

# **OPEN SESSION AGENDA ITEM**

## **August 2018 PROGRAMS COMMITTEE ITEM III.C.**

**DATE:** August 10, 2018

**TO:** **Members, Programs Committee**

**FROM:** Amy C. Nuñez, Interim Director, Office of Admissions

**SUBJECT:** Revisions to the Special Admissions Rules

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### **EXECUTIVE SUMMARY**

As a result of the discussions engaged in by the Board of Trustees during the January 2018 annual strategic planning session, the Board revised Objective q (previously objective i) of Goal 2 of the State Bar's 2017-2022 Strategic Plan to direct that Bar staff: "No later than December 31, 2018, review special admissions rules to determine whether changes are needed to support the goal of increased access to legal services or for other reasons, and implement needed changes." The primary change in this objective was the clear direction to review these rules in the context of supporting the Bar's goal of increased access to legal services. This informational item is intended to update the Programs Committee on the progress toward meeting that strategic plan objective.

Staff examined the California Rules of Court and the State Bar Rules for special admissions to identify any aspects of the rules which may present unnecessary road blocks to gain special admission status which negatively impacted the provision of legal services to indigent California residents. Staff developed rule proposals to support greater access to legal services, all while maintaining public protection. The proposals for amendments to the Rules of Court and the State Bar Rules regarding RIHCs and RLSAs are contained in Attachments A and B. No amendments were deemed necessary for other special admissions categories.

At the direction of the Chair and Vice-Chair of the Programs Committee, staff also reviewed whether a new special admissions program would be appropriate for military spouses. State Bar staff reviewed the national model rule and modified it to align with the multijurisdictional practice programs, in the level of attorney oversight, ensuring to incentivize bar exam passage and encouraging pro bono services in the state. The proposed rules appear in Attachment C.

### **BACKGROUND**

The 2017-2022 State Bar Strategic Plan, as initially adopted, included objective i, goal 2, directing staff to "Review special admissions rules (Multijurisdictional Practice, Pro Hac Vice, Registered In-House Counsel, Out of State Attorney Arbitration Counsel, Foreign Legal

Consultants, and Practice Training of Law Students Program) to determine whether changes are needed, and implement needed changes.

In January 2018, the Board of Trustees conducted its annual strategic planning session during which the Board focused its attention on areas that were not sufficiently defined or prioritized in the 2017-2022 Strategic Plan. Panels presented to the Board on methods for improving employee morale and career satisfaction, understanding access to justice needs and providing greater access, and initiatives to prevent harm to clients rather than responding after harm has occurred. The Board engaged in lively discussions about possible changes to the objectives set forth in the Strategic Plan to ensure appropriate focus on these important topics.

At its February 2018 meeting, the Board adopted amendments to the strategic plan based on the discussions at the January meeting. The revised strategic plan now includes, as objective q of Goal 2 that Bar staff: “No later than December 31, 2018, review special admissions rules to determine whether changes are needed to support the goal of increased access to legal services or for other reasons, and implement needed changes.”

Special Admissions rules govern the extent to which those not formally admitted to the State Bar of California may practice in California.

Rules of Court, Rules 9.40 and 9.43, governing Pro Hac Vice and Out-of-State Attorney Arbitration Counsel (OSAAC), permit out of state counsel (in good standing in their home jurisdiction) the ability to participate in a formal legal proceeding (as litigator, arbitrator or mediator) on a limited number of cases in the state under the supervision of a California attorney. Additionally, Pro Hac Vice rules require written permission from the judicial officer assigned to the case.

Rule 9.44, governing Foreign Legal Consultants, permits attorneys licensed in another country's jurisdiction (and who are in good standing in that jurisdiction) to provide legal advice in California exclusively regarding the law of their foreign jurisdiction.

Rule 9.42 grants eligible law school students the ability to provide limited legal services under the supervision of a California attorney, reflected as the Practical Training of Law Students (PTLS) Program.

The Multijurisdictional Practice Programs include two attorney types, Registered In-House Counsel (RIHC) and Registered Legal Services Attorneys (RLSA). Rule 9.46 governs Registered In-House Counsel (RIHC), who are non-California attorneys from other US jurisdictions who meet certain qualifications, register with the State Bar and are then allowed to practice as in-house counsel in California for a qualifying institution. The work of RIHCs is limited to providing legal services in California only to the qualifying institution that employs him or her. RIHCs are not permitted to make court appearances in California state courts or to provide personal or individual representation to any customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution.

Registered Legal Services Attorneys (RLSA), governed by Rule 9.45, must register with the State Bar and work under the supervision of a California attorney, but are employed by a California-based organization that provides legal services in the state. The rules pertaining to both RLSA and RIHC require that the attorney is well-versed in local laws, applicable case law and rules regarding ethical conduct. Both are required to apply for moral character determination. California State Bar Rules allow out-of-state attorneys to qualify for both RIHC and RLSA.

In 2011, the Military Spouses J.D. Network was established to aid the spouses of military service members in finding employment as attorneys in the state or territory in which their active military spouse has been assigned. Currently, there are 30 states and U.S. territories that have incorporated a special admissions policy for military spouses. For many states, the ability to allow special admission to military spouses has been facilitated by the reciprocity rules that exist between states, which allow an attorney to waive into the state (admitted on motion) based on admission in another state. California, however, does not have reciprocity with any other state, and does not currently have any special admissions rules unique to military spouses.

## **DISCUSSION**

Staff reviewed all special admissions rules to identify whether changes were needed to support increased access to legal services or for other reasons. Draft language was presented to a working group of the California Commission on Access to Justice in early August, 2018 and will be presented to the Committee of Bar Examiners on August 24. The input of these two State Bar sub-entities will be incorporated in the proposal that will be presented in September for approval to circulate for public comment.

In its review of the special admissions rules, staff concluded that no changes were needed to the rules governing Pro Hac Vice, OSAAC, Foreign Legal Consultants, or Certified Law Students to support the Bar's goal of increased access to legal services in California, due to the limited nature of the representation for which the status is sought. Staff were unable to identify any other needed modifications to those rules at this time.

As a result, staff focused on the rules regarding RIHC and RLSA.

