

DATE: November 17, 2016
TO: Members, Board of Trustees
FROM: Elizabeth R. Parker, Executive Director
SUBJECT: TFARR Competency Training Requirement

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 course units in law school from 15 to 6, in its July 2016 meeting, the Board Committee on Admissions and Education directed staff to confer with TFARR's chair, Justice Jon Streeter, about his and TFARR's concerns relative to the revisions that had been made by staff and to return to the Board of Trustees for further consideration.

After that meeting, on August 4, 2016, staff also met with several law school deans from leading 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 several TFAAR 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 received and 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 credit unit proposal, staff does not believe it is the right time to advance TFARR's competency recommendation. Staff's further recommendation, however, is that the Board of Trustees encourage the Committee of Bar Examiners to adopt rules for the law schools within California it regulates to require those schools to provide a minimum of 6 credit 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 nationally.

BACKGROUND AND DISCUSSION: PRE-ADMISSION COMPETENCY REQUIREMENT

During its July meeting, the Board Committee on Admissions and Education considered the following proposed resolution reflecting a number of alternative approaches to implementing a 15-credit unit experiential competency training requirement that would be required of students during the course of their law school education. The following three options were presented, with the request that the Board select one that could be circulated for public comment:

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;

Action on all options was postponed to allow further consultation between the staff and Justice Streeter. Since the July meeting, staff met on August 4, 2016 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 and a copy of a resolution from the Conference of Chief Justices was also received and reviewed.

The Conference's resolution concludes with a recommendation:

...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.”

An additional recommendation 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.

There are two primary reasons that have been expressed in opposition to the original TFARR proposal of requiring 15 credit 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. First, there is concern about the additional costs associated with providing such individualized education, which during these times of economic uncertainty and students' growing law school debt, do not seem financially prudent. Second, the unprecedented reduction in curriculum flexibility that such a requirement would cause is problematic for curriculum reform and innovation.

Many of the deans agreed that the nature of legal education is changing; they noted 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 credit units of competency training is an appropriate step forward. At the same time, the deans recommended that this requirement not be increased until the impact of the current ABA change could be evaluated in actual practice.

Subsequent to the August meeting, Justice Streeter was invited to provide another version of proposed recommended rules, to reflect his (and 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 credit 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 California law schools it regulates, which would require those schools to provide a minimum of 6 credit 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 respective 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. Such an assessment would inform whether to increase the competency training requirement.

These discussions have also made apparent that it is important for the State Bar to become more involved with the ABA's Council on Legal Education and Admissions to the Bar, and to provide advice and input on issues related to competency as they may arise, so that these 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.

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 rules 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

**Justice Streeter's
Revised TFARR Recommendations
15 Units or
6 Units of Competency Training
Requirement
August 16, 2016**

ATTACHMENT A

TFARR: Recommendation A (15 Units of Competency Training); Summary of Rules

After 2 years of careful study and deliberation, TFARR proposed new requirements in order to ensure that new admittees were better prepared for practice. Among these proposed requirement was Recommendation A, a set of rules imposing on new Bar applicants a practice-based experiential competency training requirement prior to admission to practice. the gist of the proposed Recommendation A rules is that new applicants would be required to show they had taken 15 units of practice-based experiential competency training as a condition of admission to the Bar. These rules were unanimously approved by the State Bar's Board of Trustees in November 2014.

DRAFTING OF PROPOSED REVISIONS TO TFARR RULES

Bar Staff proposed a set of revisions to TFARR's Recommendation A rules in May 2016. Staff then prepared a draft of revised rules and submitted them to the Admissions and Education (A&E) Committee in July 2016. These draft revised rules were apparently designed to give the A&E Committee a number of different options from which to choose, including an option for adoption of a 6-unit requirement and various options for adoption of a 15-unit requirement on a phased-in basis. Staff's consolidated approach to revising TFARR's proposed rules (which merged the optional 6-unit and 15-unit proposals into a single set of draft rules), while efficient for purposes of presenting policy choices to the A&E Committee, created certain drafting ambiguities in the proposed rules and potentially made all of them unworkable in practice.

