



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 50-7 MAY 2021**

**DATE:** May 13, 2021

**TO:** Members, Board of Trustees

**FROM:** Dina DiLoreto, Program Director, Office of Attorney Regulation & Consumer Resources

**SUBJECT:** Proposed Technical Amendment to Rule 2.53 Governing Minimum Continuing Legal Education (MCLE) Requirements for New Licensees: Return from Public Comment and Request for Approval

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### **EXECUTIVE SUMMARY**

On March 18, 2021, the Board of Trustees authorized a 30-day public comment period for the proposed technical amendment to rule 2.53 governing Minimum Continuing Legal Education (MCLE) requirements for new licensees (Attachment A).

The State Bar received one public comment in support of the proposed amendment.

This item requests the approval of the proposed amendment (Attachment B).

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### **BACKGROUND**

On September 30, 2020, the Board filed a request with the Supreme Court of California for approval of a California Rule of Court to create a temporary provisional licensure program for all persons 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. The Board's request was granted, and Rule 9.49 of the California Rules of Court became effective on November 17, 2020 (Attachment C).

On January 12, 2021, the Board filed a subsequent request for approval of a California Rule of Court to expand the temporary licensure program to include applicants who received a score between 1390 and 1439 on any California Bar Examination administered between July 2015 and February

2020. The Board's request was granted, and Rule 9.49.1 of the California Rules of Court became effective on February 1, 2021 (Attachment D).

The background of this item was discussed at the March 2021 meeting. See Item 50-7 March 2021, available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027252.pdf>.

## **DISCUSSION**

One public comment was received in support of the rule.

Staff recommends adoption of the technical amendment of this rule as circulated for public comment.

## **FISCAL/PERSONNEL IMPACT**

There will be limited costs associated with the programming and administration of a process to match Provisionally Licensed Lawyers' educational records to their bar numbers upon admission to the State Bar. These costs will be absorbed within the administrative costs of administering the MCLE program.

## **AMENDMENTS TO RULES OF THE STATE BAR**

State Bar Rule 2.53

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - compliance

## **RECOMMENDATIONS**

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees approves the proposed technical amendment to rule 2.53 governing Minimum Continuing Legal Education (MCLE) requirements for a new license.

## **ATTACHMENT(S) LIST**

- A.** Rules of the State Bar, Title 2, Division 4. Minimum Continuing Legal Education (Redline version)
- B.** Rules of the State Bar, Title 2, Division 4. Minimum Continuing Legal Education (Clean version)
- C.** California Rule of Court, Rule 9.49
- D.** California Rule of Court, Rule 9.49.1

**TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES**

Adopted July 2007

**DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION**

**Chapter 1. Purpose and scope**

**Rule 2.50 Purpose of MCLE**

Rules for Minimum Continuing Legal Education (MCLE) require active licensees of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. A licensee's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar website.

*Rule 2.50 adopted effective January 1, 2008; amended effective January 25, 2019.*

**Rule 2.51 Definitions**

- (A) An "MCLE activity" is continuing legal education that the State Bar approves as meeting standards for MCLE credit.
- (B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.
- (C) "MCLE credit" is the number of credit hours that a licensee may claim to meet the requirements of these rules.
- (D) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.
- (E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.
- (F) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means.
- (G) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

- (H) State Bar New Attorney Training is MCLE that is developed and made available directly from the State Bar and is focused on law practice competency for newly admitted licensees.

*Rule 2.51 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective February 1, 2018; amended effective January 25, 2019.*

## **Rule 2.52 MCLE Activities**

To receive MCLE credit, a licensee must complete an MCLE activity that meets State Bar standards.

- (A) The MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during every MCLE activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, the MCLE provider must meet the requirements of Business and Professions Code section 6070.5.