The proposed modifications for the rules related to RIHC address the following areas:

- The size of the employer. To qualify under the RIHC program, the applicant must be proposing to work for a corporation, partnership, association or other legal entity, that is not a government entity or an entity that provides legal services to others which employ 10 employees or a full time California attorney. Staff proposes to reduce the number of employees from 10 to 5.
- Status of attorney in their home state. Rule of Court 9.46(a)(2)(C) makes eligible for participation in the RIHC program only those who have not been disbarred, have not resigned with charges pending and not having been "suspended." The goal of this prohibition appears to be to restrict attorney applicants who have been disciplined in the state where they have practiced. Staff propose to clarify that the person cannot have been suspended from practicing law for disciplinary misconduct; making eligible applicants who may have been administratively suspended for non-disciplinary actions, such as for non-payment of fees.
- Authority to provide pro bono services. Language was added to allow the RIHC the ability to provide pro bono services for an eligible legal aid organization or the institution that employs him or her. This eliminates the requirement to submit a separate application to serve as a registered legal services attorney and to pay registration fees for participation as a RLSA. The amendment also expressly permits the RIHC to provide pro bono through his or her employer, not just through a legal services agency.

Supervision of RIHC. Staff evaluated relaxing the rule requires a RIHC to be supervised by a California-licensed attorney, as this provision does serve to limit those institutions that might be willing to hire a RIHC. However the requirement ensures against the unauthorized practice of law and provides public protection. Given the absence of a California law license and that this classification requires that the attorney is well-versed in local laws, applicable case law and rules regarding ethical conduct, it is appropriate to require supervision by a California licensed attorney.

The proposed modifications for the rules related to RLSA address the following areas:

Definition of Qualifying Legal Aid Entity. The definition of qualifying legal service provider was modified to expand from only those eligible for IOLTA funding to nonprofit legal aid entities and nonprofit law schools that provide civil legal aid. The proposal also removes the limitation that the entity be based solely in California;

- Status of attorney in their home state. The language in Rule of Court 9.45(a)(2)(C) refers to the active member not having been disbarred, not having resigned with charges pending and not having been suspended. This appears to restrict attorney applicants from applying for Registered Legal Services Attorney who have been disciplined in the state where they have practiced. To clarify the ambiguity with regard to the word “suspended,” staff propose specifying that the person cannot have been suspended from practicing law for disciplinary misconduct. This differentiates from applicants who may have been administratively suspended for non-disciplinary actions, such as for non-payment of fees.
- Length of Time as a RLSA. Extends from three to five years the number of years the maximum period in which an individual may practice as an RLSA, thereby making it easier to continue serving in this role, and providing an incentive for individuals to apply for such a role, while still continuing to incentivize future attempts to take and pass the California Bar Examination and get admitted to the State Bar of California.

-Simplification of application process. The proposed modifications attempt to simplify the application process by allowing the RLSA the ability to work at multiple eligible legal aid organizations, as long as they are registered and the organization certifies.

-Supervision of RLSA. The requirement for a RLSA to be supervised by a California-licensed attorney intends to ensure against the Unauthorized Practice of Law and to provide public protection. Given the absence of a California law license and that this classification requires that the attorney is well-versed in local laws, applicable case law and rules regarding ethical conduct, supervision of a California licensed attorney seems like the appropriate method.

The proposed new Military Spouse Rule is drafted to largely conform with the RIHC and RLSA rules, and in that way does not follow the model rule being circulated by the Military Spouse J.D. Network. The proposed rules address the following areas:

-The definition of spouse. The definition of spouse conforms to the California law, which allows civil unions and domestic partners the same liberties as spouses.

- Consistency with the RIHC and RLSA rules. Includes language to emphasize that pro bono work is allowed, as a means of encouraging military spouses to participate in this activity. The Military Spouse Attorney must not have been disbarred, resigned with charges pending, or suspended from practicing law for disciplinary misconduct in any

other jurisdiction. Also, once an applicant has registered and been accepted as a Military Spouse Attorney he/she may continue to take the bar exam without fear of losing eligibility;

- Requires supervision of an attorney who is an active licensee in good standing of the State Bar of California who has been admitted to the practice of law for two years or more;
- Unlike the RIHC and RLAA rules, the Military Spouse Attorney is permitted to practice law in California, under supervision, in all forms of legal practice that are permissible for a licensed attorney of the State Bar of California, including pro bono legal services.

TITLE 3. PROGRAMS AND SERVICES [7/5/2018 Draft]

Adopted July 2007

DIVISION 3. NON- ~~MEMBER~~ LICENSEE ATTORNEYS

Chapter 1. Multijurisdictional Practice

Article 3. Registered In-House Counsel

Rule 3.370 Definitions

- (A) An attorney registered as Registered In-House Counsel is an attorney who meets the eligibility requirements of Rule 9.46 of the California Rules of Court (“Rule 9.46”) and is registered by the State Bar as Registered In-House Counsel.
- (B) “Registered” means that the State Bar has issued a certificate of registration to an attorney it deems eligible to practice law as Registered In-House Counsel.
- (C) A “qualifying institution” is a corporation, a partnership, an association, or other legal entity that meets the requirements of Rule of Court 9.46(a)(1).

*Rule 3.370 adopted effective July 1, 2010*

Rule 3.371 Application

- (A) To apply to register as Registered In-House Counsel, an attorney who meets the eligibility and employment requirements of Rule 9.46 must
  - (1) submit an Application for Registration<sup>1</sup> as an attorney applicant for admission to the State Bar of California with the fee set forth in the Schedule of Charges and Deadlines;<sup>2</sup>
  - (2) submit an Application for Registered In-House Counsel<sup>3</sup> with the fee set forth in the Schedule of Charges and Deadlines;
  - (3) meet State Bar requirements for acceptable moral character; and
  - (4) submit a Declaration signed by an officer, a director, or a general counsel of Qualifying Institution.<sup>4</sup>

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<sup>1</sup> See Rule 4.16(B).

<sup>2</sup> See Rule 4.3(B).

<sup>3</sup> See Rule of Court 9.46(d).

<sup>4</sup> Rule of Court 9.46(a)(1).

- (B) An application to practice law as Registered In-House Counsel may be denied for failure to comply with eligibility or application requirements or a material misrepresentation of fact in the application.

