

Attachment A: Proposed Law Corporations Rules

RULES OF THE STATE BAR OF CALIFORNIA

Title 3. Programs and Services
Division 2. Attorney Members

Chapter 2. Law Corporations

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Rule 3.150 Scope¹

- (A) Subject to Supreme Court approval, the State Bar is authorized by law to establish and enforce rules for corporations that practice law in California.² To practice law in California, a corporation must be certified by the California Secretary of State and registered by the State Bar. These rules refer to such a corporation as a law corporation.
- (B) These rules do not reiterate or supersede the State Bar Act,³ statutory requirements for law corporations,⁴ or any other legal requirement.
- (C) For law corporations, the governmental agency referred to in the Professional Corporation Act is the State Bar.⁵

Rule 3.151 Eligibility

A corporation may apply to register as a law corporation if it meets statutory requirements.⁶

Rule 3.152 Application to register as a law corporation

- (A) To apply to register as a law corporation an applicant must

¹ Pending California Supreme Court action on State Bar recommendations in an August 2007 report submitted pursuant to the Court's directive in *Frye v. Tenderloin Housing Clinic, Inc.*, (2006) 38 Cal.4th 23, 40 Cal.Rptr.3d 221, the proposed rules do not reference nonpublic corporations incorporated under the Nonprofit Public Benefit Corporation law. Such entities may, but are not required to, apply for certification as a common law exception under *Frye*.

² See Business & Professions Code § 6171. This statute provides, in relevant part, that "With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article" Current rules make no reference to this statute.

³ See especially Business & Professions Code, Article 10, §§ 6160-6172. See also State Bar Rule 1.4. This State Bar rule states that "The rules of the State Bar do not include (A) Rules of the Supreme Court of California or California Rules of Court that apply to the State Bar, its members, services, or programs; (B) statutes or case law applicable to the State Bar, its members, services, or programs; or (C) policies and procedures that relate to the internal management or operations of the State Bar."

⁴ See especially Title 1, Part 4, Division 3 of the Corporations Code, commencing with section 13400 (Moscone-Knox Professional Corporation Act).

⁵ Business & Professions Code § 6160. This statute reads, "A law corporation is a corporation which is registered with the State Bar of California and has a currently effective certificate of registration from the State Bar pursuant to the Professional Corporation Act, as contained in Part 4 (commencing with section 13400) of Division 3 of Title 1 of the Corporations Code, and this article. Subject to all applicable statutes, rules and regulations, such law corporation is entitled to practice law. With respect to a law corporation the governmental agency referred to in the Professional Corporation Act is the State Bar."

⁶ Business & Professions Code § 6161. This statute very specifically details application requirements, which are also reiterated in the application form its instructions. For these reasons, Rules 3.152 and 3.153 reference § 6161 and do not restate the statute as does current rule III, Applications.

- (1) submit an Application to Register as a Law Corporation⁷ with the fee set forth in the Schedule of Charges and Deadlines; and
 - (2) provide a Law Corporation Guarantee as evidence of security for claims as required by Rule 3.158.⁸
- (B) The name under which the law corporation intends to practice law must include a designation of corporate existence such as “Professional Corporation,” “Prof. Corp.,” “Corporation,” “Corp,” “Incorporated,” or “Inc.”⁹
- (C) The effective date of registration as a law corporation is the date an applicant files a complete application.¹⁰ The State Bar has discretion to grant a later effective date requested by the applicant.¹¹

Rule 3.153 Amendment or abandonment of incomplete application¹²

If the State Bar notifies an applicant that an Application to Register as a Law Corporation is incomplete or otherwise fails to meet application requirements, it must provide the applicant at least sixty days to amend the application. If the applicant fails to meet application requirements within this time, the application is deemed withdrawn.

