



The State Bar of California

OPEN SESSION AGENDA ITEM JANUARY 2021 BOARD EXECUTIVE COMMITTEE III.B

DATE: January 8, 2021

TO: Members, Board Executive Committee

FROM: Hailyn Chen, Chair, Provisional Licensure Working Group
Donna S. Hershkowitz, Interim Executive Director

SUBJECT: Proposed Rule of Court 9.49.1 Related to Provisional Licensure: Return from Public Comment and Request for Approval to Recommend to the Supreme Court

EXECUTIVE SUMMARY

This agenda item seeks approval by the Board of Trustees of a rule of court to expand the recently adopted Provisional Licensure Program (PLP) to individuals, regardless of year of graduation from law school, who scored 1390 or higher on a bar exam from July 2015 through February 2020. The proposed rule of court would allow these Provisionally Licensed Lawyers (PLLs), upon completion of 360 to 600 hours of supervised legal practice and submission of a positive evaluation by an eligible supervising lawyer, to be admitted to the State Bar without taking another bar exam (See Attachment A). The proposed rule also recommends clarifying that a “supervising lawyer” may be a judge in the California judicial branch (See Attachments B and C). The proposal incorporates revisions to the rule made by the working group on December 29, 2020, following a 15-day public comment period. The agenda item also recommends that the Board direct staff to submit the rule to the Supreme Court for adoption.

BACKGROUND

On July 16, 2020, the California Supreme Court directed the State Bar of California “to implement, as soon as possible, a temporary supervised provisional licensure program—a limited license to practice specified areas of law under the supervision of a licensed attorney.”

The letter clarified that the provisional licensure program shall continue at least through June 1, 2022, and is available for all 2020 graduates of California-based law schools (whether ABA- approved, California accredited, or unaccredited) or 2020 graduates of law schools outside of California if such graduates are permitted to sit for the bar exam under California law.

Also on July 16, 2020, the Board delegated authority to Trustee Hailyn Chen to take the lead on implementation efforts regarding a provisional licensure program as directed by the Supreme Court. Ms. Chen was delegated the authority to appoint a working group and to take other steps necessary to implement the direction of the Supreme Court.

On September 24, the Board of Trustees approved the language of proposed Rule 9.49, implementing the Provisional Licensure Program, and directed staff to transmit a request to the Supreme Court for adoption of the rule.

On September 24, the Board also directed the Provisional Licensure Working Group to reconvene to further discuss whether to recommend extending Provisional Licensure to individuals who previously scored 1390 or greater on the bar exam, and if so, whether to recommend granting these individuals admission to the State Bar following the successful completion of a defined number of hours of supervision as a Provisionally Licensed Lawyer.

On October 22, the Supreme Court approved Rule 9.49 for adoption, with an effective date of November 17. The State Bar successfully launched the program on November 17.

The Provisional Licensure Working Group met on October 14 and November 20 to develop proposed Rule 9.49.1.¹

On November 20, the Provisional Licensure Working Group recommended sending out for public comment proposed rule 9.49.1, expanding the PLP to individuals who scored 1390 or higher on any bar exam administered between July 2015 and February 2020, and allowing this cohort entry to the State Bar following satisfactory completion of a defined number of hours of supervised legal practice in the PLP. The working group developed two options for the number of required hours of supervised legal practice, with the stated intent of forwarding both to the Board of Trustees and the Supreme Court for consideration.

Following a 15-day public comment period, the Provisional Licensure Working Group met on December 29 and made minor changes to proposed rule 9.49.1 and to the previously adopted Rule 9.49 in response to the public comment received.²

¹ The agenda item for the October 14 meeting can be found here: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000026608.pdf>. No agenda item was presented for the November 20, 2020 meeting; however the working group was provided a chart with the supervision requirements in other states, and a draft rule as a discussion document. Those items can be found here: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000026774.pdf>.

² The agenda item describing the comments received, and including a comment chart reflecting all 507 comments can be found here: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000026989.pdf>

DISCUSSION

When the working group reconvened in October following the Board's approval of Rule 9.49 of the California Rules of Court, it had two primary questions before it: (1) whether to extend eligibility for the PLP beyond 2020 graduates, to also include those who had scored between 1390 and 1439 on the bar exam, and if so, how recently that score must have been achieved; and (2) whether this group of PLLs should be permitted entry to the State Bar following completion of a specified number of hours of supervised legal practice without taking a subsequent bar exam, and if so, how many supervised hours would be required.

