

ATTACHMENT A

TFARR: Recommendation A
Summary of Rules
[9/25/14]

INTRODUCTION

The State Bar of California is proposing new requirements in order to ensure that new admittees are better prepared for practice. Applicants for the Bar will now have to meet a practice-based experiential professional competency training requirement prior to admission to practice. The Bar recognizes that today's law graduates must not only understand legal doctrine but have the ability to apply that doctrine in practice settings. Moreover, the Bar believes that the distinction between doctrine and skills is often an artificial one and has designed this competency requirement to reflect the synthesis of doctrine and skills that lawyers find in practice. The Bar expects that most applicants will be able to satisfy the practice-based professional competency training requirement through experiential coursework in law school. 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.¹ The proposed rule also affords an option for applicants to complete a portion of the professional competency training requirement through Bar or law school approved apprenticeships or clerkships. With this option, the Bar hopes to encourage experienced lawyers and judges to provide substantial mentoring to new applicants. The Bar 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 proposed practice-based experiential competency training requirement does not apply to applicants who have already been admitted to practice law in another United States jurisdiction and who have practiced full-time for at least one year or half-time for two years, or to foreign law graduates who earn an LLM degree in the United States.

PROPOSED RULE CHANGES

The proposed rules will require that an applicant for admission to practice law in California take 15 units of practice-based experiential coursework in a graduate professional law school designed to foster the development of professional competencies. For a course to meet the requirement, it must develop the concepts underlying the practice competencies being taught, provide opportunities for

¹ The ABA has approved a new Accreditation Standard 303(a)(3), which would require students to complete one or more "experiential courses" totaling at least 6 credit hours, and defining an experiential course as a simulation class, clinic or field placement. The Standard will replace current Standard 302(a)(4), which now requires one professional skills course in addition to first-year legal writing.

performance by each student other than traditional classroom discussion, provide for regular individualized student feedback from a faculty member, and provide opportunities for student self-evaluation. A course that is designated by a school as an experiential course under “the ABA Standards and Rules of Procedure for Approval of Law Schools” shall also be considered a “practice-based, experiential course” under this rule. The proposed rule does not apply to traditional first year Legal Writing and Research and first-year Moot Court class or to upper division traditional academic seminars.

Each applicant shall provide a certificate from the law school, designating the courses taken by the applicant that meet the requirement, and stating whether the applicant has satisfied the requirement in whole or in part. A law school may count a portion of a given course’s units toward this requirement provided no less than .5 unit is so designated. Any partial credit must reflect the proportion of the course dedicated to developing a student’s competency in the articulated skill. If the applicant’s school does not provide certificates, the applicant may present syllabi or other evidence that courses taken by the applicant should count toward the requirement. Traditional large classroom courses are encouraged to integrate practice-based exercises into their curriculum. For purposes of the proposed rule, the practice-based experiential courses that meet the professional competency training requirement include but are not limited to the following topics:

- *Oral presentation and advocacy;*
- *Interviewing;*
- *Counseling;*
- *Client service and business development;*
- *Negotiation, mediation, arbitration and other alternate dispute resolution methods;*
- *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);*
- *Applied legal writing (e.g. drafting of contracts, pleadings or other legal instruments);*
- *Law practice management or the use of technology in law practice;*
- *Cultural competency;*
- *Collaboration or project management;*
- *Financial analysis (e.g. accounting, budgeting, project management and valuation);*
- *Cost benefit analysis in administrative agencies;*
- *Use of technology, data analyses, or predictive coding;*
- *Business strategy and behavior;*
- *Pre-trial preparation, fact investigation (e.g. discovery, e-discovery, motion practice, assessing evidence, utilizing experts);*
- *Trial practice;*
- *Professional civility and applied ethics;*

- *Law Clinics, including classroom component;*
- *Legal Externships, including classroom component.*

Applicants to the Bar are strongly encouraged to meet a portion of these units by taking a law clinic or an externship.

