SUPREME COURT
FILED

MAY 26 2022

Jorge Navarrete Clerk

Deputy

ADMINISTRATIVE ORDER 2022-05-26

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

ORDER CONCERNING EXTENSION OF THE PROVISIONAL LICENSURE PROGRAM — AMENDMENTS TO RULES 9.49 AND 9.49.1 OF THE RULES OF COURT

On October 22, 2020, the court approved rule 9.49 of the California Rules of Court, effective November 17, 2020, establishing a temporary, supervised provisional licensure program for all persons who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020. The court subsequently approved certain amendments to rule 9.49, effective February 1, 2021. The provisional licensure program under rule 9.49 is set to expire on June 1, 2022.

On January 12, 2021, the court approved rule 9.49.1 of the California Rules of Court, effective February 1, 2021, which expanded the temporary provisional licensure program to include applicants who received a score between 1390 and 1439 on any California Bar Examination administered between July 2015 and February 2020. Rule 9.49.1 also provided provisional licensees admitted under that rule with an alternative pathway for admission to the State Bar of California if they satisfied all requirements under rule 9.49.1(i) by June 1, 2022. The court subsequently approved clarifying amendments to rule 9.49.1, effective March 17, 2021. The provisional licensure program under rule 9.49.1 is set to expire on June 1, 2022.

The court hereby amends rules 9.49 and 9.49.1 of the California Rules of Court, as set forth in the Attachment. These amendments are effective immediately.

It is so ordered.

T. Cantil-J.
Chief Justice

Corrigan, J
Associate Justice

Associate Justice

Kruger, J.
Associate Justice

Associate Justice

Jenkins, J
Associate Justice

Associate Justice

ATTACHMENT

Rule 9.49. Provisional Licensure of 2020 Law School Graduates

(a) State Bar Provisional Licensure Program

(1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates through ~~June 1, 2022~~December 31, 2022. The program shall be referred to as the "Provisional Licensure Program."

(2) The Provisional Licensure Program shall terminate on ~~June 1, 2022~~December 31, 2022, unless the California Supreme Court extends that date.

(3) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission including passage of the California Bar Examination, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(b) Definitions

(1) A "2020 Law School Graduate" means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.

(2) For purposes of this rule, a "Provisionally Licensed Lawyer" means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.

(3) "Supervising Lawyer" means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.

(4) "Firm" or "law firm" means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(c) Application Requirements

(1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements no later than June 1, 2022:

(A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of $75, or $50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;

(B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction; and

(C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.

(2) An Application for Provisional Licensure may be denied if:

(A) An applicant fails to comply with eligibility or application requirements;

(B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or

(C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by

Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

To qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

(1) Meet all of the requirements for admission to the State Bar with the following exceptions:

(A) The applicant need not have sat for or passed the California Bar Examination;

(B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and

(C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training are not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.

(2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;

(3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California.; and

(4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record within the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(e) Responsibilities of Provisionally Licensed Lawyers

Provisionally Licensed Lawyers must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

(1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;

(2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;

(3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;

(4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;

(5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;

(6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;

(7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.

(8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;

(9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but 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.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

(1) To meet the requirements of this rule, a Supervising Lawyer must:

(A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;

(B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record within the California judicial branch;

(C) Exercise competence in any area of legal service authorized under California law in which the Supervising Lawyer is supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;

(D) With the exception of a current judge of a court of record within the California judicial branch, not be an inactive licensee in California, or ineligible to practice, actually suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;

(E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;

(F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;

(G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and

(H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyer becomes aware or reasonably should have become aware that:

i. The Provisionally Licensed Lawyer has terminated employment;

ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;

iii. The Supervising Lawyer no longer meets the requirements of this rule;

iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or

v. The Supervising Lawyer has changed offices or email addresses.

(2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.

(3) A Supervising Lawyer who is a current judge of a court of record within the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(j) Termination of Provisional Licensure

(1) A Provisionally Licensed Lawyer's provisional license terminates:

(A) Upon <u>determination by the State Bar Court that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, or upon</u> imposition of any sanction for misconduct <u>by any court or tribunal,</u> ~~the State Bar of California~~ or any ~~other~~ professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;

(B) Upon imposition of any ~~sanction~~discipline for misconduct by the State Bar of California, the Supreme Court, or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such ~~sanction~~discipline, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;

(C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.

(D) Upon admission to the State Bar of California;

(E) Upon cessation of the Provisional Licensure Program;

(F) Upon request of the Provisionally Licensed Lawyer;

(G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;

(H) For failure to pay any fees required by the State Bar; or

(I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.

(2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.

(3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Inherent Power of Supreme Court

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 9.49.1 Provisional Licensure with Pathway to Full Licensure for Certain Individuals

(a) Expansion of the Provisional Licensure Program

The Provisional Licensure Program established pursuant to Rule 9.49 shall, no later than March 1, 2021, be expanded to include individuals who scored 1390 or higher on a California Bar Examination 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 Provisional Licensure Program under this rule shall terminate on ~~June 1, 2022~~December 31, 2022, unless the California Supreme Court extends that date.

(b) Definitions

(1) The definitions of "Supervising Lawyer" and "Firm" or "Law Firm" as set forth in rule 9.49(b) shall apply to this rule.