In July and August 2016, Justice Streeter, as former Chair of TFARR, in consultation with leading members of TFARR's Recommendation A Working Group, prepared a clarified version

of Staff's draft 15-unit revision of TFARR's proposed rules, with a phase-in period and a number of other changes. Should the Board wish to the 15-unit revision of TFARR's proposed rules, Justice Streeter recommends that it be adopted on a standalone basis, rather than consolidated within proposed rules designed to support the alternative 6-unit proposal.

The two documents attached herewith, one a proposed Amendment to Rule 9.6 of the California Rules of Court, and one proposed Amendment to Title 4 of the State Bar Rules (Admissions and Educational Standards Division 1, Chapter 2 and Chapter 3), collectively, set forth a standalone draft 15-unit revision.

This revision proposes that the 15-unit requirement be implemented over six years in order to allow law schools to prepare for the change. It includes a requirement for applicants who have the equivalent of a JD degree from a foreign law school and who are qualifying for the California Bar by earning an LLM degree from a law school in the U.S. These applicants must take 5 units of practice-based experiential competency training, 1/3 of the amount of units required for JD students (since a typical LLM program is one year or 1/3 of a typical full-time JD program).

OBJECTIONS FROM SOME LAW SCHOOL DEANS

Some law school deans, most from schools outside of California, have objected to the proposed 15-unit requirement on the ground that it is inconsistent with the 6-unit experiential education requirement that the American Bar Association (ABA) imposes on ABA accredited law schools nationwide, a rule that was adopted in August 2014 just as TFARR was completing its work. At the invitation of Executive Director Elizabeth Parker, during the recent ABA convention in San Francisco,

Justice Streeter met with a number of these objecting deans. At that meeting, he emphasized two points, which may be helpful for the Board to consider as well:

*First, the 15-unit requirement recommended in the TFARR II Final Report is not in conflict with the ABA's 6-unit accreditation rule and it does not regulate legal education. It complements the ABA's accreditation rule by proposing a "safe-harbor" rule that would (i) count as a qualifying unit anything the ABA counts, and then (ii) define practice-based experiential competency training far more broadly than the ABA does (pro bono work, externships, and summer clerkships do not count under the ABA accreditation rule, for example). In effect, on top of the legal education that students who qualify to take the California Bar already receive while in law school, TFARR is proposing to require a new set of pre-admission **competency training** experiences designed to prepare these aspiring lawyers for the actual practice of law. Most of this training would take place outside of the law schools. And to the extent experiential courses in law school would count for competency training, the law schools themselves would decide what courses qualify (which is why the proposal does not regulate legal education).*

Second, to understand why there is no conflict between the ABA's 6-unit accreditation rule and TFARR's proposed 15-unit competency training requirement, it is important to consider how the ABA's objectives as a law school regulator differ from what the Bar should be doing in carrying out its public protection mission in regulating lawyers. The ABA's accreditation rule requires applies only to schools themselves and requires nothing of individual law students. The TFARR 15-unit recommendation, on the other hand, is founded on the notion that each law student must begin to understand, even while in law school, that a law license will eventually impose on

him or her many ethical responsibilities—the first and most basic of which is to acquire and maintain professional competence in the practice of law. To send that critically important message, TFARR proposes that all new applicants must show that, while in law school, they sought out and took advantage of training experiences designed to expose them to real world law practice.

While this concept has long been fundamental to training new members of other learned professions, such as medicine, it remains foreign to the legal profession. TFARR's Recommendation A does introduce what is, admittedly—some might say unfortunately—something law schools have not seen before, but to the extent it is new, the strong consensus among former TFARR members is that the 15-unit requirement is fully in accord with the leading role California should play in regulating the legal profession, by our example in this state.

OVERVIEW OF 15-UNIT TFARR RULES AS ORIGINALLY PROPOSED AND HIGHLIGHTED REVISIONS

TFARR developed rules requiring applicants to meet a practice-based experiential competency training requirement prior to admission to practice. TFARR recognized that law graduates must understand legal doctrine and have the ability to apply that doctrine in practice settings – but that many such graduates leave law school without having had sufficient training along both of these dimensions. TFARR's original proposal, adopted unanimously by the Board of Trustees in November 2014, starts with the premise that the distinction between doctrine and skills is often an artificial one and therefore has developed this competency requirement to reflect the synthesis of doctrine and skills that lawyers find in practice. As a result, the proposal is designed to be flexible and allow for a variety of courses and programs to meet the requirement.

