



AMERICAN **BAR** ASSOCIATION

Legal Education and
Admissions to the Bar

Memorandum

To: The Council

From: The Standards Review Subcommittee

Date: May 8, 2020

Re: Proposed Changes to Rule 2

Attached are a proposed change to Rule 2 with an Explanation and a redlined copy showing the proposed changes to the Rule. As you will see, this proposed change would permit the Council to provide temporary relief from a rule or the requirements of a standard to allow law schools to respond to a regional or national emergency, such as weather disasters and pandemics. The relief granted would be effective only for the duration of the extraordinary circumstance and only to the extent specifically provided.

The proposed change is necessary because we are unsure of what the fall semester will bring with the COVID-19 pandemic, or what the Department of Education will permit accreditors to do to meet the continued emergency. The SRS recommends approval of this proposed change for Notice and Comment. If approved, the Notice and Comment process will be fast-tracked with the intent to submit the proposed changes to the House of Delegates for its August 2020 meeting so that the Council will be in a position to address potential pandemic issues that may arise for the fall semester. This fast-tracking will necessitate a July online Council meeting for the purpose of approving the final recommendation of the SRS following the Notice and Comment period.

Proposed New Rule 2(b)*:

The Council is authorized to adopt emergency policies and procedures in response to extraordinary circumstances in which compliance with the Standards would create or constitute extreme hardship for multiple law schools. These policies and procedures will be effective upon adoption by the Council for a term certain and limited to the duration of the extraordinary circumstance.

Explanation:

This proposed change will authorize the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally. Examples of emergencies include, but are not limited to, weather disasters and pandemics. In such emergency situations, law schools may need to respond in ways that could violate a standard. An example was when many law schools needed to abruptly shift from routine in-class scheduling of courses to distance learning due to the COVID-19 pandemic of 2020. This proposed change would permit the Council to provide temporary relief from a rule or the requirements of a standard to allow law schools to respond to the emergency. Such relief would be effective only for the duration of the extraordinary circumstance and only to the extent specifically provided.

This proposed amendment to Rule 2 is not intended for an individual law school facing an extraordinary circumstance. Those requests would be made through the variance process [Standard 107] or, if addressing distance learning, through the substantive change process [Standard 105 and Rule 24]. Put another way, the proposed emergency actions are not intended to displace the normal processes outlined in the Standards where an individual law school seeks to respond to extraordinary events.

Additionally, this proposed rule change is not a substantive change in the standards for distance education. In coming months, the Standards Review Subcommittee will seek input from law schools and others on the potential need to revise the definition and requirements of distance education, especially in light of the experiences of law schools in responding to the COVID-19 pandemic. Thus, comments submitted on the proposed changes in this Notice and Comment Memorandum should only address the proposal to authorize the Council to take emergency action to address extraordinary circumstances regionally or nationally.

* Under this proposal, Rule 2 will be restructured. Current Rule 2 will become Rule 2 (a), with subsections listed as (1) through (8). This proposed new rule will become Rule 2(b). Slight modifications will also be made to the Title of Rule 2. See the attached redlined version.

Rule 2: Council Responsibility and Authority with ~~Regard to Accreditation Status~~

- (a) The Council has authority to determine compliance with the Standards. The Council has authority to:
- (1) ~~(a)~~ grant or deny an application of a law school for provisional approval or full approval;
 - (2) ~~(b)~~ withdraw provisional or full approval;
 - (3) ~~(c)~~ grant or deny applications for acquiescence in a substantive change, as provided in the Standards;
 - (4) ~~(d)~~ grant or deny applications for variances;
 - (5) ~~(e)~~ grant or deny an application for approval of a foreign program, 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;
 - (6) ~~(f)~~ approve or deny approval of a teach-out plan;
 - (7) ~~(g)~~ impose sanctions and/or direct specific remedial action; and
 - (8) ~~(h)~~ set fees for services and activities related to accreditation.
- (b) The Council is authorized to adopt emergency policies and procedures in response to extraordinary circumstances in which compliance with the Standards would create or constitute extreme hardship for multiple law schools. These policies and procedures will be effective upon adoption by the Council for a term certain and limited to the duration of the extraordinary circumstance.