

DATE: July 9, 2004

TO: Members of the Board Committee on Planning, Program Development and Budget

FROM: Office of Certification Staff

SUBJECT: Proposed Rules of the State Bar of California Registered In-House Counsel Program and Rules of the State Bar of California Registered Legal Services Attorney Program – Request for Public Comment

ATTACHMENTS:

1. Proposed Rules of the State Bar of California Registered In-House Counsel Program
2. Proposed Rules of the State Bar of California Registered Legal Services Attorneys Program
3. California Rules of Court, rules 964 and 965
4. Comparison Chart

EXECUTIVE SUMMARY

The Office of Certification recommends that the Board Committee authorize publication of proposed Rules of the State Bar of California Registered In-House Counsel Program and Rules of the State Bar of California Registered Legal Services Attorneys Program, as set forth in Attachments 1 and 2, for a 45-day public comment period.

The Supreme Court of California has approved rule 964 [Registered Legal Services Attorneys] and rule 965 [Registered In-House Counsel] (see Attachment 3). Rule 964 permits an attorney who relocates to California and who is licensed to practice law in one or more jurisdictions in the United States other than California to register to provide legal services for a qualifying legal services provider in California without becoming a member of the California bar. Rule 965 permits an attorney who resides in California and who is licensed to practice law in one or more jurisdictions in the United States other than California to register to provide legal services as in-house counsel for a single qualifying institution in California without becoming a member of the California bar.

The rules, which become effective November 15, 2004, authorize the State Bar to establish and administer programs for registering California legal services attorneys and in-house counsel under rules adopted by the Board of Governors. Because the court rules go into effect on November 15, 2004, we are asking for a shortened public comment period in order for the rules and regulations to be in place by that date.

Any questions about this agenda item should be directed to Phyllis Culp at 415-538-2118 or phyllis.culp@calbar.ca.gov.

BACKGROUND

In 2002, the Supreme Court of California formed the Multijurisdictional Practice Implementation Committee (MJP Committee) and charged it with drafting rules that would expand the circumstances under which attorneys licensed to practice law in U.S. jurisdictions other than California are permitted to

practice law in California. The MJP Committee submitted its report to the Court in March 2004, along with proposed new rules of court to implement its recommendations. The Court approved the rules effective November 15, 2004.

The MJP Committee recommended permitting four categories of out-of-state lawyers to provide legal services in California:

- *Legal services attorneys (Rule 964)* – attorneys providing legal services to indigent clients on an interim basis, under the supervision of an experienced member of the State Bar, at a qualifying provider of legal services.
- *In-house counsel (Rule 965)* – attorneys providing out-of-court legal services exclusively for a single, full-time employing entity (e.g., a corporation or partnership) that does not provide legal services to third parties.
- *Litigating attorneys (Rule 966)* – attorneys providing legal services in California in anticipation of legal proceedings in California or as part of legal proceedings pending or anticipated in another jurisdiction.
- *Transactional and other nonlitigating attorneys (Rule 967)* – attorneys providing legal services in California on a temporary and occasional basis.

See chart in Attachment 4 for a comparison of the scope of practice and requirements under each rule. The proposed rules provide that attorneys practicing law pursuant to those rules are subject to the jurisdiction of the State Bar and the California courts. For two of the categories, legal services attorneys and in-house counsel, the MJP Committee recommended a system of registration that was similar to admission to the California bar but did not require an attorney to pass the California bar exam. There are no registration requirements for the other two categories of attorneys.

PROPOSED RULES AND REGULATIONS

Rules 964 (Registered Legal Services Attorneys) and 965 (Registered In-House Counsel) authorize the State Bar to establish and administer programs to register eligible legal services attorneys and in-house counsel under rules adopted by the Board of Governors. Proposed Registered Legal Services Attorneys Rules and Regulations and Registered In-House Counsel Rules and Regulations are summarized by section below, noting any substantive differences in requirements for legal services attorneys and in-house counsel:

RULE	EXPLANATION
Rule 1. Purpose	Establishes the purpose of the program.
Rule 2. Requirements	Provides that attorneys must comply with the requirements under the court rules and the program rules.
Rule 3. Scope of Practice	Sets forth practice limitations. Legal services attorneys must be employed by, and practice exclusively on behalf of, a single qualifying legal services provider and under the supervision of a California bar member also employed by that entity. In-house counsel must be employed by, and practice exclusively on behalf of, a single qualifying institution, and may not make court appearances in California state courts or engage in any other activities that require pro hac vice admission. (There is an exception that allows legal services attorneys, if qualified, to practice simultaneously as registered in-house counsel, and vice versa.)

