



The State Bar of California

**OPEN SESSION
AGENDA ITEM
4.1 FEBRUARY 2025
BOARD OF TRUSTEES**

DATE: February 21, 2025

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

FROM: Terrie Goldade, Supervising Attorney, Office of Case Management & Supervision
Melanie Lawrence, Program Director III, Office of Professional Support & Client Protection

SUBJECT: Proposed Changes to California Rules of Court to Modify Rule Regarding Stipulations for Modification of Probation Terms (Rule 9.10) and to Add New Rule Regarding Professional Responsibility Examination Requirement (Rule 9.24): Request to Circulate for Public Comment

EXECUTIVE SUMMARY

The purpose of the Attorney Supervision and Assistance Redesign (ASAR) Project is to reduce recidivism of attorneys in the discipline system and increase public protection by providing a framework for systems change to improve performance and rehabilitation for respondents under State Bar supervision. Those changes include strategies to address the needs of individual respondents. In order to implement the ASAR Project, the Office of Case Management & Supervision (OCMS) seeks to update the Rules of Court. California Rules of Court, rule 9.10(c), authorizes the State Bar Court to make modifications to probation conditions based upon stipulations between disciplined licensees (respondents) and the Office of Chief Trial Counsel (OCTC). The proposed amendment to rule 9.10 of the California Rules of Court adds that the State Bar office that monitors disciplinary conditions, in addition to OCTC, may enter into stipulations to modify probation conditions.

Following the California Supreme Court's decision in *Segretti v. State Bar*, (1976) 15 Cal.3d 878, providing proof of passage of a professional responsibility examination is ordered in most disciplinary matters.

The proposed new California Rules of Court, rule 9.24 would state that the Supreme Court may, but is not required to, order a respondent to pass a professional responsibility examination following an order suspending a respondent from the practice of law.

RECOMMENDED ACTION

Staff recommend that the Board, sitting as the Regulation and Discipline Committee, adopt a resolution directing staff to make available for public comment, for a period of 45 days, proposed amendments to California Rules of Court, rule 9.10(c), and new proposed rule 9.24.

DISCUSSION

The Office of Case Management and Supervision (OCMS), the office that monitors and supports respondents on probation or reprobation, has moved towards a tailored approach to supervision as part of the Attorney Supervision and Assistance Redesign project. But some of the disciplinary conditions ordered by the Court have become customary, regardless of individual needs, originating from a time when there were fewer available alternatives. As an additional issue, no authority permits OCMS and the respondent to agree to modify disciplinary conditions, subject to State Bar Court approval. As a result, the parties must engage in lengthy motion practice to make any modifications, unnecessarily expending OCMS and State Bar Court resources in matters in which the parties agree.

Staff recommends a change to the California Rules of Court that will give more flexibility to OCMS and the respondent to agree to modifications of disciplinary conditions, with State Bar Court approval.

Further, staff recommends that a new California Rule of Court be added to state that in cases where a respondent's conduct results in suspension, whether actual or stayed, the Supreme Court may, but is not required to, order the respondent to take and pass a professional responsibility examination.

PROPOSED CHANGE TO RULE OF COURT 9.10(C)

California Rules of Court, rule 9.10(c) confers authority on the State Bar Court to approve stipulations to modify terms of probation only between the respondent and OCTC. However, OCMS, not OCTC, monitors respondents' disciplinary conditions. As a result, if OCMS agrees with a modification requested by a respondent, OCMS must file a separate pleading with the State Bar Court setting forth its non-opposition rather than stipulating with the respondent—a more expeditious alternative. Additionally, if OCMS seeks a modification to the terms or conditions, it must do so by filing a motion to modify rather than by entering into a stipulation with the respondent. Responses to modification motions are not due for thirty days, and there is no rule for when a judge must issue a ruling. This process delays the respondent's ability to benefit from conditions more tailored to the respondent's needs.

Requiring OCMS or respondents to file a motion for modification consumes valuable time and resources of the parties and State Bar Court, which is unnecessary when the parties agree upon

the modification. Accordingly, staff recommends that the State Bar propose an amendment to the California Supreme Court's California Rules of Court, rule 9.10(c) to confer authority on the State Bar Court to approve stipulations between the State Bar office responsible for monitoring disciplinary conditions (currently OCMS) and a respondent. The proposed amendment would confer authority on the State Bar Court to approve stipulations between a respondent and OCTC, OCMS, or both OCTC and OCMS, should a stipulation address modifications for which the State Bar Court would prefer all stakeholders to agree.