Unlike the ABA's experiential education requirement, it is not limited to simulation classes, clinics, or externships. Rather it is structured so that, for example, doctrinal courses can add labs where students engage in exercises that apply what they learned in their doctrinal courses and it includes practical classes such as "Financial Basics for Lawyers" and "Law Practice Management."

The proposed rules allow law schools to set up apprenticeship programs, typically for summer months, so students can receive up to six of the fifteen required units while working. Students who take advantage of this option need only take a total of nine more units during law school, six of which are mandated by the ABA and would automatically count under TFARR's proposed safe-harbor provision, meaning that the net difference between the ABA's more narrowly experiential course 6-unit rule and TFARR's more broadly defined 15-unit competency training requirement is three units. In addition, TFARR recommends and encourages the Committee of Bar Examiners to set up post-graduate apprenticeships so that recent graduates can fulfill some of requirements while awaiting Bar results.

With the law school-approved and Committee-approved options, TFARR hopes to encourage experienced lawyers and judges to provide substantial mentoring to new applicants. TFARR expects these mentors to provide high-quality training, professional-level assignments, and direct supervision and feedback to the applicants, which will foster the applicants' development of practice-based professional competencies and benefit the profession as a whole. The post-graduate apprenticeship also allows students who were not able to meet all of the requirements while in law school to do so after graduation, though TFARR expects that most applicants will be able to satisfy the practice-based professional competency training requirement while in law school.

As noted above, for applicants who graduate from law schools accredited by the American Bar Association, the proposed practice-based professional competency training requirement coheres with ABA accreditation standards through a “safe harbor” provision; courses that satisfy the ABA “experiential course” requirement will also satisfy the practice-based professional competency training requirement.

To accommodate objections from law school deans and to address issues raised by Bar Staff, the revision from Justice Streeter proposes

(1) The 15-unit requirement be implemented over six years in order to allow law schools to prepare for the change.

(2) For applicants who have the equivalent of a JD degree from a foreign law school and who are qualifying for the California Bar by earning an LLM degree from a law school in the U.S., these applicants must 5 units of practice-based experiential competency training; this is 1/3 of the amount of units required for JD students, since a typical LLM program is one year or 1/3 of a typical full-time JD program. This differs from the original proposal, which would have exempted those with an LLM degree.

(3) For law students who graduate from law schools outside California, those students could apply for a hardship exemption by demonstrating that his or her law school did not offer enough experiential courses to allow compliance. TFARR expects that this exemption would be difficult to justify, because, as noted above, practice-based experiential opportunities as defined by TFARR are broadly available and TFARR is simply requiring students to show that they took advantage of them, but for the rare law schools where that is not the case—if any such schools exist—a “safety valve” hardship exemption would be available

for their graduates.

(4) So that the hardship procedure and the administration of Committee-approved apprenticeship standards will not be a drain on the Bar's budget, the revised rules contemplate that students availing themselves of these two options would be required to pay a user fee, according to a fee schedules to be developed by the Bar.

(5) There is a provision allowing pro bono service hours to count for experiential training credit. This provision is designed to dovetail with the new legislatively mandated 50-hour pro bono service requirement (SB 1257) that appears likely to become law in the next few months.

**Proposed Amendments to
Rules of the State Bar Of California
Title 4. Admissions and Educational Standards
Division 1, Chapter 2 and Chapter 3
Admission To Practice Law In California**

August 15, 2016

Rule 4.15 Certification to California Supreme Court

To be eligible for certification to the California Supreme Court for admission to the practice of law, an applicant for admission must

- (A) be at least eighteen years of age;
- (B) file an Application for Admission with the Committee;
- (C) meet the requirements of these rules regarding education or admission as an attorney in another jurisdiction, determination of moral character, and examinations;
- (D) be in compliance with California court-ordered child or family support obligations pursuant to Family Code § 17520;
- (E) be in compliance with tax obligations pursuant to Business and Professions Code section 494.5;
- (F) be in compliance with the practice-based experiential competency training requirement pursuant to 9.6(a) of the California Rules of Court and these rules;
- (G) until admitted to the practice of law, notify the Committee within thirty days of any change in information provided on an application; and
- (H) otherwise meet statutory criteria for certification to the Supreme Court.

