

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: April 2017 – O-400

DATE: April 24, 2017

TO: Subcommittee on Educational Standards

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

SUBJECT: **Proposed Amendments to the Law School Regulation Statutes and Rules re Mandatory Accreditation of Law Schools**

BACKGROUND

Since March 2013, the Committee of Bar Examiners (Committee) has spent many hours during the course of several meetings and two public forums, discussing the future of California’s registered, unaccredited law schools. Essentially, the Committee intention was to seek all necessary legal authority from the State Bar’s Board of Trustees, the California Supreme Court, and the California Legislature to eventually phase out unaccredited law schools while, at the same time, permitting it to accredit unaccredited law schools that use online, distance-learning technology to offer their programs of legal education. In addition, there were several other proposed amendments that have been considered that would clarify and simplify its statutory authority to regulate legal education in California and the admission to practice law by graduates of the law schools it oversees.

To achieve each of these goals, the Committee appointed two separate “Working Groups,” Working Group I and Working Group II, each of which was comprised of Committee members and a Dean from each type of law school to be affected by the proposed regulatory changes. They include: California-accredited law schools (CALs), and each type of unaccredited law schools, fixed-facility, distance-learning and correspondence. To receive additional stakeholder input, the Committee also conducted two public forms to receive public comment from various interested parties. The first forum was held in August of 2013; the second took place in April of 2016.

In January 2015, following the initial public forum and with the input provided by the members of Working Group I, the Committee adopted, in principle, various amendments as follows:

- Proposed amendments to Sections 6046.7, 6060 and 6060.7 of the *California Business and Professions Code* to clarify that the Committee’s regulatory authority covers only those law schools that offer a legal education leading to the award of a Juris Doctor (J.D.) degree that will

qualify their graduates to take the California Bar Examination; that all other law-related programs (offered either by law schools or a “nonlaw” school), including advanced law degrees, such as the LL.M., and any other degree in law not based upon the J.D. curriculum, would be under the oversight of other state agencies’ degree granting entity.

- Proposed additional statutory amendments that would require registered, unaccredited law schools to meet the standards for accreditation within ten years, which would result in a period of registration with the Committee as an unaccredited law school for no more than ten years after being enacted.
- Proposed amendments to Rule 9.30 of the California Rules of Court that would align that Rule with all statutory requirements relative to qualifying legal education, along with the various, alternative means to acquire the legal education to qualify for the admission to practice law in California, including new restrictions with regard to how long an unaccredited law school may continue to operate as an unaccredited law school.
- Proposed amendments to the *Accredited Law School Rules* and *Guidelines for Accredited Law School Rules* that would set academic standards to allow for the accreditation of distance-learning and correspondence law schools using online technology to offer their programs of legal education.

During its meeting in March of 2015, the State Bar’s Board of Trustees approved the Committee’s then-proposed amendments referenced above. Thereafter, staff in the Office of Admissions and the Office of General Counsel worked to prepare a written submission to the Supreme Court. During that effort, however, it was decided that additional work by the Committee was needed to provide the Supreme Court with more details regarding the proposed amendments.

Additional questions arose related to such things as the timing of when unaccredited law schools would be required to seek and obtain accreditation or otherwise lose their registration, and in the substantive provisions of the *Guidelines for Accredited Law School Rules* to clarify how and when online legal education leading to the award of a Juris Doctor Degree would be found to qualify for Committee accreditation under the standards that now apply only to a J.D. curriculum offered in a classroom setting.

Also discussed was shortening the amount of time for a school to achieve provisional accreditation, perhaps as few as three years from when the proposed statutory amendments are adopted by the Legislature, that the time period for all unaccredited law schools granted provisional accreditation to then achieve full accreditation be reduced from five to three years, and that the timeframe for all new law schools seeking provisional accreditation be reduced from ten years to five, leading to the eventual elimination of the *Unaccredited Law School Rules* and the *Guidelines for Unaccredited Law School Rules*.

Subsequently, the Committee also considered whether that appropriate sections of the *Business & Professions Code* should be amended to eliminate the “three-administrations” rule, which currently provides students at unaccredited law schools up to three opportunities to pass the First-Year Law Students’ Examination (FYLSX) before they must be dismissed, to return to the historical requirement that students must pass the FYLSX in order to be advanced to their second year of study.

There were also several more discussions regarding if it is possible to establish an equality in the educational substance of an accredited J.D. curriculum taught in either a fixed-facility classroom or through either synchronous or asynchronous online, distance-learning technology, and what additional amendments to the *Accredited Law School Rules* and *Guidelines for Accredited Law School Rules* were found to be necessary to carry out that intention. Also needed for consideration were more transitional rules.

To receive additional substantive input, the Committee directed that a second public forum be held on April 29, 2016. Following that forum, a second Working Group was established, again comprised of law school Deans from each type of law school along with members of the Committee, to help devise all of the necessary, proposed changes to all of the legal authorities believed needed to achieve the Committee’s goal of revising its oversight and regulation of law schools. The second Working Group then held several more meetings during which significant progress was achieved in developing all of the substantive changes thought needed to achieve the Committee’s goals.

DISCUSSION

Based upon the collective effort and work product of both Working Group I and Working Group II, the following attachments are now offered for the consideration and adoption, in principle, by the Committee.

