

# **PROPOSED STATE BAR OF CALIFORNIA SPECIAL MASTER PROGRAM RULES AND REGULATIONS**

## **1.0 Purpose**

The purpose of the Special Masters Program Rules and Regulations is to establish a program to implement the State Bar of California's responsibilities under Penal Code section 1524 by which qualified attorneys serve as Special Masters to balance the interest of professionals (e.g., attorneys, physicians, psychotherapists, and the clergy) and their clients in protecting privileged materials with the interest of prosecutors in securing evidence of suspected criminal activity. Special Masters are appointed by and responsible to the appointing court. The role of the State Bar is restricted to maintaining the list of Special Masters for the use of the court.

## **2.0 Definitions**

- 2.1 A "Special Master" is an attorney who is an active member of the California State Bar who, in accordance with the requirements of these Rules and Regulations, is qualified to conduct the searches described in Penal Code section 1524.
- 2.2 The "Rules" are the State Bar of California Special Master Program Rules and Regulations.
- 2.3 The "State Bar" is the chief executive officer of the State Bar, or a person or persons designated by the chief executive officer who shall have the authority to administer and interpret these Rules.
- 2.4 "The Board of Governors" or the "Board" is the Board of Governors of the State Bar of California.

## **3.0 Eligibility**

To be eligible to become a Special Master, an applicant must at the time of application have been an active member of the State Bar for five (5) years and not:

- 3.1 Currently be employed by a public defenders' office, a district attorneys' office, the Attorney General's office, or any law enforcement agency; able.
- 3.2 Be a certified criminal law specialist;
- 3.3 Have devoted more than twenty-five (25) percent of the applicant's practice of law to criminal law issues during the year prior to the date of application;
- 3.4 Have been disciplined during the five (5) years prior to the date of application;
- 3.5 Currently be suspended or disbarred in any court; and
- 3.6 Devote more than five (5) percent of the applicant's practice to criminal law issues during the term of appointment.

## **4.0 Duties**

A Special Master shall:

- 4.1 Not have a relationship with any of the parties involved in the pending matter;
- 4.2 Not be considered, for any purpose, an agent or representative of the State Bar of California;
- 4.3 Serve without compensation;
- 4.4 Have authority to act under Penal Code section 1524 and the court making the appointment;
- 4.5 Be considered a public employee, and the governmental entity which caused the search warrant to be issued shall be considered the employer of the Special Master and the applicable public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code;
- 4.6 Upon service of the warrant, inform the served party of the specific items being sought so that the served party shall have the opportunity to provide the items requested;
- 4.7 Accompany the officer serving the warrant upon the served party so that the served party may have the opportunity to produce voluntarily the items described in the warrant;
- 4.8 Conduct the search in such a manner as to permit the party serving the warrant or a designee to accompany the Special Master while conducting the search;
- 4.9 Not permit the party serving the warrant or a designee to participate in the search;
- 4.10 Not permit the party serving the warrant or a designee to examine any of the items being searched except upon agreement of the served party;
- 4.11 Conduct the search in the areas indicated in the search warrant if the served party, in the judgment of the Special Master, fails to provide voluntarily the items listed in the warrant ;
- 4.12 Seal and take to the court for a hearing any item the served party states should not be disclosed;
- 4.13 Seal and return to the court any item that appears to be privileged when the person serving the warrant, after reasonable efforts, is unable to locate the party served;
- 4.14 Keep confidential, and not divulge except in direct response to inquiry by the court, any information from the search;
- 4.15 Notify the State Bar of discipline imposed upon the Special Master by any professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

## **5.0 Duration**

An attorney shall be a Special Master from the date of placement on the list and shall be required to reapply every five (5) years. A special master shall remain on the list for the specified period unless sooner terminated pursuant to the following:

- 5.1 The member is no longer an active member of the State Bar of California;
- 5.2 The Special Master is terminated by the State Bar without consent pursuant to Section 6.0;
- 5.3 The Special Master submits a written request to terminate.

## **6.0 Involuntary Termination**

An attorney shall be deemed terminated as a Special Master if:

- 6.1 The member has been suspended or subject to final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline;
- 6.2 The applicant made a material false representation or misstatement of material fact in the application;
- 6.3 The appointing court orders removal from the list by the State Bar.

## **7.0 Public Nature of Records**

An attorney's status as a Special Master is not confidential and shall be disclosed upon request to any interested person. Other information provided to the State Bar pursuant to these Rules, including reports, documents, correspondence concerning the information obtained, or the application of an attorney to become a Special Master, shall be confidential except to the appointing court.