

ATTACHMENT B

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

INTRODUCTION

On October 12, 2013, the State Bar’s Board of Trustees adopted the Phase I Final Report and three proposed competency training proposals of the Task Force on Admissions Regulation Reform (TFARR)

- A. Pre-admission: 15 Units of Practice-Based Experiential Training in Law School with an Apprenticeship Option;*
- B. **50 Hours Pro Bono or Reduced-Fee Legal Services;** and*
- C. Post-admission: 10 Hours Competency Training MCLE, or participation in a Bar-certified voluntary mentoring program.*

Recommendation B proposes that all new members provide fifty hours of pro bono or reduced-fee legal services at any point during law school or study of law in a law office or judge’s chambers and no later than one year following admission. While the proposed requirement will increase practical competency skills in furtherance of the State Bar’s public protection mission, the pro bono aspect will also help inculcate pro bono as a core value of professionalism and help address California’s justice gap—the shortfall between those who need legal assistance but cannot afford to pay for it, and the availability of lawyers to meet that need. A model for this aspect of the recommendation is New York’s 50 hour pre-admission pro bono requirement. However, Recommendation B goes even further by including reduced-fee legal services to those who do not qualify for free legal services, but who also cannot afford traditionally priced legal services, as an alternate way to fulfill the requirement. By including this form of practice, new lawyers will be exposed to the possibilities of serving clients with limited ability to pay, and who often are in underserved communities.

TFARR Phase II was formed at the end of 2013 to implement Recommendations A, B and C. Three working groups were formed, one for each Recommendation. The working group for Recommendation B recommends implementing new rules within a newly created Division 6. (New Member Requirement to Provide Supervised Pro Bono or Reduced-Fee Legal Services) of Title 2. (Rights and Responsibilities of Members) of the Rules of the State Bar of California.

New Member Requirement to Provide 50 Hours Supervised Pro Bono or Reduced-Fee Legal Services

Pro Bono

For purposes of the new requirement, pro bono is defined as (1) providing or enabling the direct delivery of legal services without expectation of compensation from the clients to persons of limited means; (2) to organizations designed primarily to address the needs of persons of limited means; or (3) a wider range of individuals or organizations in the areas of civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate. The general definition of pro bono in the proposed new member requirement is consistent with California Rules of Professional Conduct, proposed Rule 6.1, which was adopted by the State Bar Board of Trustees in 2010. The adoption of proposed Rule 6.1 demonstrates the State Bar's commitment to pro bono and is in line with longstanding national trends.

The definition is broad enough so that a wide range of opportunities will be available either within or outside of California. Receiving academic credit or compensation while doing pro bono work is allowed. The pro bono definition does not include section (b)(3) of proposed Rule 6.1 because, as a "catch-all," it has no nexus to experiential training and no connection to the direct delivery of legal services.

Reduced-fee legal services

Reduced-fee is defined as providing or enabling direct delivery of legal services at a substantially reduced rate. Working Group B recognizes that lawyers and their clients have the right to determine who qualifies to receive legal services at a reduced fee and what constitutes a substantially reduced fee, but wants to provide some guidance on what counts without trying to dictate or impact the market rate. While the area of reduced-fee legal services is still evolving, the Working Group compiled information from modest means providers in California and other states, including lawyer referral services, incubator programs and entities that charge reduced fees to those without the means to pay legal fees at the prevailing rate. The definition of reduced-fee is consistent with proposed Rule 6.1(b)(1) and (b)(2).

The Working Group proposes that those who qualify as “low-income”, “very low-income”, or “extremely low-income” under the current California Department of Housing and Community Development Official State Income Limits by county found at <http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>, or under comparable official state income limits in another United States jurisdiction be deemed qualified under the rules to receive a substantially reduced fee for limited scope representation. Modest means programs of State Bar certified lawyer referral services are a good source of examples of substantially reduced and flat fees for limited scope services. Substantially reduced fees as defined by State Bar certified lawyer referral modest means programs represent the lower threshold of what is known as “low bono” work.

“Dual credit”

The pro bono or reduced-fee requirement and the pre-admission practice-based experiential competency training requirement (see Recommendation A) may be concurrently satisfied by completion of an externship or apprenticeship with a qualified legal services project under Business & Professions Code section 6213(a) or support center under Business & Professions section 6213(b), a court-based self-help center under California Rule of Court 10.960, or a law school legal clinic or law school credit-bearing experiential program at which the applicant’s work qualifies as pro bono legal services as defined in 2.151 (A)(1) and (A)(2) of the proposed new rules.

