

# **COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM**

**AGENDA ITEM:** June 2018 – O- 400

**DATE:** June 15, 2018

**TO:** Subcommittee on Educational Standards

**FROM:** Natalie Leonard, Program Manager, Educational Standards

**SUBJECT:** **McMillan Academy of Law – Inspection Report from the Issued Notice of Noncompliance**

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## **SUMMARY**

This memorandum recommends that the Committee of Bar Examiners (Committee) issue a notice to withdraw the registration of McMillan Academy of Law (MAOL) based upon the findings at the school's five-year periodic inspection conducted in May 2017 (Attachment A), the Notice of Noncompliance issued to MAOL in December 2017 (Attachment B), and the findings from the Supplemental Inspection conducted on May 9, 2018. (Attachment C). The Supplemental Inspection showed that while some issues identified in the Notice of Noncompliance were resolved, other issues remained, new issues were identified, and compliance is unlikely in the future.

## **BACKGROUND**

MAOL is located in La Mesa, California. It was first registered as an unaccredited law school in 2007.

Over the years, MAOL has been cited for multiple issues of noncompliance with the Rules and Guidelines. In 2008, the school received its first Notice of Noncompliance. In 2012, the school's first five-year periodic inspection identified enough noncompliance that a supplemental inspection was required. In May 2017, the school's most recent five-year periodic inspection resulted in the issuance of a Notice of Noncompliance. That triggered the most recent supplemental inspection, which observed not only continued noncompliance, but also new instances of noncompliance. Several issues of noncompliance have been noted in more than one inspection (e.g., failure to maintain an updated law library).

In 2008, the school received its first Notice of Noncompliance after it failed to post the required disclosure that all unaccredited law schools must include in their literature, website, and enrollment agreements. When the school did not respond to the State Bar's informal courtesy letter asking the school to correct the error, a Notice of Noncompliance was issued.

In 2012, at MAOL's first five-year periodic inspection, the inspector identified 14 mandatory recommendations that needed to be addressed in order to bring the school into compliance with the Rules and Guidelines. These recommendations included updating outdated or incorrect literature (similar to an issue that was raised in the 2008 Notice of Noncompliance) and bringing the library up-to-date. Due to the volume of the areas of noncompliance, the Committee ordered a follow-up inspection to ensure that the recommendations were addressed appropriately. After that follow-up inspection in 2013, the Committee extended MAOL's registration through 2017.

During that period from 2013-2017 following the inspection, MAOL did not enroll any students, maintain its library, or update its literature.

The school's second and most recent five-year periodic inspection took place in May 2017. The inspector identified five material areas of noncompliance involving many of the Guidelines. These issues included outdated communications, incorrect disclosures, and an outdated library – all issues which were identified as problems requiring correction in the previous inspection. In addition, many areas of compliance were difficult to assess due to the long term lack of students, faculty, and classes.

Based on the findings summarized in the five-year periodic Inspection Report, the Committee issued a Notice of Noncompliance to MAOL in December 2017.

MAOL responded to the Notice of Noncompliance (Attachment D) as required by Rule 4.261. Upon receipt and consideration of that response, the Committee directed that a further inspection of the law school be conducted within 90 days to determine whether the response should be deemed satisfactory, or, if the Committee determined that MAOL was not or not likely to be compliant, whether to recommend probation or withdrawal of its registration. The follow-up inspection took place on May 9, 2018.

Rule 4.263 provides that “[i]f the Committee believes that the inspection report demonstrates that the law school is not or is not likely to be in compliance with these rules, the Committee will notify the law school that it recommends probation or withdrawal of registration.” If the Committee recommends probation or withdrawal of registration, the school may request a hearing under Rules 4.265-4.269.

The school's current status, as documented in the most recent Supplemental Periodic Inspection Report, is discussed below.

## **DISCUSSION**

The follow-up inspection conducted on May 9, 2018 needed to be broader than many follow-up inspections. The inspector evaluated MAOL's progress as to the items identified in the December 2017 Notice of Noncompliance, and also re-inspected much of the school as a whole because during the May 2017 visit, the school did not have any students, classes, or faculty other than the Dean, and had not had any students, classes, or faculty since 2013. Ultimately, though it proved more challenging than

expected to determine the number of students enrolled in May 2018, but there were some students present and a faculty member had been retained. This allowed the inspector to review student files, classes and examinations.

MAOL's May 2017 five-year periodic inspection identified the following five areas of noncompliance, communicated to MAOL in the Notice of Noncompliance issued on December 2, 2017:

- Guidelines 2.3(A) – 2.3(E) (Honesty in Communications), related to the failure to communicate in an accurate, honest, and forthright manner.
- Guidelines 2.9(B)(4) – 2.9(B)(6) (Fairness in Academic Standards and Student Assessment), related to the failure to maintain current and accurate means to assess students.
- Guidelines 5.1 – 5.2 (Academic Program and Criteria for Compliance), related to the failure to maintain a current, qualitatively sound program of legal instruction.
- Guidelines 5.2(J), 8.1 and 8.2 (Adequacy of the Law School's Finances), related to the lack of auditable income and funds needed to provide a long-term and sound program of legal education.
- Guidelines 6.1 – 6.6 (Library Resources), related to the failure to maintain a complete and updated hardcopy library.

Though some progress had been made, MAOL has only achieved full compliance with regard to the need to update the library area. In addition, the most recent inspection uncovered substantial new instances of noncompliance.

The status of each of the areas identified in the Notice of Noncompliance is summarized below and full detail is included in the attached Supplemental Inspection Report.

#### *Compliance Issues Relating to Guidelines 2.3(A)-(E), Honesty in Communications.*

Additional communication issues – not related to the findings in the December 2017 inspection – came to the attention of the Bar even before the supplemental inspection began. Under Guidelines 9.1(O)(2)(A) and (B), a law school must submit an Admission Certification within 60 days of the beginning of any academic period in which it has admitted a new student. More than four weeks after the required 60 day response deadline, and after many reminders from the State Bar, MAOL submitted an Admissions Certification identifying two enrolled students, and making an error as to the status of one of them.

After the May 2017, the school was advised that it must update its Annual Student Disclosure. The May 2018 inspection found that, though partially corrected, the title portion of the disclosure contained an error, and there was at least one material error in the disclosure. It stated that three students had enrolled in the 2017-2018 school year, when only two applications were found in the file and only two students had been listed in the Certification referenced above. The Dean could not explain the discrepancy.

*Compliance Issues Relating to Guidelines 2.9(B)(4)-2.9(B)(6), Fairness in Academic Standards and Assessment*

With only two to three students in a class, the anonymous grading contemplated under 2.9(B)(5) may not be possible. In addition, new issues of compliance were observed related to the substance of the sample examination provided to the inspector. The essay questions in the sample examination provided were sourced from past First Year Law Students' Examination questions, which is not allowed under Guideline 5.15. The multiple-choice questions were copied from a commercial book that some students could have seen in advance, disadvantaging other students in violation of Guideline 5.17. Under these facts, it was impossible to know whether the students had learned the law or if they had simply happened to access the public materials. The Dean indicated that he was unaware of this noncompliance, calling into question the oversight exercised over his single faculty member. The inspector did observe real teaching during the class, but the Rules and Guidelines require more.

Additionally, the inspector identified a number of troubling practices related to the school's Admissions policy that appeared to be out of compliance with the requirements of Guidelines 5.26-5.33. The student admission files did not appear to contain the required documents necessary to fully evaluate the students so that the law school would admit "only those applicants who reasonably appear to be qualified to study law and reasonably appear to be likely to succeed in that study." Thus it was unclear whether and to what extent MAOL was complying with those Guidelines. This came further into question because, while the consultant was onsite, one of the Dean's law clients applied, was admitted, and began law school that evening.

Moreover, one of the two students admitted to begin study in January was classified as a regular student, but it appears that the student had not met some of the mandatory requirements for admission. If true, this student will not be able to claim credit for any study undertaken at MAOL. Since MAOL's registration as an unaccredited law school in 2007, it has admitted approximately fifteen students, but none have advanced to the second year of law study at MAOL. A more rigorous admissions process is required by the Guidelines and warranted by past performance.

