



The State Bar of California

OPEN SESSION

AGENDA ITEM O-301

COMMITTEE OF BAR EXAMINERS

DATE: March 24, 2023

TO: Members, Committee of Bar Examiners

FROM: Larry Kaplan, Member, Committee of Bar Examiners
David Torres, Member, Committee of Bar Examiners
Donna S. Hershkowitz, Chief of Programs & Legislative Director

SUBJECT: Action on Rules Revisions re: Practical Training of Law Students and Law Office Study Programs: Recommendation to Adopt Following Return from Public Comment

EXECUTIVE SUMMARY

In October 2022, the Committee recommended circulating for public comment changes to the rules relating to both the Practical Training of Law Students (PTLS) Program and the Law Office Study (LOS) Program. The Board of Trustees concurred, and following the November 2022 Board meeting, the proposals were circulated for a 60-day public comment period. The rule proposals responded to the direction of the Supreme Court to evaluate whether to include LOS students in the PTLS program, and, more broadly, were part of the Admissions effort to review rules, practices and procedures, and applicant-facing materials, among other things, to streamline processes and eliminate unnecessary barriers to participation.

Thirty-three individuals and organizations submitted comments on the LOS proposal, 24 in agreement, 2 agreeing if modified, and 7 expressing disagreement with the proposal as circulated. As for the PTLS proposal, 27 individuals and organizations submitted public comment, 16 in full agreement with the proposal, 5 agreeing with modifications, and 6 expressing disagreement with the proposal. The working group is recommending that the Committee make small changes to the LOS proposal in the response to the public comment, and proceed with the PTLS rules as circulated. The working group further recommends that the Committee submit these proposals, as amended, to the Board of Trustees with a

recommendation that the Board adopt these changes and transmit them to the Supreme Court for approval.

BACKGROUND

California's 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 LOS program allows individuals to qualify to be admitted to the practice of law 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 \(Oct. 20, 2021, No. S269663\) \[2021 Cal. LEXIS 7360\]](#).

Committee members Larry Kaplan and David Torres volunteered to work with staff to develop revisions to these rules to address the Supreme Court Order and to meet the Office of Admission goals in reviewing and revising its rules. References in this agenda item to the "working group" are to these Committee members and the staff who worked with them.

Pursuant to the Committee's recommendation and action by the Board of Trustees, the rule proposals were circulated for a 60-day public comment period. In addition to posting the rules on the State Bar website and sending notice of public comment period to those who registered to receive such notices, the State Bar notified current participants and supervisors in both the PTLS and LOS programs.

In addition to the meetings of the working group conducted to develop the rule proposals, the working group also met to review all the public comments received and determine if amendments to the rules proposals should be made in response to those comments.

DISCUSSION

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

What is the PTLs Program

The 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, including appearing on behalf of a government agency in the prosecution of criminal actions classified as infractions, appearing on behalf of the client in a deposition, public trial, hearing, arbitration, or proceeding, and giving legal advice or negotiating for and on behalf of the client. 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.

Rule Proposals

Based on its review of the current rules and practices, and the purpose underlying the program, the working group recommended, and the Committee concurred, 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 gain the hands-on benefits afforded to other students. To allow for this, the following proposed amendments to the PTLs rules were recommended by the Committee:

- Adding a definition of “law student” in Rules of Court Rule 9.42 to include LOS and LLM students;
- Requiring 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;
- Requiring that an LOS student be actively continuing the course of study in the law office or judge’s chambers to participate in the PTLs program, and provide that certification will terminate if an LOS student is suspended from that program; and
- Clarifying that time spent on activities in the PTLs program shall not count towards the required number of hours of study for an LOS student.

In addition to the changes to make the program more broadly accessible, the Committee approved circulating for public comment amendments to eliminate unnecessary barriers to participation in the program and to improve administration of the program by clarifying procedural requirements. Those changes include:

- Eliminating the eligibility requirement that a student have successfully completed or be enrolled in a course in evidence and a course in civil procedure to participate in the PTLS program;
- Creating procedures to enable a student to more easily understand how to add a supervising attorney or change their supervising attorney;
- Maintaining the requirement that a supervising attorney have practiced law or taught law for the two years before supervising a PTLS student, but removing the requirement that they have done so full-time;
- Revising the procedure and timeline for notifying the student when their certification is revoked; and
- Making other technical and conforming changes.