EXTENDING ELIGIBILITY TO THE PLP TO INDIVIDUALS SCORING 1390 OR HIGHER ON THE BAR EXAM

During the 15-day public comment period for the rule creating the PLP, 50 of the 192 written comments received suggested changes to the rule's limitation to 2020 law graduates or those who first became eligible to sit for the bar exam in 2020. Some suggested all attorney applicants should be eligible, and others suggested that all applicants who timely registered for the October bar exam should be eligible. Some suggested a narrow expansion, others a broad expansion. Finally, some commented that, in light of the Supreme Court's decision in July and August 2020 to reduce the pass score to 1390, but not apply that new score to scores received on past exams, the PLP should be open to those who achieved a 1390 or higher on a past exam. When it reconvened in October 2020 to consider an expanded rule, the working group quickly agreed that individuals scoring 1390 or higher should be eligible for the PLP, and moved on the question of how recently that score must have been achieved. In exploring this question, the working group discussed three options: (1) scoring a 1390 or higher on the February 2020 bar exam; (2) scoring a 1390 or higher on the July 2017 or later bar exam; or (3) scoring a 1390 or higher on the July 2015 or later bar exam.

THE FEBRUARY 2020 BAR EXAM

Commenters recommending eligibility for those scoring 1390 or higher on the February 2020 bar exam tended to note that in its July 16 letter, the Supreme Court commented that

[T]he changing circumstances surrounding the ongoing COVID-19 pandemic in California, and throughout the country, have had an unprecedented impact on professional licensure testing for graduates seeking admission to many professions, including not only law, but medicine, nursing, architecture, and engineering. The Court understands that many law school graduates are being substantially affected by the resulting disruption. Some graduates have lost job offers. Many are about to lose health insurance, cannot find a job to pay bills, or are in fear of deportation if they cannot enter the State Bar in time to retain job

offers. Many more have student loan payments that become due in mid-November, but without a law license and the ability to work, they fear going into default.

To the extent the reduction in the pass line from 1440 to 1390 is attributable to this rationale, these commenters noted, those who took the February 2020 exam are dealing with the same circumstances, the threat of COVID-19 was already present by the end of February 2020, and because the Court determined that it will not apply the change to the passing score retroactively, they should have the benefit of the provisional licensure program. In directing the creation of the provisional licensure program, the Court also noted that it

recognizes that postponement of the bar examination may impact employment prospects, delay incomes, and otherwise impair the livelihoods of persons who recently have graduated from law school. Moreover, the Court recognizes 2020 graduates may not be in a position to study and prepare for a fall bar 2020 examination. Therefore, in order to mitigate these hardships faced by graduates while fulfilling the responsibility to protect the public by ensuring that persons engaged in the practice of law are minimally competent to do so, the Court directs the State Bar to implement, as soon as possible, a temporary supervised provisional licensure program. ...

Staff notes, however, that in its decision to lower the pass score to 1390, the Court, in the same letter, did not appear to rely on these factors for its decision, stating that

in consideration of the fact that California is one of two states with the highest pass score for its minimum competency exam, and based on findings from recently completed bar examination studies as well as data from ongoing studies, the Court directs the State Bar to modify the pass score for the California Bar Examination to allow for a minimum passing score of 1390, which is approximately two standard errors below the median recommended cut score of 1439 from the 2017 Standard Setting Study.

The Court later clarified that this reduction will not be applied retroactively.

THE JULY 2017 BAR EXAM

The working group focused most of its attention on the July 2017 or July 2015 bar exam. Commenters recommending eligibility for those scoring 1390 or higher as far back as the July 2017 exam generally pointed to the State Bar's study of the passing line in 2017, pursuant to which the Board of Trustees recommended to the Supreme Court in September 2017 (in time for application to the results of the July 2017 exam), the following options: (a) no change to the cut score; (b) reduce the cut score to 1414; or (c) reduce the cut score to 1390. In offering those options, the Board relied on the conclusions of its study that "while 1439 is the best estimate of the 'true' cut score . . . one could select a value anywhere within the range from 1388 to 1504

and still have 95-percent confidence that the ‘true’ cut score is within this range.³ In other words, the State Bar provided to the Court justification supporting a reduction in the pass score to 1390 at that time.