*Rule 3.371 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.372 Duties of Registered In-House Counsel

An attorney employed as Registered In-House Counsel must

- (A) annually renew registration as Registered In-House Counsel and submit the fee set forth in the Schedule of Charges and Deadlines;
- (B) meet the Minimum Continuing Legal Education (MCLE) requirements set forth in Rule 9.46;
- (C) use the title “Registered In-House Counsel” and no other in connection with activities performed as Registered In-House Counsel;
- (D) not claim in any way to be a ~~member~~ licensed attorney of the State Bar of California;
- (E) maintain an address of record with the State Bar, which must be the current California office address of the attorney’s employer and a current e-mail address;
- (F) report to the State Bar within thirty days
  - (1) a change in status in any jurisdiction where admitted to practice law, such as transfer to inactive status, disciplinary action that affects the attorney’s status of good standing, suspension, resignation, disbarment, or a functional equivalent;
  - (2) termination of employment with the qualifying institution; or
  - (3) any information required by the State Bar Act, such as that required by sections 6068(o) and 6086.8(c) of the California Business and Professions Code, or by other legal authority;
- (G) submit a new application to register as Registered In-House Counsel before beginning employment with a new qualifying institution;<sup>5</sup> and
- (H) otherwise comply with the requirements of Rule 9.46 and these rules.

*Rule 3.372 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.373 Duties of employer

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<sup>5</sup> Rule of Court 9.46(a)(1).

- ~~(A) A qualifying institution prospectively employing an attorney applying for registration as Registered In-House Counsel must complete a Declaration of Qualifying Institution.~~
- ~~(B) Within thirty days of ceasing to meet the requirements of Rule of Court 9.46(a), an employer of Registered In-House Counsel must report that to the State Bar that it is no longer a qualifying institution.~~

An employer who meets the requirements of Rule 9.46 for a qualifying institution must

(A) complete the Application for Approval as Qualifying Institution and be approved by the State Bar as a qualifying employer;

(B) complete a Declaration signed by an officer, a director, or a general counsel of the Qualifying Institution, before employing a Registered In-House Counsel, attesting that it

(1) is a qualifying institution;

(2) deems the attorney, on the basis of reasonable inquiry, to be of good moral character;

(3) agrees to notify the State Bar of California, in writing, within thirty days if

(a) the attorney has terminated employment;

(b) the attorney is no longer eligible for employment as required by Rule 9.46 and these rules;

(c) its status as a qualifying institution has changed; or

(d) it has changed its office address.

*Rule 3.373 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

Rule 3.374 Suspension of Registered In-House Counsel ~~registration~~

(A) Registration as In-House Counsel is suspended

- (1) for failure to annually register as Registered In-House Counsel and submit any related fee and penalty set forth in the Schedule of Charges and Deadlines;
- (2) for failure to comply with the Minimum Continuing Legal Education requirement of Rule of Court 9.46 and pay any related fee and penalty set forth in the Schedule of Charges and Deadlines;
- (3) upon transfer to inactive status, disciplinary action that affects the attorney's status of good standing, suspension, resignation,



disbarment, or a functional equivalent in status in any jurisdiction where admitted to practice law;

- (4) upon imposition of discipline for misconduct by a professional or occupational licensing authority; or
  - (5) for failure to otherwise comply with these rules or with the laws or standards of professional conduct applicable to a ~~member~~ licensee of the State Bar.
- (B) An attorney suspended under these rules is not permitted to practice law. An attorney suspended for failure to comply with annual renewal or MCLE requirements may be reinstated upon compliance.
- (C) A notice of suspension is effective ten days from the date of receipt. Receipt is deemed to be five days from the date of mailing to a California address; ten days from the date of mailing to an address elsewhere in the United States; and twenty days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.
- (D) Appeal of a suspension is subject to the disciplinary procedures of the State Bar.

*Rule 3.374 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.375 Termination of Registration

Permission to practice law as Registered In-House Counsel terminates

- (A) upon failure to meet the eligibility requirements of Rule 9.46 or these rules;
- (B) as required by Rule 9.46 or these rules;
- (C) upon admission to the State Bar;
- (D) upon repeal of Rule 9.46 or termination of the Registered In-House Counsel program; or
- (E) upon request.

*Rule 3.375 adopted effective July 1, 2010*

#### Rule 3.376 Reinstatement after termination

An attorney terminated as Registered In-House Counsel who seeks reinstatement must meet all eligibility and application requirements of these rules.

*Rule 3.376 adopted effective July 1, 2010*

### Rule 3.377 Public information

State Bar records for attorneys permitted to practice law as Registered In-House Counsel are public to the same extent as ~~member~~ licensed attorney records.

*Rule 3.377 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

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## Rule 9.46. Registered in-house counsel

### (a) Definitions

The following definitions apply to terms used in this rule:

- (1) "Qualifying institution" means a corporation, a partnership, an association, or other legal entity, including its subsidiaries and organizational affiliates. Neither a governmental entity nor an entity that provides legal services to others can be a qualifying institution for purposes of this rule. A qualifying institution must:
  - (A) Employ at least ~~40~~ 5 employees full time in California; or
  - (B) Employ in California an attorney who is an active ~~member~~ licensee in good standing of the State Bar of California.
- (2) "Active ~~member~~ licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who ~~meets all of the following criteria:~~
  - (A) Is a ~~member~~ licensee in good standing of the entity governing the practice of law in each jurisdiction in which the ~~member~~ attorney is licensed to practice law, who has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law for disciplinary misconduct in any other jurisdiction; and
  - (B) Remains an active ~~member~~ licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency, other than California, while practicing law as registered in-house counsel in California; ~~and,~~
  - (C) ~~Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.~~

*(Subd (a) relettered effective January 1, 2007; adopted as subd (j) effective November 15, 2004; amended effective , 2018.)*

### (b) Scope of practice

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is:

- (1) Permitted to provide legal services in California ~~only~~ to the qualifying institution that employs him or her;
- (2) Permitted to provide *pro bono* legal services under supervision of a California attorney for either an eligible legal aid organization as defined by Rules of Court, rule 9.45(a)(1) , or the qualifying institution that employs him or her; ~~(3)~~ (2) Not permitted to make court appearances in California state courts or to engage in any other activities for which *pro hac vice* admission is required if they are performed in California by an attorney who is not a ~~member~~ licensee of the State Bar of California; and
- ~~(4)~~ (3) Not permitted to provide personal or individual representation to any customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution, except as described in subdivision (b)(2).

*(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective November 15, 2004; amended effective , 2018.)*

### (c) Requirements

For an attorney to practice law under this rule, the attorney must:

- (1) Be an active ~~member~~ licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;

- (2) Register with the State Bar of California and file an Application for Determination of Moral Character;
- (3) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;
- (4) Comply with the rules adopted by the Board of ~~Trustees~~ Governors relating to the State Bar Registered In-House Counsel Program;
- (5) Practice law exclusively for a single qualifying institution, except that, while practicing under this rule, the attorney may, ~~if so qualified, simultaneously practice law~~ provide *pro bono* services through an eligible legal aid organization as a registered legal services attorney;
- (6) Abide by all of the laws and rules that govern ~~members~~ licensees of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;
- (7) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that ~~members~~ licensees of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements for the registered in-house counsel's compliance group as set forth in State Bar Rules 2.70 and 2.71. If the registered in-house counsel's compliance group is required to report in less than thirty-six months, the MCLE requirements will be reduced proportionally; and
- (8) Reside in California.

