

5.2 Proposed Changes to California Rules of Court to Modify Rule Regarding Stipulations for Modification of Probation Terms (Rule 9.10(c)) and to Add New Rule Regarding Professional Responsibility Examination Requirement (Rule 9.24): Return from Public Comment, Request for Approval and Submission to the California Supreme Court



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 5.2 MAY 2025 BOARD OF TRUSTEES**

**DATE:** May 22, 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(c)) and to Add New Rule Regarding Professional Responsibility Examination Requirement (Rule 9.24): Return from Public Comment, Request for Approval and Submission to the California Supreme Court

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### **EXECUTIVE SUMMARY**

At the February 21, 2025, meeting of the Board of Trustees sitting as the Regulation and Discipline Committee, staff presented a proposed amendment to California Rules of Court 9.10(c) and proposed new California Rules of Court 9.24.<sup>1</sup> The proposed amendment to Rule 9.10(c) would authorize the State Bar Court to modify probation conditions based upon stipulations between the office that monitors compliance with discipline conditions, in addition to the Office of Chief Trial Counsel (OCTC), and disciplined licensees (respondents). The new rule would state that the Supreme Court may, but is not required to, order passage of a professional responsibility examination following an order suspending a respondent from the practice of law.

The Regulation and Discipline Committee directed staff to submit the rules for public comment for 45 days. Twelve public comments were received. In relation to amending rule 9.10(c), nine agree with the proposal and three disagree. In relation to adding new rule 9.24, seven agree with the proposal, two agree with the proposal if modified, two disagree, and one had no

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<sup>1</sup> All references to rules are to the California Rules of Court unless otherwise stated.

position. This staff report presents the proposed amendment and new rule for approval and submission to the Supreme Court.

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## **RECOMMENDED ACTION**

It is recommended that the Board of Trustees approve the proposed amendment to rule 9.10(c) and new rule 9.24 (see Attachments A and B) and direct staff to send the amended rule and new rule to the Supreme Court of California for consideration.

## **DISCUSSION**

### **PROPOSED AMENDMENT AND NEW RULE**

Rule 9.10(c) authorizes the State Bar Court to make modifications to probation conditions based upon stipulations between respondents and OCTC. The proposed amendment to rule 9.10 adds that the office that monitors compliance with discipline conditions (currently called the Office of Case Management & Supervision (OCMS)), in addition to OCTC, may enter into stipulations to modify probation conditions. The proposed amendment will streamline the process for modifications that are agreed upon by the parties.

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, generally the Multistate Professional Responsibility Examination offered by the National Conference of Bar Examiners. The proposed new rule 9.24 would be added to state that a professional responsibility examination is not mandatory following an order suspending a respondent from the practice of law. The new rule acknowledges that there are now alternatives to the MPRE that the Supreme Court can order instead of the MPRE, should the Supreme Court deem those alternatives more appropriate for the particular respondent.

The proposed amendment to rule 9.10(c) and new rule 9.24 must be approved by the Board before submission to the Supreme Court of California for review and potential approval.

### **PUBLIC COMMENT**

During the public comment period, the State Bar received twelve comments, ten of which provided narrative and three of which did not specifically address these proposals.

- In relation to amending rule 9.10(c):
  - nine commenters agree with the proposal; and
  - three commenters disagree (but no narrative comments were provided in relation to the substance of the proposed amendment).

Two narrative comments received were supportive, endorsing that stipulations should be encouraged and add efficiency.

- In relation to adding new rule 9.24:
  - Seven commenters agree with the proposal;
  - two commenters agree, if the proposal is modified;

- two commenters disagree; and
- one commenter has no position.

Ten narrative comments were received in relation to adding new rule 9.24. In support of the rule, comments included that it did not make sense to have a blanket rule and that a failure to know the rules may suggest that requiring the exam is appropriate. Two comments were submitted by defense counsel in support, indicating a belief that requiring the MPRE does not protect the public and that requiring the exam is akin to a punishment where the misconduct did not arise from a rule violation.