THE JULY 2015 BAR EXAM

Proponents of eligibility for those who scored 1390 or higher on any bar exam since July 2015 point to Rule 4.17 of the State Bar Rules, which provides applicants a five-year window from the last day of the administration of the bar exam to complete the requirements for admission to the State Bar. These commenters argued that this rule renders the score on the exam valid for five years. As a result, those who scored 1390 on an exam up to five years prior should be eligible. This is consistent with the recommendation of the California State Assembly, reflected in House Resolution 103 (Stone) of the 2019-2020 legislative session, that the change to the cut score be made retroactive to the July 2015 bar exam.⁴

Some members of the working group were leaning toward the July 2017 date, and others the July 2015 date. A vote was taken on both options independently to see if there were sufficient votes for each. Both motions passed. Having sufficient votes for making the program eligible for those who scored 1390 or higher on a bar exam from July 2015 through February 2020, the working group proceeded with that option.

PATHWAY TO LICENSURE

The working group next turned to the question of whether this new cohort would not only be eligible for the PLP, but also, upon a completion of a specified number of hours of supervised legal practice, be eligible for admission to the State Bar of California without taking another bar exam. The working group quickly answered yes to this question, convinced by the public commenters who argued for retroactivity of the cut score reduction or allowing a pathway to licensure for those who met the new cut score in a prior administration of the exam. The working group next had to consider how many hours of supervised legal practice should be required.

The District of Columbia, Louisiana, Oregon, Utah, and Washington all enacted rules granting admission with a bar exam during 2020. The District of Columbia program applies to individuals

³ The agenda item and the staff summary presented to the Board of Trustees in September 2017 discussing this change to the pass line may be accessed here: <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000019981.pdf> and <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000019982.pdf>. The complete submission to the Board of Trustees is available at: <http://board.calbar.ca.gov/Agenda.aspx?id=13540&tid=0&show=100015119&s=true#10022989>

⁴ HR 103 (Stone) may be accessed here: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200HR103

who: graduated in 2019 or 2020 from an ABA law school, timely completed an application to take a bar exam in 2020, and who had not previously sat for a bar exam. The program requires three years of supervision before becoming fully licensed. The Utah program applies to those who: graduated by June 30, 2020, from an ABA law school with a first time bar taker pass rate in 2019 of at least 86 percent, and had not taken a bar exam, but had applied for the July Bar exam by the date the order creating this program became effective (April 20, 2020). Upon completion of 360 hours of supervised practice by December 31, 2020, and a statement from the supervisor attesting to the veracity of the candidate's record of hours completed, the individual could become fully licensed. Oregon and Washington did not require any supervised hours prior to admission to their bars, though limited their diploma privilege to recent graduates or those who registered for fall 2020 exam, or those from ABA law schools with a certain bar pass rate, or some combination thereof.

With this background, the working group explored graduated supervision requirements for California's program, with the fewest hours of supervised legal practice required for those who scored 1390 or higher on the February 2020 exam, and the most hours required for those who scored 1390 or higher most recently on the July 2015 exam. The working group reviewed or discussed options starting as low as 240 hours and increasing as high as 1800 hours. Wanting to establish a program that provided sufficient supervision to ensure minimum competence, but not to be overly burdensome, the working group ultimately adopted two options for Board and Supreme Court consideration:

Option A: The Provisionally Licensed Lawyer shall complete the following hours of supervised legal practice in the Provisional Licensure Program:

- (A) 360 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2017 and February 2020; or
- (B) 480 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2017.

At the low end, 360 hours is the equivalent of 9, 40-hour workweeks, and is based on the requirement imposed in Utah. At the high end, 480 hours is the equivalent of 12, 40-hour workweeks.

Option B: The Provisionally Licensed Lawyer shall complete the following hours of supervised legal practice in the Provisional Licensure Program:

- (A) 400 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2017 and February 2020; or
- (B) 600 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2017.

At the low end, 400 hours is the equivalent of 10, 40-hour workweeks. At the high end, 600 hours is the equivalent of 15, 40-hour workweeks.

PUBLIC COMMENT

Draft Rule 9.49.1, proposing this expanded PLP with a pathway to licensure, was circulated for a 15-day public comment period in early December 2020. The State Bar received 507 written comments. The vast majority of commenters (86.6 percent) indicated they agreed with the proposal as submitted. An additional 4.1 percent indicated agreement if the rule was modified (although several of those indicating straight agreement also suggested amendments). Disagreement with the proposed rule was voiced by 44, or 8.8 percent of the respondents. The comment chart (see footnote 2 for a link to the chart) includes each commenter's verbatim submission. Themes raised by the public comment are discussed below.

