

REPORT OF THE CALIFORNIA SUPREME COURT
MULTIJURISDICTIONAL PRACTICE
IMPLEMENTATION COMMITTEE

FINAL REPORT AND PROPOSED RULES

March 10, 2004

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

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I. Executive Summary

The Supreme Court of California Multijurisdictional Practice Implementation Committee (the “Implementation Committee”) recommends that the Supreme Court take the following actions:

1. Adopt proposed rules to enable out-of-state lawyers to practice law in California:
 - a. As registered legal services attorneys for up to three years (rule 964);
 - b. As registered in-house counsel for a single, qualifying institution (rule 965);
 - c. Temporarily as part of litigation (rule 966); and

- d. Temporarily as part of a nonlitigation matter (Rule 967).
2. Create a committee to monitor the multijurisdictional practice of law in California and throughout the United States; assess the effects of the proposed rules in California and of similar rules in other jurisdictions; and report to the Supreme Court on these matters within five years after implementation of the proposed rules.
3. Confer with the State Bar of California (the “State Bar”) to select an effective date for the proposed rules that would allow the State Bar sufficient time to prepare for implementation of the rules and to determine how best to extend the authority of the State Bar to nonmembers who practice law in California under the proposed rules.

I. Introduction

The Supreme Court of California formed the Multijurisdictional Practice Implementation Committee in 2002 and charged it with drafting rules that would expand the circumstances under which attorneys licensed to practice law in jurisdictions in the United States other than California (“out-of-state” attorneys) are permitted to practice law in California. In other words, the rules would increase the permissible scope of the multijurisdictional practice of law in California. The source of guidance for the Implementation Committee was the *Final Report and Recommendations of the California Supreme Court Advisory Task Force on the Multijurisdictional Practice of Law* (the “*Final Report*”). The Supreme Court adopted the *Final Report*, which defined the scope and much of the content of the rules drafted by the Implementation Committee.

The Task Force recommended permitting four categories of out-of-state lawyers to provide legal services in California. For two of the categories, it recommended a system of *registration*, similar to admission to the State Bar of California but not requiring an attorney to pass the California bar examination. Registration would be available to:

1. *Legal services attorneys* providing legal services to indigent clients on an interim basis before taking the California bar examination, under the supervision of an experienced member of the State Bar, at a qualifying provider of legal services; and
2. *In-house counsel* providing out-of-court legal services exclusively for a single, full-time employing entity (e.g., a corporation or partnership) that does not provide legal services to third parties.

In addition, the Task Force recommended that out-of-state lawyers be allowed to practice law in California through the provision of a “safe harbor,” an exception to the definition of the unauthorized practice of law that would cover specified tasks. The safe harbor would be available to:

3. *Litigating lawyers* providing legal services in California in anticipation of legal proceedings in California or as part of legal proceedings pending or anticipated in another jurisdiction; and
4. *Transactional and other nonlitigating lawyers* providing legal services in California on a temporary and occasional basis.

The Implementation Committee submits with this report a set of proposed rules designed to implement the Task Force’s recommendations. The proposed rules provide that attorneys taking advantage of registration or the safe harbor are subject to the jurisdiction of the State Bar and the California courts.

III. Form of the Report

This report addresses the process that the Implementation Committee used to develop the proposed rules (Part IV), provides an overview of the proposed rules (Part V), highlights some of the public comment regarding the proposed rules that was received during their circulation for public review and comment (Part VI), and sets forth a proposed course of action to the Supreme Court (VII). The members of the Implementation Committee are listed in the appendix to this report.

IV. Process for Developing the Rules

A. Statement of Charge

The Supreme Court charged the Implementation Committee with reviewing the final report and recommendations of the Task Force and with drafting rules or standards for the Supreme Court's consideration. The rules that accompany this report have been developed in response to that charge.

B. Composition of the Implementation Committee

The committee members brought a wide range of perspectives to their discussions. Among them were civil and criminal litigators, private and public attorneys, lawyers and laypersons, and transactional and trial counsel. This diversity of perspectives has assisted the Implementation Committee in considering the interests of all people who would be affected by any change in the rules governing the multijurisdictional practice of law.

C. Meetings of the Implementation Committee

The Implementation Committee met on five occasions to prepare the proposed rules. It met four times to develop the rules before circulating them for public comment; it then met to address the ideas and concerns raised by the comments. The report circulated for public comment from May 12, 2003, to July 7, 2003, although the committee considered comments submitted after the deadline.

The Implementation Committee honored the direction of the Chief Justice not to promote the interests of any particular constituency but to consider a range of perspectives and experiences and to design rules that would promote the public good. The primary concern of the Implementation Committee was to provide consumers of legal services with the greatest range of choices among legal representatives while ensuring their protection from incompetent or unscrupulous attorneys. The proposed rules strike a balance between these aims.

V. Overview of the Proposed Rules

The Implementation Committee drafted four rules in accordance with the Task Force's recommendations. The basic provisions of each rule and the committee's rationale for recommending its adoption are as follows:

1. Registered Legal Services Attorneys (rule 964)

The Task Force proposed a rule that would allow out-of-state attorneys to provide legal services for public-interest organizations in California for a limited number of years on a full-time basis. The Implementation Committee recommends adoption of this rule to help meet the need for legal services by low-income people in California. Rule 964 would accomplish this goal by allowing out-of-state lawyers to work exclusively for qualifying legal services providers for no more than three years.

