



The State Bar of California

OPEN SESSION

AGENDA ITEM

III.A. JUNE 2023

CALIFORNIA BOARD OF LEGAL SPECIALIZATION

DATE: June 30, 2023

TO: Members, California Board of Legal Specialization

FROM: Adrian Galang, Program Supervisor, Legal Specialization

SUBJECT: Discussion and Approval of Proposed Changes to Legal Specialist Exam Refund Rules and Policies; Recommendation to Circulate State Bar Rule 3.116 for Public Comment

EXECUTIVE SUMMARY

At its December 2022 meeting, the California Board of Legal Specialization (CBLS) discussed the need to have a dedicated Legal Specialist Exam (LSX) refund policy and directed staff to review the State Bar rules to determine if Legal Specialization rules should be updated to include provisions related to a refund policy. This agenda item summarizes the rules and policies pertaining to exam refunds and recommends that the CBLS:

- Approve a general LSX refund policy; and
- Recommend that the Board of Trustees circulate Legal Specialization rule 3.116 for a 60-day public comment period, to clarify when applications are not eligible for refunds.

The proposed refund policy for the LSX is set forth in Attachment A, and the proposed update to rule 3.116 is set forth in Attachment B.

BACKGROUND

Generally, fees paid toward the Legal Specialization program are non-transferrable and non-refundable, including the Legal Specialist Exam (LSX) registration fee. The program only recently implemented a refund policy, during the 2021 administration of the LSX, which mirrored the policy of the First-Year Law Students' Exam (FYLX). The FYLX policy provided for refunds and

refund amounts based on how far in advance an applicant withdrew from the exam and submitted a request for refund. The dates and refund scale used for the 2021 FYLSX were applied to the 2021 LSX.

DISCUSSION

At the December 2022 CBLS meeting, staff proposed (1) maintaining the 2021 LSX refund policy for the 2023 LSX¹ and future exam administrations, and (2) recommended updating the Legal Specialization rules to further define LSX applications that would not be eligible for refunds. In developing its proposal, staff (1) considered whether the existing Legal Specialization rules address LSX refunds; (2) reviewed other potentially relevant State Bar rules and resources for guidance; and, similarly, (3) surveyed exam refund rules and policies used in other certifying state jurisdictions and national organizations.

LEGAL SPECIALIZATION RULES

Legal Specialization rule 3.111 sets forth penalties for a failure to timely submit a required fee.² Rule 3.116 pertains to the exam requirement for prospective legal specialists. Neither rule addresses the refund of LSX fees. Staff recommends amending rule 3.116 by adding provisions to specify when an application is deemed abandoned and applicants are therefore ineligible to receive refunds for the LSX application fee.

OTHER STATE BAR RULES AND RESOURCES

The Committee of Bar Examiners (CBE) adopted a refund policy that applies to fees for the California Bar Exam (CBX) and the FYLSX. In doing so, the CBE has provided applicants with clear refund criteria that are applied consistently across exam administrations. Pursuant to the policy, an applicant who withdraws an application to sit for an exam within 30 days of the application deadline is entitled to a refund of 60 percent of the exam fee. An applicant who withdraws the application within 45 days of the deadline is entitled to a refund of 30 percent of the exam fee. As a courtesy to exam applicants, when exam registration is opened, Admissions staff update the State Bar website to list the relevant dates for the 60 percent and 30 percent refunds. Staff recommends adopting an LSX refund policy modelled on the refund policy for the CBX and FYLSX, both because the LSX application is similar to that of the CBX and FYLSX, and so that applicants may benefit from the clarity and consistency that an explicit policy provides.

Admissions rule 4.61³ provides that a CBX applicant is ineligible for a fee refund if the exam application is incomplete by the filing deadline or if the applicant's eligibility to sit for the exam cannot be determined by the eligibility deadline. Like the CBX, the LSX requires completion of an application and an eligibility determination. Accordingly, rule 4.61 provides a good model to govern ineligibility for a refund of an LSX fee.

¹ The LSX is held every other year.

