Discussion of Proposed Practical Guidance on Use of Artificial Intelligence in Law Schools

Background

Board of Trustees Directive

Office of Admissions and Committee of Bar Examiners to explore:

- Consider impact of AI on law students

- Consider requirements for California-accredited law schools and registered schools to require courses regarding the competent use of generative AI

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Options Presented to the CBE

- **Option 1: Take no action at this time.**
    - Space is rapidly evolving.
    - Prudent to wait for new regulations and answers to tough questions.

- **Option 2: Guidance document for law schools choosing to offer courses in AI.**
    - Flexibility to adjust quickly to rapidly-changing environment.
    - Identify opportunities to incorporate AI competencies into existing courses.
    - Encourage course topics around core competencies and build foundation to meet professional responsibilities.

- **Option 3: Add to Guidelines for Accredited and Unaccredited Law School Rules.**
    - Practice-based skills and competencies includes those related to technology and AI.
    - Knowledge of process and skills for legal research/writing includes competent use of AI.

- **Option 4: Other CBE Preference**

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CBE Directional Guidance Regarding AI Use in Law Schools

- Option 1: Take no action at this time.
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  - Prudent to wait for new regulations and answers to tough questions.

- *Option 2: Guidance document for law schools choosing to offer courses in AI.*
  - *Flexibility to adjust quickly to rapidly-changing environment.*
  - *Identify opportunities to incorporate AI competencies into existing courses.*
  - *Encourage course topics around core competencies and build foundation to meet professional responsibilities.*

- Option 3: Add to Guidelines for Accredited and Unaccredited Law School Rules.
  - Practice-based skills and competencies includes those related to technology and AI.
  - Knowledge of process and skills for legal research/writing includes competent use of AI.

CSBARS Research to Date and Timeline

- Fall 2024: Discussion of current uses and prohibitions at law schools related to AI

- January 2025: CSBARS reviews CBE direction to create practical guidance

- February 2025: Deans Frykberg and Marshall create attached guidance

- March 2025: CSBARS Reviews this guidance and shares with the public for comment

- April 2025: CSBARS considers public comment and further discussion

- June 2025: CBE reviews practical guidance for recommendation to the Board of Trustees

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Application of Current Authority to Artificial Intelligence – Accredited Rules

4.160(A): Consumer Protection and Transparency: A law school shall ensure that prospective and current students are timely informed of the rights, responsibilities, and limitations of attending the law school, the resources and requirements needed to earn a JD degree, and the law school's student outcomes with respect to retention, licensure, and career outcomes.

- **(7) Student Privacy:** A law school must protect student privacy and the confidentiality of student communications and records in accordance with the law. Notwithstanding any other provision of law, a law school must not disclose, without a student's consent, grades, grade average, class schedule, address, telephone number, or other personally identified information

4.160(D): Preparation for Licensure and Professionalism: A law school shall prepare JD students to become licensed attorneys and to practice law in an ethical and professional manner. The JD degree must be granted only upon completion of a law program that satisfies the educational requirements for a student to take the California Bar Examination.

- **(2) Practice-Based Skills and Competencies**

- **(4) Curriculum:** There is no prescribed program of legal education. An effective program of legal education for the JD degree will include, but not be limited to all of the following b) learning experiences that support the acculturation of program graduates to the mores and values of the legal profession, including service, preparation, responsiveness, confidentiality, excellence, civility, professionalism, and ethics; c) knowledge of process and skills for legal research and writing, which shall include access to legal research resources adequate to accomplish this requirement

Application of Current Authority to Artificial Intelligence – Unaccredited Rules & Guidelines

Rule 4.240(F): Competency Training: The law school must require that each student enrolled in its Juris Doctor Degree program satisfactorily complete a minimum of six semester units (or their equivalent) of course work designated to teach practice based skills and competency training. Such competency training must teach and develop those skills needed by a licensed attorney to practice law in an ethical and competent manner.

Guideline 2.9: Preparation for Licensure and Professionalism: A law school shall prepare JD students to become licensed attorneys and to practice law in an ethical and professional manner. The JD degree must be granted only upon completion of a law program that satisfies the educational requirements for a student to take the California Bar Examination.

- **(D) Authenticity of Student Work:** A law school must have a written policy setting forth the procedures used to authenticate the identity of the student submitting work and participating in educational and other law school activities and to ensure that work submitted is the student's own.

Executive Summary / Introduction

Generative AI is a tool that has wide-ranging application for both the administration and content of JD programs in California, just as it will for the practice of law and administrative functions of law for all prospective licensees. Like any technology, generative AI should be used in a manner that conforms to the mission of the law school and its responsibilities and duties, including those set forth in the Rules of Professional Conduct, Admissions Rules, Rules of Court, and the State Bar Accredited and Unaccredited Rules and Guidelines. A law school should understand the risks and benefits of the technology used in connection with providing legal education and educate its students to understand these risks and benefits as applied to their education and practice, noting that these may vary on a host of factors, including the client, the matter, the practice area, the firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary formats.

Generative AI use presents unique challenges; it uses large volumes of data, there are many competing AI models and products, and, even for those who create generative AI products, there is a lack of clarity as to how it works. In addition, generative AI poses the risk of encouraging greater reliance and trust on its outputs because of its purpose to generate responses and its ability to do so in a manner that projects confidence and effectively emulates human responses. A law school should consider these and other risks before using generative AI in providing legal education.

