

ATTACHMENT C

TFARR: Recommendation C
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 C proposes the adoption of statutes and State Bar rules requiring newly licensed attorneys to complete ten hours of minimum continuing legal education (MCLE) within the first year following admission. This would comprise six hours of first-year basic skills and four hours of first-year legal ethics education. All new members not licensed in another U.S. jurisdiction with less than four years of experience will be required to fulfill this requirement. New members admitted in another U.S. jurisdiction with at least four years of experience need only complete the four-hour first-year legal ethics portion of the training. New attorneys must complete first-year MCLE requirements in addition to the recurrent MCLE requirement for non-exempt active bar members.¹ All ten hours must be taken for participatory course credit, and attorneys will certify compliance and be subject to audit.

These recommendations will ensure that newly licensed attorneys quickly receive practical skills in core competencies that typically are not covered by doctrinal learning. This proposal will help new attorneys access fundamental concepts that are necessary to the practice of law. The proposed change will also ensure new attorneys gain access to legal ethics in the context of a specific practice area. Early development of these skills will not only be beneficial to new attorneys' careers, but will also further the State Bar's mission of public protection by ensuring that new attorneys learn how to adequately and ethically represent their clients. New attorneys are strongly encouraged to complete their entire ten hours of first-year MCLE in a designated practice area. The Committee believes this will help new attorneys gain background in

¹ The State Bar Board of Trustees will be considering a proposed change to the calculation of "proportional requirements due" (which applies to most attorneys during their first regular compliance cycle). The proposed change would ensure that one hour of Elimination of Bias credit and one hour of Substance Abuse (Competence Issues) credit will also be required within an attorney's first regular compliance cycle, regardless of the total pro-rated number of hours due. This addresses the concern that new attorneys currently can go three to six years before education in those areas is required.

their particular area of practice. Provided that new licensees complete their first-year MCLE requirements with one legal education provider, the Committee recommends that new licensees obtain a certificate of completion in the particular completed practice area. The Committee encourages MCLE providers to offer the first-year MCLE requirements at no cost or a nominal cost.

The post-admission ten hour MCLE requirement has two components. Six hours will be devoted to first-year basic skills training, preferably in a single practice area as noted above. New members must also complete four of the ten MCLE hours in first-year legal ethics. The legal ethics hours must contain training on best practices in ethical situations lawyers face in their daily practice. For purposes of fulfilling the four hour first-year legal ethics requirement, courses that meet this requirement might include, but are not limited to the following:

- *Ethical issues in pro bono representation*
- *Conflicts of interest in law practice*
- *Ethics for commercial litigators*
- *Ethics for corporate lawyers*
- *Ethics for discovery*
- *Ethics for financial industry lawyers*
- *Ethics for in-house lawyers*
- *Ethics for litigators*
- *Ethics for the negotiation and mediation*
- *Maintaining Good Standing with the State Bar*
- *Social media ethics*
- *Attorney-client privilege and work product; maintaining client confidences*
- *Attorney advertisement and solicitation*
- *Ethical issues in fee agreements, billing and collection*
- *Ethical issues relating to candor*
- *Ethical issues relating to relationships with clients, including communication*
- *Starting and terminating attorney client relationships*

The Committee acknowledges that applicants, prior to admission, already are required under the rules to complete fifteen units of practical skills coursework. Therefore, the Committee carefully crafted the six remaining post-admission hours of first-year basic skills training to reinforce the skills gained in the fifteen units of foundational law school coursework. The six-hour first-year basic skills requirement might be fulfilled by, but are not limited to, the following courses in fundamental skills:

- *Accounting for lawyers; financial statements; business concepts for lawyers*
- *Administrative law*
- *ADR*
- *Appellate law*

- *Bankruptcy*
- *Civility and professionalism*
- *Contract drafting fundamentals*
- *Corporate*
 - *Preparation of initial public offering*
 - *Federal and state securities law compliance*
 - *SEC requirements*
 - *Securities arbitration*
- *Criminal defense*
- *Elder law*
- *Employment law*
- *Estate planning*
- *Family law*
- *Guardianship*
- *Immigration*
- *Insurance law*
- *Intellectual property*
- *Juvenile law*
- *Landlord-tenant*
- *Law practice management*
 - *Attorney fee agreements*
 - *Client trust accounts*
 - *Managing a virtual law office*
 - *Technology*
 - *Employees/independent contractors*
 - *Opening your own law office*
 - *Insurance*
- *Limited scope representation*
- *Litigation*
- *Nonprofit*
- *Personal injury*
- *Probate*
- *Real estate*
 - *Map Act*
 - *Mechanic's liens*
 - *Residential/commercial purchase/lease agreements*
 - *Real estate broker practice*
 - *Construction law*
- *School law*
- *Veteran law*

The proposal will help new lawyers with little or no practical experience gain professional competency and successfully transition into the practice of law. Therefore, the Committee proposes that the first-year MCLE requirements should apply to all newly admitted attorneys, regardless of status. Out of state attorneys with less than

four years of experience are also required to complete first-year MCLE. Foreign attorneys are required to complete all ten hours of MCLE. However, new admittees from U.S. jurisdictions outside of California with more than four years' experience are not required to complete the first-year basic skills training component (six hours) although they will be required to complete the first-year legal ethics component (four hours). Existing exemptions under recurrent MCLE will not apply to new attorneys completing their ten hour first-year MCLE requirement.

