

AGENDA ITEM

A&E III F. MAY 2016

DATE: May 10, 2016

TO: Members, Admissions and Education Committee

FROM: Elizabeth R. Parker, Executive Director

SUBJECT: Request for Release For Public Comment – Task Force on Admissions Regulation Reform: Phased and Scaled Recommendation Implementation

EXECUTIVE SUMMARY

The Board of Trustees' 2014 adoption of the Task Force on Admissions Regulation Reform (TFARR) Phase II recommendations preceded a detailed June 2015 Audit, which recommended several major reviews to determine whether the State Bar was adequately resourcing its disciplinary functions. This combined with significant State Bar senior leadership changes caused the need to review the Bar's ability to advance new initiatives, including the implementation of Phase II TFARR recommendations.

With new staff leadership in place, in late 2015 the Board of Trustees asked for a re-examination of the TFARR recommended implementation plan, including a feasibility assessment from both fiscal and human capital perspectives. That assessment, which suggested implementation costs of at least \$1 million, resulted in staff development of proposed modifications to the implementation approach.

This modified approach is intended to reflect both the spirit of TFARR and principles of fiscal and operational viability.

BACKGROUND

In February 2012, the State Bar of California Board of Trustees approved the appointment of the Task Force on Admissions Regulation Reform (TFARR) to examine whether the State Bar should develop a regulatory requirement for a pre-admission practical skills training program and if so, propose such a program to the Supreme Court. The TFARR concluded that:

“...a new set of training requirements focusing on competency and professionalism should be adopted in California in order to better prepare new lawyers for successful transition into law practice, and many of these new requirements ought to take effect pre-admission, prior to the granting of a law license.”

In July 2013 the Board Committee on Regulations, Admissions & Discipline Oversight Committee approved a 45-day public comment period for the Task Force Phase I Final Report and Recommendations.

On Oct. 12, 2013, following the public comment period, the Board of Trustees adopted the Task Force's Phase I Final Proposal for a Competency Training Requirement and authorized the creation of a special committee as Phase II of TFARR to devise an implementation plan for the Phase I Final proposals (the "Implementation Committee"). That committee's final report and recommendations were adopted by the Board of Trustees on November 7, 2014.¹ The Implementation Committee was charged with developing a three part action plan which would involve imposing a new post-admission MCLE requirement in 2015; adding a pro bono/modest means participation requirement in 2016; and increasing classroom or practice based training to 15 hours by 2017.

However, the Board's 2014 adoption of the Phase II recommendations preceded a detailed June 2015 Audit, which recommended several major reviews to determine whether the State Bar was adequately resourcing its disciplinary functions. Shortly thereafter, significant senior leadership changes occurred at the State Bar, including, most significantly, the departure of the Executive Director and several other senior executive personnel. These departures triggered organizational uncertainty and significant stakeholder scrutiny, both of which caused the need to review the Bar's ability to advance new initiatives, including the implementation of Phase II TFARR recommendations. As a result, although the Board had approved a conceptual TFARR recommendation implementation plan in November 2014, as of the fall of 2015, no significant progress had been made in advancing the implementation plan because of the need for substantial review of the State Bar's support for its discipline functions pursuant to the June Audit recommendations, as subsequently codified into Business and Professions Code section 6140.16 (Stats. 2015, ch. 537 (SB 387), § 14).

With new staff leadership in place, in late 2015 the Board of Trustees asked for a re-examination of the TFARR recommended implementation plan, including a feasibility assessment from both fiscal and human capital perspectives. That assessment, which suggested implementation costs of at least \$1 million, resulted in staff development of proposed modifications to the implementation approach. This modified approach, outlined below, is intended to reflect both the spirit of TFARR and principles of fiscal and operational viability.

¹ The October 2013, or Phase I recommendations, can be found at (<http://calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceAdmissionsRegulationReform.aspx>); the 2014, or Phase II recommendations, at (<http://calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx>). As noted, the proposed implementation approach outlined above is part of the Phase II recommendations.

PROPOSED IMPLEMENTATION APPROACH

A. Pre-Admission Competency Training

Original Approach: New applicants for admission must certify the following: (a) at any time in law school, he or she has taken at least fifteen units of practice-based, experiential courses designed to develop law practice competency; and (b) in lieu of some or all of the fifteen units of practice-based, experiential course work, a candidate for admission may opt to participate in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school.

Revised Approach: As a requirement for admission to the California Bar, every applicant must complete 6 units of practice-based, experiential learning. Attorneys, domestic and foreign, admitted in good standing in another jurisdiction, are exempt. Where an applicant has been a student at a law school in California, law schools will certify satisfaction of this requirement. In all other instances, the State Bar will handle the certification process, working directly with the applicant.