⁷ Business & Professions Code § 6161. *This statute is titled “Application for registration.” See current rule III.A: “An applicant for registration as a law corporation shall file with the State Bar an application for Certificate of Registration, on a form furnished by the State Bar, and pay a fee in an amount to be determined by the State Bar.”*

⁸ Business & Professions Code § 6171(b). *B&P § 6171(b) provides “That a law corporation, as a condition of obtaining a certificate pursuant to the Professional Corporation Act and this article, shall provide and maintain security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services.” Current rule IV.7 requires that an applicant provide and maintain in effect “security for claims against it by its clients for errors and omissions arising out of the practice of law as required by Section B of this Rule IV.”*

⁹ Business & Professions Code § 6171(c). *B&P § 6171 (c) provides “That the name of the law corporation and any name or names under which it renders legal services shall be in compliance with the rules and regulations.” See current rule IV.A.5, which requires that the name of the corporation and any name under which it practices law must comply with the Rules of Professional Conduct and include “wording or abbreviations denoting corporate existence such as “Professional Corporation,” “Prof. Corp.,” “Corporation,” “Corp.,” “Incorporated,” or “Inc.”*

¹⁰ See Rule 1.24. *This rule provides that “When a rule refers to a form, the State Bar reserves the right to reject a form that is altered in language or structure or that is not completed and submitted according to instructions.”*

¹¹ *See current rule III.B, which gives the State Bar to grant a later effective date and an earlier one as well, “if the interests of justice require and good cause appears therefor.” The proposed rules do not allow the possibility of making a certificate effective on a date earlier than that on which the State Bar received a complete application. In practice such earlier dates have never been granted.*

¹² *See rule III in the current Law Corporation Rules of the State Bar of California, which are attached.*

Rule 3.154 Duties of a law corporation

- (A) A law corporation must have a currently effective certificate of registration issued by the State Bar, submit an Annual Renewal with any required fee,¹³ and otherwise comply with these rules and applicable law.¹⁴
- (B) The law corporation may practice law only under the name registered with the Secretary of State and approved by the State Bar. Use of the name must comply with requirements of the Rules of Professional Conduct.¹⁵
- (C) A law corporation must observe all rules and law that apply to a member of the State Bar and must not do or fail to do anything that would constitute a cause for discipline of a member.¹⁶
- (D) A law corporation employing an attorney who has resigned, been disbarred, been suspended from the practice of law, or resigned with charges pending¹⁷
 - (1) may not permit the attorney to practice law or represent that he or she is available to practice law and must supervise the performance of any duties assigned to such an attorney;¹⁸ and
 - (2) must remove the name of any attorney who is disbarred or resigned with charges pending from its business name, signs, advertisements, letterhead, and other materials within sixty days of the disbarment or resignation.¹⁹

Rule 3.155 Special reports

¹³ Rule 3.156.

¹⁴ See current rule IV.A.8 requires that an “applicant's affairs will be conducted in compliance with law and the rules and regulations of the State Bar.”

¹⁵ Business & Professions Code § 6171(c). See the drafter’s note to footnote 9 above.

¹⁶ Business & Professions Code § 6167. This statute provides that “A law corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute a cause for discipline of a member of the State Bar, under any statute, rule or regulation now or hereafter in effect. In the conduct of its business, it shall observe and be bound by such statutes, rules and regulations to the same extent as if specifically designated therein as a member of the State Bar.”

¹⁷ Rule 3.154(D) adds to the group of attorneys who may not practice law for a law corporation those who have resigned with charges pending. The proposed rule conforms to the State Bar practice of prohibiting a resigned attorney from practicing law. See B&P §§ 6132 and 6133.

¹⁸ Business & Professions Code § 6133. See Rule 1-311, Rules of Professional Conduct of the State Bar of California.

¹⁹ Business & Professions Code § 6132. Current rules do not reference this statutory requirement.

A law corporation must report within forty-five days any change in directors, officers, share ownership, articles of incorporation, bylaws, address, or e-mail address.²⁰ The report must comply with State Bar requirements. If the information required for the guarantee has changed, the renewal must also include a current Law Corporation Guarantee executed by all shareholders.

