

AGENDA ITEM

MOC II.D MAY 8 2014

DATE: May 1, 2014

TO: Members, Member Oversight Committee

FROM: Dina DiLoreto, Managing Director, Member Records & Compliance

SUBJECT: Proposed Changes to Calculation of Proportional MCLE Requirements – Request for Public Comment

EXECUTIVE SUMMARY

This agenda item requests a 45-day public comment period for a proposed amendment to the calculation of proportional MCLE requirements due for attorneys who were not on Active status and not otherwise exempt for the full 36 months of their MCLE compliance period. The current formula for calculating a proportional requirement, as provided on the State Bar's website as a "Proportional Requirement Table", automatically eliminates the usual one hour of required "Elimination of Bias" credit and the one hour of required "Prevention, Detection and Treatment of Substance Abuse or Mental Illness" credit in cases where less than the full 25-hour MCLE requirement applies. The proposed amendment would keep these required hours intact within every member's requirement, regardless of the pro-rated total number of hours due.

Questions on this item should be directed to Dina DiLoreto at (415) 538-2121 or Dina.DiLoreto@calbar.ca.gov.

BACKGROUND

California's MCLE requirement of 25 hours, over a 36-month compliance period, includes 4 hours of Legal Ethics credit, 1 hour of Elimination of Bias credit, and 1 hour of Prevention, Detection and Treatment of Substance Abuse or Mental Illness (to be referred to as "Competence Issues", effective July 1, 2014) credit. MCLE Rule 2.72 (D) within Title 2, Division 4 of the Rules of the State Bar, provides that an attorney may reduce the required 25 hour MCLE requirement in proportion to the number of complete months during the compliance period when the member was not yet admitted, was officially on inactive status, or was on active status but qualified for an MCLE exemption. The rule references an online tool for calculating proportional requirements, which has been implemented as the Proportional Requirement Table available on the

State Bar's website. In the current table, as soon as a member's requirement is determined to be a "proportional requirement" (i.e., is not the full 25 hours), the usual one hour required in the Elimination of Bias and the one hour required in the Prevention, Detection and Treatment of Substance Abuse or Mental Illness are dropped from the mandatory requirement. A pro-rated number of the four hours normally required in Legal Ethics remains intact.

ISSUE

Whether to authorize a 45-day public comment period for proposed changes to the way proportional MCLE requirements are calculated so that, in the future, the Elimination of Bias and Competence Issues requirements are to remain intact regardless of any reduction of total hours due. This change would be illustrated by way of changes to the Proportional Requirement Table.

The 45-day public comment period would allow this proposal to return to MOC and the Board for action in July 2014.

DISCUSSION

The State Bar's Task Force on Admissions Regulation Reform (TFARR) is currently working towards making specific implementation recommendations concerning three proposals: 15 units of competency skills training during law school, 50 hours of legal services pre- or post-admission, and 10 additional post-admission MCLE hours, focused on competency skills training. At their March meeting, a concern was raised, and a discussion ensued, regarding the fact that new lawyers often are not exposed to an Elimination of Bias or a Prevention, Detection and Treatment of Substance Abuse or Mental Illness course before several years of practice, due to the way proportional requirements are calculated. The fact that these attorneys may be required to represent clients on a pro bono or modest means basis (as part of the legal services requirement described above) underscores the value of the Elimination of Bias training, in particular. A proposal to include these topics as part of the contemplated 10 hours of competency skills training was met with some resistance since these limited hours are meant to cover practice skills.

This agenda item is staff's effort to address the concerns raised by TFARR, with proposed changes to the way the Bar applies the proportional requirement calculation formula for regular MCLE requirements. Such changes would ensure that all attorneys earn one hour of credit in the Elimination of Bias and one hour in the Prevention, Detection and Treatment of Substance Abuse categories during their first MCLE reporting period and all subsequent reporting periods, regardless of the total number of hours due.

FISCAL / PERSONNEL IMPACT

The cost and workload of any outreach efforts to promulgate a change to the calculation of proportional requirements is expected to be absorbed within the current budget. There will be no additional fiscal or personal impact.

RULE AMENDMENTS

Proposed changes would affect the Proportional Requirement Table made available on the State Bar website and there would be no change needed to the actual Rules of the State Bar.

BOARD BOOK IMPACT

None.

RECOMMENDATION

Staff recommends that MOC authorize a 45-day public comment period for a proposed amendment to the way proportional MCLE requirements are calculated so that the Elimination of Bias and the Competence Issues requirements remain intact regardless of any reduction of total hours due, as illustrated by way of changes to the Proportional Requirement Table.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Member Oversight Committee authorizes staff to make available for public comment for a period of 45 days the proposed amendment to the MCLE Proportional Requirement Table, that would keep the one hour requirement of Elimination of Bias credit and the one hour requirement of Competence Issues credit intact regardless of any reduction in the total MCLE hours due; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

ATTACHMENT

A: MCLE Proportional Requirement Table with Proposed Revisions