

Proposed Amendments to the Rules of Procedure of the State Bar Court

Division 6. Special Proceedings

[Insert Text Begin]Chapter 6. Legal Specialization Proceedings[Insert Text end]

[Insert Text Begin]Rule 5.390 Scope[Insert Text end]

[Insert Text Begin]These rules apply to proceedings and hearings before the State Bar Court pursuant to State Bar Rules, Title 3, Division 2, Chapter 2, rule 3.126, wherein a member can seek review of the denial of certification as a legal specialist, or suspension or revocation of such certification, by the Board of Legal Specialization. The State Bar Court will independently review the record and may make findings, conclusions, or a decision or recommendation different from those of the Board of Legal Specialization. The findings of fact of the Board of Legal Specialization are entitled to great weight.[Insert Text end]

[Insert Text Begin]Rule 5.391 Beginning Proceeding; Time for Filing[Insert Text end]

[Insert Text Begin]If the Board of Legal Specialization denies, suspends, or revokes a member's legal specialization certification, the member may file an application for a legal specialization certification proceeding and hearing. Within 30 days after notice of such denial, suspension or revocation is served, an application must be served under rule 5.25 and filed, accompanied by supporting documents, including a copy of the notice of denial, suspension or revocation, the applicable filing fee, and proof of service upon the Board of Legal Specialization and the Office of the Chief Trial Counsel.[Insert Text end]

[Insert Text Begin]Rule 5.392 Response to Application[Insert Text end]

[Insert Text Begin]Within 30 days after the filing of the motion, the Office of the Chief Trial Counsel will file with the Court and serve upon the member a response to the application.[Insert Text end]

[Insert Text Begin]Rule 5.393 Discovery[Insert Text end]

[Insert Text Begin](A) Generally. No discovery is permitted in a proceeding under these rules.[Insert Text end]

[Insert Text Begin](B) Limited Discovery. For good cause, the Court may permit limited discovery.[Insert Text end]

[Insert Text Begin]Rule 5.394 Issues Not Subject to Review[Insert Text end]

[Insert Text Begin]The following grounds for the Board of Legal Specialization's denial, suspension or revocation of a certificate as a legal specialist are not subject to review:[Insert Text end]

[Insert Text Begin](A) Failure to pass the written legal specialist certification examination. The examination grades given by the readers or by the Board of Legal Specialization are deemed final and are not subject to review; and[Insert Text end]

[Insert Text Begin](B) Denial, suspension or revocation by the Board of Legal Specialization based upon final disciplinary action by the Supreme Court, the State Bar Court or any other body authorized to impose professional discipline.[Insert Text end]

[Insert Text Begin]Rule 5.395 Hearing Procedure; Evidence[Insert Text end]

[Insert Text Begin](A) Declarations. Subject to appropriate objection, the Court will admit in evidence the declarations submitted in support of and in response to the action taken by the Board of Legal Specialization.[Insert Text end]

[Insert Text Begin](B) Cross-Examination. In a pleading, an opposing party may ask that a declarant be produced for cross-examination at the hearing. If the request is filed and served at least 10 days before the hearing or, if the declaration was filed under rule 5.362, within three court days after the declaration was served, the party that filed the declaration must produce the declarant as requested.[Insert Text end]

[Insert Text Begin]Rule 5.396 Burden of Proof[Insert Text end]

[Insert Text Begin]The burden of proof is on the member to prove by clear and convincing evidence that he or she satisfies the requirements for certification or recertification as a legal specialist.[Insert Text end]

[Insert Text Begin]Rule 5.397 Review[Insert Text end]

[Insert Text Begin]A ruling by the hearing judge under these rules is reviewable under rule 5.150.[Insert Text end]

[Insert Text Begin]Rule 5.398 Effect of State Bar Court Decision[Insert Text end]

[Insert Text Begin]The decision of the hearing judge, or (if review is requested) the decision of the Review Department, is the final State Bar Court decision in the proceeding. Unless the California Supreme Court grants a petition for review, the decision is binding on the member, the Office of the Chief Trial Counsel, and the Board of Legal Specialization.[Insert Text end]

[Insert Text Begin]Rule 5.399 Inapplicable Rules[Insert Text end]

[Insert Text Begin]The following rules do not apply in a legal specialization proceeding:[Insert Text end]

[Insert Text Begin](A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and[Insert Text end]

[Insert Text Begin](B) Specific. Rules 5.50 (abatement); rules 5.60-5.71 (subpoenas and discovery); rules 5.80-5.100 (default; obligation to appear at trial); and rules 5.105-5.108 (admission of certain evidence); rules 5.151-5.108 (review).[Insert Text end]