PROVISIONAL LICENSURE 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.”

On October 22, 2020, the Court approved New Rule 9.49, implementing the provisional licensure program (PLP), effective November 17, 2020.

On January 28, 2021, the Court approved an amendment to the program expanding eligibility. The PLP application for candidates qualifying under the expanded criteria was made available on February 24, 2021. These FAQs now include information on this expanded version of the program.

On March 17, 2021, the Court approved an amendment to the program that further clarifies the eligibility criteria for the expanded PLP, specifically that applicants who have passed the bar examination but have not yet been licensed are not eligible. Applicants with an adverse moral character determination are not eligible unless more than two years have elapsed from the date of the final determination or after some other time set by the State Bar, for good cause shown. This amendment also describes the manner in which successful PLP participants in the expanded path will be treated in with regard to Business and Professions Code section 6060, subdivision (g).

1. What professional services can a provisionally licensed lawyer (PLL) provide?
   • Under Rule 9.49, a provisionally licensed lawyer is 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 can apply for provisional licensure in California under the new rule?
   • The amended rule includes two eligible groups: (1) 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. They may apply regardless of whether they have taken the California bar exam, as long as they have already submitted an 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. (2) Individuals who scored between 1390 and 1439 on a California Bar Exam administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination. The application became available on February 24, 2021. Applicants can check their eligibility to apply under the expanded criteria through the Applicant Portal under the status tab. Only applicants who meet the qualification, specifically those who achieved a score between 1390 and 1439 at first read or as a total scaled score for any California Bar Exam between July 2015 and February 2020, will be granted access to the PLP application. Applicants who have passed any of the qualifying bar examinations (between July 2015 and February 2020) but have not been licensed, are not eligible to participate in the expanded PLP.

3. Do applicants for provisional licensure have to live in California?
   • No. An applicant need not live in California so long as they are employed by or volunteering with, or have a conditional offer of employment or to volunteer with from a legal employer, as defined, with an office in California are supervised by an eligible California attorney.

4. How soon will applications for a provisional license be available?
   • Applications for 2020 graduates are now available in the Admissions Applicant Portal. Applications for the expanded program were made available starting on February 24, 2021, and must be submitted no later than May 31, 2021.

5. How much will a provisional license cost?
   • Applicants pay a fee of $75, or $50 if the applicant’s fee is paid by a legal aid organization funded by the Interest on Lawyers’ Trust Accounts (IOLTA) program. There will be no fee for those using a provisional license solely in an unpaid capacity under the direction of the supervising lawyer.

6. What is the Interest on Lawyers’ Trust Accounts (IOLTA) program?
   • Interest on Lawyers’ Trust Accounts is known by its acronym, IOLTA. It is a method of raising money, primarily for providing legal services to those unable to afford it.
   • Rule 1.15 requires that attorneys who handle money belonging to their clients, including settlement checks, fees advances for services not yet
performed or money to pay court fees, deposit the funds in one or more clearly identifiable trust accounts. If the amount is large or the funds are to be held for a long period of time, the attorney must place the money at interest for the benefit of the client. However, if the client funds are not capable of earning income for the client more than the costs of securing income, then they are pooled in a single account with similar funds of other clients.

- The interest generated by the IOLTA accounts is collected by the State Bar’s Trust Fund Program and distributed to about 100 nonprofit legal aid organizations that provide civil legal aid to indigent people.

7. How do I know if my employer is an IOLTA-funded organization?
   - You can look up IOLTA funded organizations here.

8. How do I find a supervising lawyer?
   - The California Lawyers Association (CLA) is collecting information about matching programs from around the state and has a provisional licensure e-community available to members where prospective supervisors and provisional licensees can connect. While the cost of joining CLA is minimal, if price is an obstacle to joining, they will provide assistance to individuals facing hardship if asked. The link to their resource page is here: https://calawyers.org/provisional-licensure/ and the link to join is here: https://calawyers.org/#join.
   - 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.
   - You must submit a signed declaration from your supervising lawyer with your application for provisional licensure. The declaration must confirm that you will be employed by, or volunteer at, the firm or organization of the supervising lawyer. The declaration must be submitted with the Applicant Portal; declarations sent via email and USPS are not automatically associated with the online application and may delay processing. Please ensure that you are submitting as instructed in the Applicant Portal. (Please see questions 17 and 18 for application instructions).

