



The State Bar of California

OPEN SESSION

AGENDA ITEM

III.B. 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 Results Rules and Policies; Recommendation to Circulate State Bar Rules 3.110 and 3.116 for Public Comment

EXECUTIVE SUMMARY

At its December 2022 meeting, the California Board of Legal Specialization (CBLS) discussed extending the Legal Specialist Exam (LSX) results validity period and directed staff to research State Bar rules to determine if Legal Specialization rules should be updated to reflect such a policy. This agenda item summarizes rules to which staff is recommending modifications, and requests the following actions from the CBLS:

- Recommend that the Board of Trustees circulate Legal Specialization rule 3.110 for a 60-day public comment period, pertaining to the change in time required to apply for initial certification; and
- Recommend that the Board of Trustees circulate Legal Specialization rule 3.116 for a 60-day public comment period, pertaining to the addition of language defining the LSX results validity period.

The proposed update to rule 3.110 is set forth in Attachment A, and the proposed update to rule 3.116 is set forth in Attachment B.

BACKGROUND

The general requirements for a California licensee to become a certified specialist include:

- passage of a written examination in a legal specialty area;
- at least five years of continuous legal practice, with at least 25 percent of the practice in the specialty area;
- completion of continuing legal education in the specialty area greater than that required of general licensees of the State Bar;
- demonstration of broad-based and comprehensive experience in the specialty area based on completion of a variety of matters in the specialty area; and
- favorable evaluations by other attorneys and judges familiar with the attorney's work in the specialty area.

The LSX is administered every other year. The Legal Specialization Rules require applicants for certification who pass the LSX to submit an application within 18 months of the date of the LSX, and allow for an additional 18-month extension of the deadline upon a request supported by good cause. Accordingly, applicants may have up to three years from the date of the LSX to apply for certification before their passing exam result expires. The rules also require an applicant to have practiced law in a specialty for the five years immediately preceding submission of their application in order to be eligible for certification in the specialty. Consequently, in order to be eligible for certification prior to the expiration of a passing LSX result, an applicant must have practiced law in the specialty for at least two years prior to taking the LSX. This is a de facto requirement that is not stated explicitly in the rules, but results from the relationship between various rules.

DISCUSSION

At the December 2022 CBLS meeting, staff proposed extending the LSX results validity period from three years to five years. The extension would eliminate the de facto requirement that an applicant practice in a specialty area for two years prior to taking the LSX or face expiration of a passing result before meeting the eligibility requirements for certification. Instead, an applicant could take and pass the exam, begin practicing in the specialty area, and become eligible for certification before the exam result expired. Providing consistency between the results validity period and the five-year practice requirement would benefit applicants by promoting clarity and transparency in the rules.

Another factor that contributes to the complexity of ensuring that an applicant's exam validity period remains in effect while having sufficient time to meet the eligibility requirements, is the fact that the exam is offered every other year (on odd years). Extending the LSX results validity period would eliminate the challenge that applicants experience with meeting the exam and program requirements when the exam is not available on an annual basis.

For guidance that could inform a policy or rule change, staff reviewed (1) relevant Legal Specialization rules; (2) other potentially relevant State Bar rules and resources; and (3) the relevant rules and policies of other certifying state jurisdictions and national organizations.

LEGAL SPECIALIZATION RULES

Rule 3.110(B)¹ of the Legal Specialization Rules requires applicants for certification who pass the exam to submit an application within 18 months of the date on which the applicant took the LSX. The rule provides for an additional 18-month extension of the deadline upon a request supported by good cause. Accordingly, applicants may have up to 36 months, or three years, from the date on which they took the LSX to apply for certification before their passing exam result expires. Rule 3.115 requires an applicant to have practiced law in a specialty for the five years immediately preceding submission of their application in order to be eligible for certification. A consequence of the interaction between rules 3.110(B) and 3.115, is a de facto requirement that an applicant practice law in the specialty for at least two years prior to taking the LSX.

Rule 3.116 pertains to the LSX, and contains a provision that is specifically related to exam results. Staff recommend updating rules 3.110 and 3.116 to reflect the proposed five-year validity period for exam results.

