



The State Bar of California

OFFICE OF THE EXECUTIVE DIRECTOR

180 Howard Street, San Francisco, CA 94105

leht.wilson@calbar.ca.gov

SENT VIA EMAIL

May 24, 2022

Honorable Chief Justice Tani Cantil-Sakauye
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

RE: Request for Extension of Provisional Licensure Programs under Rules 9.49 and 9.49.1 of the California Rules of Court

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I want to begin by thanking the Court for its leadership in creating the Provisional Licensure Program (PLP) in 2020. The Court's recognition of the circumstances faced by 2020 graduates and the direction to provide an opportunity for them to practice law while they struggled with many challenges in the early part of the pandemic provided an unprecedented opportunity for this initial PLP cohort. For ease of reference, this cohort will be described as 2020 graduate Provisionally Licensed Lawyers (PLL), and the program created under rule 9.49 as the 2020 graduate PLP. The Court's subsequent recognition of the importance of expanding the program to include those who scored between 1390 and 1439 on a California Bar Examination administered within the prior five years increased the reach and scope of the PLP. The cohort who participated in this expanded pathway PLP will be described as expanded pathway PLLs.

As of May 18, 2022, of the 915 individuals in the 2020 graduate PLP, 619, or 68 percent, have been admitted to the State Bar. Of the 671 individuals in the expanded pathway PLP, 458, or 68 percent, have been admitted. With two-thirds of participants admitted to the State Bar prior to the program's June 1 sunset, it is safe to say that for many the PLP has been a success.

However, in recent weeks the State Bar has heard from 2020 graduate PLLs and expanded pathway PLLs who have not yet satisfied the relevant requirements for licensure. We have also received compelling correspondence about the value of the PLP for participants, clients, and employer organizations. In response to this feedback the State Bar conducted a thorough review of the circumstances of the PLLs who will not qualify for admission as of June 1; the causes are myriad and include failure to pass the bar exam or the Multistate Professional

Responsibility Examination (MPRE), delays in the moral character determination process, and lack of sufficient supervised practice hours.¹ Based on this review and in light of requests received from both PLLs and their employers, the State Bar is requesting that the Supreme Court extend until December 31, 2022, both the 2020 graduate and expanded pathway PLPs. This proposed expansion would provide participants with the opportunity to satisfy all outstanding licensure criteria, including, for the 2020 graduate PLP, passage of the bar exam.

In the event that the Court considers this proposed expansion overbroad, an additional, more limited, expansion option is also provided; under this option both the 2020 graduate PLP and the expanded pathway PLP would be extended until September 30, 2022. This more narrow approach would provide continuity for those currently active PLLs who have not satisfied all other program requirements, but have not yet achieved the required score on the Multistate Professional Responsibility Examination (MPRE) or are still awaiting initial action by State Bar staff on their Application for Determination of Moral Character or Application for Extension of Determination of Moral Character.

Each option is described more fully below.

THE 2020 GRADUATE PROVISIONAL LICENSURE PROGRAM, RULE 9.49 OF THE CALIFORNIA RULES OF COURT

Option 1: Requested Extension to December 31, 2022

As of May 18, 2022, there were 217 active 2020 graduate PLLs² who had not yet met one or more of the following requirements for admission to the State Bar:

- Passing the MPRE
- Receiving an initial moral character determination from State Bar staff or a decision on a request for extension of a positive moral character determination
- Passing the California Bar Exam

Correspondence and testimony received from 2020 graduate PLLs who have not satisfied all requirements necessary for licensure have included examples of the ways in which limited license practice is occurring in many different settings and benefitting a wide array of clients. Legal services organizations in particular have voiced strong support for a continuation of the

¹ There are also a number of PLLs who have not completed the required 10 Hour New Attorney Training and remain active in the PLPs because the one-year deadline for completion has not passed. This requirement is not highlighted in this letter because for most PLLs, this is not the lone requirement not yet completed, and for 2020 graduate PLLs, as long as the time for completion does not pass before they become fully licensed, failure to meet this requirement does not stand in the way of licensure.

² There were 10 active 2020 graduate PLLs as of May 18, 2022, who met all of the requirements. We expect that they are in the process of getting sworn into the State Bar, at which time they will no longer be able to be active in the 2020 graduate PLP.

PLP, reinforcing the message that PLL services are valuable to both under-resourced providers and the clients they serve.³

There are 209 active 2020 graduate PLLs who have not yet passed the bar exam. A small number (28) did not sit for any of the four exams administered since the start of the pandemic (October 2020, February 2021, July 2021, or February 2022); the rest sat for at least 1, and as many as 4 exams. Many of these 209 PLLs have been working full-time as a PLL, working part-time as a PLL and part-time in another capacity to meet financial obligations, or even working full-time as a PLL and part-time in another capacity. Whatever the specific circumstance, full-time work (or full-time *plus* work) has likely significantly impacted these PLLs' ability to devote the necessary attention to bar exam study. We have also heard from some 2020 graduate PLLs who did not sit for the February bar exam because it was administered in person and they were uncomfortable about the risk of exposure to COVID-19, either for themselves or immunocompromised family members.

In addition to the significant number of 2020 graduate PLLs who have not satisfied the bar passage requirement, there are 16 2020 graduate PLLs who will not receive an initial moral character determination from State Bar staff, or a decision on a request for extension of a positive moral character determination, prior to the June 1 deadline. Processing delays on the part of both impacted 2020 graduate PLLs and the State Bar are responsible for this circumstance.