*Compliance Issues Relating to Guidelines 5.1-5.2, Academic Program and Criteria for Compliance.*

While the school used standard texts, syllabi were skeletal and insufficient to notify students of assignments and grading criteria.

*Compliance Issues Relating to Guidelines 5.2(J), 8.1 and 8.2, Adequacy of the Law School's Finances.*

The school has not had any auditable income in many years. The current students are not paying any tuition or fees, and many of the previous students were not charged tuition. Dean McMillan indicated that he hopes that the current students' success will

attract paying students in the future. In the meantime, he has agreed to contribute \$20,000 per year to the school for five years to cover operating costs. As discussed in the Supplemental Inspection report on page 7, annual costs, including rental payments to Dean McMillan, are estimated to total approximately \$20,000. It is unclear, however, whether that estimate contains the funds needed to fully comply with the Rules and Guidelines. No strategy tried to date has been adequate to provide the school with a sustainable source of revenue.

### *Compliance Issues Relating to Guidelines 6.1 – 6.6, Library Resources*

The failure to have an up-to-date library was first noted in the 2012 inspection. After that inspection, updates were made. After that date, however, little to no updating happened, and noncompliance as to this was again noted in the 2017 inspection. Between 2017 and the May 2018 supplemental inspection, MAOL did make updates to the library. According to the consultants, however, although most of the volumes had been received and properly shelved at the time of the inspection, some of the newly purchased books were still in their wrappers and not available on the shelves for student use. Despite the requirement to maintain an updated library, regardless of the level of student enrollment, the consultant has observed Dean McMillan “is unwilling to maintain a compliant law library in the absence of enrolled students.” (May 2017 Inspection Report, page 10.)

The Rules and Guidelines for Unaccredited Law Schools and California Rule of Court 9.30(b) contemplate a consistent, complete and ongoing program of compliance and instruction. Though MAOL has responded somewhat to communications from the State Bar, MAOL does not appear to take preventive or corrective actions to ensure compliance without prompting.

The school's response to the many issues identified at its May 2017 inspection did not begin after the inspection when they were identified to the school verbally, but rather began only when the Notice of Noncompliance was issued six months later.

Each time the school has been inspected, the State Bar has found the school to be clearly out of compliance with multiple Guidelines. The school, however, appears satisfied to simply respond to deficiencies highlighted by the regulator, but then allow those same or similar violations to recur, and new ones to develop through inaction or lack of oversight. Comments from MAOL seem to provide further evidence of this disregard for the Rules and Guidelines, as described below.

In 2008, when the school failed to follow the disclosure requirements plainly stated in Guideline 2.3(D), Dean McMillan stated that he should not be fined for the violation because the State Bar had not reminded him to do so.

In 2012, MAOL was cited for a violation because its library was not up-to-date. The school updated the library that year, but then did not do so again until it received a Notice of Noncompliance in 2017.

Most recently, MAOL's disregard for the Rules and Guidelines has hurt students. First, a student was likely admitted without the requisite credentials and that student will not receive credit for work done this year as a result. Next, the students were given examinations copied from public sources, perhaps advantaging students who had accessed those public sources prior to the examination. Finally, the school does not appear to be following its own stated admissions evaluation policy. If the Dean was not aware of the applicable rules, this is problematic. If the Dean did not take steps to ensure that his single faculty member did not violate the Rules and Guidelines, this is problematic.

After eleven years of registration as an unaccredited law school, MAOL has not been able to operate as a going concern and or to sustain compliance with the Rule of Court 9.30 and the Rules and Guidelines applicable to unaccredited law schools, though the school has responded in many cases to admonishment from the State Bar. The school's delays and lack of oversight have hurt students in ways ranging from unfair grading to waste of time through improper admissions. Ultimately, MAOL has not been able to advance a student to the second year of law study at MAOL in over a decade. And if were to advance a student in the future, there is no evidence that the school is prepared to offer the courses, clinical options, or academic support that the Rules and Guidelines require.

## **RECOMMENDATION**

As provided by Rule 4.263: "If the Committee believes that the inspection report demonstrates that the law school is not or is not likely to be in compliance with these rules, the Committee will notify the law school that it recommends probation or withdrawal of the registration."

Here, because the law school is not in compliance with the Unaccredited Law School Rules and Guidelines for Unaccredited Law School Rules, it has a history of noncompliance, and it lacks evidence that it can consistently and proactively comply with the rules, staff recommends that the Committee advise the school that it recommends withdrawal of registration, effective January 1, 2019, and that the Committee send a copy of the inspection report to the law school, as required by Rule 4.263.

## **PROPOSED MOTION**

Should the Subcommittee agree with this recommendation, the following motion is suggested:

Move that the Supplemental Inspection Report of the inspection of the McMillian Academy of Law (MAOL), conducted on May 9, 2018, be received and filed; that MAOL be sent a copy of the Supplemental Inspection Report and informed that the Committee intends to recommend withdrawal of its registration to offer the J.D. degree effective January 1, 2019.

# **McMILLAN ACADEMY OF LAW**

## PERIODIC INSPECTION REPORT

Inspection conducted: May 9, 2017

Inspection conducted  
Pursuant to *Rule 4.244* of the  
*Unaccredited Law School Rules*

Sally Perring, Educational Standards Consultant  
Office of Admissions, The State Bar of California

Report on the Periodic Inspection of  
**McMillan Academy of Law**  
4670 Nebo Drive, Suite 200  
La Mesa, CA 91941

A registered, unaccredited fixed-facility law school.

**EXECUTIVE SUMMARY AND RECOMMENDATIONS**

**Summary:**

A five-year periodic inspection of the McMillan Academy of Law (MAOL) was conducted on May 9, 2017. The law school was last visited in September 2013 for an interim inspection, which was conducted to confirm that it had addressed several issues of noncompliance confirmed during its initial periodic inspection conducted on behalf of the Committee of Bar Examiners (Committee) in May 2012. This inspection was conducted by Sally Perring, an educational standards consultant (Consultant) to the Office of Admissions.

MAOL is owned by Scott McMillian, a licensed California attorney, who operates the law school from his law offices in La Mesa, a suburb of San Diego. Initially registered in 2007, the law school opened in 2009 but has enrolled very few students, with its most recent student attending classes in 2013. Since 2007, only three students have ever completed its first-year curriculum to become eligible to take the First-Year Law Students' Examination and none have ever graduated.

In the absence of any students, classes have not been held at MAOL since 2013, and its program of legal education has been dormant for over four years. As a result, the inspection confirmed that MAOL is noncompliant with several material requirements: 1) its law library is out of date and not compliant since none of the mandatory hardcopy legal authorities have been updated since 2014; 2) in the absence of any tuition income, the long-term financial viability of the law school, should it enroll any students, appears questionable; and 3) all of its written student materials and its website contain outdated, noncompliant and misleading information to prospective applicants and students.

**Recommendation:**

It is recommended that this Periodic Inspection Report be received and filed; that, due to the issues of noncompliance as noted in each of the recommended, mandatory actions listed below and discussed in the inspection report, the Committee issue MAOL a Notice of Noncompliance pursuant to Rule 4.260 of the *Unaccredited Law School Rules*.

