



Supreme Court of California

JORGE E. NAVARRETE
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September 20, 2023

SENT VIA USPS AND EMAIL

Leah T. Wilson
Executive Director
State Bar of California
180 Howard Street
San Francisco, California 94102

RE: S281003: Request that the Supreme Court of California Review and Approve Proposed Amendments to California Rules of Court, rule 9.42, and State Bar Rules 3.2–3.11, 4.3, 4.5, 4.6, 4.29, 4.40–4.51

Dear Ms. Wilson:

The State Bar filed a request on July 18, 2023 (Request), for approval of proposed amendments to California Rules of Court, rule 9.42, and to certain State Bar Rules relating to the moral character determinations for attorney admissions, the Law Office Study (LOS) program, and the Practical Training for Law Students (PTLS) program. After careful consideration, the court filed an administrative order today, denying the Request. The purpose of this letter is to provide the State Bar’s Board of Trustees (Board), the Committee of Bar Examiners (Committee), and bar staff with some insight into the court’s concerns with the proposal.

Rules Relating to the Moral Character Determination Process

The Request indicates that the proposed revisions to the State Bar Rules governing the moral character determination process are the result of a comprehensive review of the admissions rules meant “to clarify the State Bar Rules, and to eliminate any State Bar Rules that do not advance the State Bar’s mission or that serve as unnecessary barriers to participation in Admissions programs.” (Request at 9.) While the Request provides a few specific explanations for some of the proposed rule revisions, in most cases, the explanations are insufficient for the court to determine the propriety of the requested revisions. The court urges the State Bar to provide more detailed reasons to support the rule revisions.

For example, the State Bar proposes significant revisions to State Bar Rule 4.52 that are not adequately explained in the Request. In particular, the State Bar proposes to delete two sentences from State Bar Rule 4.52(A) regarding the length of an extension of a positive moral character determination and the effective date of that extension. That language would seem to be important to an applicant who has requested an extension, but the State Bar has not provided a reasonable justification for the deletion.

Further, State Bar Rule 4.3(M) defines “receipt” for purposes of determining the time of receipt of a document that the State Bar sends to an applicant. However, a number of the rules at issue in the Request use different terminology to describe the time frames within which applicants must respond to notices or requests from the State Bar, including, within the same rule, from the “date of the notice” (e.g., State Bar Rule 4.43(A)), from “service of the notice” (State Bar Rule 4.43(C)), or simply from the “request” (State Bar Rule 4.43(B)). If the State Bar transmits these documents electronically, it is not evident whether these various terms are meaningfully different from the revised definition of “receipt” in State Bar Rule 4.3(M). The State Bar should endeavor to standardize the rules governing the moral character application process to incorporate the definition of “receipt” or should explain the reasoning behind using different terminology to describe the trigger dates for an applicant’s response.

Rules governing the LOS and PTLs programs

The court acknowledges the State Bar’s efforts, in response to the court’s [October 20, 2021 order](#), in determining that LOS students, as well as LLM students, should be permitted to participate in the PTLs program and in considering whether any rule amendments may be necessary to provide additional protections to the public and to the judicial system. In addition, the court appreciates the State Bar’s proposed significant expansion of the rules relating to the LOS program that, among other things, provide increased flexibility by allowing remote work and calculating the required hours on a monthly, rather than weekly, basis. However, the court is concerned that the State Bar has not adequately considered potential ethical implications that could arise for certain proposed PTLs participants, specifically for those LOS students concurrently studying under the supervision of a judge.

For example, under the proposed amendments to Rules of Court, rule 9.42, an LOS student studying under the supervision of a judge who sits on a criminal court could conceivably concurrently participate in the PTLs program as a certified law student for the local district attorney’s office and, in that capacity, appear before the judge supervising the LOS student or other judges on the same bench. Similarly, pursuant to those same amendments, an LOS student studying under the supervision of a judge who

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sits on a civil court could conceivably concurrently participate in the PTLs program as a certified law student and represent civil litigants before the same court.

The proposed rule revisions neither preclude these dual roles, nor attempt to mitigate or prevent any actual or potential ethical concerns that might arise. For example, an LOS student studying under the supervision of a judge may have access to internal court documents related to pending proceedings being concurrently handled by the student's PTLs program attorney supervisor. Similarly, an LOS student studying under the supervision of a judge and concurrently representing either the local district attorney's office or a client through the PTLs program might be viewed as having special access or influence within the court, casting doubt on the court's impartiality and creating the appearance of impropriety. Accordingly, the State Bar should endeavor to address the ethical concerns described above and, pursuant to the court's [October 20, 2021 order](#), "consider whether any rule amendments may be necessary to provide additional protections to the public and to the judicial system."

Conclusion

The court wishes to express its appreciation to the Board, the Committee, and bar staff for conducting a comprehensive review of the admissions rules and engaging in a thoughtful analysis of the LOS and PTLs programs in response to this court's October 2021 order, and for submitting these rule amendments for consideration.

Sincerely,



JORGE E. NAVARRETE

Clerk and
Executive Officer of the Supreme Court

Enclosure

cc: Rec.