One comment expressed strong opposition to the proposed rule, stating that all disciplined attorneys should be required to pass the MPRE because the public should be assured that the attorney at least knows what is supposed to be done. Staff notes that, should the court determine that a respondent does not know what ethical duties are required, and that the passage of the MPRE could remedy that, the proposed new rule provides the court the option to order such.

Two narrative comments did not seem to demonstrate understanding of the substance of proposed new rule 9.24 because they did not focus on the testing requirement as it applies to disciplined attorneys.

Three of the narrative comments were not in relation to either of the proposals of the agenda item.

After reviewing the public comments received, staff determined that rule 9.10(c) and new rule 9.24 do not require further amendment and submits the proposed rule amendment and new rule for approval. The proposed amendment will increase efficiency. The new rule will provide flexibility for the court to determine the most appropriate resources required to rehabilitate each particular disciplined attorney so that the public is protected.

## **PREVIOUS ACTION**

[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](#)

## **FISCAL/PERSONNEL IMPACT**

If adopted, 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.

## **RESOLUTIONS**

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

**RESOLVED**, following notice and publication for comment, that the Board of Trustees, sitting as the Regulation and Discipline Committee, approves the amendments to California Rules of Court, rule 9.10(c) set forth in Attachments A and B, and the proposed new rule 9.24 set forth in Attachment C; and it is

**FURTHER RESOLVED**, that staff is directed to submit the proposed amendment to California Rules of Court, rule 9.10(c) set forth in Attachments A and B, and proposed new rule 9.24 set forth in Attachment C to the California Supreme Court.

## **ATTACHMENTS LIST**

- A. Proposed Amendment to California Rules of Court, Title 9, Division 2, Chapter 3, Rule 9.10 – Redline
- B. Proposed Amendment to California Rules of Court, Title 9, Division 2, Chapter 3, Rule 9.10 – Clean
- C. Proposed New California Rules of Court, Title 9, Division 2, Chapter 3, Rule 9.24
- D. Table of Public Comments Received

Rule 9.10. Authority of the State Bar Court

**(a) Conviction proceedings**

The State Bar Court exercises statutory powers under Business and Professions Code sections 6101 and 6102 with respect to the discipline of attorneys convicted of crimes. (See Bus. & Prof. Code §6087.) For purposes of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed, or if filed the petition has been denied or the judgment of conviction has been affirmed. The State Bar Court must impose or recommend discipline in conviction matters as in other disciplinary proceedings. The power conferred upon the State Bar Court by this rule includes the power to place attorneys on interim suspension under subdivisions (a) and (b) of section 6102, and the power to vacate, delay the effective date of, and temporarily stay the effect of such orders.

*(Subd (a) amended effective January 1, 2007.)*

**(b) Professional responsibility examination**

The State Bar Court may:

- (1) Extend the time within which a licensee of the State Bar must take and pass a professional responsibility examination;
- (2) Suspend a licensee for failing to take and pass such examination; and
- (3) Vacate licensee's suspension for failing to take and pass such examination.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

**(c) Probation**

The State Bar Court for good cause, may:

- (1) Approve stipulations between the licensee and the Chief Trial Counsel, the licensee and the State Bar Office responsible for monitoring disciplinary conditions, or both, for modification of the terms of a licensee's probation; and
- (2) Make corrections and minor modifications to the terms of a licensee's disciplinary probation.

The order of the State Bar Court must be filed promptly with the Clerk of the Supreme Court.

*(Subd (c) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

**(d) Rule 9.20 compliance**

The State Bar Court for good cause, may extend the time within which a licensee must comply with the provisions of rule 9.20 of the California Rules of Court.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

**(e) Commencement of suspension**

The State Bar Court for good cause, may delay temporarily the effective date of, or temporarily stay the effect of, an order for a licensee's disciplinary suspension from practice.