*(Subd (c) relettered effective January 1, 2007; adopted as subd (b) effective November 15, 2004; amended effective 2018.)*

#### **(d) Application**

To qualify to practice law as registered in-house counsel, an attorney must:

- (1) ~~Register as an in-house counsel; submit an application for the qualifying institution; register as an attorney-applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners; and comply with Rules of Court, rule 9.9.5, governing attorney fingerprinting;~~
- (2) Submit a supplemental application identifying the eligible legal aid organization as defined by Rules of Court, rule 9.45(a)(1) and the supervising attorney, through which an in-house counsel intends to provide *pro bono* services, if applicable;
- (3) ~~2~~ Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than on behalf of the qualifying institution during the time he or she is registered in-house counsel in California, ~~except that if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as a registered legal services attorney if supervised, a registered in-house counsel may provide *pro bono* services through an eligible legal aid organization; and~~
- (4) ~~3~~ Submit to the State Bar of California a declaration signed by an officer, a director, or a general counsel of the applicant's employer, on behalf of the applicant's employer; The declaration must attesting:
  - (i) that the applicant is employed as an attorney for the employer;
  - (ii) that the nature of the employment conforms to the requirements of this rule;
  - (iii) that the employer will notify the State Bar of California within 30 days of the cessation of the applicant's employment in California; and

(iv) that the person signing the declaration believes, to the best of his or her knowledge after reasonable inquiry, that the applicant qualifies for registration under this rule and is an individual of good moral character.

*(Subd (d) relettered effective January 1, 2007; adopted as subd (c) effective November 15, 2004; amended effective , 2018.)*

#### **(e) Duration of practice**

A registered in-house counsel must renew his or her registration annually. There is no limitation on the number of years in-house counsel may register under this rule. Registered in-house counsel may practice law under this rule only for as long as he or she remains employed by the same qualifying institution that provided the declaration in support of his or her application. If an attorney practicing law as registered in-house counsel leaves the employment of his or her employer or changes employers, he or she must notify the State Bar of California within 30 days. If an attorney wishes to practice law under this rule for a new employer, he or she must first register as in-house counsel for that employer.

*(Subd (e) amended and relettered effective January 1, 2007; adopted as subd (d) effective November 15, 2004.)*

#### **~~(f) Eligibility~~**

~~An application to register under this rule may not be denied because:-~~

~~(1) The attorney applicant has practiced law in California as in-house counsel before the effective date of this rule.~~

~~(2) The attorney applicant is practicing law as in-house counsel at or after the effective date of this rule, provided that the attorney applies under this rule within six months of its effective date.~~

~~*(Subd (f) amended and relettered effective January 1, 2007; adopted as subd (e) effective November 15, 2004.)*~~

#### **~~(f g) Application and registration fees~~**

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered in-house counsel.

*(Subd (g) amended and relettered effective January 1, 2007; adopted as subd (f) effective November 15, 2004; relettered effective , 2018.)*

#### **~~(g h) State Bar Registered In-House Counsel Program~~**

The State Bar must establish and administer a program for registering California in-house counsel under rules adopted by the Board of Trustees ~~Governors~~.

~~*(Subd (h) amended and relettered effective January 1, 2007; adopted as subd (g) effective November 15, 2004; relettered effective , 2018.)*~~

#### **~~(h i) Inherent power of Supreme Court~~**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

~~*(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (h) effective November 15, 2004; relettered effective , 2018.)*~~

#### **~~(i j) Effect of rule on multijurisdictional practice~~**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not ~~members~~

licensees of the State Bar of California.

*(Subd (j) relettered effective January 1, 2007; adopted as subd (i) effective November 15, 2004; relettered effective 2018.)*

*Rule 9.46 amended and renumbered effective January 1, 2007; adopted as rule 965 by the Supreme Court effective November 15, 2004.*

TITLE 3. PROGRAMS AND SERVICES [7/5/2018 Draft]

Adopted July 2007

DIVISION 3. NON- MEMBER LICENSEE ATTORNEYS

Chapter 1. Multijurisdictional Practice

Article 2. Registered Legal Aid ~~Services~~ Attorneys

Rule 3.360 Definitions

- (A) A “Registered Legal Aid ~~Services~~ Attorney” is an attorney who meets the eligibility requirements of Rule 9.45 of the California Rules of Court (“Rule 9.45”) and is registered by the State Bar as a Registered Legal Aid ~~Services~~ Attorney.
- (B) “Registered” means that the State Bar has issued a certificate of registration to an attorney it deems eligible to practice law as a Registered Legal Aid ~~Services~~ Attorney.
- (C) An “eligible legal aid organization ~~qualifying legal services provider~~” is an entity or law school program ~~that meets the requirements of Rule of Court 9.45(a)(1) or that receives a grant from the Legal Services Trust Fund.~~

*Rule 3.360 adopted effective July 1, 2010; amended effective , 2018.*

Rule 3.361 Application

- (A) To apply to register as a Registered Legal Aid ~~Services~~ Attorney, an attorney who meets the eligibility and employment requirements of Rule 9.45 must
  - (1) submit an Application for Registration<sup>1</sup> as an attorney applicant for admission to the State Bar of California with the fee set forth in the Schedule of Charges and Deadlines;<sup>2</sup>
  - (2) submit an Application for Registered Legal Aid ~~Services~~ Attorney<sup>3</sup> with the fee set forth in the Schedule of Charges and Deadlines;
  - (3) meet State Bar requirements for acceptable moral character; and
  - (4) submit a Declaration signed by the attorney from the eligible legal aid organization who will be providing the required supervision. ~~of Qualifying Legal Services Provider.~~

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<sup>1</sup> See Rule 4.16(B).

<sup>2</sup> See Rule 4.3(B).

<sup>3</sup> See Rule of Court 9.44.

- (B) An application to practice law as a Registered Legal Aid Services Attorney may be denied for failure to comply with eligibility or application requirements or a material misrepresentation of fact.

