



# The State Bar Court *of California*

---

## **OPEN SESSION AGENDA ITEM 50-8 MAY 2022**

**DATE:** May 19, 2022

**TO:** Members, Board of Trustees

**FROM:** Michelle Cramton, Clerk of Court, State Bar Court  
Erika Doherty, Projects Attorney, State Bar Court

**SUBJECT:** Proposed New Rules of Procedure Regarding Provisional Licensure Program:  
Return from Public Comment and Request for Approval

---

### **EXECUTIVE SUMMARY**

This item requests approval of rules 5.480–5.486 of the Rules of Procedure of the State Bar of California to create a new process to hear and decide cases alleging misconduct by Provisionally Licensed Lawyers (PLLs) in the State Bar Court.

At its February 2022 meeting, the State Bar Board of Trustees [authorized these rules](#) for a 45-day public comment period. The State Bar received five public comments. Three of the comments indicate agreement with the proposed rules, one agrees if modified, one disagrees; however, none of the comments substantively address the proposed rules. There are no proposed revisions based on these public comments.

The State Bar Court recommends minor revisions to clarify that if the PLL defaults in the disciplinary proceeding, the Office of Admissions will determine whether to terminate a PLL from the program.

---

### **BACKGROUND**

The Provisional Licensure Program, established by the California Supreme Court through adoption of rules 9.49 and 9.49.1 of the California Rules of Court, permits certain qualified law

school graduates to temporarily engage in the practice of law, subject to certain restrictions. The program also provides a pathway to permanent licensure for some PLLs.

To become a PLL, an individual must agree to be subject to the disciplinary authority of the California Supreme Court and the State Bar. (Cal. Rules of Ct., rules 9.49(c)(1)(B) & 9.49.1(c).) If the PLL is sanctioned for misconduct by the State Bar, the PLL is subject to termination from the program. (Cal. Rules of Ct., rules 9.49(j)(1)(A) & 9.49.1(h).)

These proposed Rules of Procedure create a process for the State Bar Court to adjudicate allegations of misconduct against a PLL. The process will occur, for the most part, in the same manner as a discipline proceeding against a permanently licensed attorney.

## **DISCUSSION**

Following a 45-day public comment period, the State Bar Court proposes permanent adoption of rules 5.480–5.486. There are nonsubstantive revisions recommended to clarify that if the PLL defaults in the disciplinary proceeding, the Office of Admissions will determine whether to terminate a PLL from the program based on their failure to participate in the disciplinary proceeding. A clean version of the rules is set forth in Attachment A and a redline version showing the changes from the rules issued for public comment is provided in Attachment B.

The State Bar received five public comments, provided in Attachment C. The State Bar Court does not recommend changes to the proposed rules based on these public comments. Three of the comments indicate agreement with the proposed rules but do not address the rules themselves, other than one comment indicating that the rules seem reasonable. One public comment agrees with the rules if modified, but the comment does not address the proposed rules. Finally, one comment disagrees with the proposed rules but expresses disagreement with the PLL Program more generally; the comment does not address the proposed rules.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF PROCEDURE**

Title III, Division 7, Chapter 4

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

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 1. Protect the Public by Strengthening the Attorney Discipline System.

## **RECOMMENDATIONS**

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

**RESOLVED**, that the Board of Trustees hereby approves and adopts rules 5.480–5.486 of the Rules of Procedure of the State Bar of California, creating a new process to adjudicate allegations of misconduct against Provisionally Licensed Lawyers in the State Bar Court and as set forth in Attachment A, effective May 19, 2022.

## **ATTACHMENTS LIST**

- A.** Proposed Rules 5.480–5.486 of the Rules of Procedure of the State Bar of California (clean copy)
- B.** Proposed Rules 5.480–5.486 of the Rules of Procedure of the State Bar of California (redline from February 25, 2022 version)
- C.** Public Comments Received Regarding Proposed Rules 5.480–5.486 of the Rules of Procedure of the State Bar of California

**Division 7, Chapter 4 Provisionally Licensed Lawyer Proceedings****5.480 Nature of Proceeding**

- (A) **Scope.** These rules apply to a “Provisionally Licensed Lawyer,” as defined and licensed pursuant to California Rules of Court, rules 9.49 and/or 9.49.1.
- (B) **Issues.** The issues in a proceeding under these rules are limited to whether the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California.
- (C) **Applicable Rules.** The Rules of Procedure that by their terms apply to disciplinary proceedings shall govern these proceedings except as provided in rule 5.486. In all such applicable rules, any reference to “attorney” shall apply to a Provisionally Licensed Lawyer.

