



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM O-301 COMMITTEE OF BAR EXAMINERS**

**DATE:** October 14, 2022

**TO:** Members, Committee of Bar Examiners

**FROM:** Larry Kaplan, Member, Committee of Bar Examiners  
David Torres, Member, Committee of Bar Examiners  
Kathy Sher, Senior Program Analyst, Office of Legislative Affairs

**SUBJECT:** Action on Revisions to the Practical Training of Law Students and Law Office Study Rules; Recommendation to Circulate for Public Comment

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### **EXECUTIVE SUMMARY**

In October of 2021, the California Supreme Court issued an Order directing the State Bar to consider whether to change Rule 9.42 of the California Rules of Court to allow Law Office Study (LOS) students to participate in the Practical Training for Law Students (PTLS) program.<sup>1</sup> This direction from the Supreme Court has been folded into the broader review and evaluation that the State Bar is undertaking of Admissions Rules, practices, and procedures, as well as applicant-facing materials, and the Applicant Portal in the Admissions Information Management System, which is designed to streamline processes and eliminate unnecessary barriers to participation. This agenda item requests that the Committee of Bar Examiners recommend to the Board of Trustees circulating rule changes for public comment to revise rules for the PTLS program and the LOS program. At a very high level, the rule changes:

- Allow students in the LOS program to be certified for participation in the PTLS program;
- Allow students in LLM programs to be certified for participation in the PTLS program;
- Eliminate the requirement that students in the PTLS program have completed or

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<sup>1</sup> [Order in re Petition to Amend Cal. Rules of Court Rule 9.42 \(Oct. 20, 2021, No. S269663\) \[2021 Cal. LEXIS 7360\]](#)

- be currently enrolled in courses in Evidence and Civil Procedure;
- Allow LOS students to complete their studies in a physical location other than the law office or judge's chambers with which they are associated, and to eliminate the requirement that they complete their studies during "regular business hours;"
- Make other changes to the State Bar Rules to clarify the requirements and procedures for participation in the PTLS and LOS programs.

In addition, this agenda item requests that the Committee of Bar Examiners adopt a policy granting a grace period for students in the LOS program to submit two required semi-annual reports that were missed or submitted late during the pandemic.

The proposed changes to rule 9.42 of the California Rules of Court are set forth in Attachment A, proposed changes to State Bar Rules 3.1 to 3.11 are set forth in Attachment B, proposed changes to State Bar Rule 4.29 are set forth in Attachment C, proposed changes to the Schedule of Charges and Deadlines are set forth in Attachment D, and the pandemic grace period policy is set forth in Attachment E.

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## **BACKGROUND**

California's Practical Training of Law Students (PTLS) program allows law students certified by the State Bar and working under the supervision of an attorney to provide specified legal services to clients. The purpose of the PTLS program is to improve the training of lawyers by giving law students the opportunity to gain hands-on experience while ensuring the protection of the clients they work with by having the students closely supervised. Students learn the skills and judgment that they will need to practice law in a way that cannot be replicated in a classroom; the attorneys who provide supervision find PTLS students to be a valuable addition to their teams. The requirements for students participating in the PTLS program, requirements for supervision of PTLS students, and restrictions as to what services PTLS students may provide are set forth in California Rules of Court Rule 9.42 and State Bar Rules 3.1 to 3.10.

The Law Office Study (LOS) program allows individuals to qualify to take the California Bar Exam without attending law school, by studying law for four years in a law office or judge's chambers. By allowing aspiring lawyers to complete their legal education by studying with an attorney or judge, California has created a path to licensure for those who may not be able to attend a traditional law school because their other responsibilities make attendance difficult, because they do not do well in traditional academic settings, or for financial reasons. The program is authorized by Business and Professions Code section 6060 (e)(2) (B) and (C), and the specific requirements for study in a law office or judge's chambers are set out in State Bar Rule 4.29.

In October of 2021, the California Supreme Court issued an Order directing the State Bar to consider whether changes to Rule 9.42 of the California Rules of Court to allow LOS participants to participate in the PTLS program would be "prudent," and whether any further rule amendments should be made to provide additional protections to the public and to the judicial

system. [Order in re Petition to Amend Cal. Rules of Court Rule 9.42 \(Oct. 20, 2021, No. S269663\) \[2021 Cal. LEXIS 7360\]](#).

At the Committee's August meeting, staff sought the Committee's input on a response to the Supreme Court Order and other potential changes. Committee members David Torres and Larry Kaplan volunteered to work with staff on developing a proposal to be brought back to the Committee. The proposal before the committee today is the result of that effort. References in this agenda item to the "working group" are to these Committee members and the staff who worked with them.