Discussion: This proposal reduces the practice-based, experiential coursework requirement from 15 to 6 units, to align all law schools in California with the new national standards promulgated by the ABA in 2014, for implementation in fall 2016. Thus the ABA requirement will extend to all law schools in California, and to all non-licensed attorney applicants for admission. In this way, the revised approach both limits and expands the original TFARR recommendation, setting a reasonable and achievable goal for all law schools operating in California, while addressing inequities between JD and LLM students extant in the original recommendation. It is expected that review and assessment of the initial implementation effort, in consultation with all ABA and California approved law schools, will inform any future increase in the practice-based requirement.

B. 50-Hour Pro Bono or Reduced-Fee Legal Services Requirement

Original Approach: Prior to admission or by the end of one year following admission, each new admittee must devote at least 50 hours of legal services to pro bono or modest means clients.

Revised Approach: As a requirement for admission to the California Bar, every applicant must provide 50 hours of pro bono legal services. Attorneys, domestic and foreign, admitted in good standing in another jurisdiction, are exempt.

Discussion: This proposal maintains the original TFARR recommendation with respect to the number of pro-bono hours required and expands the requirement to all non-Attorney applicants; the proposal also re-structures the requirement so that it applies only to the pre-admission period, and also eliminates the modest means client option. Both of these changes ultimately derive from implementation challenge considerations.

First, adoption of a requirement that crosses the pre- and post-admission period would require the Bar to establish an entirely new monitoring function, complete with the consequences of non-compliance, but in a manner that effectively straddles two entirely distinct organizational areas – Admissions and Member Services. Moving the requirement to the pre-admission period allows it to be managed in a manner akin to other similar State

Bar enforced requirements, thus significantly mitigating the implementation impact since no new technical and personnel systems would need to be created.

With respect to the elimination of the modest means client option, such a standard would necessarily require a client-by-client analysis and some level of corresponding certification, presenting a potentially significant burden to applicants, legal services providers, and the State Bar.

Certification of fulfillment of the pro bono requirement could be achieved in a number of ways. Optimally, for California law students who complete requisite pro bono hours during law school, we have been advised that law schools would be willing to be responsible for certifying, compliance either manually or electronically. In the alternative, and with respect to both law students who complete pro bono hours after law school graduation and those candidates for admission who did not attend a California law school, applicants would work directly with the State Bar to self-certify completion.

It should be noted, however, that pending Senate Bill 1257 (Block) would add new Business and Professions Code, section 6060.1.5 which would also require a 50 hour pre-admission pro bono requirement. Legislative counsel has advised that the bill could pass this summer. In its current draft, SB 1257, differs from the TFARR modified proposal in that it also allows “modest means” legal service and self-certification. During the requested public comment period it will be important to explore with Senator Block and other stakeholders how best to harmonize the modified proposal and proposed legislation.

C. Enhanced Post-Admission Competency Training

Original Approach: New admittees will be required to take ten additional hours of mandatory continuing legal education (“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, will be available for participation in Bar-approved mentoring programs.

Revised Approach: Attorneys will complete a New Attorney Training MCLE program during their first year post-admission. This curriculum will be developed by the State Bar, and will be no more than ten hours in total length. These ten hours will not be in addition to the currently required MCLE hours for active members of the Bar. Instead, up to ten of those currently required hours will comprise New Attorney Training, and this training will be prescribed for completion within the first 12 months of admission to the California Bar.

Discussion: The revised approach addresses concerns that imposing additional MCLE requirements on new attorneys would present both monetary and time burdens on them. By incorporating a New Attorney Training into the existing MCLE framework, the goal of ensuring that new admittees receive a baseline level of core competency training is met without implicating these concerns. Working with non-profit providers on a no-fee basis, the State Bar plans to develop the New Attorney Training curriculum, which will be available in a module-based, on-line, format, at a 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 one-year anniversary month as a licensee of the State Bar 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 would not be eligible to practice (consistent with the repercussions of not completing regular MCLE requirements).

D. State Bar and California Rule of Court Rules as Implementation Vehicle

The TFARR II report includes a comprehensive addendum outlining State Bar rule and legislative changes needed for recommendation implementation. In lieu of this approach, a new comprehensive Admissions Rule of Court is proposed, addressing both the Competency Training and Pro Bono requirements. In addition, revisions to existing State Bar MCLE-related rules to reflect the New Attorney Training requirement, are proposed. This revised approach has the benefit of resulting in the development and promulgation of a comprehensive Admissions rule, which has merit and relevance as an outcome well beyond TFARR, and places the responsibility and ability to implement these recommendations squarely with the State Bar and the Supreme Court, so that no additional statutory authority would likely be required.

FISCAL/PERSONNEL IMPACT

Recent feasibility assessment suggests implementation costs of at least \$1 million.

RULE AMENDMENTS

State Bar Rules; Proposed Rule of Court.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATION

Staff recommends that the Admissions and Education Committee authorize staff to circulate for a 45-day period of public comment, the proposed phased and scaled Task Force on Admissions Regulation Reform proposals described herein.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Admissions and Education Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Admissions and Education Committee authorizes staff to make available, for a public comment period of 45 days, the phased and scaled Task Force on Admissions Regulation Reform proposals described herein; 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.