**5.481 Beginning Proceeding**

- (A) **Notice of Disciplinary Charges.** A notice of disciplinary charges is the initial pleading, except where a Provisionally Licensed Lawyer is criminally convicted, and must include the content required by rule 5.41(B), except as follows:
  - (1) The notice of disciplinary charges shall not provide notice concerning costs or monetary sanctions as required by rule 5.41(B)(4); and
  - (2) The notice language set forth in rule 5.41(B)(5) must be replaced with the following:

“IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:  
(1) YOUR DEFAULT WILL BE ENTERED;  
(2) YOUR PROVISIONAL LICENSE MAY TERMINATE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;  
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND  
(4) YOU WILL BE REFERRED TO THE OFFICE OF ADMISSIONS FOR A DETERMINATION REGARDING YOUR ELIGIBILITY TO PARTICIPATE IN THE PROVISIONAL LICENSURE PROGRAM AND/OR ABILITY TO QUALIFY FOR ADMISSION TO THE STATE BAR UNDER THE PROVISIONAL LICENSURE PROGRAM. (SEE CAL. RULES OF COURT, RULES 9.49 & 9.49.1.)”
- (B) **Notice of Record of Conviction.** Conviction proceedings against a Provisionally Licensed Lawyer are initiated in the Review Department of the State Bar Court when the Office of Chief Trial Counsel files a certified copy of the record of conviction or sentence of incarceration for 90 days or more. Rules 5.340 through 5.347 will apply to the proceeding, except as follows:
  - (1) The Review Department will examine the record of conviction or sentence of incarceration for 90 days or more, and if the conviction would provide any ground

for interim suspension or involuntary inactive enrollment under rule 5.342, the Review Department shall issue an order referring the matter to the Office of Admissions for a determination regarding the Provisionally Licensed Lawyer's eligibility to participate in the Provisional Licensure Program and/or ability to qualify for admission to the State Bar under the Provisional Licensure Program.

- (2) If the conviction does not provide any ground for referral to the Office of Admissions under subparagraph (B)(1), upon finality or a waiver of finality, the conviction shall be referred by the Review Department to the Hearing Department. After the conviction is referred to the Hearing Department, the procedures under rule 5.435 apply except that:

- i. The notice of hearing on conviction shall not provide notice concerning costs or monetary sanctions as required by rule 5.345(A); and
- ii. The notice language set forth in rule 5.345(A) must be replaced with the following:

"IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR PROVISIONAL LICENSE MAY TERMINATE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND
- (4) YOU WILL BE REFERRED TO THE OFFICE OF ADMISSIONS FOR A DETERMINATION REGARDING YOUR ELIGIBILITY TO PARTICIPATE IN THE PROVISIONAL LICENSURE PROGRAM AND/OR ABILITY TO QUALIFY FOR ADMISSION TO THE STATE BAR UNDER THE PROVISIONAL LICENSURE PROGRAM. (SEE CAL. RULES OF COURT, RULES 9.49 & 9.49.1.)"

#### **5.482 Default**

If a Provisionally Licensed Lawyer does not file a response to the notice of disciplinary charges under rules 5.80 or 5.346, or fails to appear at trial under rules 5.81 or 5.346, and the Provisionally Licensed Lawyer does not vacate or set aside the default pursuant to rule 5.83, the court shall issue an order referring the matter to the Office of Admissions for termination from the Provisional Licensure Program pursuant to California Rule of Court, rules 9.49(j)(1)(A) or 9.49.1(h).

#### **5.483 Termination of Provisional Licensure Program**

- (A) **Dismissal of Proceeding.** If a Provisionally Licensed Lawyer who is provisionally licensed pursuant to California Rules of Court, rule 9.49 is the subject of a pending proceeding in the State Bar Court, the court must dismiss the proceeding without prejudice on the date the Provisional Licensure Program terminates as set forth in California Rules of Court, rule 9.49(a)(2). The allegations set forth in the Notice of Disciplinary Charges or the record of conviction may be grounds for an adverse moral character determination or for the filing of

new charges by the Office of Chief Trial Counsel if the Provisionally Licensed Lawyer becomes a licensed attorney.

- (B) Continuation of Proceeding.** If a Provisionally Licensed Lawyer who is provisionally licensed pursuant to California Rules of Court, rule 9.49.1 is the subject of a pending proceeding in the State Bar Court, the court shall continue with the proceeding after the date the Provisional Licensure Program terminates as set forth in California Rules of Court, rule 9.49.1(i)(5).