Many individuals who will benefit from the work of registered legal services attorneys are often not in a position to critically assess the quality of legal services; therefore, the Implementation Committee included safeguards in rule 964. First and foremost, registered legal services attorneys will be subject to oversight by a designated supervisor, who must be an experienced California lawyer and must assume professional responsibility for the legal services provided by the registered attorney. In particular, the supervisor must provide assistance, counsel, and direct supervision sufficient to protect all clients who receive legal representation under this rule. In addition, the rule limits practice to three years. After that time, attorneys must take and pass the California bar examination if they want to continue to practice law in California.

2. Registered In-House Counsel (rule 965)

The Task Force recommended adoption of a rule that would allow out-of-state attorneys to provide legal services in California as in-house counsel on a full-time basis. The Implementation Committee drafted a rule, rule 965, designed to meet the needs of business entities regularly using legal services, including large corporations, by allowing out-of-state lawyers to work exclusively for qualifying institutions on an indefinite basis.

The scope of practice of registered in-house counsel is restricted to protect the public. A lawyer practicing pursuant to this rule may not provide legal services to anyone other than his or her employer, may not work for an entity that provides legal services to others, and may not make court appearances. (The sole exception to these restrictions is that registered in-house counsel may also serve the public as a registered legal services attorney.) The purpose of these restrictions is to ensure that registered in-house counsel provide legal services only to qualifying institutions capable of meaningfully assessing the legal advice and assistance they receive.

3. Litigators Temporarily in California (rule 966)

The Task Force recommended a rule that would allow attorneys to provide legal services in California related to ongoing or anticipated litigation. The rule would fill a gap in the current legal system. The reality of today's practice is that consumers of legal services need to be able to retain counsel for litigation that spans multiple jurisdictions. Under the current system, consumers often have difficulty meeting this need without hiring more than one set of counsel. Admission *pro hac vice* works well for litigation pending in California, in part because a California court can assess whether an out-of-state attorney should be permitted to practice in California. However, that approach does not work for litigation pending in another jurisdiction or for litigation that has yet to be filed.

The Implementation Committee's proposed rule allows attorneys to serve the needs of clients with litigation matters spanning multiple U.S. jurisdictions. It allows attorneys to provide legal services in California on a temporary basis for litigation pending or anticipated to be filed in a jurisdiction other than California and for litigation anticipated to be filed in California in which *pro hac vice* admission will be sought. Consumers of legal services are protected because out-of-state attorneys practicing under this rule will be subject to the jurisdiction of the State Bar of California, the jurisdiction of the courts of California, the laws of the State of California relating to the practice of law, and the California Rules of Professional Conduct. In addition, the attorney will be under the supervision of the forum in which the proceedings ultimately take place.

4. Nonlitigators Temporarily in California (rule 967)

The Task Force recommended a rule that would allow attorneys while in California temporarily to provide legal services related to transactional and other nonlitigation matters. In various circumstances, out-of-state lawyers may be the best or most convenient source of legal guidance on matters that require providing legal services in California.

First, many transactions and other nonlitigation matters span more than one jurisdiction. Clients may wish to choose counsel to assist in a particular matter without being restricted to those attorneys who are admitted in all of the relevant jurisdictions and without hiring more than one lawyer or law firm. To address the needs of these clients, the Implementation Committee proposed a rule that would allow an attorney to provide legal services in California if a material aspect of the transaction or other matter is taking place in a jurisdiction in which the attorney is licensed.

Second, clients may benefit if they can retain out-of-state lawyers to assist California counsel on matters related to federal law or the law of jurisdictions other than California. The rule proposed by the Implementation Committee permits this practice.

Finally, a client may be located in more than one state and may wish to rely on the legal services of an attorney-employee located and licensed to practice law in a jurisdiction other than California. The proposed rule allows the out-of-state attorney to provide legal services in California to his or her employer and the employer's subsidiaries and affiliates.

Like rule 966, this rule protects consumers of legal services because out-of-state attorneys practicing under it will be subject to the jurisdiction of the State Bar, the jurisdiction of the courts of California, the laws of the State of California relating to the practice of law, and the California Rules of Professional Conduct.

VI. Public Comment

The Implementation Committee circulated the proposed rules for public comment and received almost 50 responses, many on behalf of groups. The great majority of comments were in favor of the rules, although many suggested amendments. The committee reviewed and considered all comments and made a variety of amendments based on them. The comments added greatly to the deliberative process and enhanced the proposed rules, whether or not the committee ultimately adopted any particular suggestion. The Implementation Committee appreciates the time and thought that all the commentators invested in improving the rules.

While it is impractical to respond to every comment, some major points warrant discussion. Of those who were critical of the proposed rules, many suggested in various ways that the rules do not go far enough, some indicating that out-of-state lawyers, in one category or another or as a group in its entirety, should be able to practice law in California in the same way as members of the State Bar. Some comments appeared to contemplate comity (allowing out-of-state lawyers this privilege in general) and others reciprocity (allowing out-of-state lawyers this privilege if their home jurisdiction grants the same privilege to members of the State Bar). The Task Force had already considered comity and reciprocity, and the Supreme Court had not charged the Implementation Committee with revisiting these issues. Instead, following the approach proposed by the Task Force and adopted by the Supreme Court, the Implementation Committee developed rules that would result in incremental changes, targeting the most pressing needs while minimizing the risk of harm to consumers. This approach would allow California to develop the experience necessary to assess further possible reforms. In sum, the proposed rules are not only a means of measured reform but also part of an ongoing effort to evaluate how the reforms work in the real world.

