

AGENDA ITEM

132 JULY 18 2014

DATE: July 8, 2014

TO: Members, Member Oversight Committee
Members, Board of Trustees

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

SUBJECT: Proposed Changes to Calculation of Proportional MCLE Requirements – Return from Public Comment

EXECUTIVE SUMMARY

This item presents 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 "Competence Issues" credit in cases where less than the full 25-hour MCLE requirement applies. At its May 2014 meeting, the Member Oversight Committee authorized a 45-day public comment period on the proposed amendment, which 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 Competence Issues credit (formally known as "Prevention, Detection and Treatment of Substance Abuse or Mental Illness" credit prior to July 1, 2014). 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 Competence Issues are dropped from the mandatory requirement. A pro-rated number of the four hours normally required in Legal Ethics remains intact.

ISSUE

Whether to approve the proposed change 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 effective by way of amendments to the Proportional Requirement Table.

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 courses dealing with bias or related to substance abuse or other issues that may impair competence 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 formal 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 Competence Issues categories during their first MCLE reporting period and all subsequent reporting periods, regardless of the total number of hours due.

PUBLIC COMMENT

The proposed amendments to the Proportional Requirement Table were published on the State Bar website for a 45 day public comment period ending June 27, 2014. Four comments were received:

The Legal Aid Association of California submitted a comment in favor of the proposal, specifically stating their support for “keeping the Elimination of Bias requirement intact within every member’s requirements, regardless of the pro-rated total number of hours due.”

Attorney Vincent Cox submitted a comment stating that he does not believe that the proposal would result in a substantial public benefit. He believes instead that, “If we are to tailor our CLE requirements to newer attorneys, it would be wise to focus upon such matters as trust account management, attorney fee agreement drafting and enforcement, malpractice avoidance, and to attempt to teach them how to adopt practices to keep their knowledge current.”

Asian Americans Advancing Justice - Los Angeles submitted a comment in favor of the proposal, specifically stating that it “supports the proposed amendment to keep the required Elimination of Bias hour intact within every member’s requirement, regardless of the pro-rated total number of hours due.”

The State Bar’s California Young Lawyers Association submitted a comment in favor of the proposal, stating in part that, “The proposed changes support the State Bar’s public protection mission, & early education about substance abuse and elimination of bias can help attorneys avoid potential problems later in their careers.”

All four comments are provided in their entirety as Attachment B.

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 personnel 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 the Board adopt the 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 proposed changes to the Proportional Requirement

Table (Attachment A). Staff further recommends that these amendments become effective February 3, 2015, which is one day after the next compliance deadline. This future effective date will ensure that sufficient notice is provided to all attorneys who may be affected by this change.

PROPOSED BOARD COMMITTEE RESOLUTION

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

RESOLVED, following publication for comment and consideration of the comments received, that the Member Oversight Committee recommends that the Board adopt proposed amendments to the MCLE Proportional Requirement Table, which 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, effective February 3, 2015.

PROPOSED BOARD OF TRUSTEES RESOLUTION

Should the Board concur with the Member Oversight Committee's recommendation, the following resolutions would be in order:

RESOLVED, that following publication for comment and consideration of the comments received, and upon the recommendation of the Member Oversight Committee, the Board hereby adopts proposed amendments to the MCLE Proportional Requirement Table, which 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, effective February 3, 2015.

ATTACHMENT

A: MCLE Proportional Requirement Table with Proposed Revisions

B: Public Comment Received