* * *

Chapter 3. Required Education and Experiential Competency Training

* * *

Rule 4.34 Practice-Based Experiential Competency Training

- (A) A general applicant qualifying to take the California Bar Examination through legal education must have successfully completed fifteen units of practice-based experiential competency training. The board shall adopt regulations and a fee

schedule for the administration of this subdivision. The practice-based experiential competency training requirement shall not apply to:

- (1) an applicant who has been admitted to practice law in another United States jurisdiction and who has practiced for at least one year; or
- (2) an applicant who earned a JD degree from a United States law school outside California and can demonstrate to the State Bar that due to hardship the applicant was not able to fully meet the practice-based experiential competency training.

(B) An applicant qualifying to take the California Bar examination who has completed a JD degree or its equivalent in a country other than the United States, and then attended an LLM program at a law school within the United States, must have successfully completed 5 units of practice-based competency training. The 5 units of required training:

- (1) includes any Legal Research and Writing course developed by a law school in the United States for foreign LLM students;
- (2) allows law schools in the United States to certify that a foreign LLM student has completed the equivalent of 5 units of practice-based experiential competency training at the law school where the applicant received his or her JD degree or its equivalent;
- (3) does not apply to an applicant who received a law degree from a country other than the United States and practiced law for at least one year in the applicant's country and then received an LLM degree from a law school within the United States.

(C) Definitions

- (1) "Unit" is the academic credit a law school gives for course work completed or, in the case of a Committee-approved apprenticeship or clerkship or law school-approved apprenticeship or clerkship for which academic credit is not awarded, 50 hours of qualifying work as defined in Rule 4.34(l). For law schools accredited by the American Bar Association (ABA), a unit is the same as a credit hour under the ABA's Standards for Approval of Law Schools (ABA Standards).
- (2) "Externship" is a placement during law school in a private, public or non-profit law office for which the applicant is awarded academic credit, whether or not the applicant receives compensation.
- (3) "Clerkship" is a placement in a judge's chambers during or following law school for which an applicant may be awarded academic credits.

(4) "Apprenticeship" is a placement after completion of the first year of law school or following law school in a private, public, or non-profit law office for which an applicant may receive compensation but is not awarded academic credits.

(5) "Clinic" is a course within the law school that provides:

(a) students with a substantial lawyering experience supervised by a faculty member;

(b) opportunities for student performance, faculty feedback and self-evaluation; and

(c) a classroom component;

(d) provided that, for law schools accredited by the ABA, the definition of clinic under the ABA Standards also meets this definition.

(D) Competency training must develop the concepts underlying a particular practice-based skill or subject matter, provide opportunities for student performance in addition to traditional classroom discussion, provide for regular individualized student feedback from a faculty member, and provide opportunities for student self-evaluation. Credit toward the fifteen-unit requirement may be given upon successful completion of training that includes but is not limited to the following topics:

(1) oral presentation and advocacy;

(2) interviewing;

(3) counseling;

(4) client service and business development;

(5) negotiation, mediation, arbitration, or other alternate dispute resolution methods;

(6) advanced legal research and writing excluding:

(a) purely academic papers; and

(b) the first four units earned in introductory first-year legal research and writing class, first-year Moot Court class, or any combination thereof.

(7) applied legal writing such as drafting of contracts, pleadings, or other legal instruments;

- (8) law practice management or the use of technology in law practice;
- (9) cultural competency;
- (10) collaboration or project management;
- (11) financial analysis, such as accounting, budgeting, project management, and valuation;
- (12) cost benefit analysis in administrative agencies;
- (13) use of technology, data analyses, or predictive coding;
- (14) business strategy and behavior;
- (15) pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts;
- (16) trial practice;
- (17) professional civility and applied ethics;
- (18) a law clinic that includes a classroom component; or
- (19) a legal externship that includes a classroom component.

(E) No less than .5 units of a portion of a course dedicated to developing a student's competency in a particular skill may be used to satisfy this requirement.

(F) Any course that satisfies the "experiential course" requirement under Standard 303 of the ABA Standards will also automatically satisfy this requirement.

(G) An applicant may satisfy no more than six units of this requirement through a law school-approved or Committee-approved apprenticeship or clerkship for which academic credit is not awarded provided that 50 hours of qualifying work is completed for each unit earned. The board shall adopt regulations and a fee schedule for the administration of any Committee-approved apprenticeship.