RULE	EXPLANATION
Rule 4. Registration	Details the information and documents that must be included with the application for registration. Legal services attorneys must provide a declaration signed by the supervising attorney. In-house counsel must provide a declaration signed by the applicant's employer.
Rule 5. Qualifying Institution or Qualifying Legal Services Provider	Defines the terms.
Rule 6. Address of Record, Service	Defines address of record for State Bar purposes; provides for service of notice of State Bar proceedings.
Rule 7. Minimum Continuing Legal Education	Provides that both In-house counsel and legal services attorneys must complete the same 25 hours of MCLE required of California bar members within the first year of practice. Provides that in-house counsel must continue to comply with the requirements thereafter.
Rule 8. Fees	Sets forth application and annual registration fees.
Rule 9. Denial of Application	Sets forth reasons for denial. Legal services attorneys may be denied if they have taken and failed the California bar exam within five years immediately preceding their initial application to register. In-house counsel may be denied if they were practicing as in-house counsel on or after November 15, 2004 and failed to register by May 15, 2005.
Rule 10. Discipline	Provides that a violation of the California Rules of Professional Conduct may subject registered attorneys to disciplinary action.
Rule 11. Revocation	Sets forth reasons for revocation. Registered legal services attorneys may practice for no more than a total of three years, after which their registration is permanently terminated.
Rule 12. Reporting	Requires registered attorneys, Qualifying Institutions and Qualifying Legal Services Providers to report certain events to the State Bar within 30 days. Legal services attorneys must report a change of supervising attorney.
Rule 13. Renewal	Requires registered attorneys to renew their registration annually and pay and annual fee.
Rule 14. Use of Title "Registered In-House Counsel" or "Registered Legal Services Attorney"	Provides that attorneys may hold themselves out as registered only in connection with activities performed pursuant to the rules, and that registered attorneys may not hold themselves out as California bar members.
Rule 15. Public Records	Provides that information about registered attorneys shall be public to the same extent as information about California bar members.

EFFECTIVE DATE

We are asking for an effective date of November 15, 2004 to coincide with the effective date of rules of court 964 and 965.

FISCAL AND PERSONNEL IMPACT

The new Registered Legal Services Attorneys and Registered In-House Counsel programs will have a substantial fiscal and personnel impact on the OC. The OC estimates that, during the first year of operation, approximately 500 people will apply to become Registered In-House Counsel and that an additional 50 people

will apply to become Registered Legal Services Attorneys. It is estimated that these new programs will require at least 2,400 hours of staff time, requiring the hiring of two additional staff.

The OC must incur the cost of building complex new databases to track all of the information related to these two new programs. Substantial personnel time will be required to collect, input and evaluate information about the applicants, the jurisdictions in which they are currently or have been authorized to practice law, any change in their status in those jurisdictions, the qualifying institution for which they are working in California, any move to another qualifying institution or other termination from a qualifying institution, whether such institutions meet the requirements of the programs, any disqualifying changes in the status of such institutions, MCLE compliance by such applicants, etc.

In addition, each Registered In-House Counsel must renew his or her registration annually and each Registered Legal Services Attorney can only practice as such for a total of three years. Participants in both programs must comply with accelerated and continuing MCLE requirements. As a result, there will be substantial demands on staff time and department resources in future years with respect to those persons who apply to the programs in the initial year of operation. Of course, the OC expects that substantial additional revenue will be received in future years from new applicants.

PROPOSED BOARD COMMITTEE ACTION

If the Board Committee concurs, it would be appropriate to adopt the following resolution:

RESOLVED that the Board Committee on Planning, Program Development and Budget authorizes the publication of proposed Rules of the State Bar of California Registered Legal Services Attorneys Program and Rules of the State Bar of California Registered In-House Counsel Program for a 45-day comment period, in the form attached to these minutes and made a part thereof; and it is

FURTHER RESOLVED that the authorization to publish proposed Rules of the State Bar of California Registered Legal Services Attorneys Program and Rules of the State Bar of California Registered In-House Counsel Program is not, and shall not be construed as, a recommendation for approval by the Board.