### **Recommended Mandatory Actions:**

1. To comply with Guideline 2.3(C), the law school must review, revise and delete from all of its materials, both hardcopy and electronic, any and all references to the Bureau of Postsecondary, Private Education (BPPE) and the Student Tuition Recovery Fund (STRF), as each is noted in its program of legal education.
2. To comply with Guideline 2.3(D), the law school must review, revise and correct all information and data reported on its written Disclosure Statement required by Rule 4.241 and its Information Report Form required by Business and Professions Code, sec. 6061.7(a).
3. To comply with Guideline 2.9(B)(4), the law school must review and revise all of its materials, hardcopy and electronic, to ensure that all correctly and consistently state the number of quarter units (114) needed to earn a Juris Doctor degree.
4. To comply with Guidelines 2.9(B)(4) and 2.9(B)(6), the law school must review and revise all of its materials, hardcopy and electronic, to ensure that all contain a consistent grading scale and description of academic good standing.
5. To comply with Guideline 4.11(A), the law school must designate an individual as its Registrar and inform the Committee of Bar Examiners accordingly.
6. To comply with Guideline 6.2 and Rule 9.30(b)(6) of the *California Rules of Court*, the law school must maintain a law library such that contains all mandatory hardcopy legal authorities that are complete, current and updated.
7. To comply with Guideline 8.1, the law school must confirm that, as a separate corporate entity, it has and will maintain sufficient capital and cash resources to ensure its current and future financial viability needed to support its program of legal education and each of its current and future financial obligations.

### **Recommended Suggested Actions:**

1. Pursuant to Guideline 1.9, the law school should incorporate into its materials, both hardcopy and electronic, that it is compliant with all requirements set out in the Americans with Disabilities Act (ADA) relevant to its facilities and operations.
2. Pursuant to Guidelines 4.8 and 4.9, the law school should incorporate a copy of its current instructor evaluation policy in its Faculty Handbook.
3. Pursuant to Guidelines 9.1(A-D) and 9.1(E-F), the law school should separate and maintain all required information, transcripts and materials needed to be placed into its student files from materials relating to its courses and classes.

## **Introduction:**

As noted, at the time of the inspection, MAOL had no enrolled students and its program of legal education was dormant. Given the lack of students or any current classes being taught, the inspection of MAOL was problematic since a number of critical elements of its program of legal operation, such as the quality of its classroom instruction and the educational backgrounds of its faculty and enrolled students were not subject to review.

## **Conduct of Site Visit:**

During the inspection, the Consultant met with both Dean McMillan and Associate Dean Michelle Volk to discuss the current and former status of the law school. The Consultant then viewed the law library space used as a classroom and reviewed all available student and faculty files and records and its most-recent financial statements. The Consultant also reviewed copies of past final examinations, student answers, and final grades issued by the faculty. At the end of the inspection, the Consultant met again with Deans McMillan and Volk to conduct a comprehensive exit interview.

### **(A) Lawful Operation. The law school must operate in compliance with all applicable federal, state, and local laws and regulations. (Guideline 1.9)**

MAOL appears to be compliant with all applicable local, state and federal laws. MAOL operates as a for-profit corporation and, as such, it is in good standing with the Office of the California Secretary of State. Dean McMillan is its only director and shareholder. The school has a current business license issued by the City of La Mesa.

MAOL's policies regarding student privacy and confidentiality are appropriate with all such information either password protected or placed in a locked file accessible only by appropriate personnel. While its accommodation policy is adequately stated, the law school should better assess its legal obligations under the American with Disabilities Act to provide reasonable access since it is located on a second floor and is accessible only by stairs, which may preclude students with impaired mobility from attending classes.

### **(B) Integrity. The law school must demonstrate integrity in all of its programs, operations, and other affairs. (Guidelines 2.1, 2.2, 2.3, 2.8 - 2.12)**

The law school complies with most but not all of the above-referenced Guidelines. It has a compliant tuition refund policy and it informs students of the deadlines governing a full or partial tuition refund. MAOL's financial safeguards appear sufficient for the operation of this small school to prevent fraud and it has a student honor code that notifies students who may be subject to non-academic discipline and provides them with compliant due process in the event they receive any such discipline.

While generally compliant with all required academic policies, the law school's written materials are ambiguous in their description of at least two required policies. In response to a recommendation made in the last periodic inspection report, MAOL's

modified its use of a quarter system to ensure that its students are required to attend class for the mandatory minimum of 270 hours of annual classroom study. Previously, inconsistencies existed as to the number of classroom hours students needed to attend to earn a unit of credit. MAOL now expressly requires that 114 quarter units are needed to graduate and that each unit requires no less than 10 hours of class time. Its catalog, student handbook and website should again be reviewed to ensure that all prior statements of what constitutes a unit of credit and the number of credits required for graduation have been deleted, and that the J.D. degree graduation requirement of 114 quarter units be stated in a clear, concise and consistent manner.

The law school's grading system and its standard for academic good standing are also ambiguous. The law school issues examination grades using a numeric scale of 0-100, with 70 being the lowest passing grade. It then converts that grade into a 4.0 scale, with 2.0 being described as a minimally-passing which is then converted and posted in letter scale of A through F on each student's transcripts. Adding to the confusion and ambiguity is that, in discussing academic probation and disqualification, the current MAOL catalog notes that a grade of 2.20 is a minimally-acceptable, passing grade.

Given its past use of different grade scales, it is recommended that the law school review and revise all of its hardcopy and electronic materials to confirm its use of single grading scale so that, as described and used, students will be consistently informed as to its grading standards, good standing, as well as to academic probation and disqualification.

Each of its other academic policies, including pass/fail policies, grade review, course repetition policies are clearly stated and are compliant with the Guidelines. Students are informed of the basis for their final grades in the syllabus for each course.

While all mandatory disclosures are found in MAOL's catalog, student handbook, application form, enrollment agreement, and disclosure statement, a review of all such disclosure statements confirmed that each is not entirely consistent with the information or data being reported. In particular, there are minor inconsistencies between the data reported in the disclosure statement required by Rule 4.241 (last updated in 2013) with the data found on the MAOL website and its Information Disclosure Form as is now required by Business and Professions Code, sec. 6061.7(a).

To eliminate such inconsistencies, the law school should review and revise each printed disclosure notice to ensure that all contain the same accurate data and that the posted versions of these documents also contain the same accurate data.

In addition to these minor discrepancies, the MAOL website was found to contain a significant amount of irrelevant, outdated and inaccurate information. Such information is found on the "student disclosures" posted on the Admissions page of the website where information and disclosures relating to the Bureau of Postsecondary Private Education (BPPE) and its Student Tuition Recovery Fund (STRF) are still posted.

Information and disclosures relating to the BPPE and STRF were once relevant and appropriate when MAOL offered a joint J.D. Masters of Business of Administration degree for which it had been granted degree granting authority to issue by the BPPE. MAOL, however, no longer offers the joint MBA degree since, under current California law, the BPPE no longer has the authority to grant MAOL any non-J.D. degree-granting authority since the law school is an unaccredited entity.

Under Guideline 2.3(C), MAOL has an obligation to communicate with prospective students and applicants in an honest and forthright manner. To be compliant with this requirement, the law school must promptly review and remove from its website and delete from its written materials all information that refers to the BPPE or STRF, since all such information is now irrelevant and potentially misleading.

**(C) Governance. The law school must be governed, organized, and administered so as to provide a sound educational program. (Guidelines 3.1)**

Dean McMillan serves compliantly as MAOL's part-time dean and administrator. He earned his Bachelor of Arts in Mathematics at the University of California at San Diego in 1988 and, in 1999, received his Juris Doctor degree from Western Sierra School of Law, an unaccredited, registered fixed-facility school in San Diego. Dean McMillan was admitted to the State Bar of California in February 2001. He teaches Contracts at the law school and is clearly dedicated to MAOL's stated mission of offering a challenging program to students able to attend law school part time. While the current demands of being Dean and professor are minimal in the absence of students, he seems capable of handling his academic duties in conjunction with his private practice.

Assistant Dean Michelle Volk also serves the law school in a part time capacity. She is also a licensed California attorney. Ms. Volk received her Bachelor's degree from University of California at San Diego and her Juris Doctorate from California Western School of Law, an A.B.A. approved law school. Ms. Volk taught Torts the last time the course was offered, but indicated she did not plan on teaching again in the near future. She appears knowledgeable about the maintenance of student records and, at one time was the registrar for the school.

