



The State Bar of California

OPEN SESSION

AGENDA ITEM

4.3 OCTOBER 2024

COMMITTEE OF BAR EXAMINERS

DATE: **October 11, 2024**

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

FROM: **Paul Kramer, Committee of Bar Examiners**
Bethany Peak, Committee of Bar Examiners
Tara Clark, Program Director, Operations
Christina Doell, Program Manager, Eligibility and Testing Accommodations
David Lane, Attorney, Moral Character Determinations

SUBJECT: **Action on Revisions to the Multijurisdictional Practice and Foreign Legal**
Consultant Rules: Recommendation to Circulate Revised Rules for Public
Comment

EXECUTIVE SUMMARY

At its June 23, 2023, meeting, the Committee of Bar Examiners (CBE) adopted a motion recommending that the Board of Trustees circulate revisions to the Rules of the State Bar related to the Multijurisdictional Practice (MJP) and Foreign Legal Consultant (FLC) Programs. The effort to revise the rules was subsequently abated while the State Bar hired a new staff member in the Office of General Counsel to review and create consistency across proposed amendments to the rules.

The effort to revise the MJP and FLC rules has resumed, and the proposed amendments to the rules have been further revised. This agenda item requires CBE approval to progress the proposed rule revisions to the Board of Trustees meeting on November 14–15, 2024.

RECOMMENDED ACTION

The working group requests that the CBE recommends that the Board of Trustees circulates the proposed rules revisions set forth in Attachments A–P for a 60-day public comment period. The working group further requests that the CBE authorizes staff to make nonsubstantive,

grammatical changes to the proposed revisions set forth in Attachments A–P, if necessary, before the Board of Trustees reviews the proposal.

DISCUSSION

Generally, the proposed rules revisions are intended to eliminate outdated barriers to participation in the programs, add pertinent information not currently encapsulated in the rules, ensure consistency within the rules, and transition to gender-neutral pronouns. Please see the agenda item for the CBE’s June 23, 2023, meeting ([Item III.A.](#)) for a discussion of the most substantive revisions that were previously proposed, and which the working group has maintained in the current iteration of the proposal. Additional substantive changes to the proposal are discussed below.

FURTHER AMENDMENTS

The prior proposed revisions to the rules attempted to address an issue that currently causes confusion for out-of-state and foreign attorneys by clarifying the distinction between registering with the State Bar as an applicant and registering for the MJP or FLC Program. The working group suggests further clarification by stating that an attorney must apply for an MJP or FLC “status” after submitting and receiving approval of an Application for Registration. For example, the proposed amendments to rule 3.371 replace the phrase “apply to register as Registered In-House Counsel” with “apply for Registered In-House Counsel status.” Conforming revisions are made throughout the rules, including updates to the names of the applications, such as “Application for Registered In-House Counsel Status,” in addition to references to suspension or termination of an MJP or FLC “status.”

California Rules of Court

The working group proposes further amendments to the Rules of Court that make them clearer and more consistent, including the addition of “Failure to Comply” and “Disciplinary Authority” subsections to each of the rules, and the reordering and renaming of various subsections.

Rules of the State Bar: General Amendments

The working group reviewed and incorporated information and suggestions provided by the Supreme Court with respect to proposed revisions to other Rules of the State Bar, such as using defined terms throughout the rules, adding cross-references to other rules, and incorporating the names of the applications.

The working group further amended the rules to ensure consistency in how an application will be considered complete, incomplete, or abandoned. (Rules of the State Bar, rules 3.351(B), 3.361(B), 3.371(B), 3.401(C).)

Rules of the State Bar: Amendments to the Suspension and Termination Rules

Staff met with members of the Office of Chief Trial Counsel (OCTC) to discuss the suspension and termination provisions in the MJP and FLC rules. The current rules lack clarity regarding the standards and procedures for suspending or terminating MJP or FLC status. The rules also refer vaguely to a suspension or termination being appealable, “subject to the disciplinary procedures of the State Bar.” (Rules of the State Bar, rules 3.355(D), 3.364(D), 3.365(D), 3.374(D), 3.375(D), 3.408(D), 3.409(D).)

