

AGENDA ITEM

A&E III B. JULY 2016

DATE: July 21, 2016
TO: Members, Admissions and Education Committee
FROM: Elizabeth R. Parker, Executive Director
SUBJECT: TFAAR New Attorney MCLE Requirement

EXECUTIVE SUMMARY

This agenda item summarizes both the original Task Force on Admissions Regulation Reform (TFAAR) recommendation regarding new attorney Mandatory Continuing Legal Education (MCLE) and the proposed modified implementation approach developed by State Bar staff. It also requests authorization for public comment on proposed amendments to State Bar rules in order to implement the proposed new requirement.

BACKGROUND AND DISCUSSION: New Attorney MCLE

Original TFAAR II Approach: New admittees would be required to take ten additional hours of MCLE courses specifically focused on law practice competency training, over and above the required MCLE hours for all active members of the Bar. Credit toward this enhanced MCLE requirement, the Phase I Report recommended, would be available for participation in Bar-approved mentoring programs.

Revised Approach: Attorneys would be required to complete a New Attorney Training MCLE program during their first year post-admission. The curriculum would be developed by the State Bar, and would be no more than ten hours in length in total. These ten hours would not be in addition to the currently required MCLE hours for active members of the State Bar. Instead, up to ten of those currently required hours would comprise New Attorney Training, and this training would be prescribed for completion within the first 12 months of admission to the California State Bar. This change could be effectuated by amending the State Bar Rules, which only require the Board's approval.

The revised approach addresses concerns that adding additional MCLE requirements on new attorneys would present both monetary and time burdens. It also is highly unlikely that legislation, which would be required if additional hours of MCLE were mandated, would find success and eventually become law, as other similar bills have been vetoed by the Governor. By incorporating New Attorney Training into the existing MCLE framework, the goal of ensuring that new admittees receive a baseline level of core competency training would be met without implicating these concerns. The State Bar would develop the New Attorney Training curriculum, which would be available in a module-based, on-line, format, at no- or low-cost.

New admittees who do not complete the online New Attorney Training program by the last day of the month of their 1-year anniversary month as a member would be assessed a non-compliance fee.

Those new admittees who still have not completed the New Attorney Training by their next regular MCLE reporting deadline would be subject to a sixty-day notice to bring themselves into full compliance, or risk being placed on Administrative Inactive status and not eligible to practice (consistent with the repercussions of not completing regular MCLE requirements).

A summary of the primary differences between the original TFARR recommendation and the modified proposal follows:

- 1) By incorporating the New Attorney Training within regular MCLE requirements, the same MCLE exemptions described in statute (Business and Professions Code section 6070) and Rule of Court 9.31 would apply. These include exemptions for full-time law school professors, employees of the State of California, and employees of the US government. State Bar rules add California elected officials to this list. The original TFARR recommendation did not provide for these exemptions.
- 2) The revised proposal does not extend an exemption to members who are admitted in another US jurisdiction for at least four years, as the original proposal did.
- 3) Per Business and Professions Code section 6070 and Rule of Court 9.31, existing MCLE requirements apply to members on active status. Incorporating New Attorney Training within the existing requirement will mean that new attorneys who transfer to voluntary inactive status will not face repercussion for not completing this training (without proposing changes to legislation or the rule of court).¹
- 4) The original TFARR recommendation allowed potential new members to get started on MCLE requirements (in anticipation of bar exam results) 4 months prior to admission. This provision is not necessary under the proposed approach, which incorporates New Attorney Training into existing MCLE requirements.
- 5) The rules reference a non-compliance fee for failure to complete the New Attorney Training by the last day of the month of the attorney's one-year anniversary of admission. Staff proposes that the fee be set at \$75, which is the same as the non-compliance fee for failure to timely report regular MCLE requirements. The original TFAAR recommendation provided for a separate Administrative Inactive status for failure to comply with "first-year" MCLE while under the revised approach the possibility of being placed on Administrative Inactive status is related to failure to comply with total MCLE requirements due every three years.

¹ Staff proposes that the Bar keep track of those who avoid the requirement due to change in status, and track compliance if/when they return to Active status. The number of new admittees who transfer to voluntary inactive status within their first year is low (on average, 100 out of 7000 per year).

FISCAL/PERSONNEL IMPACT

Estimated costs for this component of TFARR implementation range from \$100,000 to \$400,000 (one-time) for the development and deployment of the New Attorney Training curriculum. Audit responsibilities associated with this proposal will be assumed by staff and temporary help currently performing annual MCLE audits and are not expected to require increased personnel resources. Periodic investments in curriculum and/or technology upgrades are anticipated; these costs cannot be reasonably estimated at this time.

RULE AMENDMENTS

Title 2, Division 4, Chapter 1.

BOARD BOOK IMPACT

Not applicable.

BOARD GOALS & OBJECTIVES

Goal 1.e.: *Expediently refine, adopt and implement phased-in and/or modified Task Force on Admissions Regulation Reform recommendations.*

BOARD COMMITTEE RECOMMENDATIONS

RESOLVED, that the Admissions and Education Committee recommends that proposed amendments to Rules of the State Bar, Title 2, Division 4, Chapter 1 as attached hereto be released for public comment for a period of 45 days; and it is

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

ATTACHMENT(S) LIST

- A. July 2016 Version of Proposed Amendments to State Bar Rules re New Attorney MCLE Requirement