*Rule 2.52 adopted effective January 1, 2008; amended effective January 1, 2013; amended effective July 1, 2014; amended effective January 25, 2019; amended effective September 24, 2020.*

## **Rule 2.53 New licensees**

- (A) A new licensee is permanently assigned to a compliance group on the date of admission.
- (B) The initial compliance period for a new licensee begins on the first day of the month in which the licensee was admitted. It ends when the period ends for the

compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.<sup>1</sup>

- (C) A new licensee may not claim credit for education taken before the initial compliance period.
- ~~(D) A new licensee is required to complete a State Bar New Attorney Training program during the first year of admission which can also be applied to the regular MCLE requirement.~~
- (D) A new licensee is required to complete a State Bar New Attorney Training program during the first year of admission. New licensees who have completed any portion of the New Attorney Training program while enrolled in the State Bar's Provisional Licensure Program<sup>2</sup> are deemed to have satisfied that portion of the requirement and, therefore, do not have to retake that portion of the New Attorney Training program.
- (E) New licensees can also apply New Attorney Training hours to their regular MCLE requirement, provided that the hours are completed within the licensee's MCLE compliance period.

*Rule 2.53 adopted effective January 1, 2008; amended effective February 1, 2018; amended effective January 25, 2019.*

## **Rule 2.54 Exemptions**

- (A) The following active licensees are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:
  - (1) officers and elected officials of the State of California;
  - (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
  - (3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
  - (4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.
- (B) Licensees whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center,<sup>3</sup> or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers' trust accounts program.

*Rule 2.54 adopted effective January 1, 2008; amended effective February 23, 2017; amended effective January 25, 2019.*

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<sup>1</sup> Rule 2.72 (C).

<sup>2</sup> California Rule of Court, Rule 9.49.

<sup>3</sup> Business & Professions Code § 6213.

## **Rule 2.55 Modifications**

A licensee prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

*Rule 2.55 adopted effective January 1, 2008; amended effective January 25, 2019.*

## **Chapter 2. Compliance**

### **Rule 2.70 Compliance groups**

A licensee is permanently assigned to one of three compliance groups on the basis of the first letter of the licensee's last name at the date of admission.<sup>3</sup> The three groups are A-G, H-M, and N-Z. The licensee remains in the compliance group despite any subsequent change of last name.

*Rule 2.70 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.71 Compliance periods**

- (A) A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A licensee must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.
- (B) Compliance with State Bar New Attorney Training must be effectuated and reported completed, in a manner established by the State Bar, by the last day of the month of an attorney's one-year anniversary as a State Bar licensee. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

*Rule 2.71 adopted effective January 1, 2008; amended effective February 1, 2018; amended effective January 25, 2019; amended effective September 24, 2020.*

### **Rule 2.72 Requirements**

- (A) Until December 31, 2021, all licensees shall be subject to the following:

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<sup>3</sup>A historical exception exists. When the MCLE program was established in 1992, licensees were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.



- (1) Unless these rules indicate otherwise, a licensee who has been active throughout a 36-month compliance period must complete 25 credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>4</sup> Total hours must include no less than six hours as follows:
    - (a) at least four hours of legal ethics;
    - (b) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
    - (c) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
  - (2) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.
  - (3) A licensee may reduce the required 25 hours in proportion to the number of full months the licensee was inactive or exempt in the 36-month compliance period. Up to half the reduced hours may be self-study.<sup>5</sup> A tool for applying this formula is available at the State Bar website.
  - (4) Excess credit hours may not be applied to the next compliance period.<sup>6</sup>
- (B) On and after January 1, 2022, all licensees shall be subject to the following:
- (1) Licensees reporting for the compliance periods ending January 31, 2022, shall be subject to the requirements set forth in paragraphs (A)(1), (A)(2), (A)(3), and (A)(4) for the compliance period ending January 31, 2022.
  - (2) Beginning with the compliance period ending January 31, 2023, all licensees shall comply with the following:

Unless these rules indicate otherwise, a licensee who has been active throughout a 36-month compliance period must complete 25 credit hours of MCLE activities. No more than 12.5 credit hours may be self-study.<sup>7</sup> Total hours must include no less than seven hours as follows:

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<sup>4</sup> Rule 2.83.