The working group is proposing revisions to clarify that the standard for a suspension for misconduct of MJP or FLC status is met when 1) OCTC initiates disciplinary proceedings against the attorney by filing a Notice of Disciplinary Charges, 2) the MJP or FLC attorney and OCTC enter into a Stipulation to Facts and Conclusions of Law pursuant to rule 5.55 of the Rules of Procedure of the State Bar, or 3) the MJP or FLC attorney and OCTC enter into a Stipulation to Facts, Conclusions of Law, and Disposition pursuant to rule 5.56 of the Rules of Procedure of the State Bar. The revisions also provide that a suspension based on one of the aforementioned actions will be lifted if the related State Bar Court proceedings conclude without discipline or a recommendation for discipline, or the Supreme Court rejects a recommendation for discipline. If discipline is imposed, the suspension will become a termination, just as it would under the current rules.

The rules related to appealing a suspension or termination have been removed from the current proposal as they are no longer necessary. An attorney’s MJP or FLC status will be reinstated following a suspension for misconduct if the underlying disciplinary proceedings resolve in the attorney’s favor. Alternatively, a suspension for misconduct will become a termination if the attorney is disciplined. MJP or FLC status that is suspended for administrative reasons will be reinstated if the attorney cures the relevant deficiencies within six months of the notice of suspension. Similarly, an attorney whose designated status has been terminated may apply for the MJP or FLC status again as long as it was not terminated “upon imposition of discipline by the State Bar Court, the Supreme Court of California, or the authority that regulates the practice of law in any other jurisdiction.” (Rules of the State Bar, rules 3.355(C), 3.365(C), 3.375(C), 3.375(D), 3.409(C).)

PREVIOUS ACTION

June 23, 2023, CBE meeting [Item III.A.](#)

FISCAL/PERSONNEL IMPACT

If these proposals are adopted, an increase in revenue from the increased number of MJP and moral character applications can be anticipated; however, the amount of the increase is unknown. The working group anticipates that the streamlined rules proposals will positively impact staff resources by reducing the number of applicant inquiries, and aid in the processing of applications by creating consistency within the rules.

AMENDMENTS TO RULES

California Rules of Court, rules 9.41.1 and 9.44–9.46

Title 3, Division 3, Chapter 1, Articles 1–3, rules 3.350–3.377

Title 3, Division 3, Chapter 4, rules 3.400–3.411

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- a. 1. Increase the number of attorneys admitted through special admissions programs.

RESOLUTIONS

It is recommended that the Committee of Bar Examiners requests that the Board of Trustees circulates for a 60-day public comment period the rule revisions reflected in Attachments A–P. It is further recommended that the Committee of Bar Examiners authorizes staff to make nonsubstantive, grammatical changes to the proposed rule revisions set forth in Attachments A–P, if necessary, before the Board of Trustees reviews the proposed rule revisions.

Should the Committee of Bar Examiners agree with the working group’s recommendation, the following motion should be made:

RESOLVED, that the Committee of Bar Examiners recommends to the Board of Trustees to circulate the proposed rule revisions set forth in Attachments A–P for a 60-day public comment period.

FURTHER RESOLVED, that the Committee of Bar Examiners authorizes staff to make nonsubstantive, grammatical changes to the proposed rule revisions set forth in Attachments A–P, if necessary, before the Board of Trustees reviews the proposed rule revisions.

ATTACHMENT(S) LIST

- A. California Rules of Court, rule 9.41.1 (RMSA redline)
- B. California Rules of Court, rule 9.41.1 (RMSA clean)
- C. California Rules of Court, rule 9.44 (FLC redline)
- D. California Rules of Court, rule 9.44 (FLC clean)
- E. California Rules of Court, rule 9.45 (RLAA redline)

- F.** California Rules of Court, rule 9.45 (RLAA clean)
- G.** California Rules of Court, rule 9.46 (RIHC redline)
- H.** California Rules of Court, rule 9.46 (RIHC clean)
- I.** Rules of the State Bar, Title 3, Division 3, Chapter 1, Article 1 (RMSA redline)
- J.** Rules of the State Bar, Title 3, Division 3, Chapter 1, Article 1 (RMSA clean)
- K.** Rules of the State Bar, Title 3, Division 3, Chapter 1, Article 2 (RLAA redline)
- L.** Rules of the State Bar, Title 3, Division 3, Chapter 1, Article 2 (RLAA clean)
- M.** Rules of the State Bar, Title 3, Division 3, Chapter 1, Article 3 (RIHC redline)
- N.** Rules of the State Bar, Title 3, Division 3, Chapter 1, Article 3 (RIHC clean)
- O.** Rules of the State Bar, Title 3, Division 3, Chapter 4 (FLC redline)
- P.** Rules of the State Bar, Title 3, Division 3, Chapter 4 (FLC clean)