Law schools are required under Accredited Rules 4.160(D) and 4.160(A) and Unaccredited Rule 4.240(F) and Unaccredited Guideline 2.9 to provide competency training to students and authenticate student work. Generative AI falls within these areas. Any education or policy in the area of AI should consider the following four-point practical guidance:

- Transparency - When and in what form is generative AI permitted and/or not permitted to be used by the law school, faculty, and students.
- Data Privacy – What is the policy to safeguard Personally Identifiable Information (PII) and/or attorney-client privileged information.
- Attribution/Citation – What is the policy of citing the use of generative AI when permitted (e.g. The generative AI engine and version employed and the query used to produce the generative AI response) (n.b. These recommendations were created with help from the generative AI engine DeepThink (R1) engine using the following query "create rules for law schools using AI")
- Bias Mitigation – What is the policy for reviewing generative AI output for bias in relation to Rule 4.160(C).

The following Practical Guidance is based on current State Bar Rules and Guidelines, statute, and California Rules of Court and demonstrates how to behave consistently with such requirements. While this guidance is intended to address issues and concerns with the use of generative AI and products that use generative AI as a component of a larger product, it may apply to other technologies, including more established applications of AI. This Practical Guidance should be read as guiding principles rather than as "best practices."

Applicable Authorities	Practical Guidance
Student Privacy Accredited Rule 4.160(A)(7); Unaccredited Guideline 2.10	Generative AI products are able to utilize the information that is input, including prompts and uploaded documents or resources, to train the AI, and might also share the query with third parties or use it for other purposes. Even if the product does not utilize or share inputted information, it may lack reasonable or adequate security. A law school must not input any confidential information of the students, faculty, or staff into any generative AI solution that lacks adequate confidentiality and security protections. A law school must anonymize information and avoid entering details that can be used to identify the students, faculty, or staff. A law school should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a law school would input confidential client information adheres to stringent security, confidentiality, and data retention protocols. A law school should review the Terms of Use or other information to determine how the product utilizes inputs. A law school that intends to use confidential information in a generative AI product should ensure that the provider does not share inputted information with third parties or utilize the information for its own use in any manner, including to train or improve its product.
Practice-Based Skills and Competencies Accredited Rules 4.160(D)(2), 4.160(D)(4); Unaccredited Rules and Guidelines 4.240(F), Guidelines 5.2, 5.12. 6.3	It is possible that generative AI outputs could include information that is false, inaccurate, or biased. A law school must ensure competent use of the technology, including the associated benefits and risks, and apply diligence and prudence with respect to facts and law. Before using generative AI, a law school should understand to a reasonable degree how the technology works, its limitations, and the applicable terms of use and other policies governing the use and exploitation of law school data by the product. AI-generated outputs can be used as a starting point but must be carefully scrutinized. They should be critically analyzed for accuracy and bias, supplemented, and improved, if necessary. A law school must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the law school in providing a sound legal education that provides students with a reasonable opportunity for licensure. The duty of competence requires more than the mere detection and elimination of false AI-generated results. A law school and its administration's professional judgment cannot be delegated to generative AI and remains the law school's responsibility at all times. A law school should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing. For example, a law school may supplement any AI-generated research with human-performed research and supplement any AI- generated argument with critical, human-performed analysis and review of

Applicable Authorities	Practical Guidance
Compliance with Laws Accredited Rule 4.160(A)(2); Unaccredited Guideline 1.9	A law school must comply with the law and cannot counsel its faculty, students, or staff to engage, or in conduct that the law school knows is a violation of any law, rule, or ruling of a tribunal when using generative AI tools. There are many relevant and applicable legal issues surrounding generative AI, including but not limited to compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws, and cybersecurity concerns. A law school should analyze the relevant laws and regulations applicable to it. The law school administration should establish clear policies regarding the permissible uses of generative AI and make reasonable efforts to ensure that the law school's faculty and staff adopts measures that give reasonable assurance that the law school conduct complies with their professional obligations when using generative AI. This includes providing training on the ethical and practical aspects, and pitfalls, of any generative AI use.
Consumer Protection and Transparency Accredited Rule 4.160(A); Unaccredited Guidelines 2.1 and 2.3	A law school should evaluate their communication obligations pursuant to the rules based on the facts and circumstances, including the novelty of the technology, and risks associated with generative AI use, and scope of the representation. The law school should consider disclosure to their students, faculty, and staff that it intends to use generative AI in its JD program, including how the technology will be used, and the benefits and risks of such use. A law school should review any applicable rules or guidelines that may restrict or limit the use of generative AI in its JD program.
Honesty in Communication Accredited Rule 4.160(A); Unaccredited Guidelines 2.1 and 2.3	A law school must review all generative AI outputs, including, but not limited to, analysis and citations to authority for accuracy before publication, and correct any errors or misleading statements made to students, prospective students, faculty, staff, and the public. A law school should also check for any rules, orders, or other requirements in the relevant jurisdiction that may necessitate the disclosure of the use of generative AI.
Equal Opportunity and Non-Discrimination Accredited Rule 4.160(C); Unaccredited Guideline 10.1	Some generative AI is trained on biased information, and a law school should be aware of possible biases and the risks they may create when using generative AI (e.g., to screen prospective students or employees). The law school administration should engage in continuous learning about AI biases and their implications in legal practice

Questions?

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