*(Subd (e) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

**(f) Readmission and reinstatement**

Applications for readmission or reinstatement must, in the first instance, be filed and heard by the State Bar Court, except that no applicant who has been disbarred by the Supreme Court on two previous occasions may apply for readmission or reinstatement. Applicants for readmission or reinstatement must:

- (1) Pass a professional responsibility examination;
- (2) Establish their rehabilitation and present moral qualifications for readmission; and
- (3) Establish present ability and learning in the general law. Applicants who resigned without charges pending more than five years before filing an application for reinstatement or readmission must establish present ability and learning in the general law by providing proof, at the time of filing the application, that they have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners pursuant to the authority delegated to it by the Board of Trustees within five years prior to the filing of the application for readmission or reinstatement. Applicants who resigned with charges pending or who were disbarred must establish present ability and learning in the general law by providing proof, at the time of filing the application for readmission or reinstatement, that they have taken and passed the Attorneys' Examination by State Bar within three years prior to the filing of the application for readmission or reinstatement.

*(Subd (f) amended effective January 1, 2019; previously amended effective January 1, 2007, and January 1, 2010.)*

**(g) Inherent power of Supreme Court**

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the lawyer discipline and admissions system.

*(Subd (g) amended effective January 1, 2007.)*

*Rule 9.10 amended effective January 1, 2010; adopted as rule 951 effective December 1, 1990; previously amended by the Supreme Court effective April 1, 1996, and January 1, 2007.*

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Rule 9.24. Professional Responsibility Examination

**(a) Professional Responsibility Examination following suspension**

(1) Each licensee whose conduct results in suspension from practice by order of the Supreme Court may be required, as a condition of resuming or continuing practice, to demonstrate that they know, understand, and can apply the principles of legal ethics by passing a professional responsibility examination. If the order of suspension is stayed and the licensee is placed on probation, the Supreme Court may require that the licensee pass a professional responsibility examination as a condition of that probation, whether or not actual suspension is also a condition thereof.

(2) Imposition of the condition described in (a)(1) of this rule is not required and is at the sole discretion of the Supreme Court.

**(b) Inherent jurisdiction over practice of law**

Nothing in this rule may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in this state.

## ATTACHMENT D

1. Modify Rule of Court 9.10 to confer authority on the State Bar Court to approve stipulations to modify conditions of probation entered into by the Office of Case Management & Supervision and a respondent.
2. Add new Rule of Court 9.24 abrogating *Segretti* so the Supreme Court may, but is not required to, order a respondent to take and pass a professional responsibility examination following a disciplinary order suspending respondent from the practice of law.

Comment #	Name or Organization	Attorney or Public Member?	Position on 1. (A/AM/D/NP) <sup>1</sup>	Position on 2. (A/AM/D/NP)	Public comments	Topic
1	Nadia Heshmati, M.S.	Public member	D	A	<p>The state Bar of California has failed to protect the public from extortionist, unethical, unprofessional and inept attorneys that commit fraud upon the court, abuse the due process, abuse their law license and perjury themselves on their moving papers! These psychopath intelligent attorneys take advantage of their law license to extort, and abuse the public &amp; defraud them in courts! They lie, cheat, and force their way into millions of dollars like Tom Girardi</p> <p>It's time for the CA BAR association to protect the public from these wolves instead of covering them from the crimes against humanities!</p> <p>Tougher sanctions, suspension of their law licenses and removal of their license must happen so the public can be safe from these thieves with a law license!</p> <p>Investigate them all &amp; make every investigation open to public &amp; display it on their license information so the public can see it &amp; make a wise decision to hire them or stay clear away! Step up and do your job!</p> <p>Have the ca Supreme Court get involved!</p> <p>Make these inept attorneys take a ethical course, substance abuse course and courses on fiduciary duties &amp; responsibility to clients</p>	N/A
2	John E. Karayan	Attorney	D	D	I am strongly opposed to the proposed changes. All members of the California State Bar who are disciplined should always be required to pass the Multistate	2.