PROPOSED NEW RULE OF COURT 9.24

The National Conference of Bar Examiners' Multistate Professional Responsibility Examination (MPRE) is routinely ordered in disciplinary cases, except, for example, in limited cases where the respondent has recently passed it. The origin of doing so dates back to the mid-1970s when the Supreme Court prescribed a professional responsibility examination in virtually all cases. The court opined that taking the MPRE would cause the erring attorney to reevaluate and reflect upon the moral standards of the profession and ensure full awareness of ethical duties; because punishment is not the purpose, most attorneys placed on probation must pass the MPRE within a year, or during the period of actual suspension, whichever is longer. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891.) Today, there are alternatives to the MPRE that exist, but given the Supreme Court holding in *Segretti*, they are almost always ordered in addition to the MPRE, not instead of it.

As recent as the 1990s, the State Bar Court demonstrated its adherence to *Segretti, supra*, and included in an opinion that *Segretti* required "the examination to be ordered routinely for respondents with no prior record including all cases including actual or wholly stayed suspension." *Matter of Respondent G* (Review Department 1992) 2 Cal State Bar Court Rptr. 181, 184.

The MPRE is widely utilized and is required for every applicant seeking admission to the California Bar. The MPRE is a 2-hour, 60 question multiple-choice exam that is administered three times per year and is taken at a Pearson Vue testing center. See <https://www.ncbex.org/exams/mpre>. Registration is \$160. See <https://www.ncbex.org/exams/mpre/registering-mpre>.

To pass, respondents frequently have to study. The MPRE does not test specifically on California law. Rather, it is based on the law governing the conduct and discipline of lawyers and judges, including the disciplinary rules of professional conduct currently articulated in the American Bar Association (ABA) Model Rules of Professional Conduct, the ABA Model Code of Judicial Conduct, and controlling constitutional decisions and generally accepted principles established in leading federal and state cases and in procedural and evidentiary rules. See <https://www.ncbex.org/exams/mpre/preparing-mpre>.

Given the subjects tested and the infrequency of testing opportunities, it is questionable as to whether the MPRE achieves the goals set forth in *Segretti*: that each respondent reevaluates and reflects upon the moral standards of the profession and is fully aware of ethical duties.

Other alternatives may better serve those goals because they are more accessible and focus on California requirements. For example, an E-Learning module on the California Rules of Professional Conduct was introduced in 2023 and can be accessed, at no cost to respondents, 24/7 via the State Bar website's My State Bar Profile; respondents must pass a 15-question test (randomly generated from a bank of 40 questions) at the end of the course with a score of at least 80%. Ethics School is offered monthly by OCTC via an online platform such as Zoom; respondents must pass a test at the end of the course with a score of at least 80%.

Staff recommends that the Supreme Court's 1976 holding in *Segretti* be abrogated via a new Rule of Court such that respondents with a suspension order, whether the suspension is actual or stayed, are no longer, as a matter of course, required to take a professional responsibility examination. *Segretti* itself arguably serves as precedent for changing routinely ordered conditions when other, more convenient and effective means for achieving their purpose, become available. The Court in *Segretti* directed that a "routinely ordered" condition, that a respondent certify in the first quarterly report to the State Bar that the State Bar Act and the Rules of Professional Conduct of the State Bar has been read, would be replaced by the newly available professional responsibility exam. (*Segretti, supra*, 15 Cal.3d at 889, 891.)

Staff has consulted OCTC and State Bar Court for their feedback and both support the recommended changes.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

No longer requiring virtually all respondents to provide proof of passage of a professional responsibility examination may result in a net neutral impact on personnel work if respondents complete conditions in lieu of the MPRE; however, it may reduce personnel work in OCMS given that some respondents file motions for extension of time in relation to the MPRE, at least in part because the MPRE is only offered three times a year.

Permitting OCMS to stipulate with respondents is anticipated to result in less personnel work for both OCMS and State Bar Court because the parties would need to submit only one document for the State Bar Court's review, instead of a motion and a response.

AMENDMENTS TO RULES

Title 9, Division 2, Chapter 3, of the California Rules of Court

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 3. Protect the Public by Regulating the Legal Profession

- b. 3. Provide effective support for attorneys experiencing practice management and other challenges that affect competency.

Goal 4. Protect the Public by Engaging Partners

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur, it is:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, the proposed amendment to California Rules of Court, rule 9.10, as set forth in Attachments A and B; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, the proposed new California Rules of Court, rule 9.24, as set forth in Attachment C.

ATTACHMENTS LIST

- A.** Proposed Amendment to California Rules of Court Rule 9.10 (Redline Version)
- B.** Proposed Amendment to California Rules of Court Rule 9.10 (Clean Version)
- C.** Proposed New California Rules of Court Rule 9.24