Eligibility for the Program

Eight commenters felt that using the July 2015 bar exam as the end point was arbitrary, and the program should extend to those who scored a 1390 or higher earlier than that date.

The working group proposed no changes to the rule based on these comments.

Hours of Supervision

As discussed above, the working group adopted two versions of the rule, Option A and Option B. The only difference between the two being the number of supervised hours of legal practice required. The working group expressed their desire to submit both options to the Board of Trustees, and ultimately the Supreme Court, for their consideration. Some commenters nonetheless expressed a preference as between Option A and Option B, with those commenters largely stating a preference for Option A (79 favoring Option A, 1 favoring Option B). Some commenters specifically noted that they were not weighing in on the wisdom of any particular option. Most commenters did not reflect a preference for one option over the other.

Other commenters argued that there should be no requirement for supervised hours of legal practice at all.

Finally, others strongly suggested that hours already worked under supervision in settings other than the PLP (such as clerking at a law firm or for a judge) should count toward the supervised legal practice hours requirement.

The working group proposed no changes to the rule based on these comments.

Diversity of the Legal Profession

Twenty commenters noted that creating this pathway to licensure for those who scored 1390 or higher would be an important step for increasing the diversity of the legal profession.

This is supported by the State Bar's March 2020 simulation of the impact of different bar exam cut scores on passage, by gender, race/ethnicity, and law school.⁵

Evaluation by the Supervising Lawyer

One commenter questioned the requirement that the supervising lawyer's evaluation must state whether they believe the PLL possesses the minimum competence to practice law without supervision. The commenter noted that the correct evaluation is whether the PLL possesses the minimum competence of an entry level lawyer. Among other points, the commenter noted: "[t]raditionally admitted entry-level attorneys usually need at least some amount of supervision in their first year, even after having demonstrated minimum competence by passing the bar examination. In other words, the need for some amount of supervision is not usually regarded as the measure of an attorney's competence or lack thereof. Supervision is a normal part of an entry-level attorney's training."

Agreeing with the commenter, the working group amended the proposal in three places to clarify that the evaluation must state whether the supervising lawyer believes the PLL possesses the minimum competence of an entry-level lawyer.

Judge as Supervising Lawyer

Two commenters raised questions whether the rule would recognize work in a court under the supervision of a judge, such as in a clerkship. This issue is not limited to the expanded PLP, but rather to the program as whole. Rule 9.49 (i) provides that a participant in the PLP must be employed by or volunteering with, or have a conditional offer of employment from, or to volunteer with, a "firm" that has an office located in California. "Firm" is defined to include a governmental organization, which would include a court. However, the language of who is eligible to serve as a supervisor does not, as written, cover judges.

The working group agreed that working under the supervision of a sitting judge in the California state court system should be permissible for participation in the program, and thus proposed to amend the language of rule 9.49 to include this clarification. The working group questioned whether it should also apply to a judge sitting on the federal bench, so long as they were otherwise admitted to the California bar. The working group ultimately concluded it could not expand the rule to cover work in the federal judiciary under the supervision of a federal judge, as federal judges are not members of the State Bar subject to the jurisdiction of either the State Bar or the California Supreme Court.

⁵ The simulation was based on results from 21 bar exams administered over 11 years, from February 2009 to February 2019. The study simulated what the pass rates for the bar exam would have been for various populations by race/ethnicity and gender. If the cut score had been 1300, 1330, 1350, or 1390 at the time of those exams. The simulation may be accessed at the following link: <https://www.calbar.ca.gov/Portals/0/documents/reports/CA-State-Bar-Exam-Cut-Score-Simulations-Analysis.pdf>.

Comments Opposing the Proposal

The themes of the comments disagreeing with the proposal include the following:

This pathway to licensure is unfair to those who had to struggle and take the bar multiple times to pass.

This pathway to licensure will weaken currently practicing lawyers' negotiating power in the job market.

The bar exam is necessary to test skills required of practicing lawyers.

Creating a pathway to licensure for those who didn't pass the bar will materially lower the quality of lawyers admitted to the practice of law in California.

The proposal is not needed, as the failure to pass the exam reflects lower quality and lower work ethic of present applicants.