At the other end of the spectrum were commentators concerned that the proposed rules would allow too great an expansion of the practice of law by out-of-state attorneys in California. Some suggested a restriction of the practice under the rules, while others argued against any change at all. Of course, some risk attends any reform; therefore, the Implementation Committee designed the proposed rules to protect consumers of legal services while expanding multijurisdictional practice in a way that can be managed

effectively. Moreover, if the test of time suggests that improvements to the proposed rules are warranted, the rules can be amended.

As noted, the committee revised the proposed rules based on various comments it received. One particular concern expressed in the comments warranted a response. Some commentators cautioned that the proposed rules might limit, rather than expand, the ability of out-of-state lawyers to practice law in California. However, the proposed rules are not intended to restrict the multijurisdictional practice of law already permitted. To clarify this point, the Implementation Committee has added language to each rule stating that conduct permissible before adoption of the rule remains permissible.

Some commentators suggested that the provisions for supervision of registered legal services attorneys were unnecessarily restrictive. These commentators encouraged the Implementation Committee to allow the designated supervisor to exercise discretion about how much assistance, counsel, and direct supervision of a registered legal services attorney is necessary to protect clients. In light of the designated supervisor's obligation to assume professional responsibility for the work of the supervised attorney, the Implementation Committee agreed and has changed the language of proposed rule 964 accordingly. The supervisor must assist, counsel, and provide direct supervision of the registered legal services attorney to the extent required for protection of clients.

As to rule 966, some commentators suggested changing the permissible scope of practice for nonlitigating attorneys temporarily in California. The Implementation Committee originally drafted the rule to allow a qualified attorney to provide assistance on a nonlitigation matter in California if a "substantial part" of the matter were taking place outside of California. Commentators proposed that the defining term be changed to "material aspect," based on the rationale that it is easier to determine whether part of a transaction is "material" than "substantial"; that the materiality (or importance) of the aspect of a transaction is more relevant than its substantiality (or size); and that use of the phrase "material aspect" would allow for a greater range of practice in California in appropriate cases. The Implementation Committee agreed and changed the language to "material aspect."

The Implementation Committee also had the benefit of comments from the State Bar, which suggested a new format for all of the proposed rules and offered comments that applied generally to the proposed rules as well as various specific modifications to particular rules. The committee reviewed each suggested change. As to the overall change in format, the committee found that the circulated version of the rules was at least as consistent with other rules currently governing the practice of law in California and was more streamlined and accessible than the suggested format. As a result, the committee chose to retain the format it had originally adopted.

The State Bar made several useful specific proposals, including, for example, a requirement that out-of-state attorneys contribute to the Client Security Fund. The rules for registered legal services attorneys and registered in-house counsel now make clear that those attorneys must comply with any rules adopted by the State Bar, which could

include contributing to the Client Security Fund. The State Bar also asked that the rules be made effective no earlier than April 1, 2004, and ideally not before July 1, 2004. The committee recommends that the Supreme Court confer with the State Bar to choose a date that will allow the State Bar to prepare for implementation of the rules.

Further, the State Bar suggested that lawyers temporarily practicing law in California should register before entering California. The committee concluded that this step was neither practical nor necessary to protect consumers. Registration would be a significant impediment on occasions when an attorney may be in California only briefly. The need for flexibility on those occasions was a significant reason to change the rules governing the multijurisdictional practice of law. Further, out-of-state lawyers practicing in California under this rule are subject to the law and rules governing California lawyers, as well as to the jurisdiction of the State Bar and California courts. They also are subject to supervision by the states in which they are licensed to practice. These safeguards should ensure that attorneys are held accountable if they act in an improper manner while practicing law in California.

Below are other significant comments by the State Bar and others, followed by the committee's responses.

Registered Legal Services Attorneys (rule 964)

Comment: Increase the time an attorney has to complete Minimum Continuing Legal Education (MCLE) requirements.

Response: A registered legal services attorney is permitted to represent clients, many of whom are not sophisticated consumers of legal services, without taking and passing the California bar examination. The committee concluded that it was reasonable and prudent to require an attorney to satisfy all MCLE requirements that apply to California attorneys within the registered attorney's first year of practice.

Registered In-House Counsel (rule 965)

Comment: Do not permit attorneys to renew registration without passing the California bar examination.

Response: Registered in-house counsel may work only for qualifying institutions that employ at least one additional in-house counsel or have a significant number of employees. They cannot provide legal services to others, nor can they work for institutions that provide legal services to others. With these safeguards in place, the committee concluded that registered in-house counsel need not take the California bar examination.

Comment: Do not limit the rule to attorneys working for qualifying institutions.

Response: The committee placed restrictions on the institutions that may qualify to employ registered in-house counsel. The goal was to limit use of the rule to those organizations that have an ability to make an independent assessment of the quality of counsel. These restrictions include requiring that a qualifying institution either employ an attorney who is an active member in good standing of the State Bar of California or have 10 full-time employees in California. The committee felt these requirements would better ensure that the rule was used appropriately.

Comment: Make existing in-house counsel eligible to serve as registered in-house counsel.

Response: The committee modified the proposed rules to ensure that out-of-state lawyers currently serving as in-house counsel in California would be eligible to become registered in-house counsel.

Comment: Increase the time an attorney has to complete MCLE requirements.

