

AGENDA ITEM

132 November 2016

DATE: November 9, 2016

TO: Members, Board of Trustees

FROM: Elizabeth R. Parker, Executive Director

SUBJECT: Task Force on Admissions Regulation Reform (TFARR) Competency Training Requirement

EXECUTIVE SUMMARY

After discussion of staff's proposed modifications to the Task Force on Admissions Regulation Reform's (TFARR) competency training recommendations, which included reducing the number of required course units in law school from 15 to 6, in its July 2016 meeting, the Board Committee on Admissions and Education directed staff to confer with TFARR's chair, Justice Jon Streeter, about his and TFARR's concerns relative to the revisions that had been made by staff and to return to the Board of Trustees for further consideration.

After that meeting, on August 4, 2016, staff also met with several law school deans from leading law schools throughout the country, representatives from the Law School Admissions Council Section on Legal Education and Admissions to the Bar, the American Bar Association's managing director of accreditation and legal education, and several TFAAR representatives, including Justice Streeter. Input was also received from the American Association of Law Schools (AALS) and a copy of a resolution from the Conference of Chief Justices was also received and reviewed. Justice Streeter was invited to provide another version of proposed recommended rules, which reflected his comments and concerns about staff's revised proposal. He has done so.

Due to the current crisis in the State Bar's funding and ongoing concerns regarding the 15 credit unit proposal, staff does not believe it is the right time to advance TFARR's competency recommendation. Staff's further recommendation, however, is that the Board of Trustees encourage the Committee of Bar Examiners to adopt rules for the law schools within California it regulates to require those schools to provide a minimum of 6 credit units in competency training as part of their required curricula. Such a requirement would be similar to what has now been incorporated into the ABA law school rules nationally.

BACKGROUND AND DISCUSSION: PRE-ADMISSION COMPETENCY REQUIREMENT

During its July meeting, the Board Committee on Admissions and Education considered the following proposed resolution reflecting a number of alternative approaches to implementing a 15-credit unit experiential competency training requirement that would be required of students

during the course of their law school education. The following three options were presented, with the request that the Board select one that could be circulated for public comment:

RESOLVED, that the Admissions and Education Committee recommends that Proposed new Rule 9.6 (a) of the California Rules of Court, proposed amendments to Title 4, Division 1, Chapter 2 (*Admissions Rules*) and Proposed Guidelines to supplement the *Admissions Rules*, which would establish a requirement that all applicants for admission acquire 6 units of experiential competency training as a condition of admission, as attached hereto, be released for public comment for a period of 45 days; OR

RESOLVED, that the Admissions and Education Committee recommends that Proposed new Rule 9.6 (a) of the California Rules of Court, proposed amendments to Title 4, Division 1, Chapter 2 (*Admissions Rules*) and Proposed Guidelines to supplement the *Admissions Rules*, which would establish a requirement that all applicants for admission acquire 15 units of experiential competency training as a condition of admission, as attached hereto, be released for public comment for a period of 45 days; OR

RESOLVED, that the Admissions and Education Committee recommends that Proposed new Rule 9.6 (a) of the California Rules of Court, proposed amendments to Title 4, Division 1, Chapter 2 (*Admissions Rules*) and Proposed Guidelines to supplement the *Admissions Rules*, which would establish a requirement that all applicants for admission acquire 15 units of experiential competency training as a condition of admission, to be phased in over a six-year period beginning as attached hereto, be released for public comment for a period of 45 days; OR

RESOLVED, that if the Admissions and Education Committee recommends that a 15 unit requirement be adopted over time as follows: 6 units for the class entering law school in 2017, 9 units for the class entering law school in 2019, 12 units for class entering law school in 2021, and 15 units for the class entering law school in 2023;

Action on all options was postponed to allow further consultation between the staff and Justice Streeter. Since the July meeting, staff met on August 4, 2016 with several law school deans from law schools throughout the country, representatives from the Law School Admissions Council Section on Legal Education and Admissions to the Bar, the American Bar Association's (ABA) managing director of accreditation and legal education and TFARR representatives, including Justice Streeter. Input was also received from the American Association of Law Schools and a copy of a resolution from the Conference of Chief Justices was also received and reviewed.

