

# **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:** TFARR Recommendation Cover Memorandum

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### **EXECUTIVE SUMMARY**

This item provides context and background for three separate Task Force on Admissions Regulation Reform (TFARR) -related proposals and rule revisions being submitted to the Admissions and Education Committee for consideration: Pre-Admission Competency Training; Pre-Admission Pro Bono Practice; and New Attorney MCLE.

The original 2014 TFARR proposal instructed that staff pursue adoption of three amendments to the Rule of Court and Business and Professions Code as necessary; it recognized, as well, that adoption by the Supreme Court of the three amendments would be required first before proceeding. At the time of the original action, the costs of implementing all three TFARR proposals was estimated at an additional \$464,000 annually, but a detailed explanation of these costs was not provided.

A delay in moving forward with this decision resulted when senior staff leadership departed in late 2014. Thereafter in June 2015 a report by the Bureau of State Auditors, recommending increased resources for the State Bar's discipline system, and the subsequent arrival of a new leadership team in September 2015, made review appropriate of the TFARR proposal and its potential costs of implementation. Further examination led to the initial conclusion that implementation of the original proposal would produce additional expenditures of at least \$1 million annually.

As a result, staff developed a revised draft proposal, designed to be consistent with the goals of TFARR, but with reduced implementation costs. Further modifications resulted in this proposal after consultations with the principal TFARR leaders and staff prepared a new Phased and Scaled Recommendation Implementation Plan (PSRI) which it presented at the May 12, 2016 meeting of the Admissions and Education Committee.

With this information in hand, staff have prepared the following three proposals to implement TFARR's three principal recommendations.

Given the possibility of phased-in implementation of TFARR recommendations and the need to consider unique operational and programmatic issues relevant to each of the three implicated areas, staff has separated the components into individual agenda items supported by the Background provided in this Cover Memorandum.

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## BACKGROUND

In February 2012, the 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 competency 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.”

On Oct. 12, 2013, following a public comment period, the Board of Trustees adopted the Task Force’s proposals and authorized the creation of another Task Force to devise related implementation plans (Implementation Task Force or TFARR II). That Task Force’s final report and recommendations were adopted by the Board of Trustees on November 7, 2014.<sup>1</sup>

The Board’s 2014 adoption of the Phase II recommendations was concomitant with a number of significant leadership changes impacting the State Bar, including, most significantly, the departure of the Executive Director and several other executive personnel. These departures triggered organizational uncertainty and significant stakeholder scrutiny, both of which impacted the Bar’s ability to advance new initiatives, including the implementation of Phase II TFARR recommendations. As a result, although the Board approved a conceptual TFAAR recommendation implementation plan in November 2014, no significant progress had been made in advancing that plan.

In the fall of 2015, new staff leadership proceeded to re-examine the proposals in accordance with directives issued by the Board of Trustees; the Board asked for a re-examination of the TFARR recommendation implementation plan, including a feasibility assessment from both fiscal and human capital perspectives.

The TFARR II report reflected an estimated implementation cost of \$464,000 for all three recommendation prongs; while no breakdown was provided in the report, staff analysis indicated the following:

- 3 additional staff people needed, Member Records and Compliance (\$230,000)
- 3 additional staff people needed, Admissions (\$220,000)
- Supplies (\$14,000)

On its face, the TFARR II fiscal estimate appears low. For example, position costs are not fully loaded with benefits, and the cost of the Pro Bono Practice requirements seem to have been wholly omitted. In addition, supervisory staff needed to oversee the work was not included, nor was the one-time or ongoing costs of technology needed to effectively implement the recommendations.

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<sup>1</sup> The proposed implementation approach outlined below refers to the Phase II recommendations.

The recent feasibility assessment conducted pursuant to the Board's 2015 direction suggested actual TFARR II recommendation implementation costs of at least \$1 million. This assessment 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.

At its May 2016 meeting, the Board discussed modifications to TFARR II recommendations. In an effort to ensure a thorough vetting of the revisions by members of both TFARR I and II, staff was asked to confer with those bodies prior to the Board's July 2016 meeting. Meetings were held on June 13 and July 7 to this effect.

At those meetings, former TFARR members continued to voice strong support for TFARR II recommendations, particularly as related to the Pre-Admission Competency Training requirement. A proposal for phased-in implementation of this particular requirement was however put forward; that proposal is outlined in the separate memorandum addressing the experiential learning requirement.