In another United States jurisdiction, the externship or apprenticeship must be completed at a legal services organization or support center that primarily provides legal services without charge to indigent persons, and is funded by either the Legal Services Corporation, the Older Americans Act, the jurisdiction’s interest on lawyers trust account program, or a law school legal clinic at law school credit-bearing experiential program at which the applicant’s work qualifies as pro bono legal services as defined in 2.151 (A)(1) and (A)(2) of the proposed rules.

Using a more narrow definition of pro bono to receive dual or concurrent credit incentivizes experiences that lead to direct legal services to low-income clients. It also sends an important message to law students and new lawyers about the importance of pro bono. The Working Group discussed the possibility of creating a limited expansion for dual credit to include government agencies and other qualified nonprofit organizations, but decided it was better for the State Bar to revisit this after the first few years of implementation.

Exclusions and Exemptions

Newly admitted attorneys employed by a qualified legal services project or support center at which the work qualifies as pro bono legal services as defined in 2.151 (A)(1) or (A)(2) will be deemed to have satisfied the 50 hour requirement upon completion of fifty hours. Active members who have been admitted and active in a jurisdiction outside of California (United States or foreign) for four years immediately preceding the application for admission or applicants who have received a law degree outside the United States and then received an LL.M. degree from a law school within the United States are exempt from the pro bono or reduced-fee requirement.

Supervision

TFARR Phase I recommended that the 50 hour requirement be completed at a Bar-certified pro bono or modest means program. Many public comments expressed concern about the potential impact of the 50 hour requirement on legal services providers, creation of more bureaucracy, the need for more flexibility to complete the 50 hours and adequate supervision. Working Group B took those comments seriously and decided it was unnecessary and too cumbersome to create a separate list of Bar-certified providers. With respect to qualifications and duties of supervising attorneys, they are required to have practiced law for at least two years immediately preceding the time of supervision, and must provide or ensure active and timely written or oral feedback, and verify the number of completed hours of pro bono or reduced-fee legal services on a State Bar compliance form. Also, in the proposed revised and new rules, the word "supervised" modifies "pro bono or reduced-fee legal services" to emphasize the importance of supervision.

Compliance

Members must submit their member compliance form by the end of one year following admission. They must also retain a copy of the member compliance form and all original supervising attorney compliance form or forms until the end of two years following admission. Noncompliance by end of the first year of admission may ultimately result in the member being involuntarily enrolled as inactive. After a member receives notification of noncompliance, State Bar staff will assist the member to come into compliance before the member is enrolled as inactive.

The noncompliant member placed on inactive status who otherwise would be ineligible to practice law will be able to provide supervised pro bono or reduced-fee legal services solely for the purpose of complying with the pro bono or reduced-fee legal services requirement.

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 the proposed new 50 hour supervised pro bono or reduced-fee requirement:

- *[NEW] Business & Professions Code section 6060.4 Provision of supervised pro bono or supervised reduced-fee legal services*
- *[AMENDMENT] Business & Professions Code section 6073 Pro Bono Legal Services*
- *[AMENDMENT] Rules of the State Bar, Rule 2.30 Member Status*

- *[NEW] Rules of the State Bar, Rule 2.37 Inactive enrollment for failure to comply with supervised pro bono or reduced-fee legal services requirement*
- *[NEW] Rules of the State Bar, Title 2, Division 6 New Member Requirement to Provide Supervised Pro Bono or Supervised Reduced-Fee Legal Services (11 new rules)*

ATTACHMENT B

BUSINESS & PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Article 4. Admission to the Practice of Law

§ 6060.4 Provision of supervised pro bono or supervised reduced-fee legal services

A member must provide fifty hours of supervised pro bono or supervised reduced-fee legal services prior to admission or no later than one year following admission in accordance with rules adopted by the board. A member who has not completed the legal services within one year following admission is enrolled as inactive until the legal services have been completed.