Newly admitted attorneys who wish to begin taking their ten hours of first-year MCLE prior to admission may do so, but only courses taken four months prior to the date of their admission will be counted towards their first-year MCLE requirements. This four-month window provides the opportunity for applicants who have completed the Bar exam to begin fulfilling their post-admission skills requirements while awaiting their bar results. New attorneys have one year following admission to complete their requirements. Thus, newly licensed attorneys will have a total of sixteen months to complete their requirements.

The programmatic requirements set forth above, along with recommendations as to compliant coursework and details of the State Bar's administration of the first-year MCLE requirement and other program requirements will be highlighted in materials provided to new admittees and will also be made available on the State Bar website. To implement this first-year MCLE requirement, the Committee proposes the following additions and amendments to the California Rules of Court, the Business and Professions Code and the Rules of the State Bar:

- *[AMENDMENT] Rules of Court, rule 9.31 Minimum Continuing Legal Education*
- *[AMENDMENT] Business and Professions Code, section 6070 Mandatory Continuing Legal Education*
- *[AMENDMENTS] Rules of the State Bar, rules 2.50, 2.53, 2.54, 2.55, 2.71 and 2.72 Minimum Continuing Legal Education.*
- *[AMENDMENTS] Rules of the State Bar, rules 3.601 and 3.602 MCLE Providers*

Post-Admission Mentoring Program

In conjunction with the practical skills competency training requirement, the Task Force on Admissions Regulation Reform in Phase I proposed a post-admittance mentoring requirement as an alternative to first-year MCLE. The Committee recommends that post-admittance mentoring not be implemented in conjunction with the mandatory first-year MCLE requirements at this time. The Committee recognizes the importance of mentoring for new lawyers and believes a future mentoring program will be valuable for public protection and enhance the practice of law in California. However, given the fundamental and logistical difference between

implementing MCLE requirements and developing a participatory mentoring program, the Committee declined to implement the mentoring program at this time. (See Appendix A.)

Working Group C

Appendix A

[9/25/14]

The Committee recommends that post-admittance mentoring not be implemented in conjunction with the mandatory first-year MCLE requirements at this time. The Committee recognizes the importance of mentoring for new lawyers and believes a future mentoring program will be valuable for public protection and enhance the practice of law in California. However, given the fundamental and logistical difference between implementing MCLE requirements and developing a participatory mentoring program, the Committee declined to implement the mentoring program at this time.

1. Although the Committee declined to implement a mentoring program, the Committee recognizes that mentoring:
 - Promotes collegial relationships among in the legal community
 - Fosters development of practical skills
 - Builds awareness of ethical obligations
 - Encourages the use of best practices and professionalism
 - Provides an experienced practitioner who is also a role model
 - Enhances public protection
 - Promotes personal development

2. The Committee also recognizes existing mentor providers such as:
 - Bar associations and local barrister organizations offering “Bridging the Gap” programs
 - State bar sections and CYLA
 - Specialty bar associations
 - Private law firms/attorneys
 - Corporate law departments
 - Nonprofit/public legal service providers
 - Government agencies
 - Law school alumni and law schools
 - Pro Bono Practice Program
 - American Inns of Court

3. Mentors can also provide guidance on various subject matters, but not limited to:
 - Rules of professional conduct, standards of professionalism, and civility
 - Creating pride and integrity in the legal profession
 - Introduction to the legal community, and public service and bar programs
 - Personal and professional development including work-life balance
 - Ethics
 - Law office management
 - Client communications, advocacy and negotiations

- Specific practice areas (e.g., civil litigation, criminal law and procedure, family, personal injury, insurance, juvenile, employment, immigration, bankruptcy, estate planning, tax, real estate, consumer, collection, probate, business, corporate and commercial, etc.)