To provide flexibility in meeting this requirement and to encourage collaboration with practicing attorneys, an applicant may fulfill up to six (6) of the fifteen (15) units through Committee-approved apprenticeships or clerkships or apprenticeships or clerkships that have been approved by a law school. For the purpose of this rule, fifty (50) hours of work in an apprenticeship or clerkship is the equivalent of one law school unit. A Committee-approved or law school-approved apprenticeship or clerkship must provide the applicant with the opportunity to further develop knowledge of the law and any of the following:

- *Effective research and organization of legally relevant information derived from non-legal sources, such as investigative records, economic research and technical analyses;*
- *Analysis, critical reasoning and problem solving;*
- *Application of facts to law;*
- *Legal expression, e.g. persuasive and objective oral or written communication;*
- *Practice competencies, e.g. litigation or transactional projects;*
- *Professionalism;*
- *Client service;*
- *Leadership, e.g. communicating and effectively influencing others;*
- *Collaboration;*
- *Management, e.g. giving feedback, planning and implementing tasks, organizing or managing workloads.*

To become a program approved by the Bar, the program must provide an orientation session, individualized supervision, a system for assignments, timely oral and written feedback, a diversity of tasks and an opportunity for reflection. All apprenticeship and clerkship programs meeting the standards above may apply to become a Bar-approved program by completing the approval process specified by the State Bar. Initially, the Bar will review each program at the end of the first year and subsequently every three years. The State Bar intends to partner with local Bar associations in the development of apprenticeship and clerkship programs.

Any law school offering an apprenticeship or clerkship option will be responsible for the development and oversight of its program. The Bar will not be responsible for approval of law school apprenticeship and clerkship programs. Law school programs must ensure that placements provide an orientation session, active supervision, a system for assignments, timely oral and written feedback, a diversity of tasks and an opportunity for reflection.

An applicant seeking to satisfy the practice-based competency training requirement in part through the apprenticeship or clerkship option shall provide a certification from the program that the applicant has satisfied the requirements of the apprenticeship or externship. The certification must include the number of hours worked by the applicant.

The Bar considered whether this new Rule should apply to applicants to the California Bar who are already admitted to practice in another United States jurisdiction. The Bar determined that the practice-based competency training requirement should not apply to these lawyers if they have practiced full-time in another United States jurisdiction for at least one year or half-time for two years. The Bar also considered whether this new Rule should be extended to foreign lawyers who have earned an LLM from a law school in the United States and sit for the California Bar. The Bar concluded that this group of applicants should be excluded from the practice-based competency training requirement given that LLM programs are typically one year in duration and the number of LLM students sitting for the California Bar remains quite low.

The State Bar intends to review this new requirement, including the apprenticeship or clerkship option, in 3 years. During that review, the Bar will address whether to require applicants to the Bar to meet a portion of the 15 unit competency requirement by completing a law clinic or an externship during law school. The review should also engage practitioners, law schools, students and graduates, and receive feedback from them.

PROPOSED ADDITIONS AND AMENDMENTS TO CALIFORNIA BUSINESS AND PROFESSIONS CODE AND TO STATE BAR RULES

The following additions and amendments to the California Business and Professions Code and the Rules of The State Bar of California are recommended to implement this recommendation:

- *[AMENDMENT] Business and Professions Code, section 6062 Out-of-State Attorneys*
- *[AMENDMENT] Business and Professions Code, section 6060 Qualifications; Examination and Fee*

- *[AMENDMENT] Rules of the State Bar, rule 4.15 Certification to Supreme Court*
- *[NEW] Rules of the State Bar, rule 4.34 and rule 4.35 Practiced Based Experiential Competency Training Requirements*
- *[NEW] Rules of the State Bar, rule 4.36 Approved Apprenticeship and Clerkship Programs*

ATTACHMENT A

BUSINESS & PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Chapter 4. Attorneys