The only technical issue regarding the law school's governance was the lack of who currently is designated its registrar; the self-study indicated the registrar was "to be determined." The law school is required to have a registrar who is responsible for all recordkeeping requirements of the Guidelines. At the time of the prior site visit, Ms. Volk was designated Registrar. However, for at least the last two years Dean McMillan has signed the law school's Annual Compliance Report as both Dean and Registrar. In light of such ambiguity, MAOL must confirm who currently acts as its registrar such that the Committee is kept fully and accurately informed. See, Guideline 4.11.

**(D) Dean and Faculty. The law school must have a competent dean or other administrative head and a competent faculty that devotes adequate time to administration, instruction, and student counseling. (Guidelines 4.1- 4.10)**

The law school, as noted above, has a competent Dean and administrator in Dean McMillan. From discussions during the site visit it is clear the Dean came to know each of the prior students and would have provided personalized counselling to the students.

MAOL has adopted compliant policies regarding both academic freedom and faculty evaluation. It is unclear, however, whether any member of the faculty has been evaluated since classes have not been offered in the last four years. In the event classes resume, it is recommended that the evaluation policy be incorporated into the faculty handbook so faculty members are aware of relevant criteria.

While the faculty files reviewed during the inspection provided evidence of the appropriate qualifications of all prior faculty members, without any current classes being taught, it is not possible to make finding at this time that the MAOL faculty is competent. If classes resume in the near future, it is assumed that both the Dean and the prior faculty members would be available to teach again, although Assistant Dean Volk confirmed that she will not teach again. The Dean will need to be proactive in confirming that each instructor asked to return to teach at MAOL is competent should classes resume.

**(E) Educational Program. The law school must maintain a sound program of legal education (Guidelines 5.1-5.16)**

As described in its materials, MAOL seeks to offer a sound and compliant program of legal education. The timing and content of its curriculum appears adequate to prepare students to succeed first on the First-Year Law Students' Examination (FYLSX), then the California Bar Examination (CBX) and, ultimately, in practicing law. While the first-year classes focus on subjects tested on the FYLSX, i.e. Torts, Contracts, and Criminal Law, the entire curriculum offers the opportunity to take up to 20 units of elective courses, in addition to all other bar-tested subjects, including Civil Procedure, Criminal Procedure, Property, Business Associations, Agency and Partnership, Constitutional Law, Evidence, Community Property, Professional Responsibility, Wills and Trusts, and Remedies.

The curriculum includes 96 quarter units of required courses covering all CBX subjects, legal analysis, research and writing and a CBX preparation course at the end of their studies. The remainder of units required for graduation is in elective subjects, including practice skills classes, such as Trial Practice, Advanced Research and Writing, and Alternative Dispute Resolution. No clinical courses are available. Course descriptions in the Catalog and syllabi reviewed by the Consultant were found to conform to typical law school classes. Under the academic calendar posted in the catalog, students are required to attend classes year-round, with short breaks between each of the four quarters. Classes are scheduled for three, three-hour sessions and one, two-hour

session per week. A student would attend class over 300 hours per year, exceeding the minimum requirement of the Rules and Guidelines of 270 hours.

A review of final examinations, students' answers and faculty grading of its former students confirmed that the form and content of such examinations were compliant in demanding a proper understanding of the legal principles covered. While only three MAOL students have ever taken the FYLSX, two have passed, one on the first attempt the other on the second attempt. The unsuccessful student took the exam only once. The student who passed on the second attempt was subsequently admitted to Thomas Jefferson School of Law, though receiving no credit for her work at MAOL.

In the absence of a faculty or any enrolled students, a comprehensive evaluation of the qualitative soundness and compliance of MAOL's program of legal education is, at best, difficult to assess since no actual class sessions were observed.

**(F) Scholastic Standards. The law school must maintain sound scholastic standards and must as soon as possible identify and exclude those students who have demonstrated they are not qualified to continue. (Guidelines 5.17-5.25)**

Other than the good standing ambiguities noted under Section (B) above, MAOL has adopted compliant policies for the quarterly evaluation of students and a strict probation policy to ensure the exclusion of all students found not to have the ability to succeed, although the Consultant found no instance of a student ever being academically excluded.

Either the inability to devote adequate time to their studies and attend classes or scholastic inability would have been noted and probably discussed with the Dean or other professor prior to withdrawal. Rather than wait for the inevitable probation or exclusion, such students chose to cease attending. The school should consider having students evaluate quarterly not just their professors, but the school and its program as well. They should also arrange to hold an exit interview with, or a survey of, any student withdrawing or failing to reenroll, to help evaluate whether appropriate adjustments to the program or schedule might help retain otherwise competent students.

The students' grades given four and five years ago, as reported by the law school, reflected mostly C's and B's in substantive courses. Given the small class sizes, no statistically significant comparison is possible. Exam questions, answers, and grades given reviewed by the Consultant found the grading appropriate.

The law school maintains an attendance policy requiring 80% attendance in courses conforms to Guideline requirements.

**(G) Admissions. The law school must maintain a sound admissions policy. The law school must not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the degree program. (Guidelines 5.26-5.35)**

The law school's admission policies and procedures comply with the requirements of the Guidelines. The law school requires either a bachelor's degree, an associate's degree, or the minimal education of 60 qualifying units of undergraduate education before an applicant is admitted. One student admitted in 2012 was never enrolled after it was confirmed that she lacked adequate pre-law education since her degree in paralegal studies was from a vocational school.

It also appears that MAOL has admitted only one special student since its opening in 2007. While MAOL has a compliant admissions policy regarding special students, no such policy currently appears in its catalog or student handbook. If the law school intends to again admit any such student, information regarding their potential admission should be found in its Catalog to inform any such potential applicants.

The application form contains the appropriate disclosure and asks applicants about their prior law school attendance and, in the event any previously-disqualified or transfer students apply, it has compliant policies in place for their admission and for the potential transfer of their credits earned at another law school.

MAOL's recruitment of students appears confined to print advertisements and Craigslist postings, which advise of the existence of the law school.

**(H) Library. The law school must maintain a library consistent with the minimum requirements set by the Committee. (Guidelines 6.1, 6.2, 6.3, 6.5)**

While MAOL maintains a law library with all hardcopy case reporters, statutes and legal authorities required by the Guideline 6.2, the inspection confirmed that its California case reporters, California statutes and its hardcopy case citator are no longer current and have not been updated since 2014. As such, the law school is not compliant with Guideline 6.2 nor, more importantly, with the mandate of the California Supreme Court as set out in the *California Rules of Court*, specifically Rule 9.30(b)(6), which provides, in part, that an unaccredited, fixed-facility law school must "[o]wn and maintain a library consisting of not less the following sets of books, all of which must be current and complete: (A) The published reports of the decisions of California courts; with advance sheets and citator; . . . (C) An annotated set of the California Codes; . . . ."

While the Committee's Guidelines (Guideline 6.4) permits a registered law school to meet its obligation to maintain a fully-compliant law library through the use of a "county, state, federal or law firm library," "within a reasonable distance of the law school's classroom facilities," no such exemption or provision exists in Rule 9.30. As such, the Committee lacks the authority to allow MAOL to operate without a law library, whether or not it has currently enrolled students. Compounding the issue of MAOL's

noncompliance with Guideline 6.2 is the fact that the school was found similarly noncompliant with this critical requirement at the time of its periodic inspection in 2012. In the report received and filed following that inspection, the Committee adopted the following finding and recommendation: “To better comply with Guideline 6.2, the law school should conduct an audit of its law library to confirm that all mandatory legal authorities are complete and current with the requirements of said guideline and California Rule of Court 9.30.”

In light of this finding, a subsequent, interim inspection was performed in September of 2013, during which it was confirmed that, through its recent purchases of updates and new editions of mandatory hardcopy legal authorities, MAOL’s library was found compliant since, as described in the inspection report, “the law school has taken efforts needed to ensure that its library is compliant with the contents requirements set forth in Guideline 6.2.”

The fact that shortly after the interim inspection of 2013 the law school’s library was soon outdated and noncompliant supports the conclusion that Dean McMillan is unwilling to maintain a compliant law library in the absence of enrolled students. In light of such apparent willful noncompliance, and given the mandate of Rule 9.30(b)(6), MAOL should be required to update all of its mandatory library resources as soon as is reasonable.

