

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: O-401

DATE: March 6, 2014

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: **Proposed Amendments to Guideline 12.1 Re Cumulative Bar Examination Pass Rates – Request to Circulate for Public Comment**

BACKGROUND

Effective January 1, 2013, all California-accredited law schools (CALs) became subject to a new accreditation standard based upon a “minimum, cumulative bar examination pass rate” (CBEPR). As now required by Rule 4.160(M) of the *Accredited Law School Rules* (Rules) the CALs “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.”

To enforce this new standard, the Committee also amended the *Guidelines for Accredited Law School Rules* (Guidelines) by adopting two new Guidelines: Guidelines 12.1 and 12.2, each of which also went into effect on January 1, 2013. Guideline 12.1 sets the current, minimum CBEPR at 40% and requires that the CALs calculate and report their respective rates as five-year rolling, annual percentages. As currently described in Guideline 12.1, a CAL is to calculate its CBEPR by dividing the total number of its graduates who take and pass the California Bar Examination (CBX) over the previous five years, by the total number of its graduates who take the CBX at least once whether or not they pass during the same period of time. Graduates who choose never to take the CBX are not to be counted in calculating a school’s CBEPR.

The narrative adopted in conjunction with Guideline 12.2 required the CALs to report their CBEPRs in their 2013 Annual Compliance Reports. For any CALs that failed to report a CBEPR of at least 40%, the Committee could have issued it a Notice of Noncompliance pursuant to Rule 4.170. The narrative to Guideline 12.2 also gave notice to the CALs that if any failed to report a compliant CBEPR in their 2016 Annual Compliance Report, the school could be placed on probation. If a school is placed on probation at that time, and it then fails to meet the terms of its probation by the end of 2017, it is subject to the loss of its accreditation.

One of the goals in adopting this new accreditation standard and the associated Guidelines was to have each of the 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, a number of CALS Deans expressed concern that the methodology described in Guideline 12.1 is unclear as to which administrations of the CBX a CALS is to use, and which classes of eligible graduates are to be counted to calculate and report an accurate CBEPR. Concern was also expressed that, as adopted, the ambiguity of Guideline 12.1 could lead to inaccurate and 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 to defer implementation of Guidelines 12.1 and 12.2. As a result, the reporting obligation by each CALS to report its CBEPR in its 2013 Annual Compliance Report (otherwise due on November 15, 2013) was suspended until amendments to Guideline 12.1 and the narrative to Guideline 12.2 could be drafted and considered by the Committee's Advisory Committee on California Accredited Law School Rules (RAC).

The CALS Deans, through RAC Chair Dean Heather Georgakis, prepared and submitted comments that suggested amendments to the Guidelines that define the timeframe of the reporting period more specifically and that identify which graduates must be counted for each reporting period and, finally, when each CALS is to submit its initial CBEPR report to the Committee. These suggestions were discussed by the RAC during its meeting on January 23, 2014 and the Committee subsequently directed staff to prepare proposed amendments to Guideline 12.1 and the narrative to Guideline 12.2 that will clarify both the calculation and timing by which all CALS are to report their respective CBEPR.

DISCUSSION

Attachment A contains the proposed amendments to Guideline 12.1 and the narrative to Guideline 12.2, which address the concerns of the CALS Deans. As they suggest, the Committee uses an academic year to count the success of all CALS graduates who take the CBX during any given five-year reporting period appears preferable since most students graduate in May and then take the following July administration of the CBX. Thus, as recommended, by starting each five-year reporting period with the pass results of a July administration, and ending it with a February administration, the CALS will be able to report the success of those graduates who graduate in the same five calendar years for each reporting period. In doing so, the anomaly of not being able to count the success of those graduates who actually graduate in the calendar year preceding each five-year reporting period, and then take and pass the first February administration in each reporting period will be eliminated. To achieve the goal of providing all who graduate during any of the five calendar years of each reporting period the opportunity to take and pass one of the 10 administrations of the CBX given during each reporting period, those who graduate in December of the last calendar year in each period will be permitted to take the February administration in the very next calendar year and still be counted in calculating a law school's CBEPR, whether or not they pass or fail.

The proposed amendments specify that the first five-year reporting period for the CALS to calculate and report their 2014 CBEPRs will include the pass/fail results for all those who graduated from January 2009 through December 2013. Thus, the pass/fail results

for the first of the ten CBX administrations will be those published for the July 2009 administration and will end the results for the February 2014 administration, the first (and last) to be counted for those who graduated in late 2013 and choose to take the first administration of the CBX for which they were eligible.

To initiate the reporting function of Guideline 12.1 without any additional delay, the proposed amendments specify a one-time CBEPR reporting deadline of July 1, 2014, which would allow schools to use and include the results of the February 2014 CBX administration for those who graduated in late 2013. Thereafter, each CALS will be required to report their respective CBEPR in their Annual Compliance Report that remains due on or before November 15th of each year. The RAC also recommended that the CALS be required to provide verifiable data to the Committee in the form of an identifying number assigned to CALS graduates by the Office of Admissions, which is an administrative issue that will be addressed by the form and handled by staff.

The proposed amendments to Guideline 12.1 and the narrative to Guideline 12.2 will be submitted to the RAC for its final review during its next meeting scheduled for February 13, 2014. Thereafter, the RAC is expected to submit a final recommendation in time for the Subcommittee's meeting on March 14th. After consideration of the RAC's recommendations, the Subcommittee's final version would then be submitted to the full Committee with a recommendation that it be circulated for a 30-day public comment period. The final version would then return to the Committee (and the RAC) for consideration during the Committee's April 25 and 26, 2014 meeting.

RECOMMENDATION

It is recommended that the Subcommittee recommend to the full Committee that the final version of the amended Guideline and narrative be adopted in principle, subject to a 30-day public comment period.

PROPOSED MOTION

If the Subcommittee agrees, the following motion is suggested:

Move that the proposed amendments to Guidelines 12.1 and 12.2, *Guidelines for Accredited Law School Rules*, in the form attached hereto, be adopted in principle; that the proposed amendments be circulated for a 30-day public comment period; and, that the proposed amendments and any comments received be referred to its Advisory Committee on California Accredited Law School Rules for comment prior to further considered and adoption by the Committee during its April 25 and 26, 2014 meeting.