The Conference's resolution concludes with a recommendation:

"...the Conference of Chief Justices commends to its members the ABA Task Force on the Future of Legal Education Report and encourages them to review and to consider implementing the findings and recommendations in general and specifically those directed to state supreme courts, state bar associations, and other regulators of lawyers and law practice. The Conference also recommends that law schools, the ABA Section of Legal Education and Admissions to the Bar,

and others in the legal education community undertake to examine the Task Force report and consider action on its recommendations.”

An additional recommendation in the report specifically addresses the issue of whether certain requirements should be mandated by State Bars or admitting authorities:

6. Avoid Imposing More Stringent Educational or Academic Requirements for Admission to Practice than those Required Under the ABA Standards for Approval of Law Schools.

There are two primary reasons that have been expressed in opposition to the original TFARR proposal of requiring 15 credit units of competency training, a position that appeared to be shared by most of the deans and other non-TFARR related individuals in attendance at the meeting held in early August. First, there is concern about the additional costs associated with providing such individualized education, which during these times of economic uncertainty and students' growing law school debt, do not seem financially prudent. Second, the unprecedented reduction in curriculum flexibility that such a requirement would cause is problematic for curriculum reform and innovation.

Many of the deans agreed that the nature of legal education is changing; they noted that much more is being done today in law schools with regard to competency training; there was similar agreement that the ABA's new requirement of a minimum of 6 credit units of competency training is an appropriate step forward. At the same time, the deans recommended that this requirement not be increased until the impact of the current ABA change could be evaluated in actual practice.

Subsequent to the August meeting, Justice Streeter was invited to provide another version of proposed recommended rules, to reflect his (and TFARR's) comments and concerns. He has done so and they are attached as Attachment A.

Due to the current State Bar funding crisis and significant ongoing concern regarding the 15 credit unit requirement, staff recommends tabling the TFARR competency training requirement. Staff's further recommendation, however, is that the Board of Trustees encourage the Committee of Bar Examiners to adopt rules for the California law schools it regulates, which would require those schools to provide a minimum of 6 credit units in competency training as part of their required curricula. Such a requirement would be similar to what has now been incorporated into the ABA law school rules.

After all categories of schools have had a period of time working with the new competency requirements required by the respective rules that regulate them, it would be appropriate to discuss the difference, if any, such new regulations have had on the education law students receive and their effect, if any, on the competence of newly admitted lawyers. Such an assessment would inform whether to increase the competency training requirement.

These discussions have also made apparent that it is important for the State Bar to become more involved with the ABA's Council on Legal Education and Admissions to the Bar, and to provide advice and input on issues related to competency as they may arise, so that these can be monitored by staff, the Admissions and Education Committee and the Committee of Bar Examiners. The Board of Trustees might also consider asking the Committee of Bar Examiners to review the ABA Task Force on the Future of Legal Education Report and determine whether any additional steps should be taken in response to the recommendations

contained in the report, such as reducing the number of subjects tested on the bar examination.

FISCAL/PERSONNEL IMPACT

None at this time.

RULE AMENDMENTS

Title 4. Admissions and Educational Standards Division 1.

BOARD BOOK IMPACT

None

BOARD GOALS & OBJECTIVES

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

BOARD RECOMMENDATIONS

It is recommended the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees continues to support and encourage competency training during law school and that such training be incorporated into a standard law school education curriculum, but that a competency training admission requirement not be pursued at this time;

RESOLVED, that the Board of Trustees recommends that the Committee of Bar Examiners consider adopting rules requiring a minimum of 6 units of competency training as part of the curricula of the law schools it regulates, which rules will be subject to the approval of the Board of Trustees;

FURTHER RESOLVED, that the Board of Trustees reassess in three years whether to pursue a competency training admissions requirement.

ATTACHMENT(S) LIST

- A. TFARR's Revised Proposal submitted by Justice Streeter