

# **COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM**

**AGENDA ITEM NUMBER:** August 2016 – O-403

**DATE:** August 18, 2016

**TO:** Subcommittee on Educational Standards

**FROM:** George Leal, Director for Educational Standards

**SUBJECT:** **Pacific West College of Law - Periodic Inspection Report**

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## **BACKGROUND**

Attachment A is the report of the periodic inspection of Pacific West College of Law (PWCOL) conducted on March 29-30, 2016 by Educational Standards Consultant Sally Perring. In a 70-page response dated, August 15, 2016 PWCOL Dean Kevin O'Connell set out the law school's objections to the Report and each of its findings and recommended mandatory actions offered to address the numerous issues of the law school's operational noncompliance found during the inspection.

As submitted, the response contains the names of several currently-enrolled PWCOL students which, if attached to this memorandum, would publically identify each. As a result and consistent with current state law, the PWCOL response will be reproduced in its entirety, with all student names redacted, so that copies will be made available to the members of Committee during their consideration of the report.

PWCOL is a registered fixed-facility law school located in the City of Orange. It operates in office space adjacent to the law offices of its Dean, Kevin O'Connell, as a for-profit, close corporation, the O'Connell College of Law, Inc. The law school is authorized to offer three degrees in law: a Juris Doctor (J.D.), an LL.M. in Taxation and LL.M. in Environmental Law. The law school also offers two non-professional degrees: a Bachelor of Science in Law (B.S.L.) and a Masters of Art in Law (M.A.L.), each of which has been authorized by the Bureau for Private Postsecondary Education (BPPE).

At the time of the inspection, PWCOL's J.D. enrollment consisted of only 10 students. To graduate, students must complete 94 semester units; while classes are generally small, averaging as few as two or three students. While technically compliant in its admissions standards, the law school has a history of admitting students from other law schools, including those previously academically disqualified and of readmitting students dismissed from PWCOL for not passing the First-Year Law Students' Examination (FYLSE) within the mandatory "three administration rule." At the time of

the inspection, 60% (six out of ten) of PWCOL's students had been earlier dismissed, either academically from another law school or by PWCOL after not passing the FYLSX.

Despite its small enrollment and the apparent good faith efforts of its Dean and administrators to achieve and maintain compliance with the *Guidelines for Unaccredited Law School Rules* (Guidelines), PWCOL has a well-documented history of operating non-compliantly. The inspection in March was PWCOL's second five-year, periodic inspection conducted on behalf of the Committee of Bar Examiners (Committee) under Rule 4.244(A) of the *Unaccredited Law School Rules* (Rules). It was, however, the law school's fourth separate inspection since 2010.

During PWCOL's first periodic inspection, conducted in February 2010, numerous findings of its non-compliance with the Rules and Guidelines were found. As a result, the Committee continued the law school's registration but ordered an interim inspection be conducted within the next two years. That interim inspection took place in February 2012, and while the law school was found to have had made progress and improved its operations, there remained several new issues of its noncompliance. As a result, the Committee required that a second, interim inspection be conducted to confirm whether the law school had finally complied with all of the mandatory recommendations that had been made after the 2010 periodic inspection and the February 2012 interim inspection.

During its second interim inspection, conducted in early 2014, PWCOL was found to have made little material progress toward full compliance over the prior two years and, in fact, the inspection confirmed that PWCOL had actually reversed course since several material operational and administrative issues of its noncompliance, previously resolved after the earlier inspections, were again found problematic and non-compliant.

As a result, PWCOL was issued a Notice of Noncompliance dated April 26, 2014. As described in the Notice, the law school was found to be in noncompliance with the following Rules and Guidelines: Rule 4.240(C), Governance; 4.240(K), Records and Reports; 4.240(M) Compliance with Committee requirements; and as to Guidelines subsections 2.3 (A) and (B), Honesty in Communications; Guideline 5.34, Admission of Previously Disqualified Applicants; Guideline 9.1 (A), (B), and (C), Applications, Admissions, and Student Files; and Guideline 9.1 (O), Annual Compliance Report.

PWCOL submitted a timely response to the Notice of Noncompliance, which, after it was received, was deemed by the Committee to sufficiently satisfactory. As a result, on June 28, 2014, the Committee continued the school's registration subject to a regularly scheduled, five-year periodic inspection to be conducted in the spring of 2016. As noted, that inspection was completed on March 29<sup>th</sup> and 30<sup>th</sup>. In the attached report, the Educational Standards Consultant has again confirmed numerous instances of how the law school is still operating non-compliantly with numerous Guideline requirements.

Based upon each of these documented findings, the report noted the following points of PWCOL's noncompliance and recommends that it be required to take action on each of the following recommendations:

- 1) To comply with Guidelines 2.3 (A), (B), (C) and (F) and 5.19, the law school's catalog, student handbook and website must be reviewed and revised to provide: a clear and compliant statement of the law school's admission procedures for those admitted after being academically disqualified; a clear and compliant statement of the its academic good standing policy, academic dismissal and all graduation requirements; and it must eliminate completely, the current stated policy (as found in the student handbook) that allows the law school dean to retain or dismiss students on academic grounds at his sole discretion.
- 2) To comply with Guideline 2.9 (C), all course syllabi must be revised to provide students with notice of all factors used to determine the all final grades given.
- 3) To comply with Guidelines 3.1 and 3.2, the law school must begin scheduling at least one annual meeting of its Board of Directors and, in preparation of each such meeting, provide each Board member with an accurate and current report of the law school's current operations and the status of its ongoing duty to operate compliantly and each member should also receive a copy of all inspection reports submitted to the Committee of Bar Examiners since 2010.
- 4) To comply with Rule 4.243 and Guidelines 4.1 and 4.2, the Dean must demonstrably devote more time and effort to oversee the administration of the law school or resign as its administrator and retain a qualified administrator.
- 5) To comply with Guideline 4.3 and 5.19 the law school must form a committee of faculty members to aid in policy formulation, curriculum review and decision-making.
- 6) To comply with Guidelines 4.8 and 4.9, the law school must institute a compliant faculty evaluation process comprised of a process that relies on more than only classroom observations.
- 7) To comply with Guidelines 5.1, 5.2, 5.7, 5.9, 5.17, 5.18 and 5.25, the law school must conduct an objective evaluation of its program of legal education by engaging its faculty, through regular meetings, to improve the overall qualitative soundness of its program of legal education by improving the effectiveness of the instruction offered students, the quality of its final examinations and the effectiveness its academic and examination grading standards to better identify all students who are not qualified to succeed and graduate so that better correlation with students' pass rates on both the FYLSX and the California Bar Examination (CBX).
- 8) To comply with Guidelines 2.2 and 8.3 the law school must obtain and submit an audited report of its current financial status, including a statement of its current assets, liabilities, revenues and profits or losses, prepared by an independent certified public accountant.

9) To comply with Guideline 5.34 and Guideline 9.1 subsections (B), (C), and (D), the law school must conduct a review of the files of all currently-enrolled student to confirm that each contains a transcript of all course work completed by each student, including the dates on which the student took the FYLSX and whether they passed or failed; the number of units earned at other law schools for which credit has been transferred; a memorandum signed by the Dean supporting the admission of each previously disqualified law student, whether or not the student is admitted after being academically dismissed from any law school, including PWCOL, or after his/her failure to pass the FYLSX timely and who then subsequently passes or is restarting his/her law studies as a first-year student at the law school.

10) To comply with Guideline 9.1 (G), the law school must create and then maintain compliant files of all administrative personnel.

11) To comply with Guideline 9.1 (H), the law school must create and maintain a compliant file for each faculty member to include all evaluations received from students or peers, as well as a copy of their law school transcripts.

12) To comply with Guideline 9.1 (O), the law school must ensure accurate and current data is submitted with its Annual Compliance Report including, but not limited to, each attachment, including its audited financial report.

The report concludes with a recommendation that the Committee issue PWCOL another Notice of Noncompliance. In doing so, the Committee is advised that all but three of the recommended mandatory actions noted above (nos. 2, 8 and 10,) relate to the very same issues of PWCOL's prior non-compliance, as each was discussed in the inspection reports received by the Committee after the 2010, 2012 and 2014 inspections. As a result, the current findings of its continuing non-compliance support the Committee's issuance of a second Notice of Noncompliance to PWCOL. Attachment B is a draft of a proposed Notice of Noncompliance.

## **DISCUSSION**

As detailed in the report and as noted above, the long-standing and repeated instances of PWCOL's noncompliance have, again, been well-documented by an on-site inspection. In its 70-page, single-spaced narrative (not counting exhibits), Dean O'Connell has set out PWCOL's extremely detailed refutation of virtually every finding of noncompliance going back to its first periodic inspection in 2010. In doing so, Dean O'Connell added a new claim to the law school's defense that many if not most of the report's findings are due to error or, worse, bias. As stated on page two of the response:

PWCOL hereby objects to the over-all content of this periodic inspection report as on the grounds that there were numerous material misstatements of facts, as to the ambiguity of the self-study guide that was sent to it to be followed in

responding for the self-study (Exhibit 1) and the bias of the consultant as the over-all nature and manner as by which the periodic inspection evaluation was conducted.

In light of the report's numerous findings of the law school's current non-compliance, combined with the substance and length of the law school's response, it appears that it would be very difficult for the Committee to make a fair and reasoned assessment and final decision as to whether the law school is currently operating compliantly or whether its registration should be continued. Moreover, given the allegations of bias and factual error, in fairness to both the law school and the Committee's inspection process, a decision based simply on the current written report and PWCOL's written response would not appear to be in the best interest of either party.

The possibility that the findings of the current report, combined with its long-standing history of noncompliance, may now support a future recommendation that its registration be terminated, suggests that allowing the law school a full opportunity as possible to offer its factual defense during a hearing before the Committee would offer it the most comprehensive degree due process provided by the Rules.

As provided by Rule 4.260: "If the Committee believes that a registered law school is not in full compliance with these rules, the Committee will provide the law school with a written Notice of Noncompliance that states the reasons for its belief." Thereafter, as required by Rule 4.261, PWCOL will be required to file its response which the Committee may or may not deem "satisfactory." If any such response is not found satisfactory, the Committee may then order another inspection or, as it has in regard to other law schools found operating non-compliantly, it may notify PWCOL that it recommends that it either be placed upon probation or have its registration withdrawn.

If any such recommendation is made, the law school "may request a hearing before the Committee within fifteen days of being sent a notice that the Committee is recommending probation or withdrawal of recommendation." Rule 4.264.

#### **RECOMMENDATION:**

Based upon both its prior history of noncompliance and, as supported by the findings of its most recent periodic inspection, it is recommended that, pursuant to Rule 4.260, the Committee issue PWCOL a second Notice of Noncompliance in the form and content as set forth in Attachment B hereto.

#### **PROPOSED MOTION:**

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

Move that the Periodic Inspection Report of the Pacific West College of Law (PWCOL) of the inspection conducted on March 29-30, 2016 by Sally Perring, Educational Standards Consultant, be received and filed; that the response dated

August 15, 2016 submitted on behalf of the law school by Dean Kevin O'Connell be received and filed; that all of the Report's recommended, mandatory recommendations regarding PWCOL's noncompliance be adopted; and that pursuant to Rule 4.260, the Committee issue it a Notice of Noncompliance as attached hereto.