The law school is compliant with Guideline 6.5 by offering its students access to online library materials. The law school maintains an account with Lexis-Nexis account which, if and when it were to enroll any new students, each will be given compliant access.

In separate financial accounting, no costs for library materials have been charged to the school in the last five years. Since the law firm shares the library with the school, the law firm may have been responsible for the costs of upkeep and additions to the library not reflected in the school’s library accounts during this period.

**(l) Physical Resources. The law school must have physical resources and an infrastructure adequate for its programs and operations. The law school must, at a minimum, maintain its primary administrative office in the State of California.** (Guidelines 7.1, 7.2)

MAOL’s offices and school are located in a commercial building in La Mesa, California. The area set aside for use as a classroom within the McMillan Law Firm appears adequate for small classes and any conference space needed for adjunct faculty to meet privately with a student. Sufficient on site and nearby public parking is available. The Dean’s office is appropriate and on-site filing cabinets contain all the required hardcopy materials generated by the school. Technology plays a minimal role at the school, and the separation of school electronic information from the law firm’s electronic files, firewall and password protected, appear sufficient for the needs of the law school.

**(J) Financial Resources. The law school must have adequate present and anticipated financial resources to support its programs and operations. (Guidelines 8.1, 8.2, 8.3)**

With no tuition income earned over the past four years and with fixed annual costs, including annual business license fee of \$1410 paid to the City of La Mesa, its annual rent of \$9,600 MOAL is to pay under its lease with the McMillan Law Firm, along with its annual report fees of \$580 paid to the Committee each year, the law school has operated at a loss over the last four years. All such expenses, however, have been absorbed annually by Dean McMillan, as MAOL's sole shareholder, and paid by him through additional capital contributions made to the corporation.

The law school's self-study included a projected budget for 2017, which seems to suggest that it would have enrolled students and, thus, it would be earning tuition revenue. Based upon that speculative assumption, the law school's overhead expenses as calculated included only its expenses for business and reporting fees, its rent and instructional salaries. They did not include any compensation for administrative staff, advertising, and maintenance of the website, library or online technology. Moreover, under the proposed budget, the law school's future income is calculated on the assumption that it will enroll up to five first-year students a year, with each attending the same classes for an entire year and each paying full tuition. Based on this presumed budget, the school would generate a small profit.

In making each of these assumptions, and ignoring the very real possibility of student attrition, its projected future budget and its estimate of generating a profit are, at best, overly optimistic and likely unattainable. The school is not now nor does it appear likely that it has ever earned a profit since it opened. In the current absence of any enrolled students, it also appears unlikely to do so in the future.

As a result its ongoing ability to maintain its registration is clearly dependent on the Dean's continued willingness to absorb and pay its fixed operating losses. In light of this necessity, it appears that the law school is not compliant with Guideline 8.1 which requires that a "law school must have adequate and anticipated financial resources to support its programs and operations . . . ."

In light of such apparent noncompliance, sufficient credible financial evidence, in the form of bank statements, should be required to show that MAOL as a separate corporate entity currently has sufficient capital and cash resources to confirm its current and future financial viability and current compliance with Guideline 8.1.

**(K) Records and Reports. The law school must maintain adequate records of its programs and operations. (Guidelines 9.1)**

MAOL substantially complies with the recordkeeping requirements of the Guidelines. The school has adopted an appropriate policy covering recordkeeping procedures regarding student files and maintenance of privacy and security.

The Consultant examined several student files. All required records were found in all required files. In addition to keeping its applications, pre-law transcripts, law school transcripts, enrollment agreements and other required student memoranda in the file, the law school maintains a policy of also storing the written work product of its students, including their exams and answers, in the same file. The result is that its student files are extremely large and bulky, which made it difficult to locate relevant material. It also made it nearly impossible to compare student answers and grading of the same examination since they were scattered amongst the various student files.

Student examinations and corresponding answers, as well as any other course work retained by the school, along with course grades given and roll sheets, should be maintained in separate files, by course and by year.

Faculty personnel files reviewed were complete. The school keeps no separate administrative files. No minutes of a faculty meeting within the last five years were available. It does not appear the faculty has met, as a group, within this period. Board minutes were also not available. However, given that the Board consists solely of Dean Millan, these would not have supplied any relevant information.

The law school was found to maintain adequate records of Committee correspondence and copies of its Annual Compliance Reports. The school should ensure that numbers and status of admitted and continuing students is consistent between the certifications and Attachments 12 and 13 to the Annual Report.

**(L) Equal Opportunity and Non-Discrimination. Consistent with sound educational policy and these rules, the law school should demonstrate a commitment to providing equal opportunity to study law and in the hiring, retention and promotion of faculty without regard to sex, race, color, ancestry, religious creed, national origin, disability, medical condition, age, marital status, political affiliation, sexual orientation, or veteran status. (Guidelines 10.1)**

The law school has adopted and provides adequate notice that it maintains appropriate policies to operate in a non-discriminatory manner. The Consultant met with the Dean, Associate Dean, and administrative assistant. Within such a small group of administrators and faculty there was no indication of either a lack of equal opportunity or of any unlawful discrimination.

**NOTICE OF NONCOMPLIANCE  
TO  
McMillan Academy of Law  
4670 Nebo Drive, Suite 200, La Mesa, California**

**December 2, 2017**

Pursuant to Rule 4.260 of the *Unaccredited Law School Rules*, the Committee of Bar Examiners (Committee) finds grounds to believe that the McMillan Academy of Law (MAOL), a registered, unaccredited, fixed-facility law school, is not in compliance with one or more of the *Guidelines for Unaccredited Law School Rules* (Guidelines) and is hereby issued this Notice of Noncompliance.

The noncompliance of MAOL relates to the following Guidelines:

*Guidelines for Unaccredited Law School Rules:*

1. Guideline 2.3(A) - 2.3(E) (Honesty in Communications)  
Failure to communicate in an accurate, honest and forthright manner.
2. Guideline 2.9(B)(4) – 2.9(B)(6) (Fairness in Academic Standards and Student Assessment)  
Failure to maintain current and accurate means to assess students.
3. Guidelines 5.1 – 5.2 (Academic Program and Criteria for Compliance)  
Failure to maintain a current, qualitatively sound program of legal instruction.
4. Guidelines 5.2(J), 8.1 and 8.2 (Adequacy of the law school's finances)  
Lack of auditable income and funds needed to provide a long-term and sound program of legal education.
5. Guidelines 6.1 – 6.6 (Library Resources)  
Failure to maintain a complete and updated hardcopy law library.

Pursuant to Rule 4.261, within fifteen (15) days of the receipt by McMillan Academy of Law of this Notice, it must file a response as to its compliance or is taking steps to achieve compliance with each of the findings of its noncompliance as described above. In further compliance with Rule 4.261, the response must be submitted with the fee of \$924 as set forth in the *Unaccredited Law School Fees*.

# **McMillan Academy of Law**

## **SUPPLEMENTAL INSPECTION REPORT**

Inspection conducted on May 9, 2018

Pursuant to Rule 4.262(B) of the

*Unaccredited Law School Rules*

Sally Perring, Educational Standards Consultant,  
Office of Admissions, The State Bar of California

# McMILLAN ACADEMY OF LAW

## INTRODUCTION

McMillan Academy of Law is a fixed-facility unaccredited registered law school located in La Mesa, California, a suburb of San Diego. The school initially registered with the State Bar in 2007 and enrolled its first students in 2009. Between 2009 and 2013 the school enrolled approximately 12 students. Only three of these students completed the first year and sat for the First Year Law Students Examination (FYLSE). One student passed on the first attempt, one passed on a second attempt, and one failed the first time and did not retake the FYLSE. Neither of the students who passed completed their second year of studies at MAOL. One of the students who passed the FYLSE transferred to an ABA-accredited law school, but received no credit for work completed at MAOL. After that, no students enrolled at the school until 2018, when somewhere between two and three students were enrolled without any tuition or fees being charged to them.