Rule 3.156 Annual renewal²¹

- (A) A law corporation must annually renew its authorization to practice law by submitting an Annual Renewal with the fee set forth in the Schedule of Charges and Deadlines. The form must report any changes to the information last provided to the State Bar in an Annual Renewal, a special report, or a Law Corporation Guarantee. If the information required for the guarantee has changed, the renewal must also include a current guarantee executed by all shareholders. The deadline for submission of the Annual Renewal and the amount of the fee are set forth in the Schedule of Charges and Deadlines.
- (B) A law corporation that fails to submit a complete Annual Renewal and fee is suspended and is not entitled to practice law. It may be reinstated upon submission within one year of the renewal, fee, and any penalty. If the suspension lasts more than one year, the registration of the law corporation is involuntarily terminated.

Rule 3.157 Shares²²

- (A) A shareholder of a law corporation must be licensed and entitled to practice law.²³
- (B) The shares of a law corporation must be owned only by that corporation or a shareholder.²⁴

²⁰ Business & Professions Code § 6162. *This statute reads, “Within such time as the State Bar may by rule provide, the law corporation shall report in writing to the State Bar any change in directors, officers, employees performing professional services and share ownership, and amendments to its articles of incorporation and bylaws.” . VI.B requires that changes be reported within thirty days. The forty-five day period proposed here would align this rule with a similar LLP rule that currently requires changes to be reported within forty-five days.*

²¹ Business & Professions Code §§ 6161.1, 6163. *B&P § 6161.1 provides that “Each law corporation shall renew its certificate of registration annually at a time to be fixed by the State Bar and shall pay a fee therefor which shall be fixed by the State Bar in accordance with subdivision (a) of section 6163.” B&P § 6163 details the requirements for the annual renewal. Current rule VI deals with the annual report.*

²² *Current rule IV.B deals with security for claims against law corporations.*

²³ Business & Professions Code § 6165. *The statute reads, “Except as provided in Section 13403 and 13406 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.”*

²⁴ Corporations Code § 13406(a). *This statute provides that “Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void.” See current rule IV.C.1: “The shares of a law corporation may be owned only by (a) that corporation (b) by an active member of the State Bar or (c) by a person who is licensed to practice law in the jurisdiction or jurisdictions in which the person practices.”*

- (C) The shares of a deceased shareholder must be sold or transferred to the law corporation or its shareholders within six months and one day following the date of death.²⁵
- (D) The share certificates of the law corporation must set forth the preceding restrictions of this rule regarding ownership, sale, or transfer of shares. These restrictions must also be set forth in the articles of incorporation or bylaws.²⁶
- (E) The shares of a shareholder who is ineligible to practice law or legally disqualified²⁷ to render professional services to the law corporation must be sold or transferred to a qualified shareholder within ninety days after the date of ineligibility or disqualification. The terms of such a sale or transfer of shares must be set forth in the articles, the bylaws, or a written agreement.
- (F) The shares of a shareholder disqualified for any reason other than disbarment may be resold to that shareholder upon his or her becoming eligible to practice law.²⁸

Rule 3.158 Security²⁹

²⁵ Business & Professions Code §§ 6171(a) & 6171.1. *B & P § 6171(a) reads, “the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the rules and regulations may provide.” B&P § 6171.1 references the six months and one day time period. See current rule IV.C.2.*

²⁶ See current rule IV.C.4, which states that “The share certificates of a law corporation shall contain an appropriate legend setting forth the foregoing restrictions.”

²⁷ Business & Professions Code §§ 6166, 6171(a), and Corporations Code § 13401(e). *B & P § 6166 provides that “The income of a law corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder or his shares in the law corporation.” B & P § 6171(a) provides that “the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the rules and regulations may provide.” Corporations Code § 13401(e) states that ““Disqualified person” means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.” And see current rule IV.C.2.c: “The requirements of subsections (1) and (2) of this Section C shall be set forth in the law corporation’s articles of incorporation or bylaws, except that the terms of the sale or transfer provided for in said subsection (2) need not be set forth in said articles or bylaws if they are set forth in a written agreement.”*

²⁸ See current rule IV.C.3: “A corporation and its share holders may, but need not, agree that shares sold to it by a person who becomes a disqualified person for any reason other than disbarment may be resold to such person if and when he again becomes an eligible shareholder.”