## **DISCUSSION**

The proposals before the Committee today address the question posed by the Supreme Court as to whether LOS students should be able to participate in the PTLs program, and propose additional changes to eliminate unnecessary barriers to participation in the PTLs and LOS programs and to improve the administration of those programs.

### **PARTICIPATION OF LOS AND LLM STUDENTS IN THE PTLs PROGRAM**

In 2021, attorney Michael Millen petitioned the California Supreme Court requesting the adoption of amendments to rule 9.42 of the California Rules of Court to permit students in the LOS program to participate in the PTLs program. In response, the Supreme Court issued an Order directing the State Bar to consider whether changes to Rule 9.42 to allow LOS participants to participate in the PTLs program would be "prudent," and whether any further rule amendments should be made to provide additional protections to the public and to the judicial system.

Mr. Millen is not alone in asking that LOS students be allowed to take part in the PTLs program. State Bar staff receive a small number of inquiries each year from LOS students and their supervisors asking whether the students can become certified to participate in the PTLs program. In addition, staff report that students in LLM programs also ask if it is possible for them to be certified.

LOS students and LLM students are not expressly barred from participation in the PTLs program under Rule 9.42 of the Rules of Court or the State Bar rules governing the program. However, the existing rules impose requirements that LOS and LLM students cannot meet, precluding them from participation in the program.

Specifically, LOS students cannot meet the requirement under Rules of Court Rule 9.42 (c)(2) that they have been accepted into and be enrolled in the second, third, or fourth year of law school, and are unable to submit the Declaration of Law School Official required under State Bar Rule 3.3 (A)(2)(c). LLM students are enrolled in a one-year program, and so similarly would not meet the requirement to be enrolled in a second, third, or fourth year of law school. In addition, many LOS students are unable to meet the requirement under Rule 9.42 (c)(3) that they have completed or be currently enrolled in "academic courses" in evidence and civil

procedure. (See discussion of proposed changes to the PTLS program, below, for consideration of whether coursework requirements should remain in effect.)

In California, the Legislature and the State Bar have committed to providing an alternative path to becoming a lawyer through study in a law office or judge's chambers. The structure of the LOS program, like the PTLS program, recognizes that working closely with an experienced attorney can help a prospective attorney to learn the skills and knowledge they will need when they begin to practice law. Although the LOS program is a study program, with required hours of study and examinations, it is typical for students in the LOS program also to perform non-academic work for their supervisors, gaining hands-on experience in addition to academic training. Participation in the PTLS program would seem to be a good fit for this model of learning, allowing LOS students to provide services to clients, under supervision, that they are currently not permitted to provide. An LOS student participating in the PTLS program could represent a client in negotiations, for example, with the supervising attorney's general supervision and approval of the plan of negotiation. An LOS student might choose to participate in the PTLS program under the supervision of the same attorney who supervises the student's LOS studies, thereby being able to provide a broader scope of services to the attorney's clients, or they might choose to work with a different PTLS supervising attorney and learn more about a different type of practice.

Opening up the PTLS program to participation by LOS students can be accomplished while still maintaining protection of the public. LOS students in the PTLS program would be subject to the same restrictions on their activities and requirements for close supervision by the supervising attorney that apply to traditional law students in the PTLS program, ensuring protection of the clients served by those students. To make a clear distinction between the hours LOS students must spend on their legal studies and time spent on activities in the PTLS program, the proposed amendments expressly provide that time spent in PTLS activities cannot be counted towards the hours of study required in the LOS program.

Students in LLM programs are typically students with law degrees from schools outside the U.S., or attorneys licensed outside the U.S. These students enroll in LLM programs to become eligible to take the California Bar Exam by completing a year of study in a U.S. law school.

The benefit in having LLM students be able to participate in the PTLS program is the same as for students in JD programs: participation in this program can help them to become better lawyers by giving them hands-on experience in the practice of law while they complete their studies. The concern as to LLM students is that because their prior legal education was in another country, their academic training may not have provided them with sufficient training on U.S. law to put them on equal footing with someone who completed the first year in a California law school. The proposed rules address this concern by requiring that an LLM student complete one semester, or two quarters, in the LLM program before participating in the PTLS program.