Shortly after initial registration, the school received its first Notice of Non-Compliance for failure to comply with Rule 2.3(D), disclosing the school's status and limitations as a registered, unaccredited law school. After several rounds of correspondence, the school corrected its public communications.

When the school underwent its first five-year periodic inspection in May of 2012, the resulting report and Committee action required the school to take fourteen significant mandatory actions to remain in substantial compliance with the Guidelines. Because of the large number of actions required, the Committee took the unusual step of ordering a follow-up inspection in 2013. At that inspection, the school was able to establish enough improvement that the Committee of Bar Examiners (Committee) extended the school's registration through 2017.

The next five-year periodic inspection took place in May of 2017, and serious violations were observed in three main categories, involving over fifteen of the Rules and Guidelines for Unaccredited Law Schools. A further complication was that the school had not enrolled any students since the last follow-up inspection, and it appeared that none of the school's materials or library had been updated since that time either. Therefore, certain portions of the school's curriculum, faculty, program of instruction and student services could not be evaluated because the school's program appeared to be dormant.

On December 2, 2017, the Committee issued a Notice of Non-compliance to McMillan Academy of Law (MAOL). The Committee noted that MAOL was not in compliance with the following Guidelines, and grave concern was expressed regarding the school's ability to operate a school that was substantially compliant with the Guidelines now or in the future.

1. Guideline 2.3(A)-2.3(E) (Honesty in Communications) based upon a failure to communicate in an accurate, honest and forthright manner.
2. Guideline 2.9(B)(4)–2.9(B)(6) (Fairness in Academic Standards and Student

Assessment) based upon a failure to maintain current and accurate means to assess students.

3. Guidelines 5.1–5.2 (Academic Program and Criteria for Compliance) based upon a failure to maintain a current, qualitatively sound program of legal instruction.
4. Guidelines 5.2(J), 8.1 and 8.2 (Adequacy of the law school’s finances) based upon a lack of auditable income and funds needed to provide a long-term and sound program of legal education.
5. Guidelines 6.1–6.6 (Library Resources) based upon a failure to maintain a complete and updated hardcopy law library.

Pursuant to Rule 4.261, MAOL was required to file a written response within fifteen days. MAOL’s response advised that the school would take immediate steps to remedy the outdated website and library, and further advised that a small cohort of students had registered for Winter Quarter beginning in January of 2018. MAOL’s Dean, Scott McMillan, appeared voluntarily at the Committee meeting in February 2018 to be available for questions from the Committee.

As a result of these representation, the Committee ordered in February 2018 that a supplemental site visit take place within 90 days in order “to determine whether, under Rule 4.262(A), its response should be deemed satisfactory or whether, based upon that inspection and subsequent report and as provided by Rule 4.263, the Committee is able to determine that the law school is not or is not likely to be in compliance with these rules so that it may then notify the law school that it recommends probation or withdrawal of its registration.”

State Bar Educational Consultant Sally Perring revisited the school on May 9, 2018, to confirm compliance or progress on the five bases of noncompliance cited by the Committee in the December 2, 2018 Notice of Noncompliance. Her inspection included discussions of the compliance issues with Dean McMillan and faculty member Jorge Jamarillo. She also reviewed the midterm and final examinations from the Winter 2018 quarter, student files, financial statements, and the library. She was also supplied with electronic examples of assignments in the Legal Writing class from the Winter 2018 quarter as well as copies of one student’s briefs for Criminal Law. She attended the Contracts class that was held on the evening of the inspection.

## **FINDINGS**

- 1. Guideline 2.3(A)-2.3(E) (Honesty in Communications) based upon a failure to communicate in an accurate, honest and forthright manner.**

There were issues even prior to the start of the inspection. While a main focus of the inspection was to observe the students that MAOL had represented would begin class in January 2018, the school did not file its certificate indicating whether and how many students had enrolled. This certificate is normally due within 60 days after the start of classes under Guidelines 9.2(O) 2-3. MAOL did not respond to any of the numerous communications from the State Bar related to enrollment of students until April 17, when it advised, well after the required certification deadline, that two students had enrolled.

Its Annual Student Disclosure Statement reported that three students had enrolled. The Relevant portion of the Student Disclosure Statement is reproduced below, emphasis added:

16. ATTRITION Rates of enrolled students in subsequent years. Students enrolled in this Law School’s J.D. program by year:

	First Year	Second Year	Third Year	Fourth Year
9/15/2013	3	0	0	0
9/15/2014	0	0	0	0
9/15/2015	0	0	0	0
9/15/2016	0	0	0	0
9/15/2017*	3	0	0	0

**\*Denotes the 2017-2018 Academic school year**

Focus on the last line of the report, beginning 9/15/2017. First, the school was to report the number of first year students as of 9/15/2017. Though zero students were enrolled as of that date, the school communicated that three students had enrolled. Second, even assuming the school could expand this reporting category by inserting the asterisk to have it include all students enrolled in the 2017-2018 academic year, which is not permissible under the statute, then the form shows three students enrolled for the 2017-2018 year. The school could produce applications for only two candidates, both of whom were admitted. The Dean, who did not personally fill out the disclosure form, could not explain why the form identified that three students had enrolled. The school did, however, respond to criticism in the school’s last inspection and update information on the form regarding administrative personnel at the school.

On the other hand, the school did, however, update its handbook, including removing its many-years-outdated reference to the school’s oversight by the Bureau of Private Post-Secondary Education and its participation in the Student Tuition Recovery Fund. The school regularized reference to the number of units required to graduate and other outdated general references that appeared not to have been changed since the last students were enrolled in 2013.

**2. Guideline 2.9(B)(4)–2.9(B)(6) (Fairness in Academic Standards and Student Assessment) based upon a failure to maintain current and accurate means to assess students.**

While at campus the consultant reviewed the midterm and final examinations of both students for the criminal law class which was completed the prior quarter. Unfortunately, neither the multiple-choice portion nor the essay portion of the examination contained materials compliant with the Guidelines.

Both the final essay questions were past FYLSX questions. Unfortunately, Guideline 5.15 expressly prohibits the use of past FYLSX questions “for any purpose that affects a student’s grade.” The Dean advised did not know that the professor had used FYLSX questions, calling into question the training and oversight of the school’s sole additional faculty member. Neither the Dean nor the professor who gave the final exam seemed familiar with the Guideline 5.15. Moreover, the answers published with released questions to the FYLSX and used as model answers for grading, while good, were, as is typical for selected answers released with the examination, far from perfect or model answers.

The multiple-choice questions were photocopied from a Siegel's Criminal Law bar preparation book. Use of commercially available material for the MBE-type multiple-choice questions for the final throws into question the accuracy of the assessment of student achievement as well as fairness. Students with access to the material could have conformed their answers to those provided in the commercial materials, learning the right answers, but not necessarily the law. Also, if one student had access and another did not, it would be unfair.

The grading seemed to fairly reflect the varying degrees of competency and comprehension of the students as to each essay question. Moreover, the scores on the essays correlated well with the scores on the MBE-type questions. The midterm essays had numerous handwritten comments to alert the students both to problems and where they did well. Both the midterm and the final had available model answers. Unfortunately, though the scores were tainted by the knowledge that the students could have had access to the prior FYLSX questions or commercial multiple-choice questions before the examination took place. And as students continued to enroll from year-to-year, these practices could become known, increasing the chances for unfairness.

### **3. Guidelines 5.1–5.2 (Academic Program and Criteria for Compliance) based upon a failure to maintain a current, qualitatively sound program of legal instruction.**

Guideline 5.1 requires a school to maintain a qualitatively and quantitatively sound program of education. Guideline 5.2 provides a long list of specific criteria for evaluating conformity with Guideline 5.1.

