

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: October 10, 2017

Re: Proposed Changes to Rules of Procedure

This is the third of four memoranda to the Council setting forth recommendations from the Standards Review Committee based on actions the Committee took at its October 2017 meeting. This Memorandum addresses proposed changes to the Rules of Procedure. The Committee voted unanimously to recommend the changes. Explanations of the proposed changes are below, followed by a redlined version and a clean version.

Rule 3, Accreditation Committee Responsibility and Authority

Rule 3(a) (5) currently provides that the Accreditation Committee ("AC") has jurisdiction to make recommendations about teach-out plans. The proposed amendment deletes AC and replaces it with the Council so that the authority to approve a teach-out remains solely with the Council and approval is not delayed by requiring review and a recommendation by the AC.

Rule 5, Site Evaluations

Rule 5(d) currently provides that in extraordinary circumstances, a site evaluation of a law school may be postponed upon the request of the law school. The proposed amendment removes "upon the request of the law school," so that the Managing Director has authority to postpone a visit.

Rule 10, Notice of Accreditation Decision by Other Agency

Rule 10(c) currently provides that a law school must complete and submit the Notice of State or Other Recognized Agency Action Form. This form does not exist so the proposed amendment deletes this provision.

Rule 14, Actions on Determinations of Noncompliance with a Standard.

Rule 14(a)(2) currently provides that the Committee can direct a law school representative to appear at a hearing to determine whether to impose sanctions. However, Rule 21 provides that at the hearing, the Committee may impose sanctions or direct specific remedial action. The proposed amendment adds "specific remedial action to Rule 14(a)(2) to be consistent with Rule 21.

Rule 22, Council Consideration of Recommendation of Accreditation Committee.

Rule 22 currently provides that a law school has a right to have representatives, including legal counsel, appear before the Council following a Committee recommendation to impose sanctions. The proposed amendment adds “specific remedial action” so that a law school has a right to have representatives appear on a Committee recommendation to direct specific remedial action since such action is proposed to be added to Rule to Rule 14(a)(2).

Rule 24, Evidence and Record for Decision

The proposed amendment requires a law school to submit new evidence at least 30 days before the Council meeting, giving the Executive Committee sufficient time to review the evidence and make a determination whether the evidence will be accepted. Experience has shown that this decision is sometimes not made until the Council meeting.

Rule 25, Decisions by the Council

Rule 25 does not specify when the decision of the Council will be effective. The proposed amendment adds a section that provides the decision of the Council will be effective upon issuance.

Rule 34, Teach-Out Plan

The proposed amendment requires review of a teach-out plan by the Council instead of the AC and Council . This will allow for a quicker review of the plan given the time sensitive nature of the process.

Rule 52, Disclosure of Decision Letters

The proposed amendment deletes Rule 52(a) because it is already addressed in Rule 49.

Proposed Amendments to Rules of Procedure for Approval of Law Schools

Rule 3: Accreditation Committee Responsibility and Authority

- (a) The responsibility and authority of the Accreditation Committee is delegated to it by the Council.
- (b) The Committee has jurisdiction to make recommendations to the Council concerning:
 - (1) an application for provisional or full approval;
 - (2) withdrawal of provisional or full approval;
 - (3) an application for acquiescence in a major change under Rules 29(a)(1) through 29(a)(13);
and
 - (4) an application for a variance; ~~and~~
 - ~~(5) approval or denial of a teach-out plan.~~
- (c) The Committee has jurisdiction to make decisions concerning all matters other than those specified in Rule 3(a), including:
 - (1) determining compliance with the Standards of any provisionally or fully approved law school in connection with a site evaluation, a complaint, a response to a request for information, a fact-finding report, interim monitoring of accreditation status, or any other circumstances as provided in these Rules;
 - (2) granting or denying an application for approval of a foreign programs, and the continuance of a foreign program as set forth in the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States; the Criteria for Approval of Foreign Semester and Year-Long Programs; and the Criteria for Accepting Credit for Student Study at a Foreign Institution; and
 - (3) granting or denying an application for acquiescence in a major change under Rule 29(a)(14) through 29(a)(17).
- (d) The Committee has jurisdiction to impose sanctions and/or direct specific remedial action, or to recommend to the Council that it impose sanctions and/or direct specific remedial action, in accordance with Rules 16 to 18.
- (e) The Committee has the authority to create subcommittees and task forces as it deems appropriate. Subcommittees do not have the authority to take action on behalf of the Accreditation Committee but have the authority to make recommendations where appropriate.

