



THE STATE BAR OF CALIFORNIA

OFFICE OF ADMISSIONS

MEMORANDUM

DATE: February 16, 2010

TO: Members, Board Committee on Regulation and Admissions

FROM: Gayle Murphy
Senior Executive, Admissions

SUBJECT: REPORT ON MULTI-JURISDICTIONAL PRACTICE

The California Supreme Court adopted four Rules of Court (then numbered 964 through 968) to authorize the multi-jurisdictional practice of law in California. The rules took effect November 15, 2004 and permit certain categories of attorneys not licensed in California to practice law in this state in a limited manner. The rules were renumbered in 2007 and are now Rules 9.45 through 9.48. This status report will briefly explain the history of the program, describe how the Multi-Jurisdictional practice (MJP) Program rules were implemented, provide program statistics and discuss a few matters that have arisen in the administration of the program, which will be forwarded to the California Supreme Court for its consideration.

PROCEDURAL HISTORY

DATE	EVENT
January 2001	California Supreme Court appointed the MJP Advisory Task Force to make a recommendation on the extent to which non-California attorneys should be authorized to practice in this state.
July 2001	Task Force concluded that there should be a registration system for: (1) In-house counsel providing out-of-court services for a single full-time business entity employer, and (2) Public interest lawyers providing legal services to indigent clients on an interim basis prior to taking the CA bar exam. Task Force also concluded there should be a: (3) Safe harbor for transactional non-litigating lawyers, and (4) Safe harbor for litigation lawyers in anticipation of filing in CA or part of litigation pending in another jurisdiction.
Late 2002	The Court appointed the MJP Implementation Committee and charged it with drafting rules to implement the conclusions of the Task Force

May 2003	Committee's draft proposed rules 964-968 were released for public comment
July 2003	State Bar's Board of Governors (BOG) voted to comment on MJP rules (Agenda Item 123)
July 2003	State Bar comment was submitted to Supreme Court
March 2004	The Implementation Committee released its final report. Proposed rules of court to be adopted effective November 15, 2004
September 2004	Board of Governors approved State Bar Rules to implement new MJP Rules of Court
November 15, 2004	MJP Program became effective
May 15, 2005	Deadline for existing in-house counsel to register with State Bar of California

IMPLEMENTATION

The Supreme Court adopted four (4) Rules of Court that relate to the MJP program, Rules 964, 965, 967 and 968. These rules were renumbered as Rules 9.45, 9.46, 9.47 and 9.48 in 2007. Rules 9.45 (Legal Services attorneys) and 9.46 (In-house counsel) require registration with the State Bar. Rules 9.47 and 9.48 do not require registration.

- Rule 9.45: Registered Legal Services Attorneys
- Rule 9.46: Registered In-House Attorneys
- Rule 9.47: Attorneys temporarily in California as part of litigation
- Rule 9.48: Transactional attorneys temporarily in California

As part of the registration requirement, the in-house counsel and legal services attorneys are required to establish they are of the good moral character required for applicants seeking admission to practice law in California (Rules 9.45 and 9.46). The rules allow these two categories of attorneys to practice law in their registered positions while the Office of Admissions processes their moral character determination applications.

There is no restriction on the length of time that out-of-state attorneys may be registered in-house counsel, as long as they properly renew their registration each year. Registered legal services attorneys may only remain in the program for three years. (Rule 9.45)

When the program was first initiated, extensive outreach was conducted in order to inform eligible attorneys about the existence and requirements of the MJP program, facilitate their application process, and encourage their compliance with the Rules. By September 2004 the State Bar had established a direct telephone number, a program e-mail address, and a Web site page with registration applications with instructions and

FAQ's that provided basic information about the MJP program. The State Bar also produced an MJP Rules booklet available to those requesting written information on the program. A new database program was developed so that the records of MJP attorneys could be maintained. The MJP attorneys were added to the State Bar's "Attorney Search" function and their practice limitation identified as "RIHC" "Registered In-House Counsel" or "RLSA" "Registered Legal Services Attorneys.

A one page flier, which included registration requirements, contact information, and notice of the registration deadline of May 15, 2005, was sent to the general counsels of about 100 of the Fortune 500 companies with offices in California; to trade associations such as California Corporate Counsel Association and the national organization for corporate counsel who's president happened to have been a California attorney, the Association of Corporate Counsel (ACC). Staff met with the ACC president to discuss the program and had numerous contacts with the organization's staff counsel. Staff worked closely with ACC to respond to individual questions and appeared on a Web broad cast sponsored by the ACC to provide information and answer questions about the program for its nationwide members.

