



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

54-123 NOVEMBER 2019

REGULATION AND DISCIPLINE COMMITTEE III.D

DATE: November 14, 2019

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Donna Hershkowitz, Chief of Programs

SUBJECT: Voluntary Resignation Form Revision; Request for Approval

EXECUTIVE SUMMARY

This agenda item presents revisions to the Voluntary Resignation form that must be completed by a licensee who wishes to resign without charges pending. The revisions clarify the declarations the resigning person must make regarding his or her practice of law activities while the request for voluntary resignation is pending and after that status is granted. The purpose of the changes is to address situations where an attorney licensed in another jurisdiction may lawfully continue to practice law in and outside of California. This agenda item seeks the recommendation of the Regulation and Discipline Committee (RAD) that the Board of Trustees (Board) adopt these necessary revisions to the Voluntary Resignation form.

BACKGROUND

If an active licensee wishes to tender a voluntary resignation from the State Bar, the licensee must comply with [Rule 2.45](#) of the Rules of the State Bar. That rule provides, in part, that a licensee “must complete and execute, under penalty of perjury, the Voluntary Resignation Form approved by the Board of Trustees.” The current version of the Board approved form provides, in part, that the licensee must declare under penalty of perjury that:

I currently have no clients nor am I involved in any pending legal matters. I have no paperwork, files or property to which clients are entitled, nor have I any client fees that

are unearned and that must be refunded. I will not practice law in California in the future without seeking and obtaining readmission.

DISCUSSION

A lawyer who is an active licensee in California and in another state inquired about the voluntary resignation process and raised the general issue of the relationship of these declarations to practice of law activities that are performed in California but would not constitute the unlawful practice of law if performed by a resigned California licensee who continues to maintain active status in another state. Staff believes that clarifying revisions should be made to the Voluntary Resignation form. Other issues arise with even without the layer of having a federal practice that does not require California licensure.

A few examples help illustrate the problem. An attorney barred in another state and who continues to legally practice in that state cannot, under penalty of perjury, declare that “I currently have no clients nor am I involved in any pending legal matters. I have no paperwork, files or property to which clients are entitled.” They may have clients and pending matters in that other state. But the statement on the form is unqualified, and attorneys who wish to resign are instructed that this form is not to be altered.

Another example would be a situation where a person is licensed in more than one state, e.g., in California and New York, and is practicing federal law in both states as an admitted member of the United States Patent & Trademark Bar. If this dual licensee resigns from the State Bar of California but remains an active member in New York, then it appears that continued practice of law in California that is limited to federal patent law would not constitute the unlawful practice of law under case law applying the doctrine of federal preemption to state law restrictions on federal practice of law activities. (See *Augustine v. Department of Veterans Affairs* (Fed.Cir. 2005) 429 F.3d 1334, 1338 - 1339.)

However, in order to comply with California Rule of Court 2.45 in seeking resignation in California, the lawyer would be required to declare that the person has no client files and will not practice law in California after resignation is granted without first obtaining readmission. Arguably, in both these examples, by having signed this required declaration, the lawyer would be subject to allegations of having made a false or misleading statement and might be concerned about being subject to perjury allegations.

To address these issues, staff requests that the Board approve a revised form with amendments clarifying the form’s references to: (1) continuing possession of client files, property, and advanced fees; and (2) practice of law activities during and after resignation. The revisions would make clear that these references pertain only to activities that would constitute the unauthorized practice of law and are not intended to restrict practice of law activities that a resigning person might lawfully perform in another jurisdiction or in California as permitted, for example, under federal law.

In addition, nonsubstantive revisions and stylistic changes have been made to the form, including substituting the term “licensee” for “member.”

Request to the Supreme Court

Because, among other things, any Voluntary Resignation form submitted by a California licensed attorney must be accepted by Supreme Court to permit the attorney to resign, Supreme Court staff was apprised of the proposed change and the rationale for it. The State Bar has been informed that the Court has no objections to the proposed change.