Response: Registered in-house counsel will be permitted to represent clients in California without taking and passing the California bar examination. The committee concluded that it was reasonable and prudent to require an attorney to satisfy all MCLE requirements that apply to California attorneys within the registered attorney's first year of practice.

Attorneys Practicing Law Temporarily in California as Part of Litigation (rule 966)

Comment: Do not limit the frequency or duration of temporary practice.

Response: The rule is not intended to permit an attorney to practice law in California on an ongoing and regular basis without taking the California bar examination. If the attorney intends an extensive practice in California, the attorney should be obliged to become a member of the State Bar of California.

Comment: Limit service to 20 working days per year, in part because the restrictions on litigating in California are too vague. What does it mean that a lawyer cannot be "regularly employed" in California or "regularly" engage in business or professional activities in California?

Response: A rigid limitation on the number of days that an attorney may practice law in California would be unnecessarily restrictive. The limitations on temporary litigation in California under this rule—including the proscriptions on being "regularly employed" in California and on "regularly" engaging in business or professional activities in California—will develop more precise meanings over time. These terms can also be understood in light of their meaning in the context of admission *pro hac vice*.

Comment: Revise the definitions so that the term “authorized to appear” expressly includes practice in arbitration, administrative proceedings, and mediations.

Response: An out-of-state attorney may practice law in California under this rule if the attorney’s services are part of a legal proceeding—including an arbitration, administrative proceeding, or mediation—in California or another state in which the attorney is or reasonably expects to be “authorized to appear.” Whether the attorney is or will be “authorized to appear” depends on the rules and laws of the jurisdiction in which the legal proceeding takes place. That issue cannot and should not be resolved by a change of definition in the proposed rule.

Non-Litigation Attorneys Temporarily in California to Provide Legal Services (rule 967)

Comment: Allow out-of-state attorneys to provide legal advice on federal law and the law of other jurisdictions to anyone, not just to attorneys licensed to practice law in California.

Response: The relevant provision allows an out-of-state attorney to provide legal assistance and legal advice on a matter that is occurring only in California, even if no material aspect is taking place in any jurisdiction other than California. The committee’s concern was that the client may not recognize the relevance of California law. The committee therefore concluded that it was appropriate to require that a lawyer licensed to practice law in California be part of the process and assist the client in assessing the legal assistance or advice of the out-of-state-attorney.

VII. Recommended Future Action

After considering the charge of the California Supreme Court, the report and recommendations of the Task Force, and public comments on the draft rules, the Implementation Committee recommends that the Supreme Court take the following steps:

1. Adopt proposed rules 964, 965, 966, and 967.
2. Create a committee to monitor the multijurisdictional practice of law in California and throughout the United States; assess the effect of the proposed rules and similar rules in other jurisdictions; and report to the Supreme Court on these matters within five years after implementation of the proposed rules.
3. Confer with the State Bar of California to set a date on which the proposed rules will become effective and to determine how to extend the authority of the State Bar to nonmembers who practice law under the proposed rules.

Appendix: Members of the Implementation Committee

Chair Mr. Raymond C. Marshall
Bingham McCutchen LLP

Mr. Fred Alvarez
Wilson, Sonsini, Goodrich & Rosati

Ms. Teveia Barnes
Lawyers for One America

Mr. Jerome Braun,
Senior Executive, Admissions and Certification
State Bar of California

Ms. Joanne M. Garvey
Heller, Ehrman, White & McAuliffe LLP

Mr. Andrew J. Guilford
Sheppard, Mullin, Richter & Hampton LLP

Ms. Beth J. Jay
Principal Attorney to the Chief Justice
Supreme Court of California

Ms. Margaret Levy
Manatt, Phelps & Phillips LLP

Ms. Andrea Ordin
Morgan, Lewis & Bockius LLP

Hon. Dennis M. Perluss
Associate Justice Court of Appeal,
Second Appellate District, Division Seven

Mr. Mike Petersen
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Senate Republican Caucus

Ms. Karen Randall
Executive Vice President and General Counsel
Universal Studios

Mr. Peter Siggins
Former Chief Deputy Attorney General
California Department of Justice
Legal Affairs Secretary, Governor's Office

Ms. Karen Snell
Clarence & Snell LLP

Mr. Brian Sun
O'Neill, & Sun LLP

Mr. James E. Towery
Hoge Fenton, Jones & Appel, Inc.

Mr. Gene Wong
Chief Counsel
Senate Judiciary Committee

Reporter: Mr. Joshua Paul Davis
Associate Professor
University of San Francisco Law School

Staff: Ms. Susan R. Goins
Senior Attorney
Office of the General Counsel
Administrative Office of the Courts

Staff: Ms. Benita Downs
Administrative Coordinator
Office of the General Counsel
Administrative Office of the Courts

[The following rules were drafted by the committee and presented to the Supreme Court for consideration. The Supreme Court has approved the rules, designating November 15, 2004 as the date upon which they will become effective.]