If implemented the Committee suggests consideration of the following criteria:

A. Mentees should be required to:

- Provide confirmation of State Bar membership.
- Choose a mentor from a list of pre-approved mentor providers
- Initiate contact with mentor from a list of approved mentors
- Enter into a “mentoring contract” with mentor
- Complete mentor evaluations periodically during the term of the mentoring program

B. Mentors should:

- Have minimum qualifications (must be a licensed California attorney in good standing)
- Agree to the volunteer assignment
- Complete a mentor training program
- Complete mentee evaluations on a regularly scheduled basis

C. Mentoring programs:

- Should begin within 30 days of admission to the bar, and conclude in no less than 12 months
- Should establish a monthly conference call or meeting between the mentee and mentor
- Should establish the preferred method of communication between the mentor and mentee.

D. The Committee also recommends that the State Bar research and review the efficacy of mentoring and determine whether the Bar should revisit the mentoring program in the future. Lastly, the Committee also recommends that the State Bar identify two bar associations and two state bar sections for 24-month pilot programs. State Bar staff will reevaluate and revise the program as necessary. Should the pilot program be successful, the State Bar can reconsider and engage in a phased-in roll out.

E. The Committee recommends review of existing mentoring programs, among which include:

- National Legal Mentoring Consortium, University of South Carolina
- National Mentoring Partnership, Boston
- Existing state mentoring programs (i.e., North Dakota, New Mexico, Georgia, Delaware, Colorado, Indiana, Nevada, Ohio, Oregon, British Columbia/Canada (Articling Program))
- Bar Associations: Beverly Hills, Alameda County Barristers, LA County BWL Law Students, LA County Consumer Attorneys', Lesbian & Gay Lawyers Association – LA, Philippine American Bar Association – LA, Women Lawyers of LA, Federal Bar Association - Orange County, Mentor on Demand – Orange County, Korean American Bar Association - San Diego County, Lawyers Club – San Diego, North County Bar Association – San Diego, Young/New Lawyers Division – San Diego, Asian American Bar Greater Bay Area - San Francisco County, Bay Area Lawyers for Individual Freedom – San Francisco, Korean American Bar Association – San Francisco, Queen's Bench – San Mateo, Women Defenders – Berkeley, Santa Barbara County Women Lawyers, South Asian Bar Association of Southern California, California Women Lawyers

ATTACHMENT C

CALIFORNIA RULES OF COURT

Title 9. Rules on Law Practice, Attorneys and Judges

Chapter 3. Legal Education

Rule 9.31. Minimum continuing legal education

(a) Statutory authorization

This rule is adopted under Business and Professions Code section 6070.

(b) State Bar minimum continuing legal education program

The State Bar must establish and administer a minimum continuing legal education program under rules adopted by the Board of ~~Governors~~ Trustees of the State Bar. These rules may provide for carry forward of excess credit hours, staggering of the education requirement for implementation purposes, and retroactive credit for legal education.

(c) ~~Recurrent~~ Minimum continuing legal education requirements

~~Each~~ An active member of the State Bar (1) not exempt under Business and Professions Code section 6070, (2) not a full-time employee of the United States Government, its departments, agencies, and public corporations, acting within the scope of his or her employment, and (3) not otherwise exempt under rules adopted by the Board of ~~Trustees~~ Governors of the State Bar, must, within 36-month periods designated by the State Bar, complete at least 25 hours of legal education approved by the State Bar or offered by a State Bar-approved provider. Four of those hours must address legal ethics. Members may be required to complete legal education in other specified areas within the 25-hour requirement under rules adopted by the State Bar. Each active member must report his or her compliance to the State Bar under rules adopted by the Board of Trustees ~~Governors~~ of the State Bar.

(d) First-year minimum continuing legal education requirements

A new member of the State Bar not otherwise exempt under rules adopted by the Board of Trustees of the State Bar is required to complete 10 hours of legal education by the end of the first year following admission. These 10 hours are in addition to the 25 hours of legal education required under subpart (c).

~~(d)~~ Failure to comply with program

A member of the State Bar who fails to satisfy the requirements of the State Bar's minimum continuing legal education program must be enrolled as an inactive member of the State Bar under rules adopted by the Board of ~~Trustees~~Governors of the State Bar.

(e) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

BUSINESS & PROFESSIONS CODE

Division 3. Professions and Vocations Generally

Chapter 4. Attorneys

Article 4.5. Mandatory Continuing Legal Education

6070. (a) The State Bar shall request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar requests the Supreme Court to adopt shall require that, within designated 36-month periods, all active members of the State Bar shall complete at least 25 hours of legal education activities approved by the State Bar or offered by a State Bar approved provider, with four of those hours in legal ethics.

Additionally, the rule shall require all newly admitted members to complete at least 10 hours of first-year continuing legal education. A member of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive member pursuant to rules adopted by the Board of Trustees of the State Bar.