BUSINESS & PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Chapter 4. Attorneys

Article 4.8. Pro Bono Services

§ 6073. Pro bono legal services; financial support in lieu of directly providing services

It has been the tradition of those learned in the law and licensed to practice law in this state to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer. Every lawyer authorized and privileged to practice law in California is expected to make a contribution. In some circumstances, it may not be feasible for a lawyer to directly provide pro bono services. In those circumstances, a lawyer may instead fulfill his or her individual pro bono ethical commitment, in part, by providing financial support to organizations providing free legal services to persons of limited means. In deciding to provide that financial support, the lawyer should, at minimum, approximate the value of the hours of pro bono legal service that he or she would otherwise have provided. In some circumstances, pro bono contributions may be measured collectively, as by a firm's aggregate pro bono activities or financial contributions. Lawyers also make invaluable contributions through their other voluntary public service activities that increase access to justice or improve the law and the legal system. In view of their expertise in areas that critically affect the lives and well-being of members of the public, lawyers are uniquely situated to provide invaluable assistance in order to benefit those who might otherwise be unable to assert or protect their interests, and to support those legal organizations that advance these goals. **This section does not exempt members from, or provide an alternative means of compliance with, the requirements of Business and Professions Code, section 6060.4.**

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members,

Division 3. Member Status

Rule 2.30

- (A) Any member not under suspension, who does not engage in any of the activities listed in (B) in California, may, upon written request¹, be enrolled as an inactive member. The Secretary may, in any case in which to do otherwise would work an injustice and subject to any direction of the board permit retroactive enrollment of inactive members.
- (B) No member practicing law, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he or she is called upon in any capacity to give legal advice or counsel or examine the law or pass upon the legal effect of any act, document or law, shall be enrolled as an inactive member.
- (C) Notwithstanding (A) and (B) a member serving for a court or any other governmental agency as a referee, hearing officer, court commissioner, temporary judge, arbitrator, mediator or in another similar capacity is eligible for enrollment as an inactive member if he or she does not otherwise engage in any of the activities listed in (B) or hold himself or herself out as being entitled to practice law.
- (D) Notwithstanding (A), (B), and (C), above, a member placed on inactive status pursuant to Business & Professions Code Section 6060.4 may provide supervised pro bono or supervised reduced-fee legal services solely to comply with the supervised pro bono or supervised reduced-fee legal services requirements of Business and Professions Code, section 6060.4.

¹ Rule 2.31(A).

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members,

Division 3. Member Status

Rule 2.37 Inactive enrollment for failure to comply with supervised pro bono or supervised reduced-fee legal services requirement

- (A) A member who fails to provide the supervised pro bono or supervised reduced-fee legal services prior to admission or no later than as required by Business and Professions Code section 6060.4 is involuntarily enrolled inactive.
- (B) To terminate inactive enrollment for failure to provide the supervised pro bono or supervised reduced-fee legal services required by Business and Professions Code section 6060.4, a member must comply with the supervised pro bono or supervised reduced-fee legal services rules governing reinstatement.²

² See Rule 2.160.

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 6. Requirement to Provide Supervised Pro Bono or
Supervised Reduced-Fee Legal Services

Rule 2.150 Purpose of supervised pro bono or supervised reduced-fee legal services requirement

The purpose of requiring completion of fifty hours of supervised pro bono or supervised reduced-fee legal services is to increase practical skills by providing direct delivery of legal services as defined by these rules and to further the tradition of those learned in the law and licensed to practice law in this state to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer.³

Rule 2.151 Definitions

In this Division

- (A) “Pro bono” means providing or enabling direct delivery of supervised legal services without expectation of compensation from the client other than reimbursement of expenses to
- (1) persons of limited means as defined by Business & Professions Code section 6213(d) in California, or by the interest on lawyers trust account program in another United States jurisdiction;
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; or
 - (3) individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.
- (B) “Reduced-fee” means providing or enabling direct delivery of supervised legal services at a substantially reduced rate affordable to

³ Business & Professions Code section 6073.

- (1) individuals qualified as “low-income,” “very low-income,” or “extremely low-income” under the current California Department of Housing and Community Development Official State Income Limits at the State of California Web site, or comparable income limits in another United States jurisdiction; or
- (2) organizations identified in (A)(2) or (A)(3).

