



## PROPOSED PROVISIONAL LICENSING PROGRAM FAQs

In response to the challenges facing law students due to the COVID-19 pandemic, the [California Supreme Court on July 16, 2020](#), directed the State Bar of California “to implement, as soon as possible, a temporary supervised provisional licensure program – a limited license to practice specified areas of law under the supervision of a licensed attorney.” The State Bar’s Provisional Licensure Working Group circulated a [draft rule of court for public comment](#) on August 31, 2020. The draft rule was amended in response to public comment and submitted to the Board of Trustees for approval on September 24, 2020.

**This FAQ is based on provisions of the draft rule and is therefore subject to change until the final rule is approved by the Court.**

1. What professional services can a provisionally licensed lawyer provide under the proposal?
  - Under the draft rule, a provisionally licensed lawyer would be allowed to provide a broad array of legal services for clients, including appearing before a court, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice, provided that the work is performed under the supervision of a qualifying supervising lawyer. Unlike other states that adopted provisional licensure programs, the limits on what a provisionally licensed lawyer can do, or what needs to be done under direct versus general supervision, are largely left to the supervising attorney to determine the readiness of the provisionally licensed lawyer.
2. Who would be able to apply for provisional licensure in California under the draft rule?
  - As drafted, all 2020 law school graduates – meaning anyone who became eligible under Business and Professions Code sections 6060 and 6061 to sit for the California Bar Examination between December 1, 2019, and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (JD) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements – would be eligible to apply for provisional licensure. They may apply regardless of whether they have taken the California bar exam, as long as they have already submitted a complete [Application for Determination of Moral Character to the State Bar](#) (that has not resulted in an adverse determination of moral character by the State Bar) and otherwise meet the requirements for admission.

3. Under the draft rule, do applicants for provisional licensure have to live in California?
  - No. As drafted, an applicant need not live in California so long as they have a conditional offer of employment from a legal employer, as defined, with an office in California and are supervised by an eligible California attorney.
4. How soon will applications for a provisional license be available under the draft rule?
  - Because this rule is still in draft form, applications are not yet available. The State Bar is working to implement the program as soon as possible. We recognize that many are relying on this program in order to begin practicing law. The State Bar received public comment on the draft rules through September 15, 2020. Following public comment, the rule was revised and recommended for approval by the State Bar Board of Trustees. Following Board approval, it will go to the Supreme Court for final review and approval. Final requirements will need to be automated so that applicants can easily apply for the program through the State Bar's applicant portal.
5. How much will a provisional license cost under the draft rule?
  - The draft rule proposes a fee of \$75, or \$50 if the applicant's fee would be paid by a legal aid organization funded by the Interest on Lawyers' Trust Accounts (IOLTA). There would be no fee for those using provisional license solely in an unpaid capacity under the direction of the supervising lawyer.
6. How do I find a supervising lawyer?
  - The State Bar intends to communicate with California lawyers, bar associations, and affinity bars about this program once the rules are adopted to ensure that the legal community is aware of the opportunities provided by provisionally licensed lawyers.
  - If you plan to pursue a provisional license, you should let prospective employers know that and work with them to identify a potential supervising lawyer.
  - Under the draft rule, you will need to have a signed declaration from your supervising lawyer at the time you file an application for provisional licensure.
  - A supervising lawyer may meet the requirement for "actively practicing law" by teaching at a California law school.
7. Under the draft rule, how long would I be able to practice law with a provisional license?
  - As drafted, the provisional licensure program ends on June 1, 2022, unless extended by the Supreme Court. Upon termination of the program, provisionally licensed lawyers will no longer be able to practice law.
8. Under the draft rule, what happens if someone who is provisionally licensed takes the bar exam but is unsuccessful?
  - As drafted, the program is open to 2020 law graduates who have taken but not yet passed the bar exam, so long as they meet other eligibility requirements specified in the draft rule. Provisionally licensed lawyers who attempt the bar exam but do not pass it may continue in the provisional licensure program until the program terminates, but they are not required to sit for the bar. By the end of the program on June 1, 2022, they must have passed an exam to become fully licensed and to continue in the practice of law.

9. What other requirements are imposed by the draft rule?

Under the draft rule, a provisionally licensed lawyer must, among other requirements:

- Complete the State Bar New Attorney Training program by the conclusion of the first 12 months of provisional licensure, unless they would otherwise be exempt.
- If they have not passed the Multistate Professional Responsibility Examination (MPRE) prior to enrollment in the program take the four hours of legal ethics training included in the 10-hour New Attorney Training within the first month of provisional licensure.
- Maintain employment under the supervision of a licensed lawyer.
- Follow the same professional conduct rules as all fully licensed lawyers.
- Clearly disclose to clients and the public that they are a “provisionally licensed lawyer” and not a fully licensed lawyer.

10. What happens under the proposed rule if a provisionally licensed lawyer receives an adverse moral character determination from the State Bar?

- An applicant for provisional licensure who has not already received a positive moral character determination must have submitted a complete Application for Moral Character in order to be eligible for the program. Under the draft rule, a provisionally licensed lawyer who subsequently receives an adverse moral character determination from the State Bar will be terminated from the program. If they appeal the adverse determination, their provisional license shall be suspended until final resolution of the review or appeal.

11. What happens under the draft rule if a provisionally licensed lawyer is sanctioned by the State Bar for misconduct?

- As proposed, a provisionally licensed lawyer sanctioned for misconduct would be terminated from the program and referred to moral character.

12. May a provisionally licensed lawyer have multiple supervising lawyers to get a broader range of experience?

- Yes, the draft rule allows for multiple supervisors. The supervisors may work within the same law firm or at different law firms.

13. Is there any relief for applicants who do not meet the requirements of the program?

- At the end of its last meeting, the working group recommended reconvening to consider whether to recommend a supplemental rule to the State Bar Board of Trustees to extend eligibility for the provisional licensure program to individuals who previously scored 1390 or higher on the bar exam. The working group indicated it would consider whether these individuals should be admitted to the State Bar of California after completing a set number of supervised hours or meeting other requirements, but without the need to pass the bar exam.

## UPDATES

9/23/2020

- Modified questions #4–10
- Added question #12 and #13