Amongst the criteria in Guideline 5.2 is the competence of the instructors, their ability as teachers, and effectiveness of the methods of instruction. (Guidelines 5.2(B) and (D).) The consultant attended the first class in Contracts this quarter. The instructor was informed and drew reference from the Criminal Law class that the students had already taken, referring to such notions as specific intent, subjective and objective criteria, and capacity to help the students transition to a new subject. After an introductory lecture, the class went through the cases to be read that night. Both students had prepared their own briefs and were prepared to discuss the cases. The instructor led the discussion of each case ably, calling on the students alternatively to recite the facts, etc. The atmosphere was supportive and conducive to learning.

While the required case book was typical of that used in most law schools, the syllabus for the course was quite skeletal, giving the reading assignment for the entire week, when the class actually meets multiple times per week. Syllabi from prior years contained more information, breaking down reading assignments for each class period, and included attendance requirements, explanation of examinations, class participation and case briefing expectations and an explanation of how the final grade would be computed, as required under the Guidelines. (See Guidelines 2.9(C) and 5.2(C).)

Guideline 5.2(E) provides consideration of admission requirements, including minimum levels of prior education, preparation, or training. Upon examination of the two student files of those enrolled in January, it was discovered that one student lacked sufficient qualifying units (60) to be admitted as a non-degree regular student. The student could only have been

admitted as a special student. The student, however, had not taken the College Level Equivalency Program (CLEP) examinations, required for admission as a special student, and therefore could not have been admitted as a special student. (See Guideline 5.33 and the Rule and Business and Professions code section cited therein.) The student thus must be excluded from the law school and can receive no credit for any work completed since enrollment.

While the school's Catalog sets forth numerous submissions required for consideration of the student application, the two files contained only a completed application form and signed disclosure forms, but none of the other materials set forth in the Catalog as required for admission. It appeared as well that the student files were otherwise deficient under the recordkeeping requirements of the Guidelines, lacking transcripts and other required elements. (See also Guidelines 9.1(A) through (D).)

On the day of the consultant's visit, one of the Dean's law clients decided she wanted to attend law school. The client completed the application form and signed the appropriate disclosure forms. The applicant was admitted on the spot and provided with a photocopied portion of the Contracts textbook so that he could attend class that evening, and she did so.

While not specifically covered under Guideline 5.2(E), but related to this, is the requirement under Guidelines 9.1(O)(2)(A) and (B) that a law school must submit an Admission Certification within 60 days of the beginning of any academic period wherein it has admitted a new student. Certification forms for the two students who began in January were not submitted until April 17<sup>th</sup> and then only after the school was reminded on multiple occasions of its obligation to submit the forms. The forms showed one degreed regular student and one non-degreed regular student, but this information was neither accurate nor timely.

Other Guideline 5.2 criteria include the quality of examinations (discussed above in 2.), legal research resources and adequacy of the school's finances, which will be discussed below as separate issues in sections 4 and 5.

**4. Guidelines 5.2(J), 8.1 and 8.2 (Adequacy of the law school's finances) based upon a lack of auditable income and funds needed to provide a long-term and sound program of legal education.**

The school continues to lack auditable income. The Dean, who is also the owner of the law school corporation, in response to the December Notice of Noncompliance has deposited \$20,000 to the school's account, which shows a current balance of \$20,202.81. The \$20,000 was credited to Equity, Capital Stock, on the corporate Balance Sheet. In his Response to the Notice of Noncompliance Dean McMillan asserted: "Dean McMillan has provided MAOL with a capital guarantee of twenty thousand dollars (\$20,000) over the next five years." A subsequent conversation with the Dean clarified that he was committed to depositing \$20,000 annually over a five-year period.

Current students are not being charged any fees or tuition. The Dean hopes to use the success of the current students to attract paying students in the future.

The law school's fixed expenses include \$800 monthly rent (\$9600 annually) to the McMillan Law Firm (also owned by the Dean) for use of office space for offices, study rooms, classrooms, and the library. Annual licensing and registration fees, owed to various

governmental entities, amount to \$1,410. Salaries for adjunct professors are estimated at approximately \$3,000 per quarter if all 10 units are all taught by adjunct faculty. The school also has annual expenses for the upkeep of the library would be in addition to these costs.

Even treating the rental payments as waivable, licensing and registration fees to operate the school, adjunct salaries, and upkeep of the library, at a minimum, total about \$10,000 annually. If rental costs were included, this annual cost would be around \$20,000. One student enrolled for a year taking all classes required for the part-time program and paying full tuition and fees would contribute about \$8,300.00 annually. MAOL, registered since 2007, has had only fifteen students total, and none have undertaken the second year of study at MAOL.

**5. Guidelines 6.1–6.6 (Library Resources) based upon a failure to maintain a complete and updated hardcopy law library.**

The law school has ordered the required hardcopy materials needed to update its physical library holdings. Most of the volumes had been received and properly shelved at that time of the inspection, though some were still in their wrappers. The school has procured access to Lexis-Nexis for its students.

**CONCLUSIONS AND RECOMMENDATION**

The consultant observed real teaching and learning of the law in the classroom. However, the Guidelines require much more than that. It does not appear that anyone currently at the school has attempted to learn and ensure compliance with the requirements and obligations of an unaccredited, registered school under the relevant Rules and Guidelines. The school reacts to remedy noncompliance issues as they are highlighted by site visits, but its responses are often late and often give rise to other issues because it appears no steps have been taken by the school proactively to ensure ongoing substantial compliance.

Moreover, it does not seem possible that the school has the resources or reputation to attract, educate or retain students, and no student has advanced even to the second year of study since the school opened eleven years ago.

Based upon materials submitted both before and during the site visit as well as findings while at the site, it is recommended that the Committee of Bar Examiners withdraw registration of the McMillan Academy of Law. The school's admissions, academic program and student assessment fall short of the requirements set forth in the Guidelines and there continues to be no auditable income. Alternatively, the school should be placed on probation for one year, with a site visit at the end of that year to ensure compliance with the problems noted above and demonstration that personnel and systems have been put in place to ensure ongoing compliance with all the Rules and Guidelines. In light of the past efforts, however, success after probation is unlikely and continued operation of the school may serve to disadvantage any students who might choose to enroll.

# McMillan Academy of Law

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La Mesa, California 91941-5230  
(619) 464-1500  
www.maol.info

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December 19, 2017

George Leal, Program Manager, Educational Standard  
The State Bar of California  
180 Howard Street  
San Francisco CA 94105

Dear Mr. George Leal

McMillan Academy of Law is in receipt of the Notice of Non-Compliance dated December 2, 2017 [hereinafter the Notice], as well a copy of Periodic Inspection Report [hereinafter the Report], completed by Ms. Sally Perring, a consultant for the Economic Standards Office, and a memorandum authored by Mr. George Leal, all of which were sent to the Education Standards Subcommittee of the CBE. Please consider this letter our response to the Notice of Non-Compliance. The fee required of \$924 as requested in the Notice was previously tendered.

We at the McMillan Academy of Law [hereinafter MAOL] take not only the Notice of Non-Compliance extremely seriously, we are also mindful of all suggested actions outlined in you're the Report. MAOL is now in the process of correcting all required actions as well as those suggested and proposed in the Report. We will address each item individually below.

We also wanted to take this opportunity inform the Educational Standards Committee that MAOL is excited to announce that it already has an incoming class enrolled for the upcoming quarter, and will resume classes in January of 2018. MAOL has also hired a new professor for the upcoming academic year. Cumulatively, this will help ensure a promising future for MAOL, its students, faculty and professors, and legal community. We look forward to a optimistic and encouraging upcoming academic year.

## **Recommended Mandatory Actions**

The first item where mandatory action is recommended in the report indicates to be compliant with Guideline 2.3©, MAOL must review, revise and delete from all of its materials, both hardcopy and electronic, any and all references to the Bureau of Postsecondary, Private Education [hereinafter BPPE) and the Student Tuition Recovery Fund [hereinafter STRF], as

each is noted in its program of legal education.