OTHER STATE BAR RULES OR RESOURCES

Admissions rule 4.17² requires applicant's for licensure to be sworn-in as attorneys within five years of passing the California Bar Exam (CBX). The Supreme Court implicitly affirmed its approval of the five-year validity period by rejecting a 2022 proposal by the Committee of Bar Examiners and Board of Trustees to eliminate the five-year expiration date for CBX results.

Amending rules 3.110 and 3.116 to provide for a five-year period for LSX results that aligns with the existing practice requirement will promote consistency both within the Legal Specialization Rules and with the rules governing the CBX, and in doing so will provide clarity to applicants.

OTHER CERTIFYING STATE JURISDICTIONS AND NATIONAL ORGANIZATIONS

Staff reviewed relevant 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). All

¹ 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

² 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

state jurisdictions³⁴⁵ require applicants to apply for certification first, then, if they are found eligible, apply for and take the specialty exam. All of the states offer their exam annually, and deem applicants eligible for certification upon passing the exam. Accordingly, the jurisdictions have no need for an exam results validity period. Florida differs in that applicants who are found ineligible for certification may still take the exam, and are provided two years in which they must meet the eligibility requirements.

Of the national certifying organizations, the National Elder Law Foundation⁶ follows the same certification pathway provided in the state processes. Both the American Board of Certification⁷ and the National Board of Trial Advocacy⁸ allow applicants to either apply first for the exam, or for certification. The American Board of Certification allow applicants who opt to first pass the exam to apply for certification within one year. The National Board of Trial Advocacy requires applicants who take the exam first to complete all registration requirements within two years of the date they registered for the exam.

RULE 3.110 CERTIFICATION REQUIREMENTS IN GENERAL

Attachment A provides Legal Specialization rule 3.110 in redline with the proposed changes, as well as a clean version. Staff propose updating the timeframe of three years (18 months plus an 18-month extension) to five years. Staff also added language explicitly stating that results become invalid after five years, and clarifies that a successful applicant must pass the exam again if the five-year deadline is not met.

RULE 3.116 EXAMINATION

Attachment B provides Legal Specialization rule 3.116 in redline with the proposed changes, as well as a clean version. In the proposed changes, staff added language defining the five-year validity period for exam results. Staff also added language that further clarifies that successful applicants are not entitled to see their scores. This clarification does not change current policy, but is needed to clean up the rule.

FISCAL/PERSONNEL IMPACT

None

³ Florida Standing Policies of the Board of Legal Specialization and Education, https://www-media.floridabar.org/uploads/2023/05/2023_11-MAY-BLSE-Policies-5-12-2023.pdf

⁴ New Jersey Board on Attorney Certification Regulations, <https://www.njcourts.gov/sites/default/files/attorneys/attorney-resources/regulations.pdf>

⁵ Texas Board of Legal Specialization Standards for Attorney Certification, <https://www.tbls.org/cert/standards>

⁶ National Elder Law Foundation Rules and Regulations, <https://nelf.org/page/NELFRulesandRegulations>

⁷ Rules and Regulations of the American Board of Certification, <https://abcworld.org/rules>

⁸ National Board of Trial Advocacy Examinee Information Document, <https://www.nbtalawyers.org/wp-content/uploads/2023/05/20230324-GENERAL-EXAM-INFO-DOCUMENT-FINAL.pdf>

RECOMMENDATIONS

It is recommended that the California Board of Legal Specialization approve the changes to rule 3.110 provided in Attachment A, for transmission to the Board of Trustees to request a 60-day public comment period.

It is further recommended that the CBLIS approve the changes to rule 3.116 provided in Attachment B, for transmission to the Board of Trustees to request 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 amendments to Legal Specialization rule 3.110 provided in Attachment A, for transmission to the Board of Trustees to request a 60-day public comment period.

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

ATTACHMENTS LIST

- A.** Proposed amendments regarding LSX results to Legal Specialization rule 3.110 (redline and clean version)
- B.** Proposed amendments regarding LSX results to Legal Specialization rule 3.116 (redline and clean version)