9. What are the requirements for a supervising lawyer?
   - To qualify to supervise a PLL, the supervisor must have practiced law for at least four years and been an active California licensed lawyer for at least two years.
   - A supervising lawyer may meet the requirement for “actively practicing law” by teaching at a California law school.
   - Supervising lawyers may also be judges in the California judicial branch.
   - Registered In-House Counsel and Registered Military Spouse Attorneys are not California licensed attorneys and cannot act as supervisors for a PLL.
10. How long will I be able to practice law with a provisional license?
   • The provisional licensure program ends on June 1, 2022, unless extended by the Supreme Court.

11. What happens if someone who is provisionally licensed takes the bar exam but is unsuccessful?
   • Under the program for 2020 law graduates, 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 exam. 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.
   • Those eligible for the expanded program will not need to retake a bar exam if they complete 300 hours of supervised legal practice in the Provisional Licensure Program and fulfill all other requirements of the amended rule (see question 19 below).

12. What other requirements are imposed by the rule?
   • Complete the State Bar New Attorney Training program by the conclusion of the first 12 months of provisional licensure, or within 12 months of the training first being made available, unless they would otherwise be exempt.
   • If they have not passed the Multistate Professional Responsibility Examination (MPRE) prior to enrollment in the program, PLLs must take the four hours of legal ethics training included in the 10-hour New Attorney Training within the first month of provisional licensure, or within 30 days of the training first being made available.
   • 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.

13. When will the legal ethics training and New Attorney Training be available to PLLs?
   • The training portal containing the required courses was made available starting on February 19, 2021. Provisionally Licensed Lawyers (PLLS) with an approved application and whom are currently active, can access the portal at this site.
   • PLLs will receive an email containing their login name and corresponding password to access the Learning Module System (LMS) containing the courses for the New Attorney Training Program. A total of nine courses, totaling 10 hours of coursework, are available in the LMS and required by February 19, 2022, for all PLLs licensed by that date. The four hours of legal ethics courses include: Course ID 101, 103, 107, and 108. PLLs who are licensed as of February 19 and who are required to take the four hours of
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legal ethics training within the first 30 days of provisional licensure were required to complete those courses by March 21, 2021. If you passed the MPRE prior to provisional licensure, those courses need to be completed by February 19, 2022, or one year from provisional licensure, whichever is later. A separate FAQ has been posted for using the LMS.

- PLLs should use the dashboard in the LMS to track completed and pending courses. PLLs are not required to submit certificates of completion or required to contact the Admissions Office to report completion. State Bar staff have access to the LMS in order to track education compliance.

14. 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. A provisionally licensed lawyer who subsequently receives and 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.

15. What happens if a provisionally licensed lawyer is sanctioned by the State Bar for misconduct?
   - A provisionally licensed lawyer sanctioned for misconduct would be terminated from the program and referred to moral character.

16. May a provisionally licensed lawyer have multiple supervising lawyers to get a broader range of experience?
   - Yes, the rule allows for multiple supervisors. The supervisors may work within the same law firm or at a different law firm if you will be employed or volunteer at more than one organization. You must submit a declaration from each supervising lawyer with your application in the Applicant Portal. (Please see questions 17 and 18 for application instructions.)

17. How do I apply for the Provisional Licensure Program?
   - 2020 graduates eligible for the original program may submit an application through the Applicant Portal.
   - Applications for the expanded program were made available in the Applicant Portal starting on February 24, 2021.
   - You must already be registered with the Office of Admissions, either as a student applicant or attorney applicant, before applying for the Provisional Licensure Program. If you have previously submitted an application for any of the following, you are already registered with the Office of Admissions.
     o California Bar Exam, First-Year Law Students’ Exam, Practical Training of Law Students Program, or Moral Character Evaluation.
• Attorney applicants need to provide an original Certificate of Good Standing from each jurisdiction in which they are licensed.
• Law school graduates (JD or LLM) need to provide official, sealed transcripts.

18. What documents are needed for my application?
• The application will be considered complete when the following supporting documents are received:
  o Applicant declaration
  o Supervising Attorney Declaration. The declaration must be submitted within the Applicant Portal; declarations sent via email and USPS are not automatically associated with the online application and may delay processing. Please ensure that you are submitting as instructed in the Applicant Portal.
  o Payment

19. What is the pathway to licensure in the expanded program?
• Those eligible for the expanded program who complete 300 total hours of supervised legal practice in the Provisional Licensure Program, satisfy all eligibility requirements for admission, and fulfill other requirements of the amended rule, including obtaining an attestation from their supervising lawyer that the provisionally licensed lawyer possesses the minimum competence expected of an entry-level attorney, will be eligible for admission to the State Bar without retaking the bar exam.
• The 300 hours must be obtained after acceptance into the program. Supervision prior to provisional licensure may not be counted toward the 300-hour requirement.