At this time, MAOL has already updated its website to reflect the current information. All references to the BPPE and the STRF have been removed from the website to ensure that all communications are in an accurate, honest, and forthright manner. The website also no longer provides any information on any individual or joint MBA program. We have already updated all hardcopies of any information, manuals, or disclosure provided to students to reflect the same changes, removing all references to the BPPE and the STRF. Those hardcopies are now available for download on from MAOL's website. By adjusting both the electronic and hardcopy versions, this will ensure there is no inaccurate or confusing information being disseminated to entering students. We have attached the updated catalog (**EXHIBIT A**) to show the referenced changes.

The second item where mandatory action is recommended in the report indicates to be compliant with Guideline 2.3(D), the MAOL must review, revise and correct all information and data reported on its written Disclosure Statement required by Rule 4.241 and its Information Report Form required by Business and Professions Code, sec. 6061.7(a). MAOL has revised its disclosure statement on both the website, and in hard copy form. This includes both the required disclosure for Rule 4.241 as well as the Form required by Business and Professions Code, sec. 6061.7(a). The information is listed on the website itself, and is available for download from the website as well. All disclosures are now current, accurate, and comply with all Rules and Guidelines. Hardcopies and the website have been updated accordingly, and the disclosures are available on the website now. We have attached our Rule 4.241 Disclosure (**EXHIBIT B**) as well as MAOL's Information Report Form required by Business and Professions Code, sec. 6061.7(a) (**EXHIBIT C**).

Next listed in the Report where mandatory action states to be compliant with Guideline 2.9(B)(4), MAOL must review and revise all of its materials, hardcopy and electronic, to ensure that all correctly and consistently state the number of quarter units (114) needed to earn a Juris Doctor degree. MAOL's website already reflects the minimum number of credits needed to earn a JD degree and explains the quarter system, as well as the required hours needed for students to earn credits for each course taken. We have concurrently updated all hardcopy versions to reflect the same, so that all correspondence with students regarding the credit and hour requirements is accurate and non-confusing. The information is available in the catalogue and other documents on the website. This information is available in the catalog (**EXHIBIT A**), as well as our Academic Requirements Information (**EXHIBIT D**)

Along with Guideline 2.9(B)(4) in the report, the Notice indicates that MAOL has failed to maintain current and accurate means to assess students. As noted in the report, MAOL has had a few years with no students enrolled. With few or no students, assessing students understanding and comprehension has been unavailable. MAOL has adapted its grading criteria, and has finalized those changes for the upcoming school year. The new grading standards will be given to the incoming students prior to or at their first classes. The information will be contained in the student catalogue and in each individual syllabus as well. We are excited to have the opportunity to teach and assess students in the upcoming quarter. Each professor will follow the grading

scale and notify students in a timely manner of how they are graded. MAOL no longer uses any letter grades. Our grading criteria is now included in the catalog (**EXHIBIT A**) and will be included in each syllabus for all classes at MAOL.

The Report also requires in accordance with Guideline 4.11(A), that MAOL must designate an individual as its Registrar and inform the Committee of Bar Examiners accordingly. MAOL has designated Mr. Scott A. McMillan as its Registrar. He can be reached at

Scott A. McMillan  
McMillan Academy of Law  
4670 Nebo Dr., Ste. 200  
La Mesa, CA 91941  
Scott@McMillanlaw.us  
P: (619)464-1500  
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MAOL has already sent separate letter as an official notification to the Committee of Bar Examiners as to the designation of its registrar. We have attached the letter for your complete records (**EXHIBIT E**)

Also contained in the Report, and the Notice, is a requirement to update the law library at MAOL. This requirement is to comply with Guideline 6.2 and Rule 9.30(b)(6) of the California Rules of Court, which specifically state that [MAOL] must maintain a law library such that contains all mandatory hardcopy legal authorities that are complete, current and updated. MAOL has already ordered the requisite hardcopies of any updates to its already existing law library. We expect the law library to be fully updated by the time courses start for the upcoming academic year. We have attached the invoice and order form of the update to our library as (**EXHIBIT F**).

Finally listed in the Report and the Notice for mandatory recommended actions is a concern about MAOL's compliance with Guidelines 5.2(J), 8.1 and 8.2. These Guidelines discuss the adequacy of the law school's finances and lack of auditable income and funds needed to provide a long-term and sound program of legal education. To comply with Guideline 8.1, MAOL must confirm that, as a separate corporate entity, it has and will maintain sufficient capital and cash resources to ensure its current and future financial viability needed to support its program of legal education and each of its current and future financial obligations.

Dean Scott McMillan is the sole director and shareholder of MAOL. MAOL shares a space with the Law Offices. Dean McMillan has provided MAOL with a capital guarantee of twenty thousand dollars (\$20,000.00) over the next five years. This guarantee will provide sufficient capital, cash, and resources to ensure the viability of the school, including supporting the educational programs and any future financial obligations.

Listed on the Notice, but not in the report, is MAOL's non-compliance with Guidelines 5.1 – 5.2, dealing with the MAOL's failure to maintain a current, qualitatively sound program of legal

instruction. We are aware that this non-compliance is mostly due to a lack of a student body and classes over the past few years. However, as discussed above, MAOL already has students enrolled for the upcoming quarter beginning in January of 2018. While MAOL has been dormant, it is now invigorated with new students for the upcoming quarter.

MAOL also has hired a new, highly motivated professor who is eager for an opportunity to teach up-and-coming legal minds the law, how to pass the CBX, and how to be a successful attorney. Despite the difficulty for MAOL to provide legal education and assess students' understanding of the law, MAOL will resume classes in January. Because enrollment has increased, the law library is being updated, and classes will resume. In January, MAOL can now provide the experience of a current and qualitatively sound program. MAOL has updated its catalogue for the incoming school year to reflect all changes discussed in this letter. That catalogue is available on the website in the near future. We have also attached all disclosures as (**EXHIBIT G**).

### **Recommended Suggested Actions**

Ms. Perring's Report discussed several suggested actions that were not mentioned in the Notice itself. However, MAOL is committed providing the best possible legal education and is making changes according to these suggestions. The Report advises that pursuant to Guideline 1.9, MAOL should incorporate into its materials, both hardcopy and electronic, that it is compliant with all requirements set out in the Americans with Disabilities Act (ADA) relevant to its facilities and operations. MAOL has updated its website, its catalogue, and other materials, to reflect that it is compliant with the ADA, relevant to its facilities. These changes are reflected in all hard copy materials, including the catalog, (**EXHIBIT A**). The facilities for MAOL are on the second floor of the building, which predates the ADA. To the extent the facilities are inaccessible, MAOL will provide either alternative instruction, alternative means of instruction, or an alternative location.

Also listed in the Report was the suggestion to incorporate a copy of MAOL's current instructor evaluation policy in the its faculty handbook (Pursuant to Guidelines 4.8 and 4.9, the law school should incorporate a copy of its current instructor evaluation policy in its Faculty Handbook). These changes have been made and specifically outline how and when each professor or faculty member will be evaluated. The faculty handbook is still undergoing revisions, and will be ready for all faculty when classes begin in January.

Finally, the Report details how Ms. Perring had a difficult time locating specific items within each student file. Pursuant to Guidelines 9.1(A-D) and 9.1(E-F), MAOL should separate and maintain all required information, transcripts and materials needed to be placed into its student files from materials relating to its courses and classes. MAOL has adapted a new filing system for student files to make individual items within each file easier to locate. MAOL has also adjusted its filing system to keep and maintain a separate set of files for each course, by year. This allows easy access to any particular course and all exams taken by any students in that course. This is for internal ease and so on subsequent inspections, the inspector will easily be able to compare exams from the same course without having to pull individual student files

simultaneously.

On behalf of MAOL, we appreciate the opportunity to work with you to address the Notice. Please contact MAOL if you have any questions or concerns regarding anything within the Notice, Report, or this letter addressing the Notice. We look forward to working with you in the future to resolve any compliance issues discussed above.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott McMillan", with a long horizontal line extending to the right.

Scott McMillan  
Dean - McMillan Academy of Law

The attachments to this letter will be available upon request and will be available onsite at the meeting.