SOUTHERN CALIFORNIA INSTITUTE OF LAW SUBMISSION TO RECOMMENDED ACTION IN INSPECTION REPORT FOLLOWING SCHOOL RESPONSE

October 07, 2024

The Southern California Institute of Law respectfully submits a facial challenge to the structure of due process afforded here respecting a recommended extension of approval for two years following post-consideration of the Inspection Report and Response of May 18, 2024.

The Institute believes that for all reasons submitted as a "Postscript" to the first Response to the Inspection Report (that has since been redacted), that the Committee of Bar Examiners functions not as part of the state Supreme Court's inherent authority but as an administrative agency of the legislature and therefore its rules, inspections, and decision-making structures as applied to law school evaluations are subject to the state Administrative Procedure Act. We have submitted, what we believe, is conclusive legal evidence to the State Bar in support of this proposition.

Leaving this contention aside for now, on the issue of constitutionally mandated due process, once approval has been granted to a school, the school has a continuing property interest in its approval.

However, based on this facial and structural challenge, the proper basis for evaluating agency decisions is the "substantial evidence" standard under the state Administrative Procedure Act as explicated in court opinions. In our Response of May 18, 2024, we suggested that there were several factual and demonstrably inaccurate items of evidence that formed the basis of a litany of non-compliance findings. In its Response, the school offered to pay the expenses of an independent fact finder appointed by the Committee, if the school was unable to establish the falsity of these conclusions in the Inspection Report.

For due process, our Supreme Court has held that conclusive proof of actual bias is not required. It is enough, if under the circumstances, there is a probability of actual bias on the part of decisionmakers, or there is a bias, where objectively speaking, is too high to be constitutionally tolerable." *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737.

To be sure, the Institute does not contest the fact that the Committee may be charged with both, developing the facts and rendering a final decision. Nor does the Institute have any issue with staff advising a recommended course of action. We digress here to add that the staff of the Chief Program Analyst and others are all exceptional individuals with the highest integrity and are of unimpeachable character.

But that said, it appears from the record of other law schools, that the Committee, as a matter of routine, invariably signs onto and adopts staff recommendations. These staff recommendations include one or more Committee members that participate in the deliberative process. This is effect, is a violation of procedural due process since the school is deprived of the "fair and independent judgment" of the Committee that thus renders the procedure constitutionally defective.

For example, the Institute conceded that while it has never defaulted in any of its financial obligations over a period of thirty-eight years, its year-end balances is not as healthy as it should be on account of students not timely meeting their financial obligations especially with respect to large sum promissory notes. To address this, the school secured a signed promissory note of an investment of $150k and significant increases in new enrollment. In that light, it requested a five-year extension to 2028 contingent on the school's bank verification of such a deposit within 60-days. In context, the Institute was a state accredited law school with two campuses for nearly twenty-five years until June 2020.

On another matter, the school has two typical terms- one in the Fall (Sept) and another in the Spring (March). Simply because it added some early start dates to accommodate new enrollees in July and August prior to the formal Fall Term, and January and February before the formal start of the Spring Term, to acquaint these early starters with certain introductory/elective courses, this was deemed a new division without any explanation as to why this should be so. These new 1L enrollees are instructed by the same professors who teach the Fall and Spring Classes, and they all have a 52-consecutive week curriculum as per the relevant Guidelines. The term "new division" is undefined in the Rules. This allows for arbitrary interpretation. Accordingly, we take our cue for how the term new division is viewed in academia.

Typically, as in large colleges, unless there is a separate administrative and faculty unit, and at times even a separate budget, this would not be considered a "new" division unlike a day/evening division or a specialized unit within a discipline.

For a school to be accused of non-compliance without an opportunity for an ostensibly independent and fair hearing in which agency conclusions are adopted as presented, and contrary to reasoned arguments are reduced to no more than a *pro forma* exercise and is a form of government tyranny that Americans fought against in the Revolution. It recalls the Shakespearian quote, in *Measure for Measure*, O! it is excellent to have a giant's strength, but it is tyrannous to use it like a giant."

We respectfully request this Committee to consider these submissions.

Thank you,

Stanislaus Pulle Ph.D.
Dean of Law

_____
Eric Pommer Esq.
Vice-Dean of Law