A clean version of the proposed revised form is provided as Attachment A. A redline strikeout version is provided as Attachment B. The full text of rule 2.45 of the Rules of the State Bar is provided as Attachment C.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the revisions and hereby adopts the revised Voluntary Resignation form as set forth in Attachment A, effective upon adoption.

ATTACHMENT(S) LIST

- A.** Revised Voluntary Resignation Form – Clean Version
- B.** Revised Voluntary Resignation Form – Redline/Strikeout Version
- C.** Rule 2.45 of the Rules of the State Bar

VOLUNTARY RESIGNATION FORM – CLEAN VERSION**VOLUNTARY RESIGNATION**

I, _____, a licensee of THE STATE BAR OF CALIFORNIA
(Bar No.: _____), having been admitted to practice in the State of California on the ____ day of _____,
_____, do hereby tender my resignation as a licensee of said State Bar
and relinquish my law license issued by the California Supreme Court. (Rules of the State Bar, rule 2.45.)

In tendering this voluntary resignation, I hereby declare that:

1. I am not currently suspended from the practice of law as a result of the imposition of discipline by the California Supreme Court, nor subject to (a) a period of disciplinary probation; (b) conditions attached to a public or private reproof; or (c) the terms of an agreement in lieu of discipline with the Office of Chief Trial Counsel.
2. To my knowledge, I am not currently the subject of any disciplinary complaint, investigation or proceeding by a professional licensing agency in California or other jurisdiction.
3. I am not currently charged with the commission of any felony or misdemeanor and have no knowledge that I am the subject of a current criminal investigation or grand jury proceeding for the alleged commission of a felony or misdemeanor in any jurisdiction.
4. I have not been convicted of any crime for which I have failed to notify the State Bar pursuant to Business and Professions Code section 6068(o)(5).
5. Unless otherwise authorized by law: (i) I currently have no clients nor am I involved in any pending legal matters; and (ii) I have no paperwork, files or property to which clients are entitled, nor have I any client fees that are unearned and that must be refunded.
6. Future communications may be directed to me at the following address. [Please note that if this is not your current address on your official State Bar licensee records, execution of this declaration will change your address for such purpose. See Bus. & Prof. Code § 6002.1, subd. (b).]

I agree that upon tendering this resignation to The State Bar of California I will be ineligible to practice law or to advertise or hold myself out as practicing or entitled to practice law in California, unless such conduct is otherwise authorized by law and does not constitute the unlawful practice of law in California. I further acknowledge that my resignation from The State Bar of California is not effective unless and until it is accepted by the California Supreme Court.

I understand that any false statement made by me in tendering this resignation may result in an order denying or vacating my resignation, that it constitutes a cause for disbarment or suspension and that it may be punished as a contempt or a crime.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 20____ at _____
City, State

Signature

VOLUNTARY RESIGNATION FORM – REDLINE/STRIKEOUT VERSION SHOWING
CHANGES TO THE CURRENT FORM

VOLUNTARY RESIGNATION

I, _____, a ~~member~~ licensee of THE STATE BAR OF CALIFORNIA (Bar No.: _____), having been admitted to practice in the State of California on the _____ day of _____, _____, do hereby tender my resignation as a ~~member~~ licensee of said State Bar and relinquish ~~the right to practice law in the State of California~~ my law license issued by the California Supreme Court. (Rules of the State Bar, rule 2.45.)