A press release was also sent to Business Wire, an on-line news service, the legal dailies, such as Recorder, the Daily Journal, Bay City News, Met News, some AP reporters, and state-wide daily newspapers. A link was included on the Admissions' portion of the State Bar's Web pages to make it easy to find the MJP program. Several informational stories were featured and date of the deadline for registration was included in the California Bar Journal that is sent to all members of the State Bar of California.

State Bar staff in the Special Admissions department worked internally with the Legal Services department to share information that could be distributed through a legal services list serve, and an announcement about the new program was also provided that could be disseminated to the appropriate entities.

MCLE Requirements and Fees

Registered in-house counsel and legal services attorneys are required to complete an initial 25 hours of MCLE activities in their first year of registration. After the first year, the MCLE requirements for the In-House Counsel attorneys are the same as those for California attorneys and each attorney joins the appropriate MCLE compliance group. The overall MCLE requirement is that California attorneys must complete 25 hours of MCLE every three years. There are three compliance groups based on the attorney's last name.

The State Bar's Board set the original fees for the registrants as:

In-House Counsel: Application Fee \$550; Moral Character Fee \$361

Legal Services Attorney: No Application Fee; Moral Character Fee \$361

Both are charged an annual renewal fee that corresponds to the fee charged to California attorneys and new applicants are charged the current Moral Character fee that general admission applicants must pay, which is now \$453.

STATISTICS

It was anticipated that approximately 25-50 applications would be received from legal services attorneys and 400-500 from in-house counsel within the first year of implementation. The actual numbers were somewhat lower. As of June 15, 2005, there were 387 in-house counsel attorneys and 1 legal services attorney registered. By the end of 2009, there were 16 legal service attorneys and 790 in-house counsel attorneys registered with the State Bar.

Since 2002, 1,015 moral character determination applications have been filed by MJP attorneys. Out of that number, 139 applicants converted their applications to be able to use the application in connection with their admission to the general practice of law. These 139 attorneys who were registered as in-house counsel or legal services attorneys sought or are seeking admission to the general practice of law at the same time they are registered in the limited practice programs.

A number of MJP registrants have proven to be transient. Approximately 190 new applications and 125 voluntary revocations due to a change in employment, relocation etc. are received each year.

The following additional statistics were compiled as of August 2008. Of the in-house and legal service attorneys registered at the time (one attorney is registered as both), there were:

Gender:

536 males and 220 females

Age:

8 attorneys under 30 years of age
238 attorneys between the ages of 30 and 39
300 attorneys between the ages of 40 and 49
165 attorneys between the ages of 50 and 59
45 attorneys 60 years of age or over

Law Schools:

The top ten law schools from which MJP attorneys graduated (out of the 162 different law schools from which the attorneys graduated) were:

Georgetown University	26
George Washington	25
Harvard University	21
Columbia University	16
New York University	16
Boston University	16
American University	15
Fordham University	14
Yale University	14
Franklin Pierce	13

Jurisdictions Admitted:

MJP attorneys came from 42 different jurisdictions; the top four were:

New York	215
District of Columbia	127
Illinois	82
Texas	74

Geographic Distribution:

Area	# of Attorneys
Northern California	2
North Central	33
Bay Area	217
San Francisco	88
Central	12
Riverside	51
Los Angeles	196
Orange County	74
San Diego	83

Industries Represented:

Biotechnology	93
Communication	38
Energy/Fuel	55
Entertainment	96
Finance	84
Healthcare	38
Insurance	23
Legal Services (Public Interest)	16

Manufacturing	36
Pharmaceuticals	41
Retail	25
Technology	134
Other	77

CHANGES TO MJP STATE BAR RULES CURRENTLY UNDER CONSIDERATION

On the Board of Governors' meeting agenda there are several administrative changes proposed to the State Bar's MJP rules (see Agenda Item **March 133**). Changes to the California Rules of Court may be in order, but no proposals are currently pending.

FUTURE CONSIDERATIONS

1. Moral Character Determination

In order to register under the MJP program, legal services attorneys and in-house counsel do not need to take the California Bar Examination or the Multistate Professional Responsibility Examination, but they must file an Application for Determination of Moral Character with the Committee of Bar Examiners. The registrants are then processed as if they are applicants for regular admission as California attorneys.

Registered in-house counsel attorneys are only allowed to practice law on behalf of a specified institution, and not for an individual California resident, and are practicing law based upon their current good standing in another jurisdiction. It should be noted, too, that in order to be admitted to that other jurisdiction, they would have had to have received a positive character evaluation before admission. A balance between the interest in protecting the California clients and that of their employers to hire the attorney of their choice suggests that, perhaps, a different moral character review could be implemented.