20. How do I access my scores since July 2015 to know if I am eligible for the program?
• The Office of Admissions has your past scores on record. Starting on February 24, 2021, the State Bar will post in the Applicant Portal whether your score meets the qualification. Please check the status screen in the Applicant Portal to determine whether you are eligible.

21. How can I obtain my past result letters since July 2015?
• If you would still like to request a hardcopy of your past result letters, you may do so by completing the Application/Document Copy or Administrative Service Request Form and pay the associated fee of $15 per letter requested.

22. If I am a PLL under the expanded eligibility criteria, how do I report the number of hours that I have worked? How can I be evaluated by my supervising lawyer for licensing purposes?
• In order to comply with CA Rule of Court 9.49.1 (i)(3), PLLs who qualify under the expanded eligibility criteria are required to track and report their hours. The Office of Admissions will collect this data on a weekly basis. Specifically,
qualifying PLLs will be required to note the total number of hours worked, the total number of hours spent performing legal services (whether paid or unpaid), a description of the supervised legal practice duties assigned that specific week, along with their signature. Once that is completed, the Supervising Lawyer will be contacted to sign that week’s completed log (on a weekly basis). **Starting on March 30, 2021, at 2:00 p.m., applicants will be able to access the time-tracking log within the Applicant Portal.**

Here are the instructions to access the time-tracking log:
1. Log in to the Applicant Portal.
2. At the top, click “Applications.”
3. Click “Timesheet.”
4. Click “New” to create a new timesheet.
5. Enter all information and click Save.

- Once that timesheet record has been saved, the applicant will receive an email with a link to capture their electronic signature. After receipt of that electronic signature, an email to the supervising attorney will be sent to confirm the hours reported.
- Once a PLL has logged a total of 300 hours of legal services, an email will be sent to the supervising lawyer requesting an evaluation of the PLL’s overall work performance. Once that evaluation has been completed, it will be reviewed by the eligibility team to determine whether the PLL has satisfactorily met CA Rule of Court 9.49.1 (i(5).

23. What qualifies as “legal practice”?
- California Rule of Court 9.49.1(b)(3) defines “legal practice” as “the provision of permitted legal services to clients in compliance with rule 9.49(f) and (g).” Rule 9.49(g) states that legal services to clients include, but are not limited to, “appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.”
- Please note that the rules require that services be provided to a client for those hours to count towards the admission requirements. Assignments such as conducting research can count when that research is being used to draft legal documents or to provide legal advice to a client. Assignments that do not involve providing services to a client, such as training, while helpful, are not considered “legal practice” under the rules.

24. What is the May 31, 2021 deadline?
- May 31, 2021, is the deadline for submitting the PLP application to participate under the expansion portion of the rule, California Rule of Court
9.49.1. The application need not be approved by May 31, 2021, only submitted.

- Applicants who wish to participate in the program under California Rule of Court 9.49 can continue to submit applications after May 31, 2021.

25. Why is my PLP application still in Pending Internal Review status?

- You can always check the status of your PLP application case record by accessing the Applicant Portal. One common reason for this status is that the Moral Character (MC) Application has been submitted, but not yet considered complete and filed. The MC must be in a filed status before your PLP application can be approved. Filed status means that our office has all the preliminary documentation required to begin the background investigation. MC Applications are processed in the order received and can take up to two to three months for the initial review.

26. Can a PLL’s supervised hours include unpaid work?

- While the PLP recognizes that some PLLs may engage in unpaid volunteer work, nothing in the program purports to exempt employers from any applicable employment and wage and hour laws. Employers interested in supervising a PLL in unpaid volunteer work should determine whether such an arrangement is legally permissible given the specific factual circumstances and should follow all applicable laws as required. You may also find helpful this webpage from the California Lawyers Association about employing and paying a PLL.

27. If I do not have a passing MPRE score on file and thus satisfy the Legal Ethics component in the New Attorney Training Program in lieu, does this satisfy the MPRE requirements?

- No. Taking the legal ethics course allows you to become provisionally licensed, it does not replace the MPRE requirement for full licensure.

UPDATES

4/29/2021
- Updated question #26
- Added new question #27

4/23/2021
- Added new questions #24–#26

3/29/2021
- Updated question #2, #4, #8, and #17
- Added new question #22 and #23

2/24/2021
- Updated question #2, #4, and #17

2/22/2021
- Updated question #2, #4, #13, #17, and #20
• Added new question #6 and #7
• Deleted question regarding requesting refunds for the February 2021 Bar Exam
2/18/2021
• Updated question #11 and #18
2/1/2021
• Updated question #2, #5, #6, #17, and #18
• Added new question #7
1/28/2021
• Updated question #2, #4, #8, and #14