

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: O-400

DATE: April 16, 2014

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: **Proposed Amendments to Guidelines Re Cumulative Bar Examination Pass Rates – Return from Public Comment**

BACKGROUND

Effective January 1, 2013, each California-accredited law school (CALs) became subject to a new accreditation standard based upon a “minimum, cumulative bar examination pass rate” (MPR). As now required by Rule 4.160(M) of the *Accredited Law School Rules* (Rules), each 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 of Bar Examiners (Committee) also amended the *Guidelines for Accredited Law School Rules* (Guidelines) by adopting two new Guidelines: Guidelines 12.1 and 12.2, which also went into effect on January 1, 2013. Guideline 12.1 sets the current, minimum MPR at 40% and requires each CALs to calculate and report their respective rate as a five-year rolling, annual percentage. As currently described in Guideline 12.1, each CALs is to calculate its MPR by dividing the total number of its graduates who take and pass the California Bar Examination (CBX) over the past five years, by the total number of graduates who take the CBX at least once whether or not they pass during the same period of time. Graduates who choose not to take the CBX are not counted in the calculation of a law school’s MPR.

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

The goal in adopting this new accreditation standard and the associated Guidelines was to have each CALs calculate and report a MPR 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 and which graduating classes of eligible graduates a CALS is to use to calculate and report its initial MPR report. A concern was also expressed that, as adopted, the current ambiguity of Guideline 12.1 could lead to inaccurate and inconsistent reporting of this important new accreditation metric by one or more CALS.

In recognition of these concerns, the Committee deferred implementation of Guidelines 12.1 and 12.2. As a result, the reporting obligation by each CALS to report its MPR in its 2013 Annual Compliance Report (which were due November 15, 2013) was suspended until proposed amendments to Guideline 12.1 and the narrative to Guideline 12.2 could be drafted and considered by the Committee. Any proposed amendments would be submitted to the Committee's Advisory Committee on California Accredited Law School Rules (RAC) for its input prior to final adoption by the Committee.

During its meeting on March 13, 2014, the RAC came to a consensus as to proposed amendments to both Guidelines to eliminate all ambiguity as to which administrations of the CBX are to be used and which graduates are to be counted to ensure an accurate MPR calculation. These proposals were then recommended to the Committee. During its March 14, 2014 meeting, the Committee agreed in principle with the proposed amendments and authorized a period of public comment. See, Attachment A.

The deadline for the submission of all public comments was April 15, 2014. Attachment B is the single public comment received, an e-mail submitted by Ms. Nancy L. Swanson. In her comment, Ms. Swanson opposed the Committee's adoption of the proposed amendments on the basis that "it appears to be able to impact schools in the future who provide an education to many who cannot afford ABA accredited schools."

DISCUSSION

It appears that the proposed amendments to Guidelines 12.1 and 12.2 will achieve their intended purpose of eliminating any ambiguity in the methodology used by each CALS to calculate and timely report (by July 1st) an accurate and verifiable MPR. The sole public comment received will be forwarded to RAC for its consideration prior to the Subcommittee's meeting. Thereafter, a final recommendation from the RAC to the Committee concerning the proposed amendments is expected.

RECOMMENDATION

Subject to any final input that may be provided by the RAC, it is recommended that following a period of public comment and consideration of the comment received, the proposed amendments to Guidelines 12.1 and 12.2 of the *Guidelines for Accredited Law School Rules* be adopted, effective the date of this meeting.

PROPOSED MOTION

If the Subcommittee agrees, the following motion is suggested:

Move that following a period of public comment and consideration of the comment received, the proposed amendments to Guidelines 12.1 and 12.2, *Guidelines for Accredited Law School Rules*, in the form attached hereto, be adopted, effective the date of this meeting of the Committee.