

Memorandum

To: Dean Maureen O'Rourke, Chair
Council of the Section of Legal Education and Admissions to the Bar

From: Pamela Lysaght, Chair
Standards Review Committee

Date: January 22, 2018

Re: Proposed Changes to Rule of Procedure 53

This is the fourth of four memoranda setting forth recommendations from the Committee's January 2018 meeting. This Memoranda addresses proposed changes to Rule 53 Applications, Decisions and Recommendations Made Public. The draft was prepared by the Committee's Transparency Working Group, which included Anthony Caprio, Peter Joy (Chair), Stephanie Giggetts (ABA Staff), Susan Kay (Accreditation Committee Liaison), and Chris Pietruszkiewicz. The Committee unanimously voted to recommend that the Council distribute for Notice and Comment the proposed changes to Rule 53, which appear after this report. The recommended changes will ensure that the accreditation process will continue to be in full compliance with reporting required by the Department of Education (DoE).

The Committee also discussed the possibility of defining "significant non-compliance" in Rule 53 using some version of the DoE guidance language, which appears below:

Based on the practices common to recognized agencies and on the statutory and regulatory requirements that recognized accreditors perform effectively, at a minimum, noncompliance is viewed as significant if, notwithstanding the agency's best judgment that the institution or program will achieve compliance within the permissible timeframe, the area of noncompliance implicates institutional integrity; or, for example, the number of areas of noncompliance, institutional finances, or other circumstances cast reasonable doubt on whether compliance can be achieved in the time permitted; or the institution or its affiliates demonstrate recurrent noncompliance with one particular standard or standards; or the area of noncompliance is one for which notice to the public is required in order to serve the best interests of students and prospective students.

The Committee concluded that it is best not to define significant non-compliance. If Rule 53 defines significant non-compliance using the DoE's current guidance on the subject, the DoE could issue new guidance and then the definition in the Rule could be inconsistent with future DoE guidance. The Committee believes it is best to leave significant non-compliance undefined and, should a law school take issue with the Office providing public notification, the Office would rely on whatever the DoE guidance is in effect at the time of the public notification.

Finally, the Committee discussed the fact that, under the present structure with the Accreditation Committee (AC) and Council as separate entities, there are some situations in which the process is simply too long to address pressing issues at some schools where earlier public notice would be beneficial to current and prospective students. The current lag time should be resolved once the Council is restructured to incorporate the work of the AC. If the restructuring does not take place as expected, then perhaps there should be a change in the Rules so that some issues at schools could go directly to the Council so that public notice would occur earlier than under the present system.

Proposed Changes to Rule 53

Rule 53: Applications, Plans, Decisions and Recommendations Made Public

- (a) When a law school has applied for provisional or full approval, acquiescence in a major change, ~~or a variance~~, or has submitted a teach-out plan for approval, the ~~Council or the~~ Managing Director shall provide public notice:
- (1) That the law school has submitted an application or plan; and
 - (2) Of the procedural steps for consideration of the application or plan.
- (b) After a law school has been notified of the Committee's decision or recommendation, the Managing Director may state publicly the conclusions of the Committee and its decision or recommendation, with an explanation of the procedural steps in further consideration of the matter, concerning:
- (1) The law school's application for provisional or full approval;
 - (2) The law school's application for acquiescence in a major change;
 - (3) The law school's application for a variance;
 - (4) The imposition of sanctions or specific remedial action on the law school;
 - (5) The placing of the law school on probation; ~~or~~
 - (6) The withdrawal of the law school's approval; or
 - (7) The law school's significant non-compliance with one or more Standards under Rule 12(a)(4).
- (c) After a law school has been notified of the Council's decision, the Managing Director shall provide public notification of the Council's conclusions and decision (except as to a sanction that is explicitly not public), with an explanation of any procedural steps for further consideration of the matter, concerning:
- (1) The law school's application for provisional or full approval;
 - (2) The law school's application for acquiescence in a major change;
 - (3) The law school's application for a variance;
 - (4) The imposition of sanctions or specific remedial action on the law school;
 - (5) The placing of the law school on probation; ~~or~~

- (6) The withdrawal of the law school's approval;
- (7) The law school's significant non-compliance with one or more Standards under Rule 12(a)(4); or
- ~~(6)~~(8) The law school's submission of a teach-out plan.

(d) After a matter concerning a law school has been acted upon by an Appeals Panel, the ~~Council or~~ the Managing Director shall provide public notification of the conclusions and decision of the Appeals Panel.

CLEAN VERSION

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