The bar exam tests competence; it is a good determination of the skills and measure of an attorney. The public will be harmed by admitting those who did not demonstrate competence by passing the exam.

The working group did not propose any changes in response to these comments.

FISCAL/PERSONNEL IMPACT

Staff anticipates more than 2,000 applicants will become eligible for the expanded program, roughly twice the number that have already applied for entry to the PLP. How many will apply is unknown. In addition, it is believed that as many as 750 of those eligible applicants will need to submit a moral character application, either because no application had been previously submitted or because a prior positive determination has since expired. This will impact staff resources. Further, some additional programming changes to the Admissions Information Management System will be required, along with the need to develop forms and instructions for the submission of verified hours of supervised legal work and evaluation by the supervising lawyer.

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board Executive Committee, under its delegated authority to act on behalf of the Board of Trustees between meetings, approves Rule 9.49.1 of the California Rules of Court, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board Executive Committee, under its delegated authority to act on behalf of the Board of Trustees between meetings, approves amended Rule 9.49 of the California Rules of Court, as set forth in Attachment B (redline version) and Attachment C (clean version); and it is

FURTHER RESOLVED, that the Board Executive Committee, under its delegated authority to act on behalf of the Board of Trustees between meetings, directs staff to transmit Options A and B of proposed Rule 9.49.1 Supreme Court for adoption, with an effective date of March 1, 2021; and it is

FURTHER RESOLVED, that the Board Executive Committee, under its delegated authority to act on behalf of the Board of Trustees between meetings, directs staff to transmit the amendments to Rule 9.49 of the California Rules of Court to the Supreme Court for adoption.

ATTACHMENT(S) LIST

- A. Proposed Rule 9.49.1
- B. Proposed Amendments to Rule 9.49, redline version
- C. Proposed Amendments to Rule 9.49, clean version

Option A

Rule 9.49.1 is added to the California Rules of Court to read:

Provisional Licensure with Pathway to Full Licensure for Certain Individuals

(a) Expansion of the Provisional Licensure Program

The Provisional Licensure Program established pursuant to Rule 9.49 shall be expanded to include individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination. The Provisional Licensure Program under this rule shall terminate on June 1, 2022, unless the California Supreme Court extends that date.

(b) Definitions

(1) The definitions of “Supervising Lawyer” and “Firm” or “Law Firm” as set forth in rule 9.49(b) shall apply to this rule.

(2) For purposes of this rule, “Provisionally Licensed Lawyer” means an individual who:

- (A) Scored 1390 or higher on a California Bar Examination taken administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination; and
- (B) Meets the eligibility criteria under (d) and is granted provisional licensure by the State Bar.

(3) For purposes of this rule, “legal practice” means the provision of permitted legal services to clients in compliance with rule 9.49(f) and (g).

(c) Application Requirements

All of the application requirements of rule 9.49(c) apply to applicants for provisional licensure under this rule. An application for provisional licensure under this rule must be submitted to the State Bar no later than May 31, 2021. Applications shall not be accepted after that date.

(d) Eligibility Requirements

With the exception of (d)(1)(A), all eligibility requirements of rule 9.49(d) apply to applicants for provisional licensure under this rule.

(e) Responsibilities of Provisionally Licensed Lawyer

All requirements of rule 9.49(e) and (f) apply to Provisionally Licensed Lawyers under this rule with the exception that the State Bar New Attorney Training program described in rule 9.49(e)(1) must be completed in order for a Provisionally Licensed Lawyer to qualify for admission to the State Bar of California under this rule.

(f) Permitted activities

All of the permitted activities set forth in rule 9.49(g) apply to Provisionally Licensed Lawyers under this rule.

(g) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer under this rule shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(h) Termination of Provisional Licensure

The conditions for termination of a provisional license under rule 9.49(j) apply to Provisionally Licensed Lawyers under this rule.

(i) Admission to the State Bar of California

A Provisionally Licensed Lawyer shall be eligible for admission to the State Bar of California upon compliance with all of the following requirements.

(1) The Provisionally Licensed Lawyer shall complete the following hours of supervised legal practice in the Provisional Licensure Program:

- (A) 360 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2017 and February 2020; or
- (B) 480 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2017.

(2) The Provisionally Licensed Lawyer shall submit, in the format developed by the State Bar of California, a record of the hours of supervised legal practice completed under supervision of the Supervising Lawyer(s).