#### **5.484 Decision**

The court's decision shall be limited to whether, based on any finding of culpability and any aggravating or mitigating circumstances, the court would issue a reproof or recommend a greater degree of discipline. The decision may, but is not required to include, the degree of discipline that the court would recommend if it would exceed a reproof.

#### **5.485 Service of Final Decision**

The State Bar Court's final decision must be served on the parties, the Office of Admissions, and the California Supreme Court.

#### **5.486 Inapplicable Rules**

The following rules do not apply to Provisionally Licensed Lawyer proceedings:

- (A) General.** Rules that by their terms apply only to involuntary inactive enrollment proceedings (rules 5.170–5.278), probation proceedings (rules 5.300–5.317), certain special proceedings (rules 5.330–5.337, 5.350–5.399), and other regulatory proceedings (rule 5.400–5.466).
- (B) Specific.** Rules 5.120 (sending disciplinary recommendations to the Supreme Court), 5.128 (reprovals with conditions), 5.129–5.132 (costs), 5.135 (ethics school), and 5.137–5.139 (monetary sanctions).

## Division 7, Chapter 4 Provisionally Licensed Lawyer Proceedings

### 5.480 Nature of Proceeding

- (A) **Scope.** These rules apply to a “Provisionally Licensed Lawyer,” as defined and licensed pursuant to California Rules of Court, rules 9.49 and/or 9.49.1.
- (B) **Issues.** The issues in a proceeding under these rules are limited to whether the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California.
- (C) **Applicable Rules.** The Rules of Procedure that by their terms apply to disciplinary proceedings shall govern these proceedings except as provided in rule 5.486. In all such applicable rules, any reference to “attorney” shall apply to a Provisionally Licensed Lawyer.

### 5.481 Beginning Proceeding

- (A) **Notice of Disciplinary Charges.** A notice of disciplinary charges is the initial pleading, except where a Provisionally Licensed Lawyer is criminally convicted, and must include the content required by rule 5.41(B), except as follows:
  - (1) The notice of disciplinary charges shall not provide notice concerning costs or monetary sanctions as required by rule 5.41(B)(4); and
  - (2) The notice language set forth in rule 5.41(B)(5) must be replaced with the following:
 

“IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

    - (1) YOUR DEFAULT WILL BE ENTERED;
    - (2) YOUR PROVISIONAL LICENSE ~~WILL~~MAY TERMINATE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
    - (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND
    - (4) YOU WILL BE REFERRED TO THE OFFICE OF ADMISSIONS FOR A DETERMINATION REGARDING YOUR ELIGIBILITY TO PARTICIPATE IN THE PROVISIONAL LICENSURE PROGRAM AND/OR ABILITY TO QUALIFY FOR ADMISSION TO THE STATE BAR UNDER THE PROVISIONAL LICENSURE PROGRAM. (SEE CAL. RULES OF COURT, RULES 9.49 & 9.49.1.)”
- (B) **Notice of Record of Conviction.** Conviction proceedings against a Provisionally Licensed Lawyer are initiated in the Review Department of the State Bar Court when the Office of Chief Trial Counsel files a certified copy of the record of conviction or sentence of incarceration for 90 days or more. Rules 5.340 through 5.347 will apply to the proceeding, except as follows:
  - (1) The Review Department will examine the record of conviction or sentence of incarceration for 90 days or more, and if the conviction would provide any ground

for interim suspension or involuntary inactive enrollment under rule 5.342, the Review Department shall issue an order referring the matter to the Office of Admissions for a determination regarding the Provisionally Licensed Lawyer's eligibility to participate in the Provisional Licensure Program and/or ability to qualify for admission to the State Bar under the Provisional Licensure Program.

- (2) If the conviction does not provide any ground for referral to the Office of Admissions under subparagraph (B)(1), upon finality or a waiver of finality, the conviction shall be referred by the Review Department to the Hearing Department. After the conviction is referred to the Hearing Department, the procedures under rule 5.435 apply except that:

- i. The notice of hearing on conviction shall not provide notice concerning costs or monetary sanctions as required by rule 5.345(A); and
- ii. The notice language set forth in rule 5.345(A) must be replaced with the following:

"IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;

(2) YOUR PROVISIONAL LICENSE ~~WILL~~MAY TERMINATE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;

(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND

(4) YOU WILL BE REFERRED TO THE OFFICE OF ADMISSIONS FOR A DETERMINATION REGARDING YOUR ELIGIBILITY TO PARTICIPATE IN THE PROVISIONAL LICENSURE PROGRAM AND/OR ABILITY TO QUALIFY FOR ADMISSION TO THE STATE BAR UNDER THE PROVISIONAL LICENSURE PROGRAM. (SEE CAL. RULES OF COURT, RULES 9.49 & 9.49.1.)"