*Rule 3.361 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.362 Duties of Registered Legal Aid Services Attorney

An attorney employed as Registered Legal Aid Services Attorney must

- (A) annually renew registration as a Registered Legal Aid Services Attorney and submit the fee set forth in the Schedule of Charges and Deadlines;
- (B) practice for no more than a total of ~~three~~ five years as a Registered Legal Aid Services Attorney;
- (C) meet the Minimum Continuing Legal Education (MCLE) requirements set forth in Rule 9.45;
- (D) report a change of attorney supervisor in accordance with State Bar requirements;
- (E) use the title “Registered Legal Aid Services Attorney” and no other in connection with activities performed as a Registered Legal Aid Services Attorney;
- (F) not claim in any way to be a ~~member~~ licensed attorney of the State Bar of California;
- (G) maintain with the State Bar an address of record that is the current California office address of the attorney’s employer and a current e-mail address;
- (H) report to the State Bar within thirty days:
  - (1) a change in status in any jurisdiction where admitted to practice law, such as transfer to inactive status, disciplinary action that affects the attorney’s status of good standing, suspension, resignation, disbarment, or a functional equivalent;
  - (2) termination of employment with the eligible legal aid organization ~~qualifying legal services provider~~; or
  - (3) any information required by the State Bar Act, such as that required by sections 6068(o) and 6086.8(c) of the California Business and Professions Code, or by other legal authority;
- (I) submit a new application to register as a Registered Legal Aid Services Attorney before beginning employment with a new eligible legal aid



- organization ~~qualifying legal services provider~~; and
- (J) otherwise comply with the requirements of Rule 9.45 and these rules.

*Rule 3.362 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.363 Duties of employer

An employer who meets the requirements of Rule 9.45 for an eligible legal aid organization ~~qualifying legal services provider~~ must

- (A) ~~at all times meet the statutory requirements for a legal services project or be the recipient of a grant from the Legal Services Trust Fund;~~<sup>8</sup>
- (A ~~B~~) complete the Application for Approval as Eligible Legal Aid Organization ~~Qualifying Legal Services Provider~~ and be approved by the State Bar as an eligible ~~qualifying~~ employer;
- (B ~~C~~) ~~before employing a Registered Legal Services Attorney~~, complete a Declaration signed by the supervising attorney of the Eligible Legal Aid Organization ~~Qualifying Legal Services Provider~~, before employing a Registered Legal Aid Attorney, attesting that it
- a. is an eligible legal aid organization ~~qualifying legal services provider~~;
  - b. agrees to supervise the Registered Legal Aid ~~Services~~ Attorney (“attorney”) and otherwise comply with the requirements of Rule 9.45 and these rules;
  - c. deems the attorney, on the basis of reasonable inquiry, to be of good moral character;
  - d. agrees to notify the State Bar of California, in writing, within thirty days if
    - i. the attorney has terminated employment;
    - ii. the attorney is no longer eligible for employment as required by Rule 9.45 and these rules;
    - iii. the supervising attorney no longer meets the requirements of these rules;
    - iv. its status as an eligible legal aid organization ~~qualifying legal services provider~~ has changed; or
    - v. it has changed its office address; ~~and~~.

<sup>8</sup> ~~Business & Professions Code §§ 6213 and 6214(b)(3)(B).~~

- (D) ~~comply with State Bar quality control procedures for qualifying legal services providers.~~

*Rule 3.363 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

Rule 3.364 Suspension of a Registered Legal Aid Services Attorney registration

- (A) Registration as a Legal Aid Services Attorney is suspended
- (1) for failure to annually register as a Registered Legal Aid Services Attorney and submit any related fee and penalty set forth in the Schedule of Charges and Deadlines;
  - (2) for failure to comply with the Minimum Continuing Legal Education requirement of Rule of Court 9.45 and to pay any related fee and penalty set forth in the Schedule of Charges and Deadlines;
  - (3) upon transfer to inactive status, disciplinary action that affects the attorney's status of good standing, suspension, resignation, disbarment, or a functional equivalent in status in any jurisdiction where admitted to practice law;
  - (4) upon imposition of discipline for misconduct by a professional or occupational licensing authority; or
  - (5) for failure to otherwise comply with these rules or with the laws or standards of professional conduct applicable to a ~~member~~ licensee of the State Bar.
- (B) An attorney suspended under these rules is not permitted to practice law during the suspension. An attorney suspended for failure to comply with annual registration requirements may be reinstated upon compliance.
- (C) A notice of suspension is effective ten days from the date of receipt. Receipt is deemed to be five days from the date of mailing to a California address; ten days from the date of mailing to an address elsewhere in the United States; and twenty days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.
- (D) Appeal of a suspension is subject to the disciplinary procedures of the State Bar.

*Rule 3.364 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

Rule 3.365 Termination of Registration

Permission to practice law as a Registered Legal Aid Services Attorney terminates

- (A) upon failure to meet the eligibility requirements of Rule 9.45 or these rules;
- (B) as required by Rule 9.45 or these rules;
- (C) upon admission to the State Bar;
- (D) upon repeal of Rule 9.45 or termination of the Registered Legal Aid ~~Services~~ Attorney program; or
- (E) upon request.

*Rule 3.365 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.366 Reinstatement after termination

An attorney terminated as a Registered Legal Aid ~~Services~~ Attorney who seeks reinstatement must meet all eligibility and application requirements of these rules.

*Rule 3.366 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

#### Rule 3.367 Public information

State Bar records for attorneys permitted to practice law as Registered Legal Aid ~~Services~~ Attorneys are public to the same extent as ~~member~~ records of licensed attorneys.

*Rule 3.367 adopted effective July 1, 2010; amended effective \_\_\_\_\_, 2018.*

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## Rule 9.45. Registered legal aid services attorneys [7/5/2018 Draft]

### (a) Definitions

The following definitions apply in this rule:

- (1) ~~"Qualifying legal services provider" means either of the following, provided that the qualifying legal services provider follows quality control procedures approved by the State Bar of California:~~

"Eligible legal aid organization" means any of the following:

- (A) ~~A nonprofit entity incorporated and operated exclusively in California that as its primary purpose and function provides legal services without charge in civil matters to indigent persons, especially underserved client groups, such as the elderly, persons with disabilities, juveniles, and non-English-speaking persons; or~~

A nonprofit entity in good standing in California and in the state in which it is incorporated, if other than California, that provides legal aid in civil matters, including family law and immigration law, to indigent and disenfranchised persons, especially underserved client groups, such as the elderly, persons with disabilities, people of color, juveniles, and non-English-speaking persons; or

- (B) ~~A program operated exclusively in California by a nonprofit law school approved by the American Bar Association or accredited by the State Bar of California that has operated for at least two years at a cost of at least \$20,000 per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.~~

A nonprofit law school approved by the American Bar Association located in California or accredited by the State Bar of California that provides legal aid as described above in subdivision (A).

