

AGENDA ITEM

A&E III D. JULY 2017

DATE: July 5, 2017

TO: Members, Board of Trustees

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Report from Committee of Bar Examiners on TFARR Recommendations and Proposed Amendments to Law School Regulation Rules to Require 6 Units of Competency Training – Request to Circulate for Public Comment

EXECUTIVE SUMMARY

During its November 2016 meeting, the Board of Trustees (Board) referred the Task Force on Admissions Regulation Reform's proposal that applicants for admission complete 15 units of experiential training to the Committee of Bar Examiners (Committee) with a request that it report back to the Board during its July 2017 meeting. The Board also asked that the Committee consider amending the law school regulation rules to require a 6 units of competency training as a curriculum requirement.

In recognition of the several studies that are currently underway regarding the bar examination and determining the minimum competence that attorneys entering the practice of law in California should be required to demonstrate, the Committee has deferred taking any specific action relative to the TFARR proposal. In response to the mandatory competency training curriculum requirements of law schools it regulates, the Committee has approved in principle a proposed new Rule 4.160(F) (Competency Training) of the *Accredited Law School Rules* as set forth in Attachment A, and the proposed new Rule 4.240(F) (Competency Training) of the *Unaccredited Law School Rules*, as set forth in Attachment B, subject to a 45-day public comment period and final approval by the Board. The Committee requests authorization from the Board of Trustees to circulate the proposed new rules for a 45-day public comment period; that following the public comment period, the proposed new rules and any comments received be considered by the Committee in preparation for adoption of a final version of the rules and submission of the new rules to the Board of Trustees for approval.

BACKGROUND

The Board of Trustees (Board) established two Task Forces on Admissions Regulation Reform (TFARR) several years ago, which ultimately resulted in a recommendation that applicants seeking admission to practice law in California be required to complete 15 units of experiential/competency training as a condition of admission. After discussions during several meetings of the Board, the TFARR proposal was referred to the Committee of Bar Examiners (Committee) by the Board during its November 2016 meeting. An excerpt from the Board minutes follows:

FURTHER RESOLVED, that the Task Force on Admissions Regulation Reform proposal regarding mandated competency training admission requirements be referred to the Committee of Bar Examiners for further consideration, and the committee report back to the Board of Trustees on this matter during the Board's July 2017 meeting.

Also included in the original proposed motion for Board of Trustees' consideration was the following:

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 rules will be subject to the approval of the Board of Trustees.

DISCUSSION

Subsequent to the Board's referral to the Committee of TFARR's proposal regarding an admission requirement of 15 units of experiential/competency training, the Supreme Court directed the State Bar to conduct an investigation that includes: "(1) identification and exploration of all issues affecting California bar pass rates; (2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score; and (3) participation of experts and stakeholders in the process, including psychometricians, law student representatives and law school faculty or deans." A report on these matters is due to the Court no later than December 1, 2017.

Rather than consider the TFARR competency requirement as an independent issue, the Committee believes the best course of action is to incorporate TFARR's recommendation regarding the competency of those admitted to the practice of law in California into the work currently underway to address the Supreme Court's bar exam study directives. Most notably, the question of what constitutes minimal competence for admission to practice law is currently under consideration and will continue to be discussed in connection with the various studies that have been undertaken. This question appears directly relevant to the minimum competence discussions from which the TFARR proposals emerged. As a result, the Committee has deferred taking any action specific to the TFARR mandatory competency training admission requirement proposals.

Mandatory 6 Units of Competency Training as a Curricula Requirement for Schools Accredited by the Committee

In response to the Board's action in November 2016, the Committee discussed whether the law school regulation rules and/or guidelines should be amended to mandate competency training as part of the curricula of for California Accredited Law School (CALS) and registered law schools. Beginning with the 2016-2017 entering classes, the American Bar Association (ABA) law schools must have their students complete a minimum of 6 units of competency training, many believe it would be appropriate to have a similar requirement for the schools the Committee regulates in order to create a level playing field.

After discussion of this matter during its June 2017 meeting, the Committee took the following action:

It was moved, seconded and duly carried that the proposed new “Rule 4.160(F) (Competency Training)” of the *Accredited Law School Rules* and the proposed new “Rule 4.240(F) (Competency Training)” of the *Unaccredited Law School Rules* in the form attached hereto, be adopted in principle; that a request be forwarded to the Board of Trustees seeking approval to circulate the proposed new rules for a 45-day public comment period; that following the public comment period, the proposed new rules and any comments received be considered by the Committee in preparation for adoption of a final version of the rules and submission of the new rules to the Board of Trustees for approval.

While it may be more of a challenge for the unaccredited law schools to provide the necessary units, the *Guidelines for Accredited Law School Rules* were recently amended by the Committee, after a period of public comment, to require law schools accredited by the Committee to provide the opportunity for students in their J.D. programs to complete a minimum of fifteen (15) units of practice based skills and competency training.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Rule 4.160 of the *Accredited Law School Rules*
Rule 4.240 of the *Unaccredited Law School Rules*

BOARD BOOK IMPACT

None

BOARD GOALS & OBJECTIVES

None

BOARD COMMITTEE RECOMMENDATIONS

It is recommended that the Admissions and Education Committee authorize the release of the proposed amendments to the law school regulation rules for a 45-day public comment period. If the Board Committee agrees, it is recommended that the Admissions and Education Committee approve the following resolution:

RESOLVED, that the Admissions and Education Committee authorizes staff to release the proposed new Rule 4.160(F) (Competency Training) of the *Accredited Law School Rules* and the proposed new Rule 4.240(F) (Competency Training) of the *Unaccredited Law School Rules* as attached hereto, which would require students attending such schools to complete 6 units of competency training, for a 45-day public comment period; 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.

ATTACHMENT(S) LIST

- A: Proposed new “Rule 4.160(F) (Competency Training)” of the *Accredited Law School Rules*
- B. Proposed new “Rule 4.240(F) (Competency Training)” of the *Unaccredited Law School Rules*