<sup>5</sup> Rule 2.83.

<sup>6</sup> But see Rule 2.93.

- (i) at least four hours of legal ethics;
  - (ii) at least two hours dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation;
    - 1. Of those two hours, at least one hour must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system; and
  - (iii) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
- (b) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of Rule 2.52(F).
  - (c) A licensee may reduce the required 25 hours in proportion to the number of full months the licensee was inactive or exempt in the 36-month compliance period, except that the requirements of paragraphs (B)(2)(a)(ii) and (B)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>8</sup> A tool for applying this formula is available at the State Bar website.
  - (d) Excess credit hours may not be applied to the next compliance period.<sup>9</sup>

*Rule 2.72 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019; amended effective September 24, 2020.*

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<sup>7</sup> Rule 2.83.

<sup>8</sup> Rule 2.83.

<sup>9</sup> But see Rule 2.93.

### **Rule 2.73 Record of MCLE**

For a year after reporting MCLE compliance, a licensee must retain and provide upon demand and to the satisfaction of the State Bar:

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or
- (C) proof of exempt status.

*Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

## **Chapter 3. MCLE Activities approved for MCLE credit**

### **Rule 2.80 Attending programs and classes**

A licensee may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

*Rule 2.80 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.81 Speaking**

A licensee may claim participatory MCLE credit for speaking at an approved MCLE activity.

- (A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim
  - (1) actual speaking time multiplied by four for the first presentation; or
  - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (B) A panelist may claim
  - (1) either of the following for the first panel presentation:
    - (a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or
    - (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus

the actual time spent in attendance at the remainder of the presentation.

- (2) actual speaking time only for each time a presentation is repeated without significant change.
- (C) A licensee who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

*Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

### **Rule 2.82 Teaching**

A licensee may claim participatory MCLE credit for teaching a law school course.

- (A) A licensee assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by 12 or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.
- (B) A guest lecturer or substitute teacher may claim
  - (1) actual speaking time multiplied by four for the first presentation; or
  - (2) actual speaking time only for each time a presentation is repeated without significant change.

*Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

### **Rule 2.83 Self-study**

A licensee may claim up to half the credit hours required in a compliance period for

- (A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;
- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or
- (C) authoring or coauthoring written materials that
  - (1) have contributed to the licensee's legal education; have
  - (2) been published or accepted for publication; and
  - (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

*Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.84 Legal specialization**

A licensee may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.

*Rule 2.84 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.85 Education taken while physically out of state**

- (A) A licensee may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the licensee attends or does the MCLE activity outside California. A licensee may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.
- (B) A licensee who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

*Rule 2.85 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.86 Licensee credit request**

A licensee may apply for MCLE credit for an educational activity directly relevant to the licensee's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

*Rule 2.86 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.87 Bar examinations and MPRE**

A licensee may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

*Rule 2.87 adopted effective January 1, 2008; amended effective January 25, 2019.*

## **Chapter 4. Noncompliance**

### **Rule 2.90 Definition**

Noncompliance is failure to

- (A) complete the required education during the compliance period or an extension of it;
- (B) report compliance or claim exemption from MCLE requirements;
- (C) keep a record of MCLE compliance<sup>10</sup>; or
- (D) pay fees for noncompliance.

*Rule 2.90 adopted effective January 1, 2008.*

### **Rule 2.91 Notice of noncompliance**

- (A) A licensee who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive licensee is not eligible to practice law.
- (B) If the notice requires the licensee to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

*Rule 2.91 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.92 Enrollment as inactive for MCLE noncompliance**

A licensee who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative, and no hearing is required.

*Rule 2.92 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.93 Reinstatement following MCLE noncompliance**

Enrollment as inactive for MCLE noncompliance terminates when a licensee submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

*Rule 2.93 adopted effective January 1, 2008; amended effective January 25, 2019.*

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<sup>10</sup> Rule 2.73.

**TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES**

Adopted July 2007

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**Chapter 1. Purpose and scope**

**Rule 2.50 Purpose of MCLE**

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- (F) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means.
- (G) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

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- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, the MCLE provider must meet the requirements of Business and Professions Code section 6070.5.

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## **Rule 2.53 New licensees**

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compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.<sup>1</sup>

- (C) A new licensee may not claim credit for education taken before the initial compliance period.
- (D) A new licensee is required to complete a State Bar New Attorney Training program during the first year of admission. New licensees who have completed any portion of the New Attorney Training program while enrolled in the State Bar's Provisional Licensure Program<sup>2</sup> are deemed to have satisfied that portion of the requirement and, therefore, do not have to retake that portion of the New Attorney Training program.
- (E) New licensees can also apply New Attorney Training hours to their regular MCLE requirement, provided that the hours are completed within the licensee's MCLE compliance period.

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#### **Rule 2.54 Exemptions**

- (A) The following active licensees are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:
  - (1) officers and elected officials of the State of California;
  - (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
  - (3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
  - (4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.
- (B) Licensees whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center,<sup>3</sup> or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers' trust accounts program.

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- <sup>1</sup> Rule 2.72 (C).
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## **Rule 2.55 Modifications**

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## **Chapter 2. Compliance**

### **Rule 2.70 Compliance groups**

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- (B) Compliance with State Bar New Attorney Training must be effectuated and reported completed, in a manner established by the State Bar, by the last day of the month of an attorney's one-year anniversary as a State Bar licensee. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

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- (A) Until December 31, 2021, all licensees shall be subject to the following:

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<sup>3</sup>A historical exception exists. When the MCLE program was established in 1992, licensees were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

- (1) Unless these rules indicate otherwise, a licensee who has been active throughout a 36-month compliance period must complete 25 credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>4</sup> Total hours must include no less than six hours as follows:
    - (a) at least four hours of legal ethics;
    - (b) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
    - (c) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
  - (2) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.
  - (3) A licensee may reduce the required 25 hours in proportion to the number of full months the licensee was inactive or exempt in the 36-month compliance period. Up to half the reduced hours may be self-study.<sup>5</sup> A tool for applying this formula is available at the State Bar website.
  - (4) Excess credit hours may not be applied to the next compliance period.<sup>6</sup>
- (B) On and after January 1, 2022, all licensees shall be subject to the following:
- (1) Licensees reporting for the compliance periods ending January 31, 2022, shall be subject to the requirements set forth in paragraphs (A)(1), (A)(2), (A)(3), and (A)(4) for the compliance period ending January 31, 2022.
  - (2) Beginning with the compliance period ending January 31, 2023, all licensees shall comply with the following:

Unless these rules indicate otherwise, a licensee who has been active throughout a 36-month compliance period must complete 25 credit hours of MCLE activities. No more than 12.5 credit hours may be self-study.<sup>7</sup> Total hours must include no less than seven hours as follows:

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<sup>4</sup> Rule 2.83.

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- (i) at least four hours of legal ethics;
  - (ii) at least two hours dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation;
    - 1. Of those two hours, at least one hour must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system; and
  - (iii) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
- (b) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of Rule 2.52(F).
  - (c) A licensee may reduce the required 25 hours in proportion to the number of full months the licensee was inactive or exempt in the 36-month compliance period, except that the requirements of paragraphs (B)(2)(a)(ii) and (B)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>8</sup> A tool for applying this formula is available at the State Bar website.
  - (d) Excess credit hours may not be applied to the next compliance period.<sup>9</sup>

*Rule 2.72 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019; amended effective September 24, 2020.*

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<sup>7</sup> Rule 2.83.

<sup>8</sup> Rule 2.83.

<sup>9</sup> But see Rule 2.93.