The working group has concluded that rule 9.42 of the Rules of Court and State Bar Rules governing the PTLS and LOS programs should be amended to allow LOS students and LLM students to participate in the PTLS program, and proposes the following changes to the rules:

- To add a definition of “law student” in Rules of Court Rule 9.42, to include LOS and LLM students;
- To require that an LOS student have completed one year of studies and have passed the First Year Law Students’ Exam;
- To require that an LLM student have successfully completed one semester or two quarters of the LLM program and be enrolled in a second or subsequent semester or third or subsequent quarter;
- To require that an LOS student be actively continuing the course of study in the law office or judge’s chambers and provide that certification will terminate if an LOS student is suspended from that program;
- To exempt LOS students from the requirement to submit a Declaration of Law School Official, instead requiring them to submit a declaration from the attorney or judge who oversees their LOS studies;
- To state, in Rule 4.29 regarding the LOS program, that time spent on activities in the PTLS program shall not count towards the required number of hours of study for an LOS student; and

## **PROPOSED CHANGES TO STRENGTHEN AND MODERNIZE THE LAW OFFICE STUDY PROGRAM**

**Background:** California law and the State Bar Rules provide an alternative path to licensure as an attorney through the study of law in a law office or judge’s chambers. The Law Office Study (LOS) program provides a flexible and affordable option for aspiring lawyers for whom traditional law schools may not be a good fit. Over one hundred students are currently approved by the State Bar to study law in this manner, and in the ten years from 2011 to 2021, forty-three individuals who took this non-traditional path were able to pass the California Bar Exam.

By updating the rules to reflect the realities of modern legal practice and to clarify program requirements, the Committee can make it possible for more aspiring lawyers to succeed in the LOS program while ensuring that they receive the training and education they need.

**Updating LOS program requirements to reflect the realities of modern legal practice:** The statutory requirement for study in the LOS program, under Business and Professions Code section 6060 (e)(2), is that a student study law “in a law office in this state” or “in the chambers ... of a judge of a court of record of this state.” Rule 4.29 (A) (3) imposes the more specific requirement that an LOS participant study law “in a law office or judge’s chambers during regular business hours” for a required amount of time. Rule 4.29 (B)(3) requires that the supervisor “personally supervise” the LOS student for at least five hours a week.

The way attorneys do their work has changed significantly since Rule 4.29 was adopted in 2008, and what once were reasonable requirements now stand as outdated and unnecessary barriers to successful completion of study in the LOS program. First, the requirement for a student to complete the specified number of hours of study during “regular business hours” makes little sense given the way lawyers now work. Modern lawyers schedule their work based on the

needs of their clients and their own needs rather than adhering to a traditional workday and workweek. An attorney or judge who supervises an LOS student should be able to work with the student to craft a study schedule that best meets the needs of both supervisor and student.

Similarly, an update is needed to clarify that the statutory and rules requirements for study “in a law office or judge’s chambers” does not require physical presence in the office or chambers. Working remotely has become a regular practice for many attorneys, as improved technology allows research and writing to be accomplished from any computer with access to the internet. The pandemic has accelerated the pace of change. Many types of work that previously required an attorney to be present in-person, such as meetings, depositions, and in some cases even court appearances, can now be done with the attorney and other participants joining by video. Some attorneys work entirely remotely and some do not even have an office.

LOS students, like their attorney and judge supervisors, should be able to take advantage of technology and find the combination of in-office and remote study that best suits their needs. To ensure that adequate supervision is provided when a student is studying remotely, the supervisor should be required to submit a plan for remote supervision.

The working group also discussed whether the rules for the LOS program should continue to require that some of the supervision of the student take the form of in-person meetings. The working group recognized that allowing for video meetings between supervisor and student could greatly increase flexibility and therefore access to the program, for example allowing a student to study with an attorney whose office is far from where the student resides. However, the working group also noted that in-person contact allows a kind of connection and communication that is impossible when all meetings are by video. The proposed rules seek to strike a balance by requiring five hours of in-person “direct supervision” for every twelve weeks of LOS study, with at least two in-person meetings required for each six-month study session.

In addition to the proposed changes to allow remote study and supervision, the working group proposes that the requirements for supervision of LOS students be clarified to distinguish between the obligation to oversee the student’s course of study generally and the obligation to provide a specified number of hours of direct supervision to the student. Specifically, the proposed changes would change the requirement in Rule 4.29 (B)(2) for the attorney or judge to “personally supervise” the course of instruction to require instead that they “personally oversee” the course of instruction, and change the requirement in Rule 4.29 (B)(3) that the attorney or judge “personally supervise” the applicant for at least five hours a week to require instead that they “directly supervise” the applicant for at least five hours a week. A corresponding change would be made to require that the hours of each type of oversight and supervision be reported in the semi-annual report. Finally, the working group recommends that State Bar staff be directed to create informational materials to provide a more detailed explanation of what is required for each type of oversight and supervision.

