

# AGENDA ITEM

## A&E III B. JULY 2016

**DATE:** July 18, 2016

**TO:** Members, Admissions and Education Committee

**FROM:** Elizabeth R. Parker, Executive Director

**SUBJECT:** TFARR Pre-Admission Competency Training Requirement

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### EXECUTIVE SUMMARY

This agenda item summarizes the original Task Force on Admissions Regulation Reform (TFARR) recommendation regarding pre-admission competency training requirements, adopted by the Board of Trustees on November 7, 2014, and a second staff developed modified proposal, the Phased and Scaled Recommendation Implementation Plan (PSRI), presented to the Admissions and Education Committee on May 12, 2016.

At that meeting staff requested that the PSRI be submitted for public comment but several TFARR members urged that a decision on public comment be delayed to allow comment by all TFARR members and other interested parties. The Admissions and Education Committee thus postponed consideration of a decision on public comment until its July 21, 2016, meeting and directed staff to arrange further opportunities for comment. In response, staff offered all TFARR members the opportunity to respond to the new proposal at an informal meeting on June 14 and again at a publically noticed hearing on July 7; comments were received at both and letters from the American Bar Association, the Association of American Law Schools and several California law deans were also submitted.

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### BACKGROUND and DISCUSSION: PRE-ADMISSION COMPETENCY TRAINING REQUIREMENT

*Original TFAAR II Approach:* As a condition for admission to the practice of law in California, applicants are required to have the following: (a) at least fifteen units, during or following completion of law school, of practice-based, experiential courses designed to develop law practice competency or (b) in lieu of some or all of the fifteen units of practice-based, experiential course work, participation in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school.

*Proposed Modified Approach:* Staff has reorganized the proposed rules to implement this new requirement to ensure alignment with existing rules and regulations, and proposes that instead of amendments to statute, a Rule of Court be approved. Staff is also recommending: 1) every applicant for admission to practice law must complete 6 units of practice-based, experiential learning; 2) attorneys, domestic and foreign, admitted in good standing in another jurisdiction, be exempt; and 3) that all general applicants be required to meet the requirement – LLM foreign-educated law students would not be exempted. The revised process would also permit

law school certification if an applicant has completed the necessary units while in law school. In all other instances, the State Bar will handle the certification process, working directly with the applicant.

A summary of the primary differences between the original TFARR recommendations and the modified implementation approach follows:

- 1) Requirement for experiential competency training is an amended Rule of Court, not statute;
- 2) Requirement is for 6, rather than 15, units of competency training;
- 3) Requirement applies to all general applicants;
- 4) Requirement does not apply to attorneys from other jurisdictions admitted for less than one year;
- 5) Requirement codified in Admissions Rule, with implementing details originally proposed to be part of the Rules, such as the definition of what competency training includes and what is considered an approved apprenticeship or clerkship, delineated in new Guidelines; and
- 6) The State Bar will not “approve” apprenticeships or clerkships, but will evaluate an applicant’s “credit” to determine whether it meets the requirements, for a fee.

The proposed new Court Rule (Attachment A), which is an amendment to Rule 9.6 of the California Rules of Court, amendments to the *Admissions Rules* (Attachment B), and proposed Guidelines to supplement the *Admissions Rules* (Attachment C), which would implement the requirement for specific experiential competency training pre-admission are attached. Much of the language of these three documents is taken directly from the TFARR recommendations; the primary changes reflect the differences discussed above.

During the course of TFARR’s discussions, similar proposals were also under consideration by the Council of the American Bar Association (ABA) Section of Legal Education and Admissions to the Bar. In 2014 the ABA promulgated new national standards, for implementation in fall 2016. Thus the modified TFARR proposal reduces the practice-based, experiential coursework requirement from 15 to 6 units, to align all law schools in California with the new ABA standard. Thus, the ABA requirement will extend to all law schools in California, and to all general 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. It is expected that review and assessment of the initial implementation effort, in consultation with ABA and California approved law schools, will inform any future increase in the practice-based requirement.

*Suggestion for Further Modification by TFARR Chairs:* On June 14 and July 7, 2016, State Bar staff met with many members of TFARR I and II. The July 7 meeting was held simultaneously in the San Francisco and Los Angeles offices. Most of the participants who spoke indicated their strong continuing support of the TFARR II proposal regarding competency training as originally submitted and approved by the Board of Trustees. Several of those speaking, including TFARR Chair Justice Jon Streeter and Dean Emerita Shauna Marshall, Chair of the TFARR group that studied competency training, advised, however, that they could support some adjustments to the original TFARR II approach as follows:

- 1) requirement does not apply to attorneys from other jurisdictions admitted less than one year;

- 2) requirement does apply to LLM students but only in an amount proportional to the amount of time they spent at a law school in the United States completing their LLM programs; and
- 3) the requisite 15 units of experiential learning could be phased in over time: 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.