(3) The Provisionally Licensed Lawyer must complete the required total number of hours of supervised legal practice, satisfy all eligibility requirements for admission not met at the time of application to the program, have an active positive moral character determination, submit a satisfactory evaluation(s) pursuant to (j)(2), and submit all other documentation of completion in the format required by the State Bar by June 1, 2022 to qualify for admission to the State Bar.

(4) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(3), but has a disciplinary matter pending with the Office of Chief Trial Counsel shall, prior to the date the Provisional Licensure Program terminates under (a) and (h), be permitted to continue practicing as Provisionally Licensed Lawyer if all other requirements of this rule have been met. If the disciplinary matter is pending as of the date the program terminates, the Provisionally Licensed Lawyer shall be placed in an abeyance status until the matter is resolved, and shall not continue to practice as Provisionally Licensed Lawyer.

(A) If the complaint is resolved with no disciplinary action, before or after the termination of the Provisional Licensure Program under (a) and (h), the Provisionally Licensed Lawyer shall qualify for admission to the State Bar as long as all other requirements for admission remain current and satisfied.

(B) If the complaint is resolved with disciplinary action, the Provisionally Licensed Lawyer shall not qualify for admission to the State Bar under this program and shall be terminated from the Provisional Licensure Program.

(j) Supervision and Evaluation of Provisionally Licensed Lawyer

(1) In addition to the requirements under (j)(2), all of the eligibility requirements, duties and responsibilities of a Supervising Lawyer set forth under rule 9.49(i) apply to Supervising Lawyers under this rule.

(2) Each Supervising Lawyer shall provide an evaluation of the Provisionally Licensed Lawyer in the format developed by the State Bar of California. The evaluation shall include the following:

(A) Verification of the number of hours of supervised legal practice completed;

(B) A general description of the types of supervised legal practice performed by the Provisionally Licensed Lawyer;

(C) Whether, in the opinion of the Supervising Lawyer, based on the supervised legal practice performed during the program, the Provisionally Licensed Lawyer possesses the minimum competence expected of an entry level attorney; and

(D) Other criteria established by the State Bar.

(3) If a Supervising Lawyer cannot attest that a Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, the Provisionally Licensed Lawyer may not be

admitted to the State Bar of California under this program without additional hours of supervised legal practice sufficient to establish to the Supervising Lawyer that the Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, and submission of a satisfactory evaluation by that Supervising Lawyer before the termination of the program.

Option B

Rule 9.49.1 is added to the California Rules of Court to read:

Provisional Licensure with Pathway to Full Licensure for Certain Individuals

(a) Expansion of the Provisional Licensure Program

The Provisional Licensure Program established pursuant to Rule 9.49 shall be expanded to include individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination. The Provisional Licensure Program under this rule shall terminate on June 1, 2022, unless the California Supreme Court extends that date.

(b) Definitions

- (1) The definitions of “Supervising Lawyer” and “Firm” or “Law Firm” as set forth in rule 9.49(b) shall apply to this rule.
- (2) For purposes of this rule, “Provisionally Licensed Lawyer” means an individual who:
 - (A) Scored 1390 or higher on a California Bar Examination taken administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination; and
 - (B) Meets the eligibility criteria under (d) and is granted provisional licensure by the State Bar.
- (3) For purposes of this rule, “legal practice” means the provision of permitted legal services to clients in compliance with rule 9.49(f) and (g).

(c) Application Requirements

All of the application requirements of rule 9.49(c) apply to applicants for provisional licensure under this rule. An application for provisional licensure under this rule must be submitted to the State Bar no later than May 31, 2021. Applications shall not be accepted after that date.

(d) Eligibility Requirements

With the exception of (d)(1)(A), all eligibility requirements of rule 9.49(d) apply to applicants for provisional licensure under this rule.

(e) Responsibilities of Provisionally Licensed Lawyer

All requirements of rule 9.49(e) and (f) apply to Provisionally Licensed Lawyers under this rule with the exception that the State Bar New Attorney Training program described in rule 9.49(e)(1) must be completed in order for a Provisionally Licensed Lawyer to qualify for admission to the State Bar of California under this rule.

(f) Permitted activities

All of the permitted activities set forth in rule 9.49(g) apply to Provisionally Licensed Lawyers under this rule.