### **Rule 2.73 Record of MCLE**

For a year after reporting MCLE compliance, a licensee must retain and provide upon demand and to the satisfaction of the State Bar:

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or
- (C) proof of exempt status.

*Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

## **Chapter 3. MCLE Activities approved for MCLE credit**

### **Rule 2.80 Attending programs and classes**

A licensee may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

*Rule 2.80 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.81 Speaking**

A licensee may claim participatory MCLE credit for speaking at an approved MCLE activity.

- (A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim
  - (1) actual speaking time multiplied by four for the first presentation; or
  - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (B) A panelist may claim
  - (1) either of the following for the first panel presentation:
    - (a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or
    - (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus

the actual time spent in attendance at the remainder of the presentation.

- (2) actual speaking time only for each time a presentation is repeated without significant change.
- (C) A licensee who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

*Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

### **Rule 2.82 Teaching**

A licensee may claim participatory MCLE credit for teaching a law school course.

- (A) A licensee assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by 12 or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.
- (B) A guest lecturer or substitute teacher may claim
  - (1) actual speaking time multiplied by four for the first presentation; or
  - (2) actual speaking time only for each time a presentation is repeated without significant change.

*Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

### **Rule 2.83 Self-study**

A licensee may claim up to half the credit hours required in a compliance period for

- (A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;
- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or
- (C) authoring or coauthoring written materials that
  - (1) have contributed to the licensee's legal education; have
  - (2) been published or accepted for publication; and
  - (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

*Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.84 Legal specialization**

A licensee may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.

*Rule 2.84 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.85 Education taken while physically out of state**

- (A) A licensee may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the licensee attends or does the MCLE activity outside California. A licensee may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.
- (B) A licensee who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

*Rule 2.85 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.86 Licensee credit request**

A licensee may apply for MCLE credit for an educational activity directly relevant to the licensee's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

*Rule 2.86 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

#### **Rule 2.87 Bar examinations and MPRE**

A licensee may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

*Rule 2.87 adopted effective January 1, 2008; amended effective January 25, 2019.*



## **Chapter 4. Noncompliance**

### **Rule 2.90 Definition**

Noncompliance is failure to

- (A) complete the required education during the compliance period or an extension of it;
- (B) report compliance or claim exemption from MCLE requirements;
- (C) keep a record of MCLE compliance<sup>10</sup>; or
- (D) pay fees for noncompliance.

*Rule 2.90 adopted effective January 1, 2008.*

### **Rule 2.91 Notice of noncompliance**

- (A) A licensee who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive licensee is not eligible to practice law.
- (B) If the notice requires the licensee to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

*Rule 2.91 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.92 Enrollment as inactive for MCLE noncompliance**

A licensee who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative, and no hearing is required.

*Rule 2.92 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Rule 2.93 Reinstatement following MCLE noncompliance**

Enrollment as inactive for MCLE noncompliance terminates when a licensee submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

*Rule 2.93 adopted effective January 1, 2008; amended effective January 25, 2019.*

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<sup>10</sup> Rule 2.73.

JAN 28 2021

S266547

ADMINISTRATIVE ORDER 2021-01-20

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

EN BANC

ORDER RE REQUEST FOR APPROVAL OF PROPOSED AMENDMENTS  
TO THE CALIFORNIA RULES OF COURT

On January 12, 2021, the Board of Trustees of the State Bar of California filed a request for approval of a California Rule of Court to expand the temporary, supervised provisional licensure program to include applicants who received a score between 1390 and 1439 on any California Bar Examination administered between February 2020 and July 2015. In addition, the Board of Trustees requests amendment of Rule 9.49 of the California Rules of Court, the rule governing the temporary, supervised provisional licensure program.

The requests are granted. Rule 9.49.1 of the California Rules of Court, modified as set forth in the Attachment is effective February 1, 2021. Amendments to Rule 9.49 of the California Rules of Court, as modified, are also set forth in the Attachment, and are effective February 1, 2021.