(H) Work that meets the fifty-hour pro bono requirement pursuant to Senate Bill 1257, as and when it becomes law, may be counted toward the fifteen-unit practice-based experiential competency training provided the work is consistent with the requirements of the provisions of this subdivision.

(I) An apprenticeship approved by a law school or by the Committee must provide the opportunity to further develop knowledge of the law and any of the following:

- (1) effective research and organization of legally relevant information derived from non-legal sources, such as investigation records, economic research, and technical analyses;
- (2) analysis, critical reasoning, and problem solving;
- (3) application of facts to law;
- (4) legal expression, such as persuasive and objective oral or written communication;
- (5) practice competencies, such as litigation or transactional projects;
- (6) professionalism;
- (7) client service;
- (8) leadership, such as communicating and effectively influencing others;
- (9) collaboration; or
- (10) management, such as giving feedback, planning and implementing tasks, organizing or managing workloads.

(J) To be approved by the Committee or a law school, an apprenticeship or clerkship must provide:

- (1) an orientation session;
 - (2) individualized supervision;
 - (3) a system for assignments;
 - (4) timely oral and written feedback;
 - (5) diversity of tasks; and
 - (6) opportunity for reflection.
- (7) The supervisor of an applicant in an approved apprenticeship or clerkship must have practiced law for at least two years immediately preceding the time of supervision; and
 - (8) submit the required form certifying that all requirements specified by the Committee have been met.

(K) Nothing in Rule 4.34 requires a law school to establish an apprenticeship program or to approve any individual apprenticeship. A law school may elect to provide all fifteen units of practice-based experiential competency training

through courses for which academic credit is awarded.

(L) An applicant who intends to satisfy a portion of this requirement through an apprenticeship or clerkship program established by the Committee must submit the required form with the fee set forth in the Schedule of Charges and Deadlines.

(M) Waiver due to hardship

(1) An applicant who has earned a JD from a United States law school outside of California may apply to the State Bar for a waiver of the fifteen-unit requirement due to hardship. In determining whether to exercise discretion to grant a waiver, the Committee may consider, among other facts and circumstances:

(a) whether the applicant's law school offered a sufficient array of courses to reasonably allow the applicant to complete the requirement;

(b) whether the applicant's law school offered a law-school approved apprenticeship program;

(c) whether the applicant decided to take the California Bar Exam at a point during or after law school that would have posed a hardship to take fifteen units of qualifying courses.

(2) An applicant who seeks a waiver of this requirement due to hardship must submit the required form with the fee set forth in the Schedule of Charges and Deadlines.

(N) The fifteen-unit practice-based experiential competency training shall be phased in over six years and shall apply to applicants qualifying to take the California State Bar Examination according to the following schedule:

(1) all students entering law school in the years 2017 and 2018 shall be required to complete six units of practice-based experiential competency training;

(2) all students entering law school in the years 2019 and 2020 shall be required to complete nine units of practice-based experiential competency training;

(3) all students entering law school in the years 2021 and 2022 shall be required to complete twelve units of practice-based experiential competency training;

(4) all students entering law school in the year 2023 and thereafter shall be required to complete fifteen units of practice-based experiential

competency training.

(5) The five-unit practice-based experiential competency training shall apply to all foreign LLM students entering a United States law school in the year 2017 and all years thereafter.

RULES OF THE STATE BAR OF CALIFORNIA Title 4. Admissions and Educational Standards Division 1. Admission To Practice Law In California Chapter 3. Required Education and Practice-Based Experiential Competency Training

Rule 4.35 Practice-Based Experiential Competency Training for Attorney Applicants

An attorney applicant qualifying to take the California Bar Examination who is admitted to and has practiced in another United States jurisdiction for less than one year must successfully complete fifteen units of practice-based experiential competency training in accordance with the provisions of Rule 4.34.

RULES OF THE STATE BAR OF CALIFORNIA Title 4. Admissions and Educational Standards Division 1. Admission To Practice Law In California Chapter 3. Required Education and Practice-Based Experiential Competency Training

Rule 4.36 Approved Apprenticeship and Clerkship Programs

(A) A Committee or law school apprenticeship or clerkship program must include:

- (1) an orientation session;
- (2) individualized supervision;
- (3) a system for assignments;
- (4) timely oral and written feedback;
- (5) diversity of tasks; and
- (6) opportunity for reflection.