Rule 5: Site Evaluations

- (a) A site evaluation of a law school or of a program is a comprehensive examination of the law school or program conducted by one or more persons qualified to conduct site evaluations who:
 - (1) Review documents relating to the law school or program;
 - (2) Perform an on-site evaluation of the law school or program; and
 - (3) Prepare a factual report to be used by the Committee for purposes of making decisions or recommendations relating to accreditation status of the law school or program.
- (b) Site evaluations of law schools shall be conducted according to the following schedule:
 - (1) A site evaluation of a fully approved law school shall be conducted in the third year following the granting of full approval and every seventh year thereafter.
 - (2) A site evaluation of a provisionally approved law school shall be conducted in accordance with subsection (g) below.
 - (3) A site evaluation shall be conducted upon application by a law school for provisional approval.
- (c) The Council or Committee may order additional site evaluations of a law school when special circumstances warrant.
- (d) In extraordinary circumstances, a site evaluation of a law school may be postponed ~~upon the request of the law school~~. In such cases, the postponement shall be at the discretion of the Managing Director in consultation with the chair of the Committee and shall not exceed one year.
- (e) When a site evaluation of a law school is required under the Standards or these Rules, the Managing Director shall make the following arrangements:
 - (1) Schedule the site evaluation during the regular academic year, at a time when classes in the program of legal education are being conducted.
 - (2) Appoint a qualified site evaluation team of sufficient size to accomplish the purposes of the site evaluation, and appoint a chair of the site evaluation team;
 - (3) Provide the site evaluation team all relevant documents relating to Accreditation Committee and Council action regarding the law school;
 - (4) Provide the site evaluation team with any third-party comments received by the Managing Director's Office regarding the law school's compliance with the Standards;
 - (5) Provide the site evaluation team all complaints received under Rule 43 and not dismissed by the Managing Director or the Accreditation Committee; and
 - (6) Provide the site evaluation team with any necessary or appropriate directions or instructions.

- (f) In connection with a site evaluation of a law school, the Managing Director shall direct the law school to provide the following documents to the site evaluation team before the site evaluation:
 - (1) All completed forms and questionnaires, as adopted by the Council; and
 - (2) In the case of a law school applying for provisional or full approval, the completed application for provisional or full approval.
- (g) Site evaluations for provisionally approved law schools shall be conducted as follows:
 - (1) In years two and four, and upon application for full approval, the law school shall be inspected in accordance with the rules for site evaluation of fully approved law schools.
 - (2) The Accreditation Committee has the discretion to order a site evaluation in any other year. The Accreditation Committee may direct that the additional site evaluation be limited in scope.
- (h) Following a site evaluation, the site evaluation team shall prepare a written report on facts and observations that will enable the Committee to determine compliance with the Standards or other issues relating to the accreditation status of the law school. A site evaluation report shall not contain conclusions regarding compliance with Standards or make recommendations for action by the Committee or the Council.
- (i) The Managing Director shall review the report submitted by a site evaluation team and ensure that it complies with (h). The Managing Director shall then transmit the report to the president and the dean in order to provide an opportunity to make factual corrections and comments. The law school shall be given at least 30 days to prepare its response to the report, unless the law school consents to a shorter time period. The 30 day period shall run from the date on which the Managing Director transmits the report to the law school.
- (j) Following receipt of the law school's response to the site evaluation report, the Managing Director shall forward a copy of the report with the law school's response to members of the Accreditation Committee and the site evaluation team.
- (k) Site evaluations regarding foreign programs shall be conducted as provided under the:
 - (1) Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States;
 - (2) Criteria for Approval of Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools.