It is so ordered.

CANTIL-SAKAUYE

*Chief Justice*

CORRIGAN

*Associate Justice*

LIU

*Associate Justice*

CUÉLLAR

*Associate Justice*

KRUGER

*Associate Justice*

GROBAN

*Associate Justice*

JENKINS

*Associate Justice*

## **ATTACHMENT**

### **Rule 9.49.1 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, no later than March 1, 2021, 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, a “Provisionally Licensed Lawyer” means an individual who:

(A) Scored 1390 or higher on any 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, under this rule, 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~~ 300 total 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.~~



(2) Provisionally Licensed Lawyers under rule 9.49 who also qualify for participation under this rule may receive credit for hours of supervised legal practice completed as a provisional licensee under rule 9.49 for purposes of meeting the hours requirement under (i)(1). Such individuals must comply with all of the application and eligibility requirements under this rule to qualify for admission to the State Bar of California.

(23) 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).

(34) 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.

(45) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4), 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 a 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.

## **Rule 9.49 Provisional Licensure of 2020 Law School Graduates**

### **(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 the employer paying the fee 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; and
- (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 are** 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 within the California judicial branch**, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

**(e) Responsibilities of Provisionally Licensed Lawyers**

**A** Provisionally Licensed Lawyers 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 within the California judicial branch;
- (C) Exercise competence in ~~the any~~ area of legal service authorized under California law in which the Supervising Lawyer is ~~they are~~ supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
- (D) With the exception of a current judge of a court of record within the California judicial branch, nNot be ~~an~~ inactive ~~licensee~~ 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~~ offices or email addresses.

(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 within 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.

JAN 28 2021

S266547

ADMINISTRATIVE ORDER 2021-01-20

Jorge Navarrete Clerk

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IN THE SUPREME COURT OF CALIFORNIA DeputyEN BANC

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ORDER RE REQUEST FOR APPROVAL OF PROPOSED AMENDMENTS  
TO THE CALIFORNIA RULES OF COURT

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The requests are granted. Rule 9.49.1 of the California Rules of Court, modified as set forth in the Attachment is effective February 1, 2021. Amendments to Rule 9.49 of the California Rules of Court, as modified, are also set forth in the Attachment, and are effective February 1, 2021.

It is so ordered.

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CANTIL-SAKAUYE*Chief Justice*

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CORRIGAN*Associate Justice*

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LIU*Associate Justice*

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CUÉLLAR*Associate Justice*

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KRUGER*Associate Justice*

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GROBAN*Associate Justice*

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JENKINS*Associate Justice*

## ATTACHMENT

### **Rule 9.49.1 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, no later than March 1, 2021, 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, a “Provisionally Licensed Lawyer” means an individual who:

(A) Scored 1390 or higher on any 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, under this rule, 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~~ 300 total 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.~~

(2) Provisionally Licensed Lawyers under rule 9.49 who also qualify for participation under this rule may receive credit for hours of supervised legal practice completed as a provisional licensee under rule 9.49 for purposes of meeting the hours requirement under (i)(1). Such individuals must comply with all of the application and eligibility requirements under this rule to qualify for admission to the State Bar of California.

(23) 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).

(34) 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.

(45) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4), 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 a 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.



## **Rule 9.49 Provisional Licensure of 2020 Law School Graduates**

### **(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 the employer paying the fee 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; and
- (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 are** 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 within the California judicial branch**, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

**(e) Responsibilities of Provisionally Licensed Lawyers**

**A** Provisionally Licensed Lawyers 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 within the California judicial branch;
- (C) Exercise competence in ~~the any~~ area of legal service authorized under California law in which the Supervising Lawyer is ~~they are~~ supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
- (D) With the exception of a current judge of a court of record within the California judicial branch, nNot be ~~an~~ inactive ~~licensee~~ 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~~ offices or email addresses.

(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 within 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.