(B) The supervisor of an applicant in an approved apprenticeship or clerkship must:

- (1) have practiced law for at least two years immediately preceding the time of supervision; and

(2) submit the required form certifying that all requirements specified by the Committee have been met.

**PROPOSED AMENDMENTS TO
9.6, CALIFORNIA RULES OF COURT**

August 8, 2016

Rule 9.6. Attorney admission and Roll of attorneys admitted to practice

(a) In addition to meeting the requirements for admission to practice law specified in Business and Professions Code section 6060, a person must meet the following requirement before being certified to the Court as qualified for admission:

- (1) completion of fifteen units of practice-based experiential competency training in accordance with rules adopted by the State Bar's examining committee and approved by the Board of Trustees of the State Bar.**

(ah) State Bar to maintain the roll of attorneys

The State Bar must maintain, as part of the official membership records of the State Bar, the Roll of Attorneys of all persons admitted to practice in this state. Such records must include the information specified in Business and Professions Code section 6002.1 and 6064 and other information as directed by the Supreme Court.

(Subd (a) lettered effective June 1, 2007; adopted as unlettered subdivision effective May 1, 1996; previously amended effective January 1, 2007.)

(b,c) Annual State Bar recommendation for one-time expungement of suspension for nonpayment of membership fees

The State Bar is authorized to transmit to the Supreme Court on an annual basis the names of those members who meet all of the following criteria, along with a recommendation that their public record of suspension for nonpayment of membership fees be expunged:

- (1) The member has not on any previous occasion obtained an expungement under the terms of this rule;**
- (2) The suspension was for 90 days or less;**
- (3) The suspension ended at least seven years before the date of the submission of member's name to the Supreme Court;**

(4) The member has no other record of suspension or involuntary inactive enrollment for discipline or otherwise.

(Subd (b) adopted effective June 1, 2007.)

(ed) Records to be maintained by State Bar

Upon order of the Supreme Court of expungement of a member's record under (b) of this rule, the State Bar will remove or delete the record of such suspension from the member's record. Notwithstanding any other provision of this rule, the State Bar must maintain such internal records as are necessary to apply the terms of (b) of this rule and to report to the Commission on Judicial Nominees Evaluation or appropriate governmental entities involved in judicial elections the member's eligibility for a judgeship under the California Constitution, article VI, section 15.

(Subd (c) adopted effective June 1, 2007.)

(de) Duty of disclosure by member

Expungement of a member's suspension under (b) of this rule will not relieve the member of his or her duty to disclose the suspension for purpose of determining the member's eligibility for a judgeship under the California Constitution, article VI, section 15. For all other purposes the suspension expunged under (b) of this rule is deemed not to have occurred and the member may answer accordingly any question relating to his or her membership record.

(Subd (d) adopted effective June 1, 2007.)

(ef) Authorization for the Board of Governors of the State Bar to adopt rules and regulations

The Board of ~~Governors~~Trustees of the State Bar is authorized to adopt such rules and regulations as it deems necessary and appropriate in order to comply with this rule.

(Subd (e) adopted effective June 1, 2007.)

(fg) Inherent power of Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court to exercise its inherent power to direct the State Bar to expunge its records.

(Subd (f) adopted effective June 1, 2007.)

TFARR: Recommendation A (Six Units of Competency Training); Summary of Rules

After 2 years of careful study and deliberation, TFARR proposed new requirements in order to ensure that new admittees were better prepared for practice. TFARR developed rules requiring applicants to meet a practice-based experiential competency training requirement prior to admission to practice. TFARR proposed that applicants for the bar complete 15 units of experiential competency training, and that applicants have the ability to substitute an approved "apprenticeship" (including during the summer) for up to 6 of the units. These rules were unanimously approved by the State Bar's Board of Trustees in November 2014, with direction to Bar staff to pursue adoption, of the recommendations.

