

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM NUMBER: October 2016 – O-403

DATE: October 6, 2016

TO: Subcommittee on Educational Standards

FROM: Gayle Murphy, Senior Director, Admissions
George Leal, Director, Educational Standards

SUBJECT: **Proposed Amendments to Law School Rules re Conforming to California Public Records Act**

BACKGROUND

Effective January 1, 2016, the State Bar of California became subject to the California Public Records Act (CPRA). As a result, most, but not all, of the records associated with the Committee of Bar Examiners' (Committee) law school regulation responsibilities must be provided upon request.

The following are excerpts from the law school rules adopted by the Committee and approved by the State Bar's Board of Trustees:

Accredited Law School Rules

"Rule 4.108 Public information

The following information about applicants for provisional accreditation, provisionally accredited law schools, and accredited law schools is public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Schedule of Charges and Deadlines:

- (1) public portions of applications for provisional accreditation or accreditation;
- (2) executive summaries of periodic inspection reports;
- (3) public portions of annual reports; and
- (4) any other document related to accreditation that the Committee deems suitable for publication.

The following information is confidential, whether or not contained in a public record:

- (1) personal information about identifiable students;
- (2) personal information about identifiable instructors;

- (3) law school financial records; and
- (4) any other information designated confidential by the Committee.”

Unaccredited Law School Rules

“Rule 4.207 Public information

The following information about registered law schools is public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Unaccredited Law School Fees (Schedule of Charges and Deadlines):

- (1) applications for registration;
- (2) public portions of annual reports; and
- (3) notices of major changes.

The following information is confidential, whether or not contained in a public record:

- (1) personal information about identifiable students;
- (2) personal information about identifiable instructors;
- (3) law school financial records; and
- (4) any other information designated confidential by the Committee.”

DISCUSSION

As a result of the new law, information received and maintained under the Committee’s authority to accredit and regulate law schools must be treated differently than it has in the past. Although all documents in its possession are “public records” (Gov. Code § 6252(e)), the CPRA affords agencies a variety of discretionary exemptions, which they may utilize as a basis for withholding records from disclosure. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure or when another statute such as Business and Professions Code section 6060.25 apply.

The following are examples of required information that fall within CPRA exemptions: For all law schools that must maintain the confidentiality of student records under the Federal Educational and Privacy Rights Act (FERPA) (20 U.S.C. § 1232g), that law expressly allows production of such information to any accrediting organization if the information is needed to perform its accrediting function. (34 C.F.R. § 99.31(a)(7).) The CPRA has an exemption covering all information and/or records, if the disclosure of such information or records is exempted or prohibited under any federal or state law, including FERPA. (Gov. Code § 6254(k).)

The CPRA also provides an express exemption for information that constitutes an unwarranted invasion of personal privacy. (Gov. Code § 6254(c).) In regard to law

schools' financial information, a record may be withheld if the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code § 6255.)

Since the State Bar is now subject to the CPRA, the law school rules language relative to public records is no longer applicable. The following amendments to conform the rules are suggested:

Accredited Law School Rules

"Rule 4.108 Public information

~~—The following Release of information about contained in the files of applicants for provisional accreditation, provisionally accredited law schools, and accredited law schools is subject to the requirements and limitations imposed by state law. public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Schedule of Charges and Deadlines:~~

- ~~—(1) public portions of applications for provisional accreditation or accreditation;~~
- ~~—(2) executive summaries of periodic inspection reports;~~
- ~~—(3) public portions of annual reports; and~~
- ~~—(4) any other document related to accreditation that the Committee deems suitable for publication.~~

~~—The following information is confidential, whether or not contained in a public record:~~

- ~~—(1) personal information about identifiable students;~~
- ~~—(2) personal information about identifiable instructors;~~
- ~~—(3) law school financial records; and~~
- ~~—(4) any other information designated confidential by the Committee."~~

Unaccredited Law School Rules

"Rule 4.207 Public information

~~—The following Release of information about contained in the files of applicants for registration and registered law schools is subject to the requirements and limitations imposed by state law. public, subject to any exception of confidentiality the Committee deems appropriate, and available upon written request for the processing fee set forth in the Unaccredited Law School Fees (Schedule of Charges and Deadlines):~~

- ~~—(1) applications for registration;~~
- ~~—(2) public portions of annual reports; and~~

~~—(3) notices of major changes.~~

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~~—The following information is confidential, whether or not contained in a public record:~~

~~—(1) personal information about identifiable students;~~

~~—(2) personal information about identifiable instructors;~~

~~—(3) law school financial records; and~~

~~—(4) any other information designated confidential by the Committee.”~~

Since the proposed amendments are to conform the rules to the new law, a public comment period is not necessary. If the Committee agrees with the proposed amendments, it would be appropriate to adopt them, subject to the approval of the Board of Trustees.

RECOMMENDATION:

It is recommended that the Committee adopt the proposed amendments and seek the Board of Trustees' approval.

PROPOSED MOTION:

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

Move that the proposed amendments to the *Accredited Law School Rules* and the *Unaccredited Law School Rules*, which conform the public information provisions to current law relative to the California Public Records Act, in the form attached hereto, be adopted and forwarded to the Board of Trustees for approval.