1

1 Statement of Purpose. The purpose of this rule is to permit an attorney who relocates to
2 California and who is licensed to practice law in one or more jurisdictions in the United
3 States other than California to practice law in California under a registration system
4 without becoming a member of the State Bar of California. An attorney so registered
5 may practice law in California for no more than three years and during that period must
6 do so under the supervision of an attorney employed by a qualifying legal service
7 provider.
8

9 **Rule 964. Registered Legal Services Attorneys**

10
11 (a) **[Scope of practice]** Subject to all applicable rules, regulations, and
12 statutes, an attorney practicing law under this rule is permitted to
13 practice law in California only while working, with or without pay, at a
14 qualifying legal services provider, as defined in this rule, and, at that
15 institution and only on behalf of its clients, may engage, under
16 supervision, in all forms of legal practice that are permissible for a
17 member of the State Bar of California.
18

19 (b) **[Requirements]** For an attorney to practice law under this rule, the
20 attorney must:

- 21
22 (1) Be an active member in good standing of the bar of a United States
23 state, jurisdiction, possession, territory, or dependency;
24
25 (2) Register with the State Bar of California and file an *Application for*
26 *Determination of Moral Character*;
27
28 (3) Meet all of the requirements for admission to the State Bar of
29 California, except that the attorney:
30
31 (A) Need not take the California bar examination or the
32 Multistate Professional Responsibility Examination; and
33
34 (B) May practice law while awaiting the result of his or her
35 *Application for Determination of Moral Character*;
36
37 (4) Comply with the rules adopted by the Board of Governors
38 relating to the State Bar Registered Legal Services Attorney
39 Program;
40

- 1 (5) Practice law exclusively for a single qualifying legal services
2 provider, except that if so qualified, an attorney may, while
3 practicing under this rule, simultaneously practice law as registered
4 in-house counsel;
5
- 6 (6) Practice law under the supervision of an attorney who is employed
7 by the qualifying legal services provider and who is a member in
8 good standing of the State Bar of California;
9
- 10 (7) Abide by all of the laws and rules that govern members of the
11 State Bar of California, including the Minimum Continuing Legal
12 Education (MCLE) requirements;
13
- 14 (8) Satisfy in his or her first year of practice under this rule all of
15 the MCLE requirements, including ethics education, that
16 members of the State Bar of California must complete every three
17 years; and
18
- 19 (9) Not have taken and failed the California bar examination within
20 five years immediately preceding application to register under this
21 rule.
22
- 23 (c) **[Application]** To qualify to practice law as a registered legal services
24 attorney, the attorney must:
25
- 26 (1) Register as an attorney applicant and file an *Application for*
27 *Determination of Moral Character* with the Committee of Bar
28 Examiners;
29
- 30 (2) Submit to the State Bar of California a declaration signed by
31 the attorney agreeing that he or she will be subject to the
32 disciplinary authority of the Supreme Court of California and
33 the State Bar of California and attesting that he or she will not
34 practice law in California other than under supervision at a
35 qualifying legal services provider during the time he or she
36 practices law as a registered legal services attorney in California,
37 except that if so qualified, the attorney may, while practicing under
38 this rule, simultaneously practice law as registered in-house
39 counsel; and
40
- 41 (3) Submit to the State Bar of California a declaration signed by
42 a qualifying supervisor on behalf of the qualifying legal services
43 provider in California attesting that the applicant will work, with or

1 without pay, as an attorney for the organization; that the applicant
2 will be supervised as specified in this rule; and that the qualifying
3 legal services provider and the supervising attorney assume
4 professional responsibility for any work performed by the
5 applicant under this rule.
6

- 7 **(d) [Duration of practice]** An attorney may practice for no more than a
8 total of three years under this rule.
9
- 10 **(e) [Fees]** The State Bar of California may set appropriate initial and annual
11 registration fees, as well as application fees, to be paid by registered
12 legal services attorneys.
13
- 14 **(f) [State Bar Registered Legal Services Attorney Program]** The State
15 Bar may establish and administer a program for registering California
16 legal services attorneys under rules adopted by the Board of Governors
17 of the State Bar.
18
- 19 **(g) [Supervision]** To meet the requirements of this rule, an attorney
20 supervising a registered legal services attorney:
21
- 22 (1) Must be an active member in good standing of the State Bar of
23 California;
 - 24
 - 25 (2) Must have actively practiced law in California and been a member
26 in good standing of the State Bar of California for at least the two
27 years immediately preceding the time of supervision;
 - 28
 - 29 (3) Must have practiced law as a full-time occupation for at least four
30 years;
 - 31
 - 32 (4) Must not supervise more than two registered legal services
33 attorneys concurrently;
 - 34
 - 35 (5) Must assume professional responsibility for any work that the
36 registered legal services attorney performs under the supervising
37 attorney's supervision;
 - 38
 - 39 (6) Must assist, counsel, and provide direct supervision of the
40 registered legal services attorney in the activities authorized by this
41 rule and review such activities with the supervised attorney, to the
42 extent required for the protection of the client;

1 (7) Must read, approve, and personally sign any pleadings, briefs, or
2 other similar documents prepared by the registered legal services
3 attorney before their filing, and must read and approve any
4 documents prepared by the registered legal services attorney for
5 execution by any person who is not a member of the State Bar of
6 California before their submission for execution; and
7

8 (8) May, in his or her absence, designate another attorney meeting the
9 requirements of (1) through (7) to provide the supervision required
10 under this rule.

11
12 (h) **[Inherent power of Supreme Court]** Nothing in this rule is to be construed
13 as affecting the power of the Supreme Court of California to exercise its
14 inherent jurisdiction over the practice of
15 law in California.

16
17 (i) **[Effect of rule on multijurisdictional practice]** Nothing in this rule limits
18 the scope of activities permissible under existing law by attorneys who are not
19 members of the State Bar of California.