Rule 10: Notice of Accreditation Decision by Other Agency

- (a) An approved law school shall promptly inform the Managing Director of the following actions with respect to the law school:
 - (1) Pending or final action by State agency to suspend, revoke, withdraw, or terminate legal authority to provide post-secondary education;
 - (2) Decision by recognized agency to deny accreditation or pre-accreditation;

- (3) Pending or final action by recognized agency to suspend, revoke, withdraw, or terminate accreditation or pre-accreditation; or
 - (4) Probation or equivalent status imposed by recognized agency.
- (b) If the law school is part of a university, then the law school shall promptly inform the Managing Director of the above actions with respect to the university or any program offered by the university.

~~(c) A law school must complete and submit the Notice of State or Other Recognized Agency Action Form.~~

~~(c)~~(d) The Council will not grant approval to a law school if the Council knows, or has reasonable cause to know, that the law school is subject to the actions in subsection (a), unless the Council can provide a thorough and reasonable explanation, consistent with the Standards, why the action of the other body does not preclude the Council's grant of approval. Such explanation will be provided to the Secretary of the Department of Education.

~~d)~~(e) If the Council learns that an approved law school is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the Council will promptly review its approval of the law school to determine if it should also take adverse action or place the law school on probation.

~~(e)~~(f) The Council will, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation status of a law school and any adverse actions it has taken against a law school.

Rule 14: Actions on Determinations of Noncompliance with a Standard

- (a) Following a determination by the Committee of non-compliance with a Standard in accord with Rule12(a)(4), the Committee shall:
 - (1) Require the law school to bring itself into compliance and submit information by a specific date to demonstrate that it has come into compliance with the Standard; and
 - (2) Direct that representatives of the law school, including any person specifically designated by the Committee, appear at a hearing to determine whether to impose sanctions or direct specific remedial action in connection with the law school's non-compliance with the Standard.
- (b) The period of time by which a law school is required to demonstrate compliance with a Standard shall not exceed two years from the date of determination of noncompliance, except as provided for in subsection (c).
- (c) Upon request of the law school and for good cause shown, the Committee may extend the date of compliance or may recommend that the Council extend the date of compliance.

Rule 22: Council Consideration of Recommendation of Accreditation Committee

- (a) A law school has a right to have representatives of the law school, including legal counsel,

appear before the Council at a Council hearing following a Committee recommendation regarding (i) the law school's application for provisional approval, (ii) the law school's application for full approval, (iii) the law school's application for acquiescence in a major change under Rule 29(a)(1) – 29(a)(13), ~~and~~ (iv) the Committee's recommendation to impose sanctions following a hearing held in accordance with Rules 11(b) or 14(a)(2), and (v) the Committee's recommendation of specific remedial action.

- (b) The Managing Director in consultation with the Chair of the Council may set reasonable limitations on the number of law school representatives that may appear at a meeting and on the amount of time allotted for the appearance.
- (c) Except as permitted in subsection (a), a law school does not have a right to appear at a Council meeting, hearing or proceeding on any matter related to the accreditation of a law school.
- (d) The Chair of the Council may invite the Chair of the Accreditation Committee to appear at the hearing, if the Chair determines that such person could reasonably be expected to provide information helpful to the Committee. The Chair of the Accreditation Committee may not present new evidence unless the law school has the opportunity to respond to that new evidence.
- (e) The Managing Director or designee and any additional staff designated by the Managing Director shall be present at Accreditation Committee meetings and hearings. Legal Counsel for the Section may also be present at Accreditation Committee meetings and hearings.

Rule 24: Evidence and Record for Decision

- (a) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council shall adopt the Committee's findings of fact unless the Council determines that the findings are not supported by substantial evidence in the record.
- (b) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the record on which the Council shall make its decision shall be the following:
 - (1) The record before the Committee on which the Committee based its decision or recommendation;
 - (2) The letter setting forth the Committee's decision or recommendation;
 - (3) The written appeal by the law school, if applicable;
 - (4) Any written submission by the Committee in response to an appeal, if applicable;
 - (5) Any testimony of the law school in a hearing or an appearance before the Council.
- (c) Except as specifically provided otherwise in these Rules, the law school shall not present any evidence to the Council that was not before the Committee at the time of the Committee's decision or recommendation.
- (d) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council will accept new evidence submitted by the law school only if the

Executive Committee of the Council determines that:

- (1) The evidence was not presented to the Committee;
- (2) The evidence could not reasonably have been presented to the Committee;
- (3) A reference back to the Committee to consider the evidence would, under the circumstances, present a serious hardship to the law school;
- (4) The evidence was submitted at least 30~~14~~ days in advance of the Council meeting; and
- (5) The evidence was appropriately verified at the time of submission.