A more comprehensive description of these rule changes is contained in the October 14, 2022., agenda item presented to the Committee; see <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029849.pdf>

Public Comment

The proposed rules were circulated for a 60-day public comment period. During that period, a total of 27 individuals and organizations submitted public comment, with the majority in full agreement with the proposal as submitted. The breakdown of the comments received is:

- Agree with proposal – 16
- Agree if modified – 5
- Disagree - 6

The issue that was raised most often by those who requested modifications to the proposal or disagreed with the proposal revolved around the elimination of the requirement to “have successfully completed or be currently enrolled in and attending academic course in evidence and civil procedure” to be eligible for the program. Three of the five requesting modifications raised this issue, as did two who expressed their disagreement. Staff notes, however, that four commenters who stated their agreement with the proposal expressly referenced this change among the proposal’s positive elements. This issue was discussed at length in the October 14, 2022, agenda item presented to the Committee. Due to the number of comments on this issue, revisiting what was presented to the Committee at that time may be useful:

This 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.

Having renewed their analysis of the issue, the working group continues to recommend elimination of these specific course requirements as an eligibility requirement for participation in the program. The working group assumes that those accepting PTLs students may very well impose their own requirements, and would expect those requirements to vary depending on the type of legal assistance the PTLs student will be providing.

The working group notes that two commenters disagreed with the expansion of the program to LLM students and LOS students. However, one commenter specifically indicated agreement with including LLM students, but not LOS students. The other commenter made the opposite comment. The working group continues to strongly believe that the program should be expanded for both LLM and LOS students.

Specific responses to these and the other comments are noted in the comment chart set forth in Attachment E.

PROPOSED CHANGES TO STRENGTHEN AND MODERNIZE THE LAW OFFICE STUDY PROGRAM

What is the LOS Program

California statute 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 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.

Rule Proposals

The working group recommended, and the Committee concurred, that State Bar rules should be amended to update the LOS rules to reflect the realities of modern legal practice and to clarify program requirements. To accomplish this, the Committee recommended circulating for public comments changes to the LOS rules to accomplish the following:

- Allow for a significant amount of the study to be conducted remotely, but in a manner that still requires supervision by the attorney or judge'
- To ensure that adequate supervision is provided when a student is studying remotely, the supervisor will be required to submit a plan for any remote supervision;
- Maintain a small number of required in person meetings between the student and the supervising attorney or judge (five hours every twelve weeks of study, resulting in at least two in person meetings for each six-month study session);
- Require the application and supporting documentation to 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;
- 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;
- 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);
- Clarify the requirements for the outline of the proposed course of instruction that must be submitted with the application materials;
- Revise and clarify the requirements for what must be submitted in the semi-annual reports and the procedures for submitting these reports;
- Make express the prohibition on receiving credit for hours of study devoted to study of subjects previously completed;
- Identify the procedure for a student to change their supervisor;
- Ease administration of the program for State Bar staff by providing 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

- Make other technical and conforming changes, including changes to the Schedule of Charges and Deadlines.

A more comprehensive description of these rule changes is contained in the October 14, 2022 agenda item presented to the Committee; see

<https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029849.pdf>

Public Comment

The proposed rules were circulated for a 60-day public comment period. During that period, a total of 33 individuals and organizations submitted public comments, with the vast majority in full agreement with the proposal as submitted. The breakdown of the comments received is:

- Agree with proposal – 24
- Agree if modified – 2
- Disagree -7

Those who expressed disagreement with the proposal either submitted no explanation for their position (four) or provided comments that were not relevant to the proposal that was circulated for public comment (three).

The working group considered the suggestions from the two commenters who requested modifications to the proposal, and make the following recommendations:

- Ensure that the changes to the timeline for the initial application do not affect current participants whose application was timely under the current rules.
 - Agree. The working group recommends a change to the rules proposal to clarify that point. In addition, the working group examined the other rule changes proposed and determined that a similar clarification would be appropriate to ensure that a judge or attorney previously approved to supervise the LOS student is not deemed ineligible under the rule changes. (See language in Attachment C, amending rule 4.29(A))
- Eliminate the requirement for the two in-person direct supervision meetings per study session.
 - Disagree. As discussed in the October 14, 2022, Committee agenda item, the working group was supportive of providing significant flexibility by allowing most of the study session and supervision to occur remotely. 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. The working group believes

this minimal amount of in person supervision is not onerous and is important to increase the value of the education provided.