(2) For purposes of this rule, "Provisionally Licensed Lawyer" means an individual who:

(A) Scored between 1390 and 1439 on any California Bar Examination 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; and

(B) Meets the eligibility criteria under (d) and is granted provisional licensure by the State Bar.

(3) For purposes of this rule, "legal practice" means the provision of permitted legal services to clients in compliance with rule 9.49(f) and (g).

(c) Application Requirements

All of the application requirements of rule 9.49(c) apply to applicants for provisional licensure under this rule. An application for provisional licensure under this rule must be submitted to the State Bar no later than May 31, 2021. Applications shall not be accepted after that date.

(d) Eligibility Requirements

With the exception of (d)(1)(A), all eligibility requirements of rule 9.49(d) apply to applicants for provisional licensure under this rule. However, an applicant who has previously received an adverse moral character determination is ineligible to apply under this rule unless more than two years has elapsed from the date of the final

determination or after some other time set by the State Bar, for good cause shown, at the time of its adverse determination, within the meaning of State Bar Rule 4.49.

(e) Responsibilities of Provisionally Licensed Lawyer

All requirements of rule 9.49(e) and (f) apply to Provisionally Licensed Lawyers under this rule with the exception that the State Bar New Attorney Training program described in rule 9.49(e)(1) must be completed in order for a Provisionally Licensed Lawyer to qualify for admission to the State Bar of California under this rule.

(f) Permitted activities

All of the permitted activities set forth in rule 9.49(g) apply to Provisionally Licensed Lawyers under this rule.

(g) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer under this rule shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(h) Termination of Provisional Licensure

The conditions for termination of a provisional license under rule 9.49(j) apply to Provisionally Licensed Lawyers under this rule.

(i) Admission to the State Bar of California

A Provisionally Licensed Lawyer, under this rule, shall be eligible for admission to the State Bar of California upon compliance with all of the following requirements.

(1) The Provisionally Licensed Lawyer shall complete 300 total hours of supervised legal practice in the Provisional Licensure Program:

(2) Provisionally Licensed Lawyers under rule 9.49 who also qualify for participation under this rule may receive credit for hours of supervised legal practice completed as a provisional licensee under rule 9.49 for purposes of meeting the hours requirement under (i)(1). Such individuals must comply with all of the application and eligibility requirements under this rule to qualify for admission to the State Bar of California.

(3) The Provisionally Licensed Lawyer shall submit, in the format developed by the State Bar of California, a record of the hours of supervised legal practice completed under supervision of the Supervising Lawyer(s).

(4) The Provisionally Licensed Lawyer must complete the required total number of hours of supervised legal practice, satisfy all eligibility requirements for admission not met at the time of application to the program, have an active positive moral character determination, submit a satisfactory evaluation(s) pursuant to (j)(2), and submit all other documentation of completion in the format required by the State Bar by ~~June 1, 2022~~December 31, 2022 to qualify for admission to the State Bar.

(5) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4) but has a disciplinary matter pending with the Office of Chief Trial Counsel or the State Bar Court shall, prior to the date the Provisional Licensure Program terminates under (a) and (h), be permitted to continue practicing as a Provisionally Licensed Lawyer if all other requirements of this rule have been met. If the disciplinary matter is pending as of the date the program terminates, the Provisionally Licensed Lawyer shall be placed in an abeyance status until the matter is resolved, and shall not continue to practice as Provisionally Licensed Lawyer.

(A) If the complaint is resolved with no disciplinary action, before or after the termination of the Provisional Licensure Program under (a) and (h), the Provisionally Licensed Lawyer shall qualify for admission to the State Bar as long as all other requirements for admission remain current and satisfied.

(B) If the complaint is resolved with ~~disciplinary action~~ a determination that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, the Provisionally Licensed Lawyer shall not qualify for admission to the State Bar under this program and shall be terminated from the Provisional Licensure Program.

(6) The Provisionally Licensed Lawyer must comply with all the eligibility requirements for certification to the California Supreme Court for admission to the practice of law under Business and Professions Code section 6060 and rule 4.15 of the Rules of the State Bar of California. A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4) shall be deemed to meet the requirement of Business and Professions Code section 6060, subdivision (g).

(j) Supervision and Evaluation of Provisionally Licensed Lawyer

(1) In addition to the requirements under (j)(2), all of the eligibility requirements, duties and responsibilities of a Supervising Lawyer set forth under rule 9.49(i) apply to Supervising Lawyers under this rule.

(2) Each Supervising Lawyer shall provide an evaluation of the Provisionally Licensed Lawyer in the format developed by the State Bar of California. The evaluation shall include the following:

(A) Verification of the number of hours of supervised legal practice completed;

(B) A general description of the types of supervised legal practice performed by the Provisionally Licensed Lawyer;

(C) Whether, in the opinion of the Supervising Lawyer, based on the supervised legal practice performed during the program, the Provisionally Licensed Lawyer possesses the minimum competence expected of an entry level attorney; and

(D) Other criteria established by the State Bar.

(3) If a Supervising Lawyer cannot attest that a Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, the Provisionally Licensed Lawyer may not be admitted to the State Bar of California under this program without additional hours of supervised legal practice sufficient to establish to the Supervising Lawyer that the Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, and submission of a satisfactory evaluation by that Supervising Lawyer before the termination of the program.