**Allowing a grace period for LOS students to submit semi-annual report that were late or missed during the pandemic:** As part of the overall review of admissions rules and processes, staff have been working to identify timelines that may have been impacted by challenges

students faced during the pandemic. The Committee has already considered a rule change addressing this in the context of Rule 4.17 which requires applicants who passed the bar exam to complete all steps to get certified to the Supreme Court and take the attorney's oath within five years of passing the bar exam. With regard to the LOS program, staff has reason to believe that the conditions of the pandemic made it difficult for some students to submit the required semi-annual reports in a timely manner, although they were continuing their studies and meeting all other requirements. These students may have continued their studies with every intention of reporting on those studies as required, and then found themselves in circumstances that left them unable to get the required report in on time, resulting in them not getting any credit for that work. The working group recommends that the Committee recognize the difficulties that the pandemic posed for these students, and that they be given the opportunity to submit or re-submit up to two semi-annual reports due since the start of the pandemic to the present, granting credit retroactively for up to two six-month periods of study upon submission of the reports for those periods so long as all other requirements were fulfilled for the study periods in question. This policy would apply only to those students who have submitted and had accepted at least one timely semi-annual report in the past (before or after the start of the pandemic), the group of students who have shown their ability to meet the program's requirements.

Because this is expressly a temporary change, allowing a one-time grace period and not changing the underlying rule regarding the deadline for required submission of the semi-annual reports, it is proposed as a Committee policy rather than a rule change. The policy proposed for adoption is set forth in Attachment E.

**Other changes needed:** The working group has identified a number of areas where Rule 4.29 should be updated to improve administration of the program and to ensure that LOS students and their supervisors have clear direction as to the various requirements for applying to and continuing in the program. The recommended changes include:

- To require that the application and supporting documentation be submitted and approved no less than thirty days prior to the applicant beginning study, rather than within thirty days after beginning study, and to provide for a refund of fees if an application is denied;
- To specify that a student must complete twenty-four weeks of study within a twenty-six week period to receive credit for a half year of study;
- To specify that an attorney supervising an LOS student must have been admitted to practice in California and in good standing continuously for a minimum of five years immediately preceding the application and have been engaged in the active practice of law for that time, and a judge supervising an LOS student must be a judge of a court of record of this state with no minimum number of years of admission to practice, in accordance with the requirement in Business and Professions Code section 6060 (e)(2)(C);
- To clarify that the outline of the proposed course of instruction must outline proposed instruction for the full number of years of study required;

- To revise and clarify the requirements for the information to be included in the semi-annual reports and the procedures for submitting these reports;
- To state that LOS students are subject to State Bar Rule 4.32 and will not receive credit for hours of study devoted to study of subjects previously completed;
- To state that LOS students will not receive credit for time spent in activities in the PTLS program;
- To specify the procedures for a student to change their supervisor;
- To specify that failure to submit a semi-annual report within one year of beginning study or within one year of submission of the most recently submitted semi-annual report will result in the student being placed on suspended status and being required to submit a new application to resume study; and
- To make other technical and conforming changes, including changes to the Schedule of Charges and Deadlines.

### **PROPOSED CHANGES TO REMOVE UNNECESSARY BARRIERS TO PARTICIPATION IN THE PRACTICAL TRAINING FOR LAW STUDENTS PROGRAM AND TO IMPROVE PROGRAM ADMINISTRATION**

**Background:** The Practical Training for Law Students (PTLS) program, also called the Certified Law Students program, is a program that allows law students certified by the State Bar and working under the supervision of an attorney to provide specified legal services to clients. Hands-on experience in the practice of law, under close supervision, is universally recognized to be a valuable addition to traditional academic training, and all fifty states and the District of Columbia have this type of program available to law students.

In addition to the rule amendments proposed above to allow LOS and LLM students to participate in the PTLS program, staff propose further changes to the rules to eliminate unnecessary barriers to participation in the program and to improve administration of the program by clarifying procedural requirements.

**Should students in the PTLS program be required to take courses in Evidence and Civil Procedure?** Rules of Court Rule 9.42 (c)(3) specifies that to be eligible to become a certified law student, a student must “have successfully completed or be currently enrolled in and attending academic course in evidence and civil procedure.” If this requirement is not needed to ensure that PTLS students will provide competent legal services under supervision, then it should be eliminated so that more students will be able to participate.

The requirement is unusual among the various states’ law student practice programs. Most states have no specific coursework prerequisites for participation, and in those states with such requirements the most common courses required are professional responsibility and legal ethics. The experience of other states suggests that students who do not meet the requirement for coursework in evidence and civil procedure would nonetheless be capable of providing competent services to clients through the PTLS program. Indeed, under the existing rules in California, students may begin participation in the PTLS program when they have only just



begun their courses in evidence and civil procedure, performing the same kinds of work as the students who have already completed those courses.