(g) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer under this rule shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(h) Termination of Provisional Licensure

The conditions for termination of a provisional license under rule 9.49(j) apply to Provisionally Licensed Lawyers under this rule.

(i) Admission to the State Bar of California

A Provisionally Licensed Lawyer shall be eligible for admission to the State Bar of California upon compliance with all of the following requirements.

(1) The Provisionally Licensed Lawyer shall complete the following hours of supervised legal practice in the Provisional Licensure Program:

- (C) 400 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2017 and February 2020; or
- (D) 600 total hours of supervised legal practice for individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2017.

(2) The Provisionally Licensed Lawyer shall submit, in the format developed by the State Bar of California, a record of the hours of supervised legal practice completed under supervision of the Supervising Lawyer(s).

(3) The Provisionally Licensed Lawyer must complete the required total number of hours of supervised legal practice, satisfy all eligibility requirements for admission not met at the time of

application to the program, have an active positive moral character determination, submit a satisfactory evaluation(s) pursuant to (j)(2), and submit all other documentation of completion in the format required by the State Bar by June 1, 2022 to qualify for admission to the State Bar.

(4) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(3), but has a disciplinary matter pending with the Office of Chief Trial Counsel shall, prior to the date the Provisional Licensure Program terminates under (a) and (h), be permitted to continue practicing as Provisionally Licensed Lawyer if all other requirements of this rule have been met. If the disciplinary matter is pending as of the date the program terminates, the Provisionally Licensed Lawyer shall be placed in an abeyance status until the matter is resolved, and shall not continue to practice as Provisionally Licensed Lawyer.

(C) If the complaint is resolved with no disciplinary action, before or after the termination of the Provisional Licensure Program under (a) and (h), the Provisionally Licensed Lawyer shall qualify for admission to the State Bar as long as all other requirements for admission remain current and satisfied.

(D) If the complaint is resolved with disciplinary action, the Provisionally Licensed Lawyer shall not qualify for admission to the State Bar under this program and shall be terminated from the Provisional Licensure Program.

(j) Supervision and Evaluation of Provisionally Licensed Lawyer

(1) In addition to the requirements under (j)(2), all of the eligibility requirements, duties and responsibilities of a Supervising Lawyer set forth under rule 9.49(i) apply to Supervising Lawyers under this rule.

(2) Each Supervising Lawyer shall provide an evaluation of the Provisionally Licensed Lawyer in the format developed by the State Bar of California. The evaluation shall include the following:

(A) Verification of the number of hours of supervised legal practice completed;

(B) A general description of the types of supervised legal practice performed by the Provisionally Licensed Lawyer;

(C) Whether, in the opinion of the Supervising Lawyer, based on the supervised legal practice performed during the program, the Provisionally Licensed Lawyer possesses the minimum competence expected of an entry level attorney; and

(D) Other criteria established by the State Bar.

(3) If a Supervising Lawyer cannot attest that a Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, the Provisionally Licensed Lawyer may not be admitted to the State Bar of California under this program without additional hours of supervised legal practice sufficient to establish to the Supervising Lawyer that the Provisionally Licensed Lawyer

possesses the minimum competence of an entry level attorney, and submission of a satisfactory evaluation by that Supervising Lawyer before the termination of the program.

California Rules of Court, Rule 9.49. Provisional Licensure of 2020 Law School Graduates, as Proposed to be Amended (redline version)

(a) State Bar Provisional Licensure Program

- (1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates through June 1, 2022. The program shall be referred to as the “Provisional Licensure Program.”
- (2) The Provisional Licensure Program shall terminate on June 1, 2022, unless the California Supreme Court extends that date.
- (3) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission including passage of the California Bar Examination, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(b) Definitions

- (1) A “2020 Law School Graduate” means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.
- (2) For purposes of this rule, a “Provisionally Licensed Lawyer” means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.
- (3) “Supervising Lawyer” means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.
- (4) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(c) Application Requirements

- (1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements:
 - (A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if employer paying the fee is receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;
 - (B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction.
 - (C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.
- (2) An Application for Provisional Licensure may be denied if:
 - (A) An applicant fails to comply with eligibility or application requirements;
 - (B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or
 - (C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

To qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

- (1) Meet all of the requirements for admission to the State Bar with the following exceptions:
 - (A) The applicant need not have sat for or passed the California Bar Examination;
 - (B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and
 - (C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training is not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.
- (2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;
- (3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California; and
- (4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record in the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(e) Responsibilities of Provisionally Licensed Lawyer