An extension of the program to December 31, 2022, would provide 2020 graduate PLLs one additional opportunity to sit for and pass the bar exam (July 2022), up to two additional opportunities to achieve a passing score on the MPRE, and sufficient time for the initial moral character determination process to occur. In light of the totality of factors that have resulted in over 200 2020 graduate PLLs not satisfying the requirements for licensure, the State Bar believes that such an extension is appropriate and would not create a risk to public protection. Therefore, we respectfully request that the Court amend rule 9.49 to implement this option.

Option 2: Limited Extension to September 30, 2022, to Receive Initial Moral Character Determination or Pass the MPRE

If the Court does not agree to an extension of the program of this duration or scope, the State Bar requests that the Court consider extending the program through September 30, 2022, to enable currently active 2020 graduate PLLs who have met all other program and admission requirements as of June 1, 2022, to continue to practice while awaiting the initial staff

³ Many participants and employer organizations have advocated for a permanent nonexam pathway to licensure for the 2020 graduate PLL population. If an extension of the PLP is granted, the State Bar will survey PLP participants and employers to understand more about these cohorts. An evaluation of survey responses will provide valuable insight to the State Bar and the Court as we examine the future of these programs, the paraprofessional program proposal likely to be submitted to the Court by the State Bar later this year, and the nonexam pathway currently under consideration by the Blue Ribbon Commission on the Future of the California Bar Examination.

determination on their Application to Determine Moral Character or Application for Extension of Determination of Moral Character and/or to pass the MPRE. As of May 18, 2022, there were 16 active 2020 graduate PLLs who are awaiting a determination on their moral character application, and 50 active 2020 graduate PLLs who have yet to pass the MPRE (with some overlap between the two groups). The MPRE will next be administered in August, and results are anticipated to be released to the State Bar by the end of September. The State Bar heard from a number of PLLs over the course of the program who were concerned that while the bar exam was administered remotely up until the February 2022 exam, the MPRE was only administered in person. For some, health considerations for themselves and their loved ones stood in the way of their taking the MPRE before March 2022. This abbreviated extension will give eligible 2020 graduate PLLs one more opportunity to sit for the MPRE. Additionally, the State Bar believes that with each applicant's cooperation, we will be able to issue the initial staff determination of moral character by September 30.

THE EXPANDED PROVISIONAL LICENSURE PROGRAM WITH A PATHWAY TO LICENSURE

Option 1: Requested Extension to December 31, 2022

There are currently 129⁴ active expanded pathway PLLs who have not met one or more of the following program requirements and are therefore not eligible for admission to the State Bar:

- Passing the MPRE
- Receiving an initial moral character determination from State Bar staff or a decision on a request for extension of a positive moral character determination
- Completing at least 300 hours with a positive supervisor evaluation

Additionally, there are a small number of expanded pathway PLLs who have met the hours requirement and all other requirements for admission, but are awaiting supervisor evaluation. Although the State Bar anticipates being able to issue the initial moral character determination for all active expanded pathway PLLs prior to the June 1 deadline, an extension of the program paralleling the approach for the 2020 graduate PLP will prevent unnecessary disruption for the expanded pathway PLLs, their employers, and the public, and minimize confusion about the rules being applied to the two distinct (yet similar) provisionally licensed populations.

Option 2: Limited Extension to September 30, 2022, to Receive Initial Moral Character Determination or Pass the MPRE

As of May 18, 2022, there were 27 active expanded pathway PLLs who had not received either an initial moral character determination or action on their request for extension of their moral character application; of these 27 expanded pathway PLLs, 3 had not yet achieved a passing score on the MPRE. There are an additional 15 expanded pathway PLLs who have received a

⁴ There were 56 active PLLs as of May 18, 2022, who have satisfied all program requirements. It is assumed that they are in the process of getting sworn in to the State Bar, and are maintaining the PLL status so as to be able to continue work pending the swearing in.

positive moral character determination but have not yet reported a passing score on the MPRE. As noted above, the State Bar anticipates that August MPRE scores will be released by September 30. An extension to September 30, 2022, will therefore allow the State Bar to complete the initial or extension moral character determination for qualifying expanded pathway PLLs and will provide them with an additional opportunity to pass the MPRE.

CONCLUSION

Based on the foregoing, the State Bar respectfully requests that the Supreme Court amend rules 9.49 and 9.49.1 of the California Rules of Court to extend the Provisional Licensure Programs, both the original program and the expanded pathway program, to December 31, 2022, for all currently active PLLs. The State Bar believes this extension is appropriate and would not pose a significant risk to public protection. If the Court does not agree that an extension of this duration and scope is warranted, the State Bar requests that both programs be extended until September 30, 2022, for currently active PLLs who have met all program and admission requirements, with the exception of having an active positive moral character determination, having received a passing score on the MPRE, or both. This limited extension will allow qualifying PLLs to keep practicing for their current employers while these two final licensing requirements are resolved in one fashion or another.

Thank you for your consideration of this request. Please let me know if I can provide additional information to the Supreme Court to facilitate deliberation or answer any questions the Court may have.

Sincerely,



Leah T. Wilson
Executive Director

cc: Ruben Duran, Chair, State Bar Board of Trustees
Brandon Stallings, Vice-Chair, State Bar Board of Trustees
Hailyn Chen, Member, Board of Trustees, Former Chair of the Provisional Licensure Program Working Group