ten administrations of the CBX a CALS is to use and which eligible graduates are to be counted to calculate and report its CBEPR accurately. Concern was also expressed that such ambiguity would lead to both inconsistent reporting of this important new accreditation metric by some or all of the CALS.

In recognition of these concerns, the Committee took action at its meeting on December 7, 2013 deferring implementation of Guidelines 12.1 and 12.2 so that appropriate amendments to Guideline 12.1 could be drafted, reviewed by the CALS and considered by the Committee's Advisory Committee on California Accredited Law School Rules (Advisory Committee) in preparation for review by the Committee at this meeting.

DISCUSSION

A contingent of CALS deans, through one of its representatives on the Advisory Committee, RAC Chair, Dean Heather Georgakis, recently submitted a proposal discussing how they believe an accurate and consistent CBEPR should be calculated and reported. As discussed in Attachment A, the Deans suggest using an academic year to define a "CBEPR reporting period" so that each five-year and 10 CBX administrations period used to calculate each annually-reported CBEPR would start with a July administration and then end with the February administration in the calendar year in which the school reports. It is thought that in doing so, the number of all graduates who are eligible and actually take (and either pass or fail) the CBX within each reporting period will be both counted and reported accurately.

To initiate the reporting function of Guideline 12.1 without additional delay, the Deans have also suggested a special, one time CBEPR reporting deadline of July 1, 2014 that would include the results of the February 2014 CBX administration; thereafter the CALS would report their CBEPRs in their Annual Compliance Reports that are due on or before November 15th of each year. Finally, the Deans have suggested that the schools also be required to provide verifiable data with each CBEPR report to support the veracity of the number reported.

These recommendations will be discussed by the Advisory Committee during its meeting on Thursday, January 23rd. A report of the Advisory Committee's recommendations will be made during the Subcommittee's meeting on January 24th, after which it is anticipated that the Subcommittee will make a recommendation for an interpretation of Guidelines 12.1 and 12.2 for consideration by the full Committee.

RECOMMENDATION

Pending.

PROPOSED MOTION

Pending.