#### **5.482 Default**

If a Provisionally Licensed Lawyer does not file a response to the notice of disciplinary charges under rules 5.80 or 5.346, or fails to appear at trial under rules 5.81 or 5.346, and the Provisionally Licensed Lawyer does not vacate or set aside the default pursuant to rule 5.83, the court shall issue an order referring the matter to the Office of Admissions for termination from the Provisional Licensure Program pursuant to California Rule of Court, rules 9.49(j)(1)(A) or 9.49.1(h).

#### **5.483 Termination of Provisional Licensure Program**

- (A) **Dismissal of Proceeding.** If a Provisionally Licensed Lawyer who is provisionally licensed pursuant to California Rules of Court, rule 9.49 is the subject of a pending proceeding in the State Bar Court, the court must dismiss the proceeding without prejudice on the date the Provisional Licensure Program terminates as set forth in California Rules of Court, rule 9.49(a)(2). The allegations set forth in the Notice of Disciplinary Charges or the record of conviction may be grounds for an adverse moral character determination or for the filing of



new charges by the Office of Chief Trial Counsel if the Provisionally Licensed Lawyer becomes a licensed attorney.

- (B) Continuation of Proceeding.** If a Provisionally Licensed Lawyer who is provisionally licensed pursuant to California Rules of Court, rule 9.49.1 is the subject of a pending proceeding in the State Bar Court, the court shall continue with the proceeding after the date the Provisional Licensure Program terminates as set forth in California Rules of Court, rule 9.49.1(i)(5).

#### **5.484 Decision**

The court's decision shall be limited to whether, based on any finding of culpability and any aggravating or mitigating circumstances, the court would issue a reproof or recommend a greater degree of discipline. The decision may, but is not required to include, the degree of discipline that the court would recommend if it would exceed a reproof.

#### **5.485 Service of Final Decision**

The State Bar Court's final decision must be served on the parties, the Office of Admissions, and the California Supreme Court.

#### **5.486 Inapplicable Rules**

The following rules do not apply to Provisionally Licensed Lawyer proceedings:

- (A) General.** Rules that by their terms apply only to involuntary inactive enrollment proceedings (rules 5.170–5.278), probation proceedings (rules 5.300–5.317), certain special proceedings (rules 5.330–5.337, 5.350–5.399), and other regulatory proceedings (rule 5.400–5.466).
- (B) Specific.** Rules 5.120 (sending disciplinary recommendations to the Supreme Court), 5.128 (reprovals with conditions), 5.129–5.132 (costs), 5.135 (ethics school), and 5.137–5.139 (monetary sanctions).

Commenter	Agree/Disagree	Comment
Michael Schiller	AGREE	Seems reasonable.
NC Carlson	AGREE	<p>The State Bar Office of Chief Trial Counsel has a documented history of failing to investigate and prosecute and discipline its attorney members as confirmed in multiple audits.</p> <p>The State Bar in expanding legal work to yet licensed members is some cause for concern.</p>
Ana Maria Martinez	AGREE	<p>"Dear, Supreme Court Justices-</p> <p>The purpose of the emergency licensure program was to grant relief for those facing difficulties throughout the pandemic from financial means to health hazards or high risk exposure to COVID in a regular in person test location. With that being said, the same rules of conduct of a licensed attorney should apply. Why? Because the graduate has had instruction on professional responsibility regardless of in person or online school, traditional or non-traditional methods of instructions.</p> <p>Our goal is to be responsible attorneys, serve the public, uphold the rule of law, temporary licensure because of necessity will eventually lead to permanent licensure once the graduate takes and passes the regular bar exam. The person is prepared from years in law school and knows the rules of conduct.</p> <p>Sincerely,</p> <p>Ana Maria Martinez-Escalona, JD Candidate, MSHL</p> <p>"</p>
No Information Provided.	AGREE ONLY if Modified	<p>Quit dumbing down and worsening the State Bar of California.</p> <p>Used to be the best bar in the United States.</p> <p>Becoming a bit of a joke now.</p>
John Boyle	DISAGREE	This proposal will only dilute to talent and professionalism of the Bar. We already have too many incompetent people practicing law. This will just make matters worse.