Article 4. Admission to the Practice of law

6062. Out-of-State Attorneys

- (a) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency the United States may hereafter acquire shall:
- (1) Be of the age of at least 18 years.
 - (2) Be of good moral character.
 - (3) Have passed the general bar examination given by the examining committee. However, if that person has been an active member in good standing of the bar of the admitting sister state or United States jurisdiction, possession, or territory for at least four years immediately preceding the first day of the examination applied for, he or she may elect to take the Attorneys' Examination rather than the general bar examination. Attorneys admitted less than four years and attorneys admitted four years or more in another jurisdiction but who have not been active members in good standing of their admitting jurisdiction for at least four years immediately preceding the first day of the examination applied for must take the general bar examination administered to general applicants not admitted as attorneys in other jurisdictions.
 - (4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.
 - (5) Have met the practice-based experiential competency training requirement approved by the board. This requirement does not apply to an attorney applicant who has been admitted to practice law in another United States jurisdiction and has practiced full-time for at least one year or half-time for two years. The board shall adopt regulations for the administration of this subdivision.

BUSINESS & PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Chapter 4. Attorneys

Article 4. Admission to the Practice of law

6062. Out-of-State Attorneys

- (b) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a jurisdiction other than in a sister state, United States jurisdiction, possession, or territory shall:
- (1) Be of the age of at least 18 years.
 - (2) Be of good moral character.
 - (3) Have passed the general bar examination given by the examining committee.
 - (4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.
 - (5) Have met the practice-based experiential competency training requirement approved by the board. This requirement does not apply to an attorney applicant who received a law degree outside the United States and then received an LLM degree from a law school within the United States. The board shall adopt regulations for the administration of this subdivision.

BUSINESS & PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Chapter 4. Attorneys

Article 4. Admission to the Practice of law

6060. Qualifications; Examination and Fee

- (i) Have met the practice-based experiential competency training requirement approved by the board. The board shall adopt regulations for the administration of this subdivision.

RULES OF THE STATE BAR OF CALIFORNIA

Title 4. Admissions and Educational Standards

Division 1. Admission To Practice Law In California

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 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.

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 4.34 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.
- (1) The practice-based experiential competency training requirement does not apply to an applicant who has received a law degree outside the United States and then received an LLM degree from a law school within the United States.¹
- (B) 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 (H). For law schools accredited by the ABA, a unit is the same as a credit hour under ABA standards.²
- (2) “Externship” is a placement during law school in a private, public or non-profit law office for which the applicant is awarded units.³
- (3) “Clerkship” is a placement in a judge’s chambers during or following law school for which an applicant may be awarded units.
- (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 which provides

¹ Business and Professions code section 6062(b)(5).

² ABA Standards and Rules of Proc. for Approval of Law Schools, std. 310(b).

³ ABA Standards and Rules of Proc. for Approval of Law Schools, std. 310.

- (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.

For law schools accredited by the ABA, the definition of clinic under the ABA Standards also meets this definition.⁴

- (C) Competency training must develop the concepts underlying a particular 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;

⁴ ABA Standards and Rules of Proc. for Approval of Law Schools, std. 304(b).

- (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.
- (D) 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.
- (E) This requirement may be satisfied through qualifying study not certified by a law school upon completion of the practice-based experiential competency requirement and submission of the required form with the fee set forth in the Schedule of Charges and Deadlines.
- (F) Courses that satisfy the "experiential courses" requirement of law schools accredited by the American Bar Association will also satisfy this requirement.
- (G) An applicant may satisfy no more than six units of this requirement through a Committee-approved apprenticeship or clerkship or law school-approved apprenticeship or clerkship for which academic credit is not awarded, provided that 50 hours of qualifying work is completed for each unit earned.
- (H) An apprenticeship or clerkship approved by the Committee or by a law school 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.
- (I) Nothing in this rule requires a law school to establish an apprenticeship program or to approve any individual apprenticeship. A law school may elect to provide all 15 units of practice-based experiential competency training through courses for which academic credit is awarded.
- (J) An applicant who intends to satisfy a portion of this requirement through an apprenticeship or clerkship program must submit the required form with the fee set forth in the Schedule of Charges and Deadlines.

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

- (A) An attorney applicant qualifying to take the California Bar Examination who is admitted to and has practiced in another United States jurisdiction full-time for less than one year or half-time for less than two years must successfully complete fifteen units of practice-based experiential competency training in accordance with the provisions of Rule 4.34.⁵

⁵ See also Business and Professions Code section 6062(a)(5)

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) 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.
- (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.