They include: Attachment A (Proposed amendments to California Rules of Court – Chapter 3. Legal Education, Rule 9.30. Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners); Attachment B (Proposed amendments to California *Business & Professions Code*, Sec. 6046.7; Sec. 6060 and Section 6060.7); Attachment C (Proposed amendments to the *Accredited Law School Rules*); Attachment D (Proposed amendments to the *Guidelines for Accredited Law School Rules*).

The key amendments found in each attachment include the following:

California Rules of Court, Rule 9.30: If all proposed amendments are adopted, the California Supreme would expressly recognize that persons attending only an accredited and provisionally-accredited law school (including either those approved by the American Bar Association or accredited by the Committee) will be eligible to be admitted to the practice of law in California (9.30(a)) (there is no intention to do away with the law office study program or those who qualify for admission through a combination of four years of law study); and that unaccredited law schools are no longer recognized as a means to support the admission to the practice of law.

Business and Professions Code sec. 6046.7: If all proposed amendments are enacted, the Committee's authority to regulate and oversee law schools would be limited to only those accredited by the Committee (its authority would not extend over any law school approved by the American Bar Association, which is consistent with current rules), and it would no longer have any authority to regulate or oversee any unaccredited law school.

Business and Professions Code sec. 6060: If all proposed amendments are adopted, only persons who earn a J.D. degree at a CALS or an ABA-approved law school would be eligible for admission to practice law in California, except those in the Law Office Study Program or through a combination of four years of law study; those with a law degree earned outside the United States would have to establish that their degree is equivalent to a J.D. earned at a CALS or an ABA-approved law school and that they complete a year of study at any such law school; those required to take the FYLSX, would be required to pass the examination within the first administration of the examination after their first year of study before being advanced into their second year.

Business and Professions Code sec. 6060.7: If the proposed amendments are adopted, the Committee would only be responsible for the approval, regulation and oversight of accredited law schools that are not approved by the ABA.

Accredited Law School Rules: If the proposed amendments are adopted, all references to "unaccredited law school's registered" with the Committee would be removed and the Rules would apply only to accredited or provisionally-accredited law schools.

Guidelines for Accredited Law School Rules: If the proposed amendments are adopted, the following changes would take effect: All currently registered, unaccredited law schools would have three years, from the date the amendments are adopted, to apply for provisional accreditation; law schools granted provisional accreditation (under Rule 4.120) would then have two additional years (possibly more if permitted by the Committee) to apply and be granted full accreditation; law schools either not granted provisional accreditation or, if granted provisional accreditation that then do not receive full accreditation must teach out all then-enrolled students within five years; an accredited J.D. curriculum, offered either at fixed-facility classrooms or through distance-learning technology, requires the satisfactory completion of 1,200 hours of "verified academic engagement with a law school's faculty and its curriculum; academic engagement includes student attendance in a classroom, student participation in either a synchronous or asynchronous curriculum offered through distance-learning technology, or some combination of the two; all required library materials, texts and legal authorities may be offered by any accredited law school through online access.

There is one more meeting of the Working Group II scheduled prior to the Subcommittee's meeting set for April 28th at which all final revisions and edits to each of the attachments are expected to be completed. Following that meeting, and before the Subcommittee reviews and considers any final proposed amendments, a final version of all proposed amendments will be provided at the time of the Subcommittee's meeting.

In light of the time and effort expended by the members of both Working Groups, as supported by the Committee's staff, it appears that the Committee's proposal to develop a comprehensive plan to phase out unaccredited law schools in the foreseeable future, along with offering accreditation to all distance-learning and online correspondence law schools found compliant with the Committee accreditation standards, is now sufficiently well developed to allow it to move on to the next step of the process.

That next step after approval of the proposed amendments in principle by the Committee is to seek approval from the Board Committee on Admissions and Education to circulate the proposed amendments for a 45-day public comment period. The proposed amendments with any public comments would next be reviewed and adopted by the Committee. After that, the proposals would be forwarded to the Board of Trustees for approval with a request that the proposals be submitted to the California Supreme Court to review and, hopefully, approve the proposed amendments of the Court Rules. The next step would involve seeking the necessary statutory amendments from the California Legislature.

RECOMMENDATION:

It is recommended that the Subcommittee recommend to the Committee that proposed amendments to the California Rules of Court, Rule 9.30; to the California *Business & Professions Code*, Sec. 6046.7; Sec. 6060 and Section 6060.7; and to the *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*, in the form attached be approved in principle and that they be forwarded to the Board of Trustees' Committee on Admissions and Education with a request to circulate the proposed amendments for a 45-day public comment period.

PROPOSED MOTION:

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

Move that that proposed amendments to the California Rules of Court, Rule 9.30; Law school study in schools accredited by the Committee of Bar Examiners; to the California *Business & Professions Code*, Sec. 6046.7; Sec. 6060 and Section 6060.7; to the *Accredited Law School Rules* and the *Guidelines for Accredited Law School Rules*, in the form attached, be approved in principle and that they be forwarded to the Board of Trustees' Committee on Admissions and Education with a request to circulate the proposed amendments for a 45-day public comment period.