

RULES OF THE STATE BAR OF CALIFORNIA

Title 7. Miscellaneous Provisions

Division 2. Special Masters

Rules 7.100 – 7.105

Rule 7.100 Special masters<sup>1</sup>

Special masters are court-appointed attorneys who without compensation accompany peace officers to serve search warrants and conduct searches for evidence in the possession or under the control of attorneys or other specified professionals.<sup>2</sup> Courts appoint special masters to balance the interests of the professionals and their clients in protecting privileged materials with the interests of prosecutors in securing evidence of suspected criminal activity. Attorneys who meet the requirements of these rules are listed by the State Bar as qualified for court appointment as special masters. The only role of the State Bar is to maintain the list. The State Bar cannot offer advice regarding the appointment of a special master.

Rule 7.101 Eligibility<sup>3</sup>

To be listed as qualified to serve as a special master, an attorney must

- (A) submit a Special Master Application to the State Bar;
- (B) at the time of application
  - (1) have been an active member of the State Bar for the preceding five years;<sup>4</sup>
  - (2) not have been disciplined in any court or jurisdiction during the preceding five years;
  - (3) not have devoted more than twenty-five percent of his or her practice of law to criminal matters during the preceding year;
  - (4) not be subject to disciplinary investigation or prosecution; and

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<sup>1</sup> *Cf. current rule 1.0 Purpose.*

<sup>2</sup> Penal Code § 1524(c) and (d).

<sup>3</sup> *Cf. current 3.0 Eligibility.*

(C) during the period when listed as qualified for appointment

- (1) be an active member of the State Bar;
- (2) not be employed by a public defender, district attorney, attorney general, or a law enforcement agency;
- (3) not be a certified criminal law specialist; and
- (4) devote less than five percent of law practice time to criminal law issues.

Rule 7.102 Duties of a special master<sup>5</sup>

In acting as a special master, an attorney must conduct searches and otherwise act in compliance with Penal Code section 1524.

Rule 7.103 Employment status

In acting as a special master, an attorney

- (A) is considered a public employee of the governmental entity that caused the search warrant to be issued;<sup>6</sup> and
- (B) is not considered an agent or representative of the State Bar.<sup>7</sup>

Rule 7.104 Term<sup>8</sup>

- (A) An attorney may be listed by the State Bar as eligible for special master appointment for five years. At the end of the term of appointment, an attorney who wishes to continue eligibility must submit a new Special Master Application.
- (B) The listing as qualified for special master appointment may be terminated upon
  - (1) prosecution or disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline;<sup>9</sup>
  - (2) a court order removing an attorney as a special master;<sup>10</sup>

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<sup>5</sup> *Cf. current 4.0 Duties.*

<sup>6</sup> Penal Code § 1524(d)(1). *Cf. current 4.5.*

<sup>7</sup> *Cf. current 4.2*

<sup>8</sup> *Cf. current 5.0 Duration.*

<sup>9</sup> *Cf. current 6.1.*

- (3) the request of the attorney;<sup>11</sup>
- (4) a determination that the attorney made a false material representation or misstatement of material fact in the application;<sup>12</sup> or
- (5) failure to comply with a requirement of these rules.

Rule 7.105 Confidentiality<sup>13</sup>

A Special Master Application is confidential. Only the State Bar list of persons qualified to serve as special masters is public information.

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<sup>10</sup> *Cf. current 6.3.*

<sup>11</sup> *Cf. current 5.3.*

<sup>12</sup> *Cf. current 6.2.*

<sup>13</sup> *Cf. current 7.0 Public nature of records.*