(d) The State Bar shall provide and encourage the development of low-cost programs and materials by which members may satisfy their continuing education requirements. Special emphasis shall be placed upon the use of internet capabilities and computer technology in the development and provision of no-cost and low-cost programs and materials. Towards this purpose, the State Bar shall ensure that by July 1, 2000, any member possessing or having access to the Internet or specified generally available computer technology shall be capable of satisfying the full self-study portion of his or her recurrent MCLE requirement at a cost of fifteen dollars (\$15) per hour or less.

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 4. Minimum Continuing Legal Education

Rule 2.50 Purpose of MCLE

Rules for Minimum Continuing Legal Education (MCLE) require active members of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. All new members must complete first-year MCLE regardless of status. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 4. Minimum Continuing Legal Education

Rule 2.53 New members

(A) A new member must complete first-year MCLE by the end of the first year following admission.¹

(AB) A new member is permanently assigned to a compliance group on the date of admission for recurrent MCLE requirements².

(BC) The initial compliance period for recurrent MCLE for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.

(CD) A new member may not claim credit for education taken before the initial applicable compliance period.

¹ Bus. & Prof. Code § 6070(a); Rule of Court, rule 9.31(d).

² Bus. & Prof. Code § 6070(a); Rule of Court, rule 9.31(c).

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 4. Minimum Continuing Legal Education

Rule 2.54 Exemptions

(A) The following active members are exempt from recurrent MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:

- (1) officers and elected officials of the State of California;
- (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
- (3) those employed full-time by the State of California as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
- (4) those employed full-time by the United States government as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.

(B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center, or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

(C) New members who are admitted to the practice of law in good standing in another United States jurisdiction for at least four years are exempt from the six-hour first-year basic skills training requirements³ provided they claim the exemption. The exemption must be claimed within the first year of admission when reporting compliance with the four-hour first-year legal ethics requirement.

³ State Bar Rule 2.72(e).

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 4. Minimum Continuing Legal Education

Rule 2.55 Modifications

| A member prevented from fulfilling ~~the~~any MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 4. Minimum Continuing Legal Education

Rule 2.71 Compliance periods

(A) The first-year MCLE requirement may be satisfied no earlier than the four months preceding admission and must be completed no later than one year following the date of admission.

(B) A compliance period for recurrent MCLE consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A member must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

RULES OF THE STATE BAR OF CALIFORNIA

Title 2. Rights and Responsibilities of Members

Division 4. Minimum Continuing Legal Education

Rule 2.72 Requirements

(A) Unless these rules indicate otherwise, a member who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study. Total hours must include no less than 6 hours as follows:

(1) at least four hours of legal ethics;

(2) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and

(3) at least one hour of education addressing substance abuse or other mental or physical issues that impair a member's ability to perform legal services with competence.

(B) Required education in legal ethics, elimination of bias, or competence issues may be a component of an ~~approved~~ MCLE activity that deals with another topic.

(C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study. A tool for applying this formula is available at the State Bar Web site.

(D) Excess credit hours may not be applied to the next compliance period.

(E) Unless these rules indicate otherwise, a new member regardless of status must complete first-year MCLE requirements, which consist of ten credit hours of MCLE activities including four hours of first-year legal ethics and six hours of first-year basic skills training. None of these hours may be self-study.

RULES OF THE STATE BAR OF CALIFORNIA

Title 3. Programs and Services

Division 5. Providers of Programs and Service

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.601 MCLE Activities

To be approved for MCLE credit, an MCLE activity must meet State Bar standards.

- (A) The MCLE activity must relate to legal subjects directly relevant to members of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, ~~or~~ competence issues, first-year legal ethics, or first-year basic skills training.²
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during the activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.

² Business & Professions Code § 6070(b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE. State Bar Rule 2.84 provides that “A member may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.” See State Bar Rule 2.72 for a description of competence issues and elimination of bias.

RULES OF THE STATE BAR OF CALIFORNIA

Title 3. Programs and Services

Division 5. Providers of Programs and Service

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.602 Responsibilities of every provider

Every provider must

- (A) comply with any State Bar rules and terms applicable to an approved MCLE activity;
- (B) retain the Record of Attendance for an MCLE activity for four years from the date of the activity and submit it to the State Bar upon request. The record must include the title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, ~~or~~ competence issues, first-year legal ethics, or first-year basic skills training as a component of the topic of the activity, and whether the activity is participatory or self-study;
- (C) furnish an MCLE Certificate of Attendance to each attendee who has met the requirements for the MCLE activity. The certificate must include the provider name, title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, ~~or~~ competence issues, first-year legal ethics, or first-year basic skills training as a component of the topic of the activity, and whether the activity is participatory or self-study;
- (D) give each attendee who completes an MCLE activity a State Bar MCLE Activity Evaluation Form or its equivalent; retain the completed form for at least one year; and submit it to the State Bar upon request; and
- (E) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.