A Provisionally Licensed Lawyer must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

- (1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;

- (2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;
- (3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;
- (4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;
- (5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;
- (6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;
- (7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.
- (8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;
- (9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

(1) To meet the requirements of this rule, a Supervising Lawyer must:

- (A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;
- (B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record in the California judicial branch;
- (C) Exercise competence in the area of California law in which they are supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
- (D) Not be inactive in California, or ineligible to practice, actually suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;
- (E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;
- (F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;
- (G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and
- (H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyers becomes aware or reasonably should have become aware that:
 - i. The Provisionally Licensed Lawyer has terminated employment;

- ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;
 - iii. The Supervising Lawyer no longer meets the requirements of this rule;
 - iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or
 - v. The Supervising Lawyer has changed their office or email address.
- (2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.
- (3) A Supervising Lawyer who is a current judge of a court of record in the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(j) Termination of Provisional Licensure

- (1) A Provisionally Licensed Lawyer's provisional license terminates:
- (A) Upon imposition of any sanction for misconduct by the State Bar of California or any other professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;
 - (B) Upon imposition of any sanction for misconduct by the State Bar of California or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such sanction, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;
 - (C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.
 - (D) Upon admission to the State Bar of California;
 - (E) Upon cessation of the Provisional Licensure Program;
 - (F) Upon request of the Provisionally Licensed Lawyer;

(G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;

(H) For failure to pay any fees required by the State Bar; or

(I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.

(2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar 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.

(3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Inherent Power of Supreme Court

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

California Rules of Court, Rule 9.49. Provisional Licensure of 2020 Law School Graduates, as Proposed to be Amended (clean version)

(a) State Bar Provisional Licensure Program

- (1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates through June 1, 2022. The program shall be referred to as the “Provisional Licensure Program.”
- (2) The Provisional Licensure Program shall terminate on June 1, 2022, unless the California Supreme Court extends that date.
- (3) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission including passage of the California Bar Examination, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(b) Definitions

- (1) A “2020 Law School Graduate” means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.
- (2) For purposes of this rule, a “Provisionally Licensed Lawyer” means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.
- (3) “Supervising Lawyer” means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.
- (4) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(c) Application Requirements

- (1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements:
 - (A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if employer paying the fee is receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;
 - (B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction.
 - (C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.
- (2) An Application for Provisional Licensure may be denied if:
 - (A) An applicant fails to comply with eligibility or application requirements;
 - (B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or
 - (C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

To qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

- (1) Meet all of the requirements for admission to the State Bar with the following exceptions:
 - (A) The applicant need not have sat for or passed the California Bar Examination;
 - (B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and
 - (C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training is not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.
- (2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;
- (3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California; and
- (4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record in the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(e) Responsibilities of Provisionally Licensed Lawyer

A Provisionally Licensed Lawyer must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

- (1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;

- (2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;
- (3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;
- (4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;
- (5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;
- (6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;
- (7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.
- (8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;
- (9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

(1) To meet the requirements of this rule, a Supervising Lawyer must:

- (A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;
- (B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record in the California judicial branch;
- (C) Exercise competence in the area of California law in which they are supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
- (D) Not be inactive in California, or ineligible to practice, actually suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;
- (E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;
- (F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;
- (G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and
- (H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyers becomes aware or reasonably should have become aware that:
 - i. The Provisionally Licensed Lawyer has terminated employment;

- ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;
 - iii. The Supervising Lawyer no longer meets the requirements of this rule;
 - iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or
 - v. The Supervising Lawyer has changed their office or email address.
- (2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.
- (3) A Supervising Lawyer who is a current judge of a court of record in the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(j) Termination of Provisional Licensure

- (1) A Provisionally Licensed Lawyer's provisional license terminates:
- (A) Upon imposition of any sanction for misconduct by the State Bar of California or any other professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;
 - (B) Upon imposition of any sanction for misconduct by the State Bar of California or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such sanction, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;
 - (C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.
 - (D) Upon admission to the State Bar of California;
 - (E) Upon cessation of the Provisional Licensure Program;
 - (F) Upon request of the Provisionally Licensed Lawyer;

(G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;

(H) For failure to pay any fees required by the State Bar; or

(I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.

(2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar 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.

(3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Inherent Power of Supreme Court

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