Rule 2.152 Standards

- (A) Following commencement of law school or filing the State Bar Notice of Intent to Study Law in a Law Office or Judge’s Chambers and by the end of one year following admission, a new member must provide fifty hours of pro bono or reduced-fee legal services in accordance with these rules.⁴
- (B) In California the pro bono or reduced-fee requirement,⁵ and the practical skills training required prior to admission⁶ may be concurrently satisfied by completion of an externship or apprenticeship with a qualified legal services project,⁷ a qualified support center,⁸ a court-based self-help center,⁹ a law school legal clinic or law school credit-bearing experiential program at which the applicant’s work qualifies as pro bono as defined in 2.151 (A)(1) and (A)(2) and the supervising attorney satisfies the requirements set forth in 2.155.
- (C) In another United States jurisdiction, the pro bono or reduced-fee requirement,¹⁰ and the practical skills training required prior to admission¹¹ may be concurrently satisfied by an externship or apprenticeship completed at a legal services organization or support center that primarily provides legal services without charge to indigent persons and is funded by either the Legal Services Corporation, the Older Americans Act, or the jurisdiction’s interest on lawyers trust account program, a law school legal clinic or law school program at which the applicant’s work qualifies as pro bono legal services as defined in 2.151 (A)(1) and (A)(2) and the supervising attorney satisfies the requirements set forth in 2.155.

⁴ See Business and Professions Code section 6060.4.

⁵ Rule 4.34 and Rule 2.152(a).

⁶ Rule 4.34.

⁷ Business and Professions Code section 6213(a)(1).

⁸ Business and Professions Code section 6213(b).

⁹ California Rules of Court, rule 10.960.

¹⁰ Rule 2.152(a).

¹¹ Rule 4.34.

- (D) Employment at a qualified legal services project¹² or support center¹³ in California or the equivalent in another U.S. jurisdiction, where the work qualifies as pro bono legal services as defined in 2.151(A)(1) and (A)(2), satisfies the requirements of these rules upon completion of fifty hours of pro bono or reduced-fee legal services.

Rule 2.153 Exemptions

The pro bono or reduced-fee requirement does not apply to an applicant who has

- (A) been admitted and been active in any jurisdiction for at least four years immediately preceding application for admission; or
- (B) received a law degree outside the United States and then an LLM degree from a law school in the United States.

Rule 2.154 Modifications

A member unable to fulfill the pro bono or reduced-fee requirement due to a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply to the State Bar for approval of any modification of the requirement.

Rule 2.155 Supervising attorney

(A) Qualifications

A supervising attorney must be

- (1) is a member in good standing in any United States jurisdiction; and
- (2) has practiced law for at least two years immediately preceding the time of supervision.

(B) Duties

A supervising attorney must

- (1) provide or ensure active and timely written or oral feedback;
- (2) ensure that the relationship between the supervising attorney and supervisee is in compliance with current state and federal labor laws; and

¹² Business and Professions Code section 6213(a)(1).

¹³ Business and Professions Code section 6213(b).

- (3) verify the number of hours of pro bono or reduced-fee legal services completed by the supervisee and compliance with these rules using the supervising attorney compliance form.

Rule 2.156 Reporting to the State Bar

Completion of the pro bono or reduced-fee requirements of these rules must be reported no later than one year following the date of admission. The report must be made online using My State Bar Profile or with the Pro Bono or Reduced-Fee Requirement Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

Rule 2.157 Record of Pro Bono or Reduced-Fee Requirement

For two years after reporting completion of pro bono or reduced-fee compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar:

- (A) a record of pro bono or reduced-fee legal services that includes the entity and date of service, and all original supervising attorney compliance forms; or
- (B) proof of exempt status.

Rule 2.158 Noncompliance

Noncompliance is failure to:

- (A) complete the pro bono or reduced-fee requirement by the end of one year following admission or an extension of it;
- (B) report completion of the pro bono or reduced-fee requirement by the end of one year following admission or claim exemption from the pro bono or reduced-fee requirement;
- (C) keep a record of the pro bono or reduced-fee requirement;
- (D) pay fees for noncompliance; or
- (E) otherwise comply with the requirements of these rules.

Rule 2.159 Enrollment as inactive for noncompliance

- (A) A member who is sent a notice of noncompliance must comply with its terms.¹⁴
- (B) A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law.¹⁵ The enrollment is administrative and no hearing is required.

Rule 2.160 Reinstatement following noncompliance

Enrollment as inactive for noncompliance with the pro bono or reduced-fee requirement terminates when a member submits proof of compliance and pays noncompliance fees.

¹⁴ See Rule 2.30.

¹⁵ See Rule 2.30.