It should be noted that the above phased-in approach under 3) above is similar to one earlier suggested by ten ABA deans in a November 3, 2014 letter to Justice Streeter. Their proposal then called for ten units of experiential education beginning in 2017 and increasing to 15 units in 2021, but after a process of review and assessment of the initial experience. This proposal has the benefit of being less burdensome on staff resources than the 6, 9, 12 and 15 unit proposal and so, if phased in implementation is selected, it would be the preferred approach from a staff perspective.

### **ANALYSIS AND RECOMMENDATIONS: POST-TFARR I and II CONVENINGS**

All students qualifying to take the California Bar Examination through study in foreign countries and participation in LLM programs should have to meet the same requirements as any other law student in the United States seeking admission to practice in this state. A two-tiered system in which foreign students are exempted from a portion of the experiential training requirement is counter to its stated overall goal of improving the quality of legal services provided to the public. As a result, staff continues to recommend that all general applicants be required to meet the same requirements, and that no exceptions or modifications be afforded for LLM students.

Phasing in the 15 unit requirement is possible, and could perhaps be a viable middle pathway; implementation of 4-different requirements over a relatively short time span is likely however to create a significant administrative burden for the State Bar. Currently, the date that students begin law study becomes known to the State Bar at the time that they file as law student registrants. Though encouraged to do so at the onset of law school, many wait until their last year of law study to register. Under the phased in approach, the competency training requirement will change over the course of an average three-year law study period. Further complicating matters, many students start their law study and stop and then start again because they were disqualified at one school or left for other reasons, and started, or continued, in another. Should phased-in implementation of 15 units be adopted, the Board of Trustees would need to develop specific protocols governing the determination of which requirement is applicable to which students over the course of the 6 year implementation period.

### **FISCAL/PERSONNEL IMPACT**

Under the original TFARR II proposal, all three recommendations were slated to cost \$464,000 annually to implement. Though not provided in the TFARR II report, this figure included \$220,000 for three positions associated with the Pre-Admission Competency Training requirement. Currently, the State Bar's Office of Admissions has an eligibility unit composed of a Section Chief and four administrative assistants and an application processing unit composed of a Section Chief and six administrative assistants. These staff are processing about 6,000 new applications each year from people who apply to take the bar examination and first-year law students exam. If the TFARR II proposal to require applicants to complete certain legal education skills requirements through the first year of practice had been adopted, it was

anticipated that at least two new positions would be needed in Admissions to process and review the documents to determine that the requirements have been met, and conduct audits.

The third new position would have been primarily assigned to set up files for and monitor the State Bar approved clerkship/apprenticeship programs that could be used in lieu of the law schools skills courses.

Under the modified proposal, law schools would handle most certifications and there would be no tracking of attorney applicants; those applicants who were not certified by their law schools could seek an evaluation by the State Bar, for a fee. There would still be some auditing done, but not to the same extent as originally contemplated. Under staff's recommended modified proposal, it is anticipated that only one new position would be needed. As noted in the cover memorandum to all three of the TFARR-related proposals being considered by the Admissions and Education Committee at its July 21, 2016, meeting, the original TFARR II cost estimate was vastly understated. Thus, when comparing the cost of the original TFARR II recommendation to that of the modified proposal, an adjustment of that original recommendation is required. Addressing the three staff people initially identified as being needed alone, the actual cost of the TFARR II Pre-Admission Competency Training requirement would total approximately \$320,000; conversely, the cost of the modified proposal, which would result in the need for one staff person, would total approximately \$107,000, a difference of \$213,000.

As outlined above, implementation of a phased-in 15 unit requirement would result in significant administrative costs. While difficult to estimate at this time, it is reasonable to assume that the cost of this approach would be double that of staff's modified proposal, totaling approximately \$214,000.

In addition to personnel costs, information technology costs associated with establishing a reporting mechanism for Pre-Admission Competency Training requirement implementation would be incurred under any proposal iteration. Those costs would obviously be magnified quite significantly under either the original TFARR II proposal, which spanned the pre- and post-admission period, or a phased-in implementation approach, which would be challenging to administer and monitor absent a robust technology-based tool.

## **RULE AMENDMENTS**

Rule 9.6 of the California Rules of Court  
Title 4, Division 1, Chapter 2

## **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 COMMITTEE RECOMMENDATIONS**

**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; and be it

**FURTHER RESOLVED**, that staff is authorized to make technical amendments to the rules before circulating for comment reflecting the decision of the Admissions and Education Committee; and be it

**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: Proposed new Rule 9.6 of the California Rules of Court<sup>1</sup>
- B: Proposed amendments to Title 4, Division 1, Chapter 2 (*Admissions Rules*)
- C: Proposed Guidelines to supplement the *Admissions Rules*

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<sup>1</sup> Proposed rules and guidelines reflect the staff recommendation of a 6-unit requirement.