20
21 (j) **[Definitions]** The following definitions apply to terms used in this
22 rule:

23
24 (1) “Qualifying legal services provider” means either of the following,
25 provided that the qualifying legal services provider follows
26 quality-control procedures approved by the State Bar of California:
27

28 (A) A nonprofit entity incorporated and operated exclusively in
29 California that as its primary purpose and function provides
30 legal services without charge in civil matters to indigent
31 persons, especially underserved client groups, such as the
32 elderly, persons with disabilities, juveniles, and non-English-
33 speaking persons; or
34

35 (B) A program operated exclusively in California by a nonprofit
36 law school approved by the American Bar Association or
37 accredited by the State Bar of California that has operated for
38 at least two years at a cost of at least \$20,000 per year as an
39 identifiable law school unit with a primary purpose and
40 function of providing legal services without charge to
41 indigent persons.
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(2) “Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency” means an attorney who meets all of the following criteria:

- (A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law;
- (B) Remains an active member in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered legal services attorney in California; and
- (C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

1 Statement of Purpose. The purpose of this rule is to permit an attorney who resides in
2 California and who is licensed to practice law in one or more jurisdictions in the United
3 States other than California to register to provide legal services as in-house counsel for a
4 single qualifying institution in California without becoming a member of the State Bar of
5 California.

6
7 **Rule 965. Registered In-House Counsel**
8

9 (a) **[Scope of practice]** Subject to all applicable rules, regulations, and
10 statutes, an attorney practicing law under this rule:

- 11
12 (1) Is permitted to provide legal services in California only to the
13 qualifying institution that employs him or her;
14
15 (2) Is not permitted to make court appearances in California state
16 courts or to engage in any other activities for which pro hac vice
17 admission is required if they are performed in California by an
18 attorney who is not a member of the State Bar of California; and
19
20 (3) Is not permitted to provide personal or individual representation to
21 any customers, shareholders, owners, partners, officers, employees,
22 servants, or agents of the qualifying institution.
23

24 (b) **[Requirements]** For an attorney to practice law under this rule, the
25 attorney must:

- 26
27 (1) Be an active member in good standing of the bar of a United States
28 state, jurisdiction, possession, territory, or dependency;
29
30 (2) Register with the State Bar of California and file an *Application for*
31 *Determination of Moral Character*;
32
33 (3) Meet all of the requirements for admission to the State Bar of
34 California, except that the attorney:
35
36 (A) Need not take the California bar examination or the
37 Multistate Professional Responsibility Examination; and
38
39 (B) May practice law while awaiting the result of his or her
40 *Application for Determination of Moral Character*;
41

- 1 (4) Comply with the rules adopted by the Board of Governors relating
2 to the State Bar Registered In-House Counsel Program;
3
 - 4 (5) Practice law exclusively for a single qualifying institution, except
5 that, while practicing under this rule, the attorney may, if so
6 qualified, simultaneously practice law as a registered legal services
7 attorney;
8
 - 9 (6) Abide by all of the laws and rules that govern members of the State
10 Bar of California, including the Minimum Continuing Legal
11 Education (MCLE) requirements;
12
 - 13 (7) Satisfy in his or her first year of practice under this rule all of the
14 MCLE requirements, including ethics education, that members of
15 the State Bar of California must complete every three years and,
16 thereafter, satisfy the MCLE requirements applicable to all
17 members of the State Bar; and
18
 - 19 (8) Reside in California.
20
- 21 (c) **[Application]** To qualify to practice law as registered in-house counsel,
22 an attorney must:
23
- 24 (1) Register as an attorney applicant and file an *Application for*
25 *Determination of Moral Character* with the Committee of Bar
26 Examiners;
27
 - 28 (2) Submit to the State Bar of California a declaration signed by the
29 attorney agreeing that he or she will be subject to the disciplinary
30 authority of the Supreme Court of California and the State Bar of
31 California and attesting that he or she will not practice law in
32 California other than on behalf of the qualifying institution during
33 the time he or she is registered in-house counsel in California,
34 except that if so qualified, the attorney may, while practicing under
35 this rule, simultaneously practice law as a registered legal services
36 attorney; and
37
 - 38 (3) Submit to the State Bar of California a declaration signed by an
39 officer, a director, or a general counsel of the applicant's
40 employer, on behalf of the applicant's employer, attesting that the
41 applicant is employed as an attorney for the employer, that the
42 nature of the employment conforms to the requirements of this
43 rule, that the employer will notify the State Bar of California

1 within 30 days of the cessation of the applicant's employment in
2 California, and that the person signing the declaration believes, to
3 the best of his or her knowledge after reasonable inquiry, that the
4 applicant qualifies for registration under this rule and is an
5 individual of good moral character.
6