Most attorneys who serve as supervisors in the PTLs program, however, do find it useful for their students to have this background. The State Bar recently surveyed attorneys who are serving or have served as supervising attorneys for PTLs students to ask whether these requirements are useful. Two hundred and forty-eight supervising attorneys responded (out of a total of one thousand and fifty-eight who received the survey link), and a majority of those responding said that they do find these requirements useful. Sixty-three percent of those supervising attorneys who responded rate the requirements, considered together, as a 4 or 5 in importance on a scale of 1 to 5; seventy-five percent rate evidence as a 4 or 5; and forty-two percent rate civil procedure as a 4 or 5. However, a considerable number of survey respondents noted that courses in criminal law or criminal procedure would be better preparation for their PTLs students than civil procedure. Other survey respondents recommended ethics or professional responsibility. Still others recommended trial advocacy, or coursework specific to their own area of practice, such as family law or wills and trusts.

Taking these survey results as a whole, and considering the approach in other states, the working group has concluded that the coursework requirements of Rule 9.42 (c)(3) should be eliminated. Law offices, agencies and law school clinical programs are free to create their own requirements for the students who apply to work with them and may choose to accept only those students who have taken certain courses or studied specific areas of the law. Eliminating the regulatory requirement for specific course work will open the program to more students and allow the offices where PTLs students work to tailor their requirements to their office-specific needs.

The working group recommends that Rule 9.42 of the California Rules of Court be amended to delete paragraph (3) of subdivision (c), as shown in the draft amendments in Attachment A. If these requirements remain, further changes will be required to conform the language to the type of study conducted by LOS students.

**Other changes needed:** The working group has identified several changes needed to ensure that the rules clearly state the requirements for a student's application to the PTLs program and for their continued participation in the program, and recommends the rules be amended to do the following:

- To create new procedures for a student to add a supervising attorney or change their supervising attorney;
- To require that a supervising attorney have practiced law or taught law for the two years before supervising a PTLs student while removing the requirement that they have done so full time;
- To revise the procedure and timeline for notification of the student when their certification is revoked; and
- To make other technical and conforming changes.

## **AMENDMENTS TO RULES OF COURT**

Title 9, Division 4, Rule 9.42

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

Title 3, Division 1, Chapter 1, Rules 3.2 through 3.10

Title 4, Division 1, Chapter 3, Rule 4.29

Appendix A, Schedule of Charges and Deadlines

## **RECOMMENDATIONS**

It is recommended that the Committee of Bar Examiners request that the Board of Trustees circulate for a 45-day public comment period the rule changes reflected in Attachments A, B, C, and D to allow students in the Law Office Study (LOS) program to be certified for participation in the Practical Training of Law Students (PTLS) program; to allow students in LLM programs to be certified for participation in the PTLS program; to eliminate the requirement that students in the PTLS program have completed or be currently enrolled in courses in Evidence and Civil Procedure; to allow LOS students to complete their studies in a physical location other than the law office or judge's chambers with which they are associated and to eliminate the requirement that they complete their studies during "regular business hours;" and to make other changes to the State Bar Rules to clarify the requirements and procedures for participation in the PTLS and LOS programs.

It is further recommended that the Committee of Bar Examiners adopt a policy giving participants in the Law Office Study program a one-time grace period to submit or re-submit two semi-annual reports that were submitted late or missed during the pandemic.

## **PROPOSED MOTIONS**

Should the Committee of Bar Examiners agree with these recommendations, the following motions would be appropriate:

**MOVE**, that the Committee of Bar Examiners recommends to the Board of Trustees to circulate the proposed rules set forth in Attachments A, B, C, and D for a 45-day public comment.

**MOVE**, that the Committee of Bar Examiners adopt the Policy Allowing a Grace Period for Submission of Semi-annual Reports by Law Office Study Participants set forth in Attachment E.

## **ATTACHMENT(S) LIST**

- A. Proposed Amendments to Title 9 of the Rules of Court, Rule 9.42 (Redline)

- B.** Proposed Amendments to Title 3 of the Rules of the State Bar, Rules 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10 and 3.11 (Redline)
- C.** Proposed Amendments to Title 4 of the Rules of the State Bar, Rule 4.29 (Redline)
- D.** Proposed Amendments to Appendix A of the Rules of the State Bar (Redline)
- E.** Policy Allowing a Grace Period for Submission of Semi-annual Reports by Law Office Study Participants