- Do not require the remote supervision to be conducted by video, but allow for telephonic remote supervision.
 - Disagree. The commenter talks about the relationship between the student and the mentor and how that relationship can be achieved through other than video technology. The working group feels that this mischaracterizes the role of the supervisor. This is a study program. The working group does not believe direct supervision by telephone to be an effective means to ensure the learning objectives are satisfied.
- Allow LOS students to get credit for duplicate classes.
 - Disagree. Although the commenter is correct that it would benefit a student to refresh their recollection of the material when they are studying for an upcoming exam, this does not translate to allowing them to get credit for these hours. This same requirement is imposed on those attending registered schools, and is a critical part of the analysis State Bar staff use to evaluate number of credits earned by students who attend but do not receive a JD from an ABA approved or California Accredited law school. LOS students should not be exempted from this same requirement.
- Provide greater flexibility in how a student can satisfy the hours requirement. The commenter suggests that a weekly requirement of 18 hours per week is not necessary, but rather students should be required only to complete the required 432 hours per six-month study session.
 - Agree in concept. The working group discussed this suggestion at length, and recommends a small change in the current requirements. The working group agrees that additional flexibility would serve the program participants well, but at the same time wants to ensure there is continuous effort to study and learn the law. As a result, the working group suggests that although the State Bar should encourage students to commit 18 hours per week, they be required to demonstrate only that they have completed 72 hours for each month of study during the six-month study session. In case Committee members are doing the math, the current requirement of 18 hours per week for a minimum of 24 weeks equates to 432 hours. Similarly, 72 hours per month over the course of 6 months equates to 432 hours. State Bar staff indicate this change will not cause significant disruption in how they evaluate successful completion of the six-month study sessions.
- LOS students should be permitted to represent clients.
 - Disagree. The working group disagrees that the LOS program should allow for representation of clients. The working group notes, however, that the changes to the PTLS program allow LOS students to participate, which will provide them the same opportunity to represent clients.

Responses to these and other comments is included in the Public Comment Chart set forth as Attachment F.

FISCAL/PERSONNEL IMPACT

Expenditures currently exceed revenue for both the PTLs program and the LOS program, although the difference between revenue and expenditures in the PTLs program is small

The changes included in this proposal are expected to result in minor, but absorbable impacts.

PTLS Program Changes:

- The addition to the rules clarifying that applications must be brought to complete status within 60 days or they will be deemed abandoned, and that no refund shall be issued is clarifying current practice. The addition of the language should reduce administrative burdens on staff by providing clarity to applicants.
- The addition of the new form to change or add a supervising attorney will provide improved clarity for applicants and staff about the process.

LOS Program Changes:

- The addition or clarification of fees for changing the attorney or judge supervisor, submission of a late semi-annual report, or application to resume study will result in an unknown, but small increase in revenue. The increase may be offset by the impact on staff to process these requests to change the attorney or judge, accept a late report, or process an application to resume study.
- The removal of the fee for “initial study”, as reflected in the Schedule of Charges and Deadlines, is simply conforming the rules with current practice.
- The revisions which allow, but set a time limit for the submission of late reports for up to 60 days will provide clarity and certainty for applicants, which should reduce the administrative burden on staff.

Any rule changes which impact the work flow, revise forms, or add new forms will require the use of resources in the Office of Information Technology to make changes to the Admissions Information Management System (AIMS), and will require the use of staff resources in the Office of Admissions to help define the requirements and test any system 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

The working recommends that the Committee approve the changes to the Law Office Study program rules described above and reflected in Attachment C and approve moving forward with the Practical Training of Law Student program rules as circulated for public comment.

PROPOSED MOTIONS

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

MOVE, that the Committee of Bar Examiners recommends that the Board of Trustees adopts the proposed rules regarding the Practical Training of Law Students program, set forth in Attachments A, B, and D;

MOVE, that the Committee of Bar Examiners recommends that the Board of Trustees adopts the proposed rules regarding the Law Office Study program, set forth in Attachments C and D;

MOVE, that the Committee of Bar Examiners recommends that the Board of Trustees direct staff to transmit the revised rules the Supreme Court for review and approval.

ATTACHMENTS 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.** Public Comment Chart – Practical Training of Law Students Program
- F.** Public Comment Chart – Law Office Study Program