When key components of an applicant's background are established and determined to be trouble-free, an abbreviated review process rather than the one that applies to applicants for regular admission might be in order. Such review would still include electronically transmitted fingerprints and acceptable reports from the DMV, the attorney's current employer, and every state in which the attorney is admitted (even if not active), in addition to a few other questions that should be asked. The annual renewal requires annual reporting of any change in admission status.

2. Initial MCLE requirement for legal services attorneys and in-house counsel

The initial MCLE requirement for Registered In-House Counsel and legal services attorneys is different from the initial MCLE requirement for members of the State Bar

and has caused confusion for in-house counsel and administrative burdens on the State Bar.

When a person becomes a member of the State Bar or a Registered In-House Counsel, he or she is permanently assigned to one of three MCLE compliance groups based on the new person's last name. For new members of the State Bar, when the 3-year MCLE requirement comes due for the member's compliance group, the new person's compliance requirement is a pro rata portion of the 25 hours of MCLE required of his or her group.

In contrast, registered In-House Counsel must complete all 25 hours of MCLE in their first year as a member of the program. Thereafter, they participate in the standard 3-year MCLE cycle. This initial MCLE requirement causes great confusion among Registered In-House Counsel and among the State Bar members with whom they work. It gets particularly confusing when Registered In-House Counsel who have just complied with their first year 25 hour requirement discover they face another pro rata MCLE requirement the following year because their last names place them in the MCLE compliance group due for that year.

The first year MCLE requirement also presents administrative burdens to State Bar staff. A special tracking system must be maintained to track compliance with the first year requirement. In addition, special adjustments must be made to the normal 3-year cycle tracking system since registered In-House Counsel attorneys do not participate in it during their first year. State Bar staff spends significant time tracking this unique requirement as well as explaining the MCLE requirements for Registered In-House Counsel.

The first-year MCLE requirement for Registered In-House Counsel should be eliminated and these attorneys should be placed in the standard 3-year MCLE cycle as soon as they enter the Registered In-House Counsel program.

The contemplated change would not be extended to Registered Legal Services Attorneys, who also must complete 25 hours of MCLE in their first year of the program. Unlike the Registered In-House Counsel program, which attracts upwards of 150 new participants each year, there are only about 8 new participants joining the Registered Legal Services Attorney program annually. In addition, since a Registered Legal Services Attorney can participate in the program for a maximum of 3 years, the standard 3-year MCLE cycle does not work for that program.

3. Enforcement of the registration requirement for in-house counsel and legal services attorneys

The largest issue in the program is reaching and registering all eligible in-house counsel and legal services attorneys who reside in California. The list of California in-house

counsel advertised on a popular Web site was recently reviewed. That list showed that approximately 15% of those listed were not members of the California State Bar, nor registered as MJP in-house counsel.

Over the course of the next year, a review will be conducted to determine, if possible, the extent of the non-compliance, and attorneys and corporations will be contacted to notify them of the requirement to register in the MJP program. California Rules of Court, Rule 9.46(f) provides that if an in-house counsel does not register with the program within 6 months of the effective date of the Rule (or his/her date of employment as an in-house counsel, if such date is after the effective date) the State Bar may deny his/her application. Since in the past, however, the State Bar has been more interested in encouraging compliance with the Rule and participation in the program, a proposal to establish a late filing fee as an additional option will be developed and forwarded to the Board for its consideration.

As part of the outreach effort, publications such as California Bar Journal and other legal newspapers might be interested in articles about the program, which could be prepared with the assistance of the State Bar's communications office. In addition, letters can be sent to those attorneys who have been discovered as having identified themselves as in-house counsel, but who have not registered in the program.

4. MJP Program Registration Fees

Under the current budgetary constraints, allowing certain categories of MJP attorneys to apply for the MJP Program without payment of an application fee may no longer be appropriate. A review of the cost of administering the application process will be undertaken, and if it is determined that the fee charged for registration should be increased for in-house counsel attorney applicants and imposed for legal services attorney applicant, a proposal will be sent to the Board for consideration.

PROPOSED ACTION BY THE BOARD COMMITTEE

After review of the report and discussion, if any, and if there is a general consensus with the direction of the future considerations, it would be appropriate for the Board Committee to receive and file the report. Shortly following this Board meeting and consideration of this report by the Board Committee, a report on the status of the MJP Program will be prepared and filed with the Supreme Court of California.