

## **AGENDA ITEM**

**703 SEPTEMBER 2016**

**DATE:** September 12, 2016  
**TO:** Members, Board of Trustees  
**FROM:** Elizabeth R. Parker, Executive Director  
**SUBJECT:** TFARR Competency Training Requirement

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### **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 units from 15 to 6, during its July 2016 meeting, the Board Committee on Admissions and Education directed staff to confer with TFARR's chair, Justice Jon Streeter, about his (TFARR's) concerns relative to the revisions that had been made by staff and come back to the Board of Trustees.

Since that meeting, staff met 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 managing director of accreditation and legal education and TFARR 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 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 unit proposal, staff does not believe it is the right time to take on new initiatives, which in any form would take resources to develop and implement, and recommends that TFARR's recommendations regarding competency training be tabled. Staff's further recommendation, however, is that the Board of Trustees encourage the Committee of Bar Examiners to adopt rules for the law schools it regulates requiring those schools to provide a minimum of 6 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.

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### **BACKGROUND AND DISCUSSION: PRE-ADMISSION COMPETENCY REQUIREMENT**

During its July meeting, the Board Committee on Admissions and Education considered the following proposed resolution regarding requiring applicants for admission to have completed a certain number of units of experiential competency training:

**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; ....

Since the July meeting, staff met in August 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 (AALS) and a copy of a resolution from the Conference of Chief Justices was also reviewed. The Conference's resolution concludes with: "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." One of the recommendations 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."

The primary reasons that have been expressed by those opposed to the original TFARR proposal of requiring 15 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, include the costs associated with providing such individualized education, which during these times of economic uncertainty and students' law school debt do not seem tenable, and the unprecedented reduction in curriculum flexibility that such a requirement would cause.

Many of the deans agree that the nature of legal education is changing and 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 units of competency training is an appropriate place to start.

Subsequent to the August meeting, Justice Streeter was invited to provide another version of proposed recommended rules, which reflected his (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 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 law schools it regulates, which would require the schools to provide a minimum of 6 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 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. It has also become apparent that it is important to become more involved with the ABA's Council on Legal Education and Admissions to the Bar, and provide advice and input on issues related to competency as they may arise, which 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.

If the Board of Trustees, however, wishes to continue to pursue proposed amendments to the Rules that would mandate competency training, it is recommended that the matter be referred back to staff and that a formal recommendation as to the form of the proposed rules, after considering Justice Streeter's newest submission, be drafted and presented to the Board Committee on Admissions and Education for consideration during its November 2016 meeting.

#### **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 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