DRAFTING OF PROPOSED REVISIONS TO TFARR RULES

Bar Staff proposed a set of revisions to TFARR's Recommendation A rules in May 2016. Staff then prepared a draft of revised rules and submitted them to the Admissions and Education (A&E) Committee in July 2016. These draft revised rules were apparently designed to give the A&E Committee a number of different options from which to choose, including an option for adoption of a 6-unit requirement and various options for adoption of a 15-unit requirement on a phased-in basis. Staff's consolidated approach to revising TFARR's proposed rules (which merged the optional 6-unit and 15-unit proposals into a single set of draft rules), while efficient for purposes of presenting policy choices to the A&E Committee, created certain drafting ambiguities in the proposed rules and potentially made all of them unworkable in practice.

In July and August 2016, Justice Streeter, as former Chair of TFARR, in consultation with leading members of TFARR's

Recommendation A Working Group, prepared a clarified version of Staff's draft 6-unit revision of TFARR's proposed rules. Should the Board wish to the 6-unit revision of TFARR's proposed rules, Justice Streeter recommends that it be adopted on a standalone basis, rather than consolidated within proposed rules designed to support the 15-unit proposal.

The two documents attached herewith, one a proposed Amendment to Rule 9.6 of the California Rules of Court, and the other a proposed Amendment to Title 4 of the State Bar Rules (Admissions and Educational Standards Division 1, Chapter 2 and Chapter 3), collectively, set forth a standalone draft 6-unit revision that does not attempt to incorporate TFARR's recommended rules for a 6-unit requirement.

BACKGROUND AND SUMMARY OF PROPOSED REVISED 6-UNIT TFARR RULES

Under accreditation standards approved by the American Bar Association ("ABA"), law students who enter ABA-accredited schools in Fall 2016 and later years will be required to complete 6 units of experiential education in order to earn a JD degree. Because this is already required by the ABA, there is no need for a State Bar rule that applies to graduates of ABA-accredited law schools. Thus, this 6-unit version of proposed rules only applies to applicants to the bar who have not earned a JD degree from an ABA-accredited law school. A 6-unit requirement should simply state that applicants who receive JD degrees from schools that are not accredited by the American Bar Association should take 6 units of courses that would qualify as "experiential" under the ABA Standards and Rules of Procedure for the Approval of Law Schools" were the school approved by the ABA.

The revision of Staff's 6-unit proposal also includes a

requirement for applicants who have the equivalent of a JD degree from a foreign law school and who are qualifying for the California Bar by earning an LLM degree from a law school in the U.S. These applicants should take 5 units of experiential courses; this is less than the amount of units required for JD students since a typical LLM program is one year. U.S. law schools can decide to certify foreign LLM students as having met this requirement if the student in question has had the equivalent of 5 units of experiential education while earning the equivalent of a JD degree at a foreign law school.

**Proposed Amendments to
Rules of the State Bar Of
California
Title 4. Admissions and Educational
Standards Division 1, Chapter 2 and Chapter
3
Admission To Practice Law In California**

August 15, 2016

Rule 4.15 Certification to California Supreme Court

To be eligible for certification to the California Supreme Court for admission to the practice of law, an applicant for admission must

- (A) be at least eighteen years of age;
- (B) file an Application for Admission with the Committee;
- (C) meet the requirements of these rules regarding education or admission as an attorney in another jurisdiction, determination of moral character, and examinations;
- (D) be in compliance with California court-ordered child or family support obligations pursuant to Family Code § 17520;
- (E) be in compliance with tax obligations pursuant to Business and Professions Code section 494.5;
- (F) be in compliance with the experiential education requirement pursuant to 9.6 (a) of the California Rules of Court and these rules, unless the applicant has graduated from a law school accredited by the American Bar Association;
- (G) until admitted to the practice of law, notify the Committee within thirty days of any change in information provided on an application; and
- (H) otherwise meet statutory criteria for certification to the Supreme Court.

* * *

Chapter 3. Required Experiential Education

* * *

Rule 4.34 Practice-Based Experiential Education

(A) A general applicant qualifying to take the California Bar Examination through legal education, and who has not received a JD degree from a law school accredited by the American Bar Association (ABA), must have successfully completed 6 units of experiential education. The board shall adopt regulations and a fee schedule for the administration of this subdivision. This requirement does not apply to an applicant who has been admitted to practice law in another United States jurisdiction and who has practiced for at least one year.