- 7 (d) **[Duration of practice]** Registered in-house counsel must renew his or
8 her registration annually. There is no limitation on the number of years
9 in-house counsel may register under this rule. Registered in-house
10 counsel may practice law under this rule only for as long as he or she
11 remains employed by the same qualifying institution that provided the
12 declaration in support of his or her application. If an attorney practicing
13 law as registered in-house counsel leaves the employment of his or her
14 employer or changes employers, he or she must notify the State Bar of
15 California within 30 days. If an attorney wishes to practice law under
16 this rule for a new employer, he or she must first register as in-house
17 counsel for that employer.
18
- 19 (e) **[Eligibility]** It will not be grounds for denial of an application to
20 register under this rule if the attorney applicant has practiced law in
21 California as in-house counsel before the effective date of this rule.
22 Further, it will not be grounds for denial of an application to register
23 under this rule if the attorney applicant is practicing law as in-house
24 counsel at or after the effective date of this rule, provided that the
25 attorney applies under this rule within six months of its effective date.
26
- 27 (f) **[Fees]** The State Bar of California may set appropriate initial and annual
28 registration fees, as well as application fees, to be paid by registered in-
29 house counsel.
30
- 31 (g) **[State Bar Registered In-House Counsel Program]** The State Bar
32 may establish and administer a program for registering California in-
33 house counsel under rules adopted by the Board of Governors.
34
- 35 (h) **[Inherent power of Supreme Court]** Nothing in this rule is to be construed
36 as affecting the power of the Supreme Court of California to exercise its
37 inherent jurisdiction over the practice of law in California.
38
- 39 (i) **[Effect of rule on multijurisdictional practice]** Nothing in this rule limits
40 the scope of activities permissible under existing law by attorneys who are not
41 members of the State Bar of California.
42

- 1 (j) **[Definitions]** The following definitions apply to terms used in this rule:
2
3 (1) “Qualifying institution” means a corporation, a partnership, an
4 association, or other legal entity, including its subsidiaries and
5 organizational affiliates. Neither a governmental entity nor an
6 entity that provides legal services to others can be a qualifying
7 institution for purposes of this rule. A qualifying institution must:
8
9 (A) Employ at least 10 employees full-time in California; or
10
11 (B) Employ in California an attorney who is an active member in
12 good standing of the State Bar of California.
13
14 (2) “Active member in good standing of the bar of a United States
15 state, jurisdiction, possession, territory, or dependency” means an
16 attorney who meets all of the following criteria:
17
18 (A) Is a member in good standing of the entity governing the
19 practice of law in each jurisdiction in which the member is
20 licensed to practice law;
21
22 (B) Remains an active member in good standing of the entity
23 governing the practice of law in at least one United States
24 state, jurisdiction, possession, territory, or dependency, other
25 than California, while practicing law as registered in-house
26 counsel in California; and
27
28 (C) Has not been disbarred, has not resigned with charges
29 pending, or is not suspended from practicing law in any other
30 jurisdiction.
31

1 Statement of Purpose. The purpose of this rule is to permit an attorney who is licensed to
2 practice law in a jurisdiction in the United States other than California, and who is in
3 California temporarily as part of litigation, to perform litigation tasks in California under
4 specified circumstances. An attorney practicing in accordance with this rule is not
5 engaged in the unauthorized practice of law in California.
6

7 **Rule 966. Attorneys practicing law temporarily in California as part of**
8 **litigation**
9

10 (a) **[Requirements]** For an attorney to practice law under this rule, the
11 attorney must:
12

- 13 (1) Maintain an office in a United States jurisdiction other than California
14 and in which the attorney is licensed to practice law;
15
- 16 (2) Already be retained by a client in the matter for which the attorney
17 is providing legal services in California, except that the attorney
18 may provide legal advice to a potential client, at the potential
19 client's request, to assist the client in deciding whether to retain the
20 attorney;
21
- 22 (3) Indicate on any Web site or other advertisement that is accessible in
23 California either that the attorney is not a member of the State Bar of
24 California or that the attorney is admitted to practice law only in the
25 states listed; and
26
- 27 (4) Be an active member in good standing of the bar of a United States
28 state, jurisdiction, possession, territory, or dependency.
29

30 (b) **[Permissible activities]** An attorney meeting the requirements of this
31 rule, who complies with all applicable rules, regulations, and statutes, is
32 not engaging in the unauthorized practice of law in California if the
33 attorney's services are part of:
34

- 35 (1) A formal legal proceeding that is pending in another jurisdiction
36 and in which the attorney is authorized to appear;
37
- 38 (2) A formal legal proceeding that is anticipated but is not yet pending
39 in California and in which the attorney reasonably expects to be
40 authorized to appear;
41

- 1 (3) A formal legal proceeding that is anticipated but is not yet pending
2 in another jurisdiction and in which the attorney reasonably
3 expects to be authorized to appear; or
4
- 5 (4) A formal legal proceeding that is anticipated or pending and in
6 which the attorney's supervisor is authorized to appear or
7 reasonably expects to be authorized to appear.
8

9 The attorney whose anticipated authorization to appear in a formal legal
10 proceeding serves as the basis for practice under this rule must seek that
11 authorization promptly after it becomes possible to do so. Failure to
12 seek that authorization promptly, or denial of that authorization, ends
13 eligibility to practice under this rule.
14

15 (c) **[Restrictions]** To qualify to practice law in California under this rule,
16 an attorney must not:
17

- 18 (1) Hold out to the public or otherwise represent that he or she is
19 admitted to practice law in California;
20
- 21 (2) Establish or maintain a resident office or other systematic or
22 continuous presence in California for the practice of law;
23
- 24 (3) Be a resident of California;
25
- 26 (4) Be regularly employed in California;
27
- 28 (5) Regularly engage in substantial business or professional activities
29 in California; or
30
- 31 (6) Have been disbarred, have resigned with charges pending, or be
32 suspended from practicing law in any other jurisdiction.
33

34 (d) **[Conditions]** By practicing law in California pursuant to this rule, an
35 attorney agrees that he or she is providing legal services in California
36 subject to:
37

- 38 (1) The jurisdiction of the State Bar of California;
39
- 40 (2) The jurisdiction of the courts of this state to the same extent as is a
41 member of the State Bar of California; and