² Rules of the State Bar, Title 3, Division 2, Chapter 2. Legal Specialization, https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title3_Div2-Ch2_LegSpec.pdf

³ Rules of the State Bar, Title 4, Division 1. Admission Practice Law in California, https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div1-Adm-Prac-Law.pdf

OTHER CERTIFYING STATE JURISDICTIONS AND NATIONAL ORGANIZATIONS

Staff reviewed the exam refund rules and policies of three certifying state jurisdictions (Florida Board of Legal Specialization & Education, New Jersey Supreme Court Board on Attorney Certification, and Texas Board of Legal Specialization), and three national certifying organizations (American Board of Certification, National Board of Trial Advocacy, and National Elder Law Foundation). Florida⁴ is an outlier among the jurisdictions surveyed in that it provides a refund of the exam fee if an applicant provides written notification of cancellation at least 48 hours prior to the date of the exam. The National Board of Trial Advocacy is relatively vague in this area, as it lists an exam fee in their fee schedule,⁵ but does not indicate whether the exam fee is refundable. All of the other certifying bodies specifically state that exam fees are non-refundable, with no mention of waivers or exceptions for refunds. Staff is proposing an LSX refund policy and related rule changes that maintain consistency with the existing refund policies for the CBX and FYLSX, rather than adopting a policy more closely aligned with the largely more restrictive refund policies of the other jurisdictions surveyed. Consistency among the policies and rules governing refunds of exam fees provides applicants with clarity and avoids potential confusion caused by different standards for the various exams.

LSX REFUND POLICY

Attachment A provides the proposed LSX Refund of Fees Policy, which includes definitions, timeframes in which LSX applicants may withdraw from the exam, and instructions for requesting refunds. The LSX policy removes requests for refunds from immediate repeat applicants as there is no overlap from the time results are released from the LSX and the following administration. The policy provides timelines upon which an applicant may request a refund, and the refund amount to which the applicant would be entitled. Adoption of this policy will provide clarity for applicants and staff and ensure that requests for refunds are handled consistently and fairly across exam administrations.

LSX RULE AMENDMENT

Attachment B proposes amendments to rule 3.116 to identify circumstances under which an applicant would be deemed to have abandoned their application to sit for exam and would be ineligible for a refund. The proposed rule is nearly identical to rule 4.61, the analogous rule related to the CBX. Proposed rule 3.116 differs from rule 4.61 in that it refers to the “final application deadline” instead of the “final eligibility deadline,” as there is no eligibility deadline for the LSX. In addition to the proposed refund provisions, staff recommends changing the phrase “examination registration fee,” to “examination application fee,” to provide consistency with other Admissions rules.

⁴ Florida Standing Policies of the Board of Legal Specialization and Education, 2.04(b) provides, “The examination fee may be refunded only if written notification of cancellation is received by the LSE office at least 48 hours in advance of the examination date.”, https://www-media.floridabar.org/uploads/2023/05/2023_11-MAY-BLSE-Policies-5-12-2023.pdf.

⁵ National Board of Trial Advocacy Fee Schedule, <https://www.nbtalawyers.org/nbta-fee-schedule/>

FISCAL/PERSONNEL IMPACT

During the 2021 LSX, staff processed a total of 13 withdrawals with refund requests for a total of \$1,097.50 being refunded to applicants. Staff anticipate a similar total refund amount for the 2023 LSX.

RECOMMENDATIONS

It is recommended that the California Board of Legal Specialization approve the LSX Refund of Fees Policy provided in Attachment A, to be effective immediately for the 2023 exam and future administrations until such time as the policy is revised.

It is further recommended that the CBLS recommend to the Board of Trustees that rule 3.116, as set forth in Attachment B, be circulated for a 60-day public comment period.

PROPOSED MOTIONS

Should the California Board of Legal Specialization agree with these recommendations, the following motions would be appropriate:

MOVE, that the California Board of Legal Specialization approve the LSX Refund of Fees Policy provided in Attachment A, effective immediately for the 2023 exam and future administrations until such time as the policy is revised.

FURTHER MOVE, that the California Board of Legal Specialization recommends to the Board of Trustees that the proposed amendments to Legal Specialization rule 3.116 provided in Attachment B, be circulated for a 60-day public comment period.

ATTACHMENTS LIST

- A.** Proposed LSX Refund of Fees Policy
- B.** Proposed amendments to Rule 3.116 regarding refunds (redline and clean version)