(B) An applicant qualifying to take the California Bar examination who has completed a JD degree or its equivalent in a country other than the United States, and then attended an LLM program at a law school within the United States, must have successfully completed 5 units of experiential education. This requirement:

(1) includes any Legal Research and Writing course developed by a law school in the United States for foreign LLM students;

(2) allows law schools in the United States to certify that a foreign LLM student has completed the equivalent of 5 units of experiential education at the law school where the applicant received his or her JD degree or its equivalent;

(3) does not apply to an applicant who received a law degree from a country other than the United States and practiced law for at least one year in the applicant's country and then received an LLM degree from a law school within the United States.

(C) The requirement shall apply to all JD students who enter law schools not accredited by the ABA in the year 2017 and all years thereafter.

(D) The 5-unit experiential education requirement shall apply to all foreign LLM students entering a United States law school in the year 2017 and all years thereafter.

RULES OF THE STATE BAR OF CALIFORNIA Title 4. Admissions and Educational Standards Division 1. Admission To Practice Law In California Chapter 3. Required Education and Practice-Based Experiential Competency Training

Rule 4.35 Practice-Based Experiential Competency Training for Attorney Applicants

An attorney applicant qualifying to take the California Bar Examination, who received a JD degree from a law school not accredited by the ABA, who is admitted to and has practiced in another United States jurisdiction for less than one year must successfully complete six units of experiential education in accordance with the provisions of Rule 4.34.

**PROPOSED AMENDMENTS TO
9.6, CALIFORNIA RULES OF COURT**

August 8, 2016

Rule 9.6. Attorney admission and Roll of attorneys admitted to practice

(a) In addition to meeting the requirements for admission to practice law specified in Business and Professions Code section 6060, a person who does not have a J.D. degree from a law school accredited by the American Bar Association must meet the following requirement before being certified to the Court as qualified for admission:

- (1) completion of six units of practice-based experiential education in accordance with rules adopted by the State Bar's examining committee and approved by the Board of Trustees of the State Bar.**

(ab) State Bar to maintain the roll of attorneys

The State Bar must maintain, as part of the official membership records of the State Bar, the Roll of Attorneys of all persons admitted to practice in this state. Such records must include the information specified in Business and Professions Code section 6002.1 and 6064 and other information as directed by the Supreme Court.

(Subd (a) lettered effective June 1, 2007; adopted as unlettered subdivision effective May 1, 1996; previously amended effective January 1, 2007.)

(bc) Annual State Bar recommendation for one-time expungement of suspension for nonpayment of membership fees

The State Bar is authorized to transmit to the Supreme Court on an annual basis the names of those members who meet all of the following criteria, along with a recommendation that their public record of suspension for nonpayment of membership fees be expunged:

- (1)_The member has not on any previous occasion obtained an expungement under the terms of this rule;
- (2)_The suspension was for 90 days or less;
- (3)_The suspension ended at least seven years before the date of the submission of member's name to the Supreme Court;

(4) The member has no other record of suspension or involuntary inactive enrollment for discipline or otherwise.

(Subd (b) adopted effective June 1, 2007.)

(ed) Records to be maintained by State Bar

Upon order of the Supreme Court of expungement of a member's record under (b) of this rule, the State Bar will remove or delete the record of such suspension from the member's record. Notwithstanding any other provision of this rule, the State Bar must maintain such internal records as are necessary to apply the terms of (b) of this rule and to report to the Commission on Judicial Nominees Evaluation or appropriate governmental entities involved in judicial elections the member's eligibility for a judgeship under the California Constitution, article VI, section 15.

(Subd (c) adopted effective June 1, 2007.)

(de) Duty of disclosure by member

Expungement of a member's suspension under (b) of this rule will not relieve the member of his or her duty to disclose the suspension for purpose of determining the member's eligibility for a judgeship under the California Constitution, article VI, section 15. For all other purposes the suspension expunged under (b) of this rule is deemed not to have occurred and the member may answer accordingly any question relating to his or her membership record.

(Subd (d) adopted effective June 1, 2007.)

(ef) Authorization for the Board of Governors of the State Bar to adopt rules and regulations

The Board of ~~Governors~~ Trustees of the State Bar is authorized to adopt such rules and regulations as it deems necessary and appropriate in order to comply with this rule.

(Subd (e) adopted effective June 1, 2007.)

(fg) Inherent power of Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court to exercise its inherent power to direct the State Bar to expunge its records.

(Subd (f) adopted effective June 1, 2007.)