- (C) Entities that receive IOLTA funds pursuant to Business and Professions Code, section 6210, et seq., are deemed to be eligible legal aid organizations.

- (2) ~~"Active member licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who:~~

- (A) ~~Is a member licensee in good standing of the entity governing the practice of law in each jurisdiction in which the member attorney is licensed to practice law, who has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law for disciplinary misconduct in any other jurisdiction; and~~

- (B) ~~Remains an active member licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered legal aid services attorney in California; and~~

- (C) ~~Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.~~

*(Subd (a) relettered effective January 1, 2007; adopted as subd (j) effective November 15, 2004; amended effective 2018.)*

### (b) Scope of practice

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule may practice law in California only while working, with or without pay, at an eligible legal aid organization ~~a qualifying legal services provider~~, as defined in this rule, and, at that institution and only on behalf of its clients or customers, may engage, under supervision, in all forms of legal practice that are permissible for a ~~member licensee~~ of the State Bar of California.

*(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective November 15, 2004; amended effective , 2018.)*

### **(c) Requirements**

For an attorney to practice law under this rule, the attorney must:

- (1) Be an active ~~member~~ licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;
- (2) Register with the State Bar of California and file an Application for Determination of Moral Character;
- (3) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;
- (4) Comply with the rules adopted by the Board of ~~Trustees~~ Governors relating to the State Bar Registered Legal Aid ~~Services~~ Attorney Program;
- ~~(5) Practice law exclusively for a single qualifying legal services provider, except that, if so qualified, an attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel;~~
- ~~(5)~~ (6) Practice law under the supervision of an attorney who is employed by the eligible legal aid organization ~~qualifying legal services provider~~ and who is a member licensee in good standing of the State Bar of California;
- ~~(6)~~ (7) Abide by all of the laws and rules that govern ~~members~~ licensees of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;
- ~~(7)~~ (8) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that ~~members licensees~~ of the State Bar of California must complete every three years, and, thereafter, satisfy the MCLE requirements for the registered legal aid attorney's compliance group as set forth in State Bar Rules 2.70 and 2.71. If the registered legal aid attorney's compliance group is required to report in less than thirty-six months, the MCLE requirements will be reduced proportionally; and
- ~~(8)~~ (9) Not have taken and failed the California bar examination within five years immediately preceding initial application to register under this rule.

*(Subd (c) relettered effective January 1, 2007; adopted as subd (b) effective November 15, 2004; amended and renumbered effective , 2018.)*

### **(d) Application**

To qualify to practice law as a registered legal aid ~~services~~ attorney at one or more eligible legal aid organizations, the attorney must:

- (1) Register as a legal aid attorney; submit a separate application for each eligible legal aid organization; register as an attorney applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners; and comply with Rules of Court, rule 9.9.5, governing attorney fingerprinting;
- (2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision of an attorney at an eligible legal aid organization ~~a qualifying legal services provider~~ during the time he or she practices law as a

registered legal aid services attorney in California, ~~except that, if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel;~~ and

- (3) Submit to the State Bar of California a declaration signed by a qualifying supervisor ~~on behalf of the qualifying legal services provider~~ from each eligible legal aid organization in California. The declaration must attest:

(i) that the applicant will work, with or without pay, as an attorney for the organization;

(ii) that the applicant will be supervised as specified in this rule; and

(iii) that the eligible legal aid organization ~~qualifying legal services provider~~ and the supervising attorney assume professional responsibility for any work performed by the applicant under this rule;

(iv) that the organization will notify the State Bar of California within 30 days of the cessation of the applicant's employment in California; and

(v) that the person signing the declaration believes, to the best of his or her knowledge after reasonable inquiry, that the applicant qualifies for registration under this rule and is an individual of good moral character.

*(Subd (d) relettered effective January 1, 2007; adopted as subd (c) effective November 15, 2004; amended effective . 2018.)*

#### **(e) Duration of practice**

An registered legal aid attorney must renew his or her registration annually and may practice for no more than a total of ~~three~~ five years under this rule.

*(Subd (e) relettered effective January 1, 2007; adopted as subd (d) effective November 15, 2004; amended effective . 2018.)*

#### **(f) Application and registration fees**

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered legal aid services attorneys.

*(Subd (f) amended and relettered effective January 1, 2007; adopted as subd (e) effective November 15, 2004; amended effective . 2018.)*

#### **(g) State Bar Registered Legal Aid Services Attorney Program**

The State Bar may establish and administer a program for registering California legal aid services attorneys under rules adopted by the Board of Trustees ~~Governors~~ of the State Bar.

*(Subd (g) relettered effective January 1, 2007; adopted as subd (f) effective November 15, 2004; amended effective . 2018.)*

#### **(h) Supervision**

To meet the requirements of this rule, an attorney supervising a registered legal aid services attorney:

- (1) ~~Must be an active member in good standing of the State Bar of California~~ Must have practiced law as a full-time occupation for at least four years in any United States jurisdiction;
- (2) Must have actively practiced law in California for at least two years immediately preceding the time of supervision and been a member licensee in good standing of the State Bar of California for at least the two years immediately preceding the time of supervision;

- ~~(3) Must have practiced law as a full-time occupation for at least four years;~~
- ~~(4) Must not supervise more than two registered legal services attorneys concurrently;~~
- (3 ~~5~~) Must assume professional responsibility for any work that the registered legal aid services attorney performs under the supervising attorney's supervision;
- (4 ~~6~~) Must assist, counsel, and provide direct supervision of the registered legal aid services attorney in the activities authorized by this rule, approve in writing any appearance in court, deposition, arbitration or any proceeding by the registered legal aid attorney, and review such activities with the supervised registered legal aid attorney, to the extent required for the protection of the client or customer;
- (5 ~~7~~) Must read, approve, and personally sign any pleadings, briefs, or other similar documents prepared by the registered legal aid services attorney before their filing, and must read and approve any documents prepared by the registered legal aid services attorney ~~for execution by any person who is not a member of the State Bar of California~~ before their submission ~~for execution~~; and
- (6 ~~8~~) May, in his or her absence, designate another attorney meeting the requirements of (1) through (5) to provide the supervision required under this rule.