In tendering this voluntary resignation, I hereby declare that:

1. I am not currently suspended from the practice of law as a result of the imposition of discipline by the California Supreme Court, nor subject to (a) a period of disciplinary probation; (b) conditions attached to a public or private reproof; or (c) the terms of an agreement in lieu of discipline with the Office of ~~the~~ Chief Trial Counsel.
2. To my knowledge, I am not currently the subject of any disciplinary complaint, investigation or proceeding by a professional licensing agency in California or other jurisdiction.
3. I am not currently charged with the commission of any felony or misdemeanor and have no knowledge that I am the subject of a current criminal investigation or grand jury proceeding for the alleged commission of a felony or misdemeanor in any jurisdiction.
4. I have not been convicted of any crime for which I have failed to notify the State Bar pursuant to Business and Professions Code section 6068(o)(5).
5. Unless otherwise authorized by law: (i) I currently have no clients nor am I involved in any pending legal matters; and (ii) I have no paperwork, files or property to which clients are entitled, nor have I any client fees that are unearned and that must be refunded. ~~I will not practice law in California in the future without seeking and obtaining readmission.~~
6. Future communications may be directed to me at the following address. [Please note that if this is not your current address on your official State Bar ~~membership~~ licensee records, execution of this declaration will change your address for such purpose. See Bus. & Prof. Code § 6002.1, subd. (b).]

I agree that, upon tendering this resignation to The State Bar of California, I will be ~~transferred to inactive membership of the State Bar and that, upon such transfer, I will be~~ ineligible to practice law or to advertise or hold myself out as practicing or entitled to practice law in California, unless such conduct is otherwise authorized by law and does not constitute the unlawful practice of law in California. I further acknowledge that my resignation from The State Bar of California is not effective unless and until it is accepted by the California Supreme Court.

I understand that any false statement made by me in tendering this resignation may result in an order denying or vacating my resignation, that it constitutes a cause for disbarment or suspension and that it may be punished as a contempt or a crime.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 20____ at _____
City, State

Signature

RULE 2.45 OF THE RULES OF THE STATE BAR

Rule 2.45 Voluntary resignation

(A) A licensee may tender a voluntary resignation from the State Bar of California if:

- (1) the licensee is not
 - (a) currently suspended from the practice of law as a result of the imposition of discipline by the California Supreme Court;
 - (b) currently subject to a period of probation or to conditions attached to a public or private reproof pursuant to discipline imposed by the State Bar Court or the California Supreme Court; or
 - (c) currently subject to the terms of an agreement in lieu of discipline that the licensee has entered into with the Office of the Chief Trial Counsel;
- (2) the licensee does not currently have a disciplinary complaint, investigation or proceeding pending against him or her with any professional licensing agency in California or another jurisdiction;
- (3) the licensee is neither currently charged with the commission of a felony or misdemeanor nor aware that he or she is the subject of a current criminal investigation or grand jury proceeding for the alleged commission of a felony or misdemeanor; and
- (4) the licensee
 - (a) has never been convicted of a felony or misdemeanor listed in Business and Professions Code section 6068(o)(5);
 - (b) has been convicted of a felony or misdemeanor listed in Business and Professions Code section 6068(o)(5) and has been disciplined as a result of the conviction; or
 - (c) has been convicted of a felony or misdemeanor listed in Business and Professions Code section 6068(o)(5) but the related disciplinary proceeding was dismissed without the imposition of discipline.

(B) A licensee who is eligible to tender his or her voluntary resignation pursuant to subsection (A) of this rule must complete and execute, under penalty of perjury, the voluntary resignation form approved by the Board of Trustees and submit the original of the form to the State Bar's Office of Attorney Regulation & Consumer Resources.

- (C) Upon tendering his or her voluntary resignation and until the California Supreme Court accepts or rejects the resignation, the licensee is immediately enrolled as an inactive licensee of the State Bar of California and is ineligible to practice law or claim in any way to be entitled to practice law.
- (D) A licensee's voluntary resignation is effective only when it is accepted by the California Supreme Court.
- (E) A false statement made by a licensee in tendering his or her voluntary resignation under this rule
 - (1) may result in an order of the Supreme Court denying or vacating the licensee's resignation;
 - (2) constitutes cause for disbarment or suspension; and
 - (3) may be punished as contempt or as a crime.

Rule 2.45 adopted as Rule 2.37 effective April 1, 2009; amended effective May 15, 2009; amended effective January 1, 2012; renumbered as Rule 2.45 effective January 17, 2014; amended effective January 25, 2019.