<sup>1</sup> A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Comment #	Name or Organization	Attorney or Public Member?	Position on 1. (A/AM/D/NP) <sup>1</sup>	Position on 2. (A/AM/D/NP)	Public comments	Topic
					<p>Professional Responsibility Examination as a precondition to being reinstated as a member of the California State Bar.</p> <p>Of course, being disciplined by the California State Bar does not mean that the individual being disciplined does not know what the professional responsibilities of members of the California State Bar are. The individual seeking reinstatement could, for example, have acted with full knowledge of these responsibilities. Nevertheless, reinstatement should be conditioned on an assurance to the public that the attorney being reinstated at least knows what (s)he is not supposed to do.</p>	
3		Attorney	D	D	<p>It is my opinion that we should leave the requirement that they have to take the professional responsibility exam again in place. These attorneys that come in from out of state seem to have few ethics in addition to little knowledge of CCP and Court rules. If they didn't have to take one on Entry they should definitely be taking one if they get disciplined.</p> <p>Leave rule in place. Out of state attys now licensed here (who knows how) have little or no ethics, especially in probate.</p>	2.
4		Attorney	A	A	Makes sense to not have such a blanket rule. It still allows requiring such attorneys to do so, but not have to add it in whatever suspensions where it isn't necessary	2.
5	James I. Ham of the Law Office of James I. Ham A Professional Corporation	Attorney	A	AM	For many years, I have pointed out during State Bar Court settlement conferences, and to others in and outside of the Bar, that requiring lawyers who have been disciplined to learn the wrong set of rules and then pass a test on the wrong set of rules, was suboptimal. The usual response I received was shrugged shoulders and some half-acknowledgement that in many cases, requiring the taking of any ethics examination is mere punishment since the misconduct did not arise from a rule violation. It is time that the MPRE examination requirement be dumped entirely, and other educational resources used instead.	2.

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6	Austin Trickey	Attorney	A	AM	Unfortunately, COVID interfered with a lot of young lawyers learning. I don't think we should punish lawyers outright but do our best to steer them in the right direction. Assistance over punishment. Lift everyone up don't penalize those who are struggling.	2.
7	Hallie Spaulding	Attorney	A	A	The system needs a reapproval and expungement process. There should be a process of expunging public approvals after a completion of probation, and additional rehab rehabilitation, etc. the lack of expungement procedures, especially when those would already be available for the same offenses at the criminal level, is very troubling.	N/A
8		Attorney	A	A		N/A
9	William Clark	Attorney	A	A	Stipulations in any litigated matter should be encouraged. Failure to know the rules may determine the need for the Exam.	Both
10		Attorney	A	A		N/A
11	Megan Zavieh	Attorney	A	A	I strongly support the proposal. I am a full time State Bar defense attorney handling attorney discipline matters. The MPRE does nothing to further the State Bar's mission of protecting the public, but it does place an unnecessary burden on attorneys returning to practice. It also creates a burden on the State Bar to police the passage of the exam. There are several problems with requiring it, including its lack of practical application and the infrequency of its offerings.  Moreover, the other part of the proposal would solve a problem we often have related to the MPRE requirement, though it applies to other conditions as well. The lack of authority at the State Bar and State Bar Court to make simple modifications to probation conditions is a hindrance to efficient management of the discipline	Both

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					system. It also stalls lawyers from going back to active status due to ministerial or minor probation conditions not yet being met. I urge the passage of the proposal."	
12	Jeawoo Jung	Decline to state	A	NP	<p>I'm here to raise a critical fairness issue from the February 2025 California Bar Exam—specifically, the failure of the cut-and-paste function during the Performance Test (PT) for in-person examinees.</p> <p>The PT is not a test of memorization, but a practical writing task requiring examinees to analyze and apply legal materials provided during the exam. Without cut-and-paste, it became extremely difficult to structure and paraphrase rules and facts, causing significant time loss and resulting in incomplete responses.</p> <p>Given that the PT counts for twice the weight of a single essay, the harm was substantial—especially since many remote examinees retained full functionality.</p> <p>I understand that the problems during this exam were varied and widespread, and that designing a universal remedy is difficult. But I respectfully urge the Board to examine individual cases and ensure that qualified applicants who would likely have passed but for these technical issues are not unfairly denied licensure.</p>	N/A