²⁹ Current rule IV.B deals with security for claims against law corporations.

- (A) Each shareholder must execute a Law Corporation Guarantee providing that the shareholders jointly and severally agree to pay all claims established against the law corporation for errors and omissions arising out of the rendering of professional services by the law corporation or anyone who practices law on its behalf as an employee or otherwise. The guarantee must name each shareholder and be executed by each. The guarantee serves as proof of security, which may be provided by insurance or otherwise.³⁰ An executed copy of the Law Corporation Guarantee must be provided to the State Bar with the Application to Register as a Law Corporation. The law corporation must submit a new guarantee executed by all shareholders whenever the guarantee last provided to the State Bar is no longer current.³¹
- (B) For purposes of determining the amount of security required for a Law Corporation Guarantee, a person who practices law on behalf of a law corporation includes
- (1) any employee, other person, or partnership in which the law corporation is a partner and that the law corporation holds out as being of counsel or otherwise available to practice law on behalf of the law corporation; and
 - (2) any association that has a continuous relationship with the law corporation for the practice of law, or that the association, with the consent of the law corporation, holds out as being of counsel or otherwise available to practice law on behalf of the association.
- (C) The Schedule of Charges and Deadlines sets forth the minimum amount of security that the Law Corporation Guarantee must provide annually for a single claim and for all claims, whether against a person covered by the guarantee or the corporation. Security paid for a claim for errors and omissions may be offset by an insurance payment made on behalf of the corporation or any of its shareholders.

Rule 3.159 Voluntary termination of registration³²

A law corporation may by resolution request that State Bar terminate its registration. The date of termination will be the date of the resolution, a later date requested by the law corporation, or an earlier date at the discretion of the State Bar.

Rule 3.160 Involuntary termination of registration³³

³⁰ Business & Professions Code § 6171(b). *This provision requires “That a law corporation, as a condition of obtaining a certificate pursuant to the Professional Corporation Act and this article, shall provide and maintain security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services.”* A historical exception exists. Law corporations incorporated before October 27, 1971 that have elected to provide security by insurance must provide as a guarantee a certificate of insurance issued by the insurer. *See current Rule IV.B at subsections 1, 2, and 3.*

³¹ Rule 3.156.

³² *See current rule V.B.*

- (A) A law corporation that fails to submit a complete Annual Renewal and fee is suspended and is not entitled to practice law.³⁴
- (B) The State Bar may terminate the certification of a law corporation for failure to comply with these rules or applicable law.³⁵ Termination is effective sixty days after it has issued a notice to the law corporation stating the grounds for the termination. The law corporation may request Supreme Court review of the termination.³⁶

Rule 3.161 Public information³⁷

State Bar records regarding the certification of a law corporation are public information, except for correspondence, internal memoranda, complaints, and any other document for which there is a legal prohibition to the contrary.

³³ See current rule V.

³⁴ Rule 3.156(B).

³⁵ Business & Professions Code § 6169. *The title of this statute is “Notice to Show Cause; Hearing; Findings and Recommendations; Review.”*

³⁶ Rule of Court 9.13(d). And see Business & Professions Code § 6170. *This statute reads, “Any action of the State Bar or the board of governors or a committee of the State Bar, or the chief executive officer of the State Bar or the designee of the chief executive officer, provided for in this article, may be reviewed by the Supreme Court by petition for review pursuant to rules prescribed by the Supreme Court.”*

³⁷ *There is no reference in the current rules, however this conforms to the current law corporation public records policy and is consistent with the current and proposed LLP rules .*