- 1 (3) The laws of the State of California relating to the practice of law,
2 the State Bar Rules of Professional Conduct, the rules and
3 regulations of the State Bar of California, and these rules.
4
- 5 (e) **[Inherent power of Supreme Court]** Nothing in this rule is to be construed
6 as affecting the power of the Supreme Court of California to exercise its
7 inherent jurisdiction over the practice of law in California.
8
- 9 (f) **[Effect of rule on multijurisdictional practice]** Nothing in this rule limits
10 the scope of activities permissible under existing law by attorneys who are not
11 members of the State Bar of California.
12
- 13 (g) **[Definitions]** The following definitions apply to the terms used in this
14 rule:
15
- 16 (1) “A formal legal proceeding” means litigation, arbitration,
17 mediation, or a legal action before an administrative decision-
18 maker.
19
- 20 (2) “Authorized to appear” means the attorney is permitted to appear
21 in the proceeding by the rules of the jurisdiction in which the
22 formal legal proceeding is taking place or will be taking place.
23
- 24 (3) “Active member in good standing of the bar of a United States
25 state, jurisdiction, possession, territory, or dependency” means an
26 attorney who meets all of the following criteria:
27
- 28 (A) Is a member in good standing of the entity governing the
29 practice of law in each jurisdiction in which the member is
30 licensed to practice law;
31
- 32 (B) Remains an active member in good standing of the entity
33 governing the practice of law in at least one United States
34 state, jurisdiction, possession, territory, or dependency
35 while practicing law under this rule; and
36
- 37 (C) Has not been disbarred, has not resigned with charges
38 pending, or is not suspended from practicing law in any
39 other jurisdiction.
40

1 Statement of Purpose. The purpose of this rule is to permit an attorney who is licensed to
2 practice law in a jurisdiction in the United States other than California, and who is in
3 California temporarily other than as part of litigation, to practice law to a limited extent in
4 California. An attorney practicing under this rule is not engaged in the unauthorized
5 practice of law in California.
6

7 **Rule 967. Non litigating attorneys temporarily in California to provide legal**
8 **services**
9

10 (a) **[Requirements]** For an attorney to practice law under this rule, the attorney
11 must:

- 12
- 13 (1) Maintain an office in a United States jurisdiction other than California
14 and in which the attorney is licensed to practice law;
15
- 16 (2) Already be retained by a client in the matter for which the attorney
17 is providing legal services in California, except that the attorney
18 may provide legal advice to a potential client, at the potential
19 client's request, to assist the client in deciding whether to retain the
20 attorney;
21
- 22 (3) Indicate on any Web site or other advertisement that is accessible in
23 California either that the attorney is not a member of the State Bar of
24 California or that the attorney is admitted to practice law only in the
25 states listed; and
26
- 27 (4) Be an active member in good standing of the bar of a United States
28 state, jurisdiction, possession, territory, or dependency.
29

30 (b) **[Permissible activities]** An attorney who meets the requirements of this rule
31 and who complies with all applicable rules, regulations, and statutes is not
32 engaging in the unauthorized practice of law in California if the attorney:
33

- 34 (1) Provides legal assistance or legal advice in California to a client
35 concerning a transaction or other nonlitigation matter, a material aspect
36 of which is taking place in a jurisdiction other than California and in
37 which the attorney is licensed to provide legal services;
38
- 39 (2) Provides legal assistance or legal advice in California on an issue of
40 federal law or of the law of a jurisdiction other than California to
41 attorneys licensed to practice law in California; or
42
- 43 (3) Is an employee of a client and provides legal assistance or legal advice
44 in California to the client or to the client's subsidiaries or organizational
45 affiliates.
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- (c) **[Restrictions]** To qualify to practice law in California pursuant to this rule, an attorney must not:
 - (1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California;
 - (2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law;
 - (3) Be a resident of California;
 - (4) Be regularly employed in California;
 - (5) Regularly engage in substantial business or professional activities in California; or
 - (6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction.
 - (d) **[Conditions]** By practicing law in California pursuant to this rule, an attorney agrees that he or she is providing legal services in California subject to:
 - (1) The jurisdiction of the State Bar of California;
 - (2) The jurisdiction of the courts of this state to the same extent as is a member of the State Bar of California; and
 - (3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules.
 - (e) **[Scope of practice]** An attorney is permitted by this rule to provide legal assistance or legal services concerning only a transaction or other nonlitigation matter.
 - (f) **[Inherent power of Supreme Court]** Nothing in this rule is to be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.
 - (g) **[Effect of rule on multijurisdictional practice]** Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not members of the State Bar of California.

- 1 **(h) [Definitions]** The following definitions apply to terms used in this rule:
2 (1) “A transaction or other nonlitigation matter” includes any legal
3 matter other than litigation, arbitration, mediation, or a legal action
4 before an administrative decision-maker.
5 (2) “Active member in good standing of the bar of a United States
6 state, jurisdiction, possession, territory, or dependency” means an
7 attorney who meets all of the following criteria:
8
9 (A) Is a member in good standing of the entity governing the
10 practice of law in each jurisdiction in which the member is
11 licensed to practice law;
12
13 (B) Remains an active member in good standing of the entity
14 governing the practice of law in at least one United States
15 state, jurisdiction, possession, territory, or dependency other
16 than California while practicing law under this rule; and
17
18 (C) Has not been disbarred, has not resigned with charges
19 pending, or is not suspended from practicing law in any other
20 jurisdiction.