Rule 25: Decisions by the Council

(a) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council shall give substantial deference to the conclusions, decisions, and recommendations of the Committee.

(b) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council may, as appropriate:

- (1) Affirm the Committee's decision or recommendation;
- (2) Amend the Committee's decision or recommendation, including imposing any sanction regardless of whether the Committee has imposed or recommended any sanction;
- (3) Reverse the Committee's decision or recommendation; or
- (4) Remand the matter to the Committee for further proceedings.

(c) If the Council remands a decision for further consideration or action by the Committee, the Council shall identify specific issues that the Committee must address.

(d) The decision of the Council shall be effective upon issuance.

Rule 34: Teach-Out Plan

(a) If a provisional or fully approved law school decides to cease operations or close a branch campus, the law school shall promptly make a public announcement of the decision and shall notify the Managing Director, the appropriate state licensing authority, and the United States Department of Education of the decision.

(b) A provisional or fully approved law school must submit a teach-out plan for approval upon occurrence of any of the following events:

- (1) The law school notifies the Managing Director's Office that it intends to cease operations or close a branch campus;
- (2) The Accreditation Committee recommends, or the Council acts to withdraw, terminate, or suspend, the accreditation of the law school;

- (3) The United States Secretary of Education notifies the Managing Director's Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;
 - (4) A state licensing or authorizing agency notifies the Managing Director's Office that an institution's license or legal authorization to provide an educational program has been or will be revoked.
- (c) The law school shall submit the teach-out plan for the law school or branch being closed as required by paragraph (b) to the Managing Director's Office within the time specified by the Managing Director. The Managing Director's Office, in consultation with the Chair of the ~~Accreditation Committee~~ Council, may require a law school to enter into a teach-out agreement as part of its teach-out plan.
 - (d) A law school must submit the "Teach-Out Plan Approval Form," as adopted by the Council, and address each item in the form.
 - (e) If a law school voluntarily enters into a teach-out agreement or if the Managing Director requires a law school to submit a teach-out agreement as part of a teach-out plan, the law school must submit the "Teach-Out Agreement Approval Form," as adopted by the Council, and address each criterion in the form.
 - (f) The ~~Accreditation Committee~~ Council will promptly review a teach-out plan submitted in accordance with (b) and (c) and shall ~~recommend approval or denial of the plan by the Council.~~
 - (1) Approval of the teach-out plan may be conditioned on specified changes to the plan.
 - (2) If the teach-out plan is denied, the law school must revise the plan to meet the deficiencies identified and resubmit the plan no later than 30 days after receiving notice of the decision.
 - (g) Upon approval of a teach-out plan of a law school or branch that is also accredited by another recognized accrediting agency, the Managing Director's Office shall notify that accrediting agency within 30 days of its approval.
 - (h) Upon approval of a teach-out plan, the Managing Director shall within 30 days notify all recognized agencies that accredit other programs offered by the institution of which the law school is a part.
 - (i) In the event a law school closes without an approved teach-out plan or agreement, the Managing Director's office will work with the United States Department of Education and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

Rule 52: Disclosure of Decision Letters

- (a) ~~Except as provided in Rule 53, decisions and recommendations of the Committee and~~

~~Council shall be confidential.~~

~~(b)~~(a) If the law school makes public a decision or recommendation of the Committee or Council, the law school must make public the entire decision or recommendation.

- (1) If the law school makes public a decision or recommendation of the Committee or Council, the law school must notify the Managing Director at or before the time of the disclosure.
 - (i) The Managing Director, in consultation with the Chair of the Council, may subsequently correct any inaccurate or misleading information released or published by the law school in connection with the disclosure or the decision or recommendation.
 - (ii) A corrective communication by the Managing Director may include the disclosure of portions of the site evaluation report or the entire site evaluation report.
- (2) Discussion of the contents of a decision or recommendation with, or release of the report to, the faculty, the university, or the governing board of the university or law school, does not constitute release of the decision or recommendation to the public within the meaning of this Rule.