

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: June 2016 – O-400

DATE: June 10, 2016

TO: Subcommittee on Educational Standards

FROM: George Leal, Director for Educational Standards

SUBJECT: **Proposed Temporary Suspension of Guideline 12.1 (Minimum, Cumulative Bar Examination Pass Rate)**

BACKGROUND

Effective January 1, 2016, the State Bar of California became subject to the California Public Records Act. The part of the Act that impacts the Committee of Bar Examiners' (Committee) authority most directly is the following statute:

§ 6060.25. Confidentiality of information provided by applicant to the State Bar for admission and license to practice law.

Notwithstanding any other law, any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admission records, including, but not limited to, bar examination scores, law school grade point average (GPA), undergraduate GPA, Law School Admission Test scores, race or ethnicity, and any information contained within the State Bar Admissions database or any file or other data created by the State Bar with information submitted by the applicant that may identify an individual applicant, shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act.

The apparent, but unintended consequence of this new law is that the Committee is currently not able to provide information to any law school as to whether any of their graduates who took the California Bar Examination, passed or failed.

Since January 1, 2013, Rule 4.160(M) of the *Accredited Law School Rules* requires that 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 quantify and enforce the new standard, the Committee adopted two new Guidelines to the *Guidelines for Accredited Law School Rules* (Guidelines 12.1 and 12.2).

The Guidelines went into effect last year. Guideline 12.1 sets the current, minimum pass rate (MPR) at 40% and requires that each CALs calculate and submit a report to

the Committee of its MPR each July 1st that covers the preceding five-year reporting period. In July of 2014, the CALS timely submitted their respective MPR reports for the reporting period of August 1, 2009 through July 31, 2014. Those reports are now posted on the State Bar's website's "statistics page."

Guideline 12.2 provides: "If the Committee finds that a law school is not in compliance with this Guideline, it will issue a Notice of Noncompliance pursuant to Rule 4.170 [of the *Accredited Law School Rules*]."

DISCUSSION

Given the current prohibition in releasing examination pass/fail results to the law schools, the CALS are now unable to calculate their current MPR accurately, since none has a reliable means to confirm whether any of their graduates who took the February administration of the CBX passed or failed. (Asking their graduates to provide the information generally has not been fruitful according to the law schools.) As a result, each of the law schools is now unable to calculate or report its current MPR this coming July 1st as each would otherwise be required to do so.

Similarly, in not being able to receive a current MPR from each of the CALS, the Committee is unable to determine accurately whether a CALS should be issued a Notice of Noncompliance based upon its MPR for the current reporting period, August 1, 2010 through July 31, 2015.

RECOMMENDATION:

Pending a decision or a change in the law that would allow the Committee to release examination pass/fail information to the law schools, it is recommended that the Committee suspend Guideline 12.1 and Guideline 12.2 of the *Guidelines for Accredited Law School Rules* so that CALS will not be required to submit a report of their current MPRs on July 1, 2016.

PROPOSED MOTION:

If the Subcommittee agrees with this recommendation, the following motion is suggested:

Move that Guidelines 12.1 and 12.2 of the *Guidelines for Accredited Law School Rules* each be temporarily suspended.