*(Subd (h) relettered effective January 1, 2007; adopted as subd (g) effective November 15, 2004; amended and renumbered effective , 2018.)*

**(i) Inherent power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (h) effective November 15, 2004.)*

**(j) Effect of rule on multijurisdictional practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not ~~members~~ licensees of the State Bar of California.

*(Subd (j) relettered effective January 1, 2007; adopted as subd (i) effective November 15, 2004.)*

*Rule 9.45 amended and renumbered effective January 1, 2007; adopted as rule 964 by the Supreme Court effective November 15, 2004.*

TITLE 3. PROGRAMS AND SERVICES [7/6/2018 Draft]

Adopted \_\_\_\_ 2018

DIVISION 3. NON-LICENSEE ATTORNEYS

Chapter 1. Multijurisdictional Practice

Article 1. Registered Military Spouse Attorney

Rule 3.350 Definitions

- (A) A “Registered Military Spouse Attorney” is an attorney who meets the eligibility requirements of Rule 9.41.1 of the California Rules of Court (“Rule 9.41.1”) and is registered by the State Bar as a Registered Military Spouse Attorney.
- (B) “Registered” means that the State Bar has issued a certificate of registration to an attorney it deems eligible to practice law as a Registered Military Spouse Attorney.

Rule 3.351 Application

- (A) To apply to register as a Registered Military Spouse Attorney, an attorney who meets the eligibility and employment requirements of Rule 9.41.1 must
  - (1) submit an Application for Registration<sup>1</sup> as an attorney applicant for admission to the State Bar of California with the fee set forth in the Schedule of Charges and Deadlines;<sup>2</sup>
  - (2) submit an Application for Registered Military Spouse Attorney<sup>3</sup> with the fee set forth in the Schedule of Charges and Deadlines;
  - (3) meet State Bar requirements for acceptable moral character;
  - (4) submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision of a California attorney during the time he or she practices law as a military spouse attorney in California; and
  - (5) submit a Declaration signed by the supervising attorney<sup>4</sup>.

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<sup>1</sup> See Rule 4.16(B).

<sup>2</sup> See Rule 4.3(B).

<sup>3</sup> See Rule of Court 9.41.1.

<sup>4</sup> See Rule of Court 9.41.1(a)(3)(F)



- (B) An application to practice law as a Registered Military Spouse Attorney may be denied for failure to comply with eligibility or application requirements or a material misrepresentation of fact.

#### Rule 3.352 Duties of Registered Military Spouse Attorney

An attorney employed as Registered Military Spouse Attorney must

- (A) annually renew registration as a Registered Military Spouse Attorney and submit the fee set forth in the Schedule of Charges and Deadlines;
- (B) practice for no more than a total of five years as a Registered Military Spouse Attorney;
- (C) meet the Minimum Continuing Legal Education (MCLE) requirements set forth in Rule 9.41.1;
- (D) report a change of supervising attorney in accordance with State Bar requirements;
- (E) use the title “Specially Registered Attorney” and no other in connection with activities performed as a Registered Military Spouse Attorney;
- (F) not imply or claim in any way to be a licensed attorney of the State Bar of California;
- (G) maintain with the State Bar an address of record that is the current California office address of the attorney’s employer and a current e-mail address;
- (H) report to the State Bar within thirty days:
  - (1) a change in status in any jurisdiction where admitted to practice law, such as transfer to inactive status, disciplinary action that affects the attorney’s status of good standing, suspension, resignation, disbarment, or a functional equivalent;
  - (2) termination of supervision by the supervising attorney; or
  - (3) any information required by the State Bar Act, such as that required by sections 6068(o) and 6086.8(c) of the California Business and Professions Code, or by other legal authority;

- (I) be supervised by a qualifying supervising attorney who meets the requirements of Rule 9.41.1.
- (J) submit a new application to register as a Registered Military Spouse Attorney before beginning employment with a new qualifying supervising attorney; and
- (K) otherwise comply with the requirements of Rule 9.41.1 and these rules.

#### Rule 3.353 Duties of supervising attorney

A qualifying supervising attorney who meets the requirements of Rule 9.41.1 must

- (A) complete the Application for Approval, and be approved by the State Bar, as a qualifying supervising attorney;
- (B) complete and sign a Declaration before supervising a Registered Military Spouse Attorney, attesting that he or she
  - a. is a qualified supervising attorney;
  - b. agrees to supervise Registered Military Spouse Attorney (“attorney”) and otherwise comply with the requirements of Rule 9.41.1 and these rules;
  - c. deems the attorney, on the basis of reasonable inquiry, to be of good moral character;
  - d. agrees to notify the State Bar of California, in writing, within thirty days if
    - i. the attorney has terminated employment;
    - ii. the attorney is no longer eligible for employment as required by Rule 9.41.1 and these rules;
    - iii. the supervising attorney no longer meets the requirements of these rules;
    - iv. its status as a qualifying supervising attorney has changed; or
    - v. it has changed its office address.

#### Rule 3.354 Suspension of a Registered Military Spouse Attorney

- (A) Registration as a Registered Military Spouse Attorney is suspended
  - (1) for failure to annually register as a Registered Military Spouse Attorney and submit any related fee and penalty set forth in the Schedule of Charges and Deadlines;

- (2) for failure to comply with the Minimum Continuing Legal Education requirement of Rule of Court 9.41.1 or to pay any related fee and penalty set forth in the Schedule of Charges and Deadlines;
  - (3) upon transfer to inactive status, disciplinary action that affects the attorney's status of good standing, suspension, resignation, disbarment, or a functional equivalent in status in any jurisdiction where admitted to practice law;
  - (4) upon imposition of discipline for misconduct by a professional or occupational licensing authority; or
  - (5) for failure to otherwise comply with these rules or with the laws or standards of professional conduct applicable to a licensee of the State Bar.
- (B) An attorney suspended under these rules is not permitted to practice law during the suspension. An attorney suspended for failure to comply with annual registration requirements may be reinstated upon compliance.
- (C) A notice of suspension is effective ten days from the date of receipt. Receipt is deemed to be five days from the date of mailing to a California address; ten days from the date of mailing to an address elsewhere in the United States; and twenty days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.
- (D) Appeal of a suspension is subject to the disciplinary procedures of the State Bar.

#### Rule 3.355 Termination of Registration

##### Permission to practice law as a Registered Military Spouse Attorney terminates

- (A) upon failure to meet the eligibility requirements of Rule 9.41.1 or these rules;
- (B) as required by Rule 9.41.1 or these rules;
- (C) upon admission to the State Bar of California;
- (D) upon repeal of Rule 9.41.1 or termination of the Registered Military Spouse Attorney program; or
- (E) upon request.

#### Rule 3.356 Reinstatement after termination

An attorney terminated as a Registered Military Spouse Attorney who seeks reinstatement must meet all eligibility and application requirements of these rules.

Rule 3.357 Public information

State Bar records for attorneys permitted to practice law as Registered Military Spouse Attorney are public to the same extent as licensed attorney records.

Rules 3.550-3.357 adopted effective \_\_\_\_\_, 2018.

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## **Rule 9.41.1. Registered Military Spouse Attorney [7/5/2018 Draft]**

### **(a) Registered Military Spouse Attorney**

The following definitions apply in this rule:

#### **(1) Definitions**

- (A) "Military Spouse Attorney" means an active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency and who is married to, in a civil union with, or a registered domestic partner of, a Service Member.
- (B) "Service Member" means an active duty member of the United States Uniformed Services who has been ordered stationed within California.
- (C) "Active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who:
  - (i) Is a licensee in good standing of the entity governing the practice of law in each jurisdiction in which the attorney is licensed to practice law, who has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law for disciplinary misconduct in any other jurisdiction; and;
  - (ii) Remains an active licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered military spouse attorney in California.

#### **(2) Scope of Practice**

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is permitted to practice law in California, under supervision, in all forms of legal practice that are permissible for a licensed attorney of the State Bar of California, including pro bono legal services.

#### **(3) Requirements**

For an attorney to practice law under this rule, the attorney must:

- (A) Be an active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;
- (B) Be married to, be in a civil union with, or be a registered domestic partner of, a Service Member;
- (C) Register as an attorney applicant with the State Bar of California and file an Application for Determination of Moral Character;
- (D) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (i) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (ii) May practice law while awaiting the result of his or her Application for Determination of Moral Character from the Committee of Bar Examiners.
- (E) Comply with the rules adopted by the Board of Trustees relating to the State Bar Registered Military Spouse Attorney Program;
- (F) Practice law under the supervision of an attorney who is an active licensee in good standing of the State Bar of California who has been admitted to the practice of law for two years or more;
- (G) Abide by all of the laws and rules that govern licensees of the State Bar of California, including the Minimum Continuing Legal Education ("MCLE") requirements;

- (H) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that licensees of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements for the registered military spouse attorney's compliance group as set forth in State Bar Rules 2.70 and 2.71. If the registered military spouse attorney's compliance group is required to report in less than thirty-six months, the MCLE requirements will be reduced proportionally ; and
- (I) Not have taken and failed the California bar examination within five years immediately preceding initial application to register under this rule.

#### **(4) Application**

To qualify to practice law as a registered military spouse attorney, the attorney must:

- (A) Register as an attorney applicant, file an Application for Determination of Moral Character with the Committee of Bar Examiners, and comply with Rules of Court, rule 9.9.5, governing attorney fingerprinting;
- (B) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision of a California attorney during the time he or she practices law as a military spouse attorney in California; and
- (C) Submit to the State Bar of California a declaration signed by a qualifying supervising attorney. The declaration must attest:
  - (i) that the applicant will be supervised as specified in this rule; and
  - (ii) that the supervising attorney assumes professional responsibility for any work performed by the registered military spouse attorney under this rule.

#### **(5) Application and Registration Fees**

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered military spouse attorney.

#### **(6) State Bar Registered Military Spouse Attorney Program**

The State Bar may establish and administer a program for registering registered military spouse attorney under rules adopted by the Board of Trustees of the State Bar.

#### **(7) Supervision**

To meet the requirements of this rule, an attorney supervising a registered military spouse attorney:

- (A) Must have practiced law as a full-time occupation for at least four years in any United States jurisdiction;
- (B) Must have actively practiced law in California for at least two years immediately preceding the time of supervision and be a licensee in good standing of the State Bar of California;
- (C) Must assume professional responsibility for any work that the registered military spouse attorney performs under the supervising attorney's supervision;
- (D) Must assist, counsel, and provide direct supervision of the registered military spouse attorney in the activities authorized by this rule, approve in writing any appearance in court, deposition, arbitration or any proceeding by the registered military spouse attorney, and review such activities with the supervised military spouse attorney, to the extent required for the protection of the client or customer;
- (E) Must read, approve, and personally sign any pleadings, briefs, or other similar documents prepared by the registered military spouse attorney before their filing, and must read and approve any documents prepared by the registered military spouse attorney before their submission to any other party;
- (F) Must agree to assume control of the work of the registered military spouse attorney in the event the registration

of the military spouse attorney is terminated, in accordance with applicable laws; and

(G) May, in his or her absence, designate another attorney meeting the requirements of (A) through (F) to provide the supervision required under this rule.

#### **(8) Duration of Practice**

A registered military spouse attorney must renew his or her registration annually and may practice for no more than a total of five years under this rule.

#### **(9) Termination of Military Spouse Attorney Registration**

(A) Registration as a registered military spouse attorney is terminated

- (i) upon receipt of a determination by the Committee of Bar Examiners that the registered military spouse attorney is not of good moral character;
- (ii) for failure to annually register as a registered military spouse attorney and submit any related fee set by the State Bar;
- (iii) for failure to comply with the Minimum Continuing Legal Education requirements and to pay any related fee set by the State Bar;
- (iv) if the registered military spouse attorney no longer meets the requirements under (a)(1)(D) of this section;
- (v) upon the imposition of any discipline by the State Bar of California or any other professional or occupational licensing authority, including administrative or stayed suspension;
- (vi) for failure to otherwise comply with these rules or with the laws or standards of professional conduct applicable to a licensee of the State Bar of California;
- (vii) if the Service Member is no longer an active member of the United States Uniformed Services or is transferred to another state, jurisdiction, territory outside of California, except that if the Service Member has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the Service Member is assigned to a location with dependents authorized; or
- (viii) if the registered military spouse attorney's marriage, civil union, or registered domestic partnership is dissolved.

(B) The supervising attorney of registered military spouse attorney suspended by these rules will assume the work of the registered military spouse attorney in accordance with applicable laws.

#### **(10) Inherent Power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

#### **(11) Effect of Rule on Multijurisdictional Practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not licensees of the State Bar of California.

Adopted as rule 9.41.1 by the Supreme Court effective , 2018.