

JUL 24 2024

Jorge Navarrete Clerk

S284732

ADMINISTRATIVE ORDER 2024-07-24-01

Deputy

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

ORDER RE REQUEST TO APPROVE PROPOSED AMENDED RULES,
9.40 AND OF THE CALIFORNIA RULES OF COURT

On April 24, 2024, the State Bar of California filed a request to approve amendments to California Rules of Court, rules 9.40 and 9.43. The request is granted.

Revisions to California Rules of Court, rules 9.40 and 9.43, are approved as modified. The approved rules are set out in the Attachment and are effective as of the date of this order.

It is so ordered.

GUERRERO

Chief Justice

CORRIGAN

Associate Justice

LIU

Associate Justice

KRUGER

Associate Justice

GROBAN

Associate Justice

JENKINS

Associate Justice

EVANS

Associate Justice

Rule 9.40. Counsel pro hac vice

(a) Eligibility

A person who is not a licensee of the State Bar of California but who is an attorney in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice*, provided that an active licensee of the State Bar of California is associated as attorney of record. No person is eligible to appear as counsel *pro hac vice* under this rule if the person is:

- (1) A resident of the State of California;
- (2) Regularly employed in the State of California; or
- (3) Regularly engaged in substantial business, professional, or other activities in the State of California.

(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)

(b) Repeated appearances as a cause for denial

Absent special circumstances, repeated appearances by any person under this rule is a cause for denial of an application.

(Subd (b) lettered effective January 1, 2007; adopted as part of subd (a) effective September 13, 1972.)

(c) Application

(1) Application in superior court

A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office. The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period.

(2) Application in Supreme Court or Court of Appeal

An application to appear as counsel *pro hac vice* in the Supreme Court or a Court of Appeal must be made as provided in rule 8.54, with proof of service on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office.

(Subd (c) amended and relettered effective January 1, 2007; adopted as part of subd (b) effective September 13, 1972; subd (b) previously amended effective October 3, 1973, September 3, 1986, January 17, 1991, and March 15, 1991.)

(d) Contents of application

The application must state:

- (1) The applicant's residence and office address;
- (2) The courts to which the applicant has been admitted to practice and the dates of admission;
- (3) That the applicant is a licensee in good standing in those courts;
- (4) That the applicant is not currently suspended or disbarred in any court;
- (5) The title of each court and cause in which the applicant has filed an application to appear as counsel *pro hac vice* in this state in the preceding two years, the date of each application, and whether or not it was granted; and
- (6) The name, address, and telephone number of the active licensee of the State Bar of California who is attorney of record.

(Subd (d) amended effective January 1, 2019; adopted as part of subd (b) effective September 13, 1972; subd (b) previously amended effective October 3, 1973, September 3, 1986, January 17, 1991, and March 15, 1991; previously amended and lettered effective January 1, 2007.)

(e) Fee for application

The State Bar of California may set an appropriate application fee to be paid by counsel *pro hac vice*.

(Subd (e) amended effective January 1, 2019; adopted as subd (c) effective September 3, 1986; previously amended and relettered effective January 1, 2007.)

(f) Counsel *pro hac vice* subject to jurisdiction of courts and State Bar

A person permitted to appear as counsel *pro hac vice* under this rule is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a licensee of the State Bar of California. The counsel *pro hac vice* must familiarize himself or herself and comply with the standards of professional conduct required of licensees of the State Bar of California and will be subject to the disciplinary jurisdiction of the State Bar of California with respect to any of his or her acts occurring in the course of such appearance. Article 5 of chapter 4, division 3 of the Business and Professions Code and the Rules of Procedure of the State Bar govern in any investigation or proceeding conducted by the State Bar of California under this rule.

(Subd (f) amended effective January 1, 2019; previously relettered as subd (d) effective September 3, 1986; previously amended and relettered effective January 1, 2007.)

(g) Representation in cases governed by the Indian Child Welfare Act (25 U.S.C. § 1903 et seq.)

(1) The requirement in (a) that the applicant associate with an active licensee of the State Bar of California does not apply to an applicant seeking to appear in a California court to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act; and

(2) An applicant seeking to appear in a California court to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act constitutes a special circumstance for the purposes of the restriction in (b) that an application may be denied because of repeated appearances.

(Subd (g) adopted effective January 1, 2019.)

(h) Supreme Court and Court of Appeal not precluded from permitting argument in a particular case

This rule does not preclude the Supreme Court or a Court of Appeal from permitting argument in a particular case from a person who is not a licensee of the State Bar of California, but who is licensed to practice in another jurisdiction and who possesses special expertise in the particular field affected by the proceeding.

(Subd (h) amended and relettered effective January 1, 2007; previously relettered as subd (e) effective September 3, 1986; previously amended and relettered as subd (g) effective January 1, 2007.)

(i) Inherent power of Supreme Court

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

Rule 9.40 amended effective January 1, 2019; adopted as rule 983 by the Supreme Court effective September 13, 1972; previously amended and renumbered effective January 1, 2007; previously amended effective October 3, 1973, September 3, 1986, January 17, 1991, and March 15, 1991.

Rule 9.43. Out-of-state attorney arbitration counsel

(a) Definition

An "out-of-state attorney arbitration counsel" is an attorney who is:

- (1) Not a licensee of the State Bar of California but who is an attorney in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in the course of, or in connection with, an arbitration proceeding in this state;
- (2) Has served a certificate in accordance with the requirements of Code of Civil Procedure section 1282.4 on the arbitrator, the arbitrators, or the arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney; and
- (3) Whose appearance has been approved by the arbitrator, the arbitrators, or the arbitral forum.

(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)

(b) State Bar out-of-state attorney arbitration counsel program

The State Bar of California must establish and administer a program to implement the State Bar of California's responsibilities under Code of Civil Procedure section 1282.4. The State Bar of California's program may be operative only as long as the applicable provisions of Code of Civil Procedure section 1282.4 remain in effect.

(Subd (b) amended effective January 1, 2007.)

(c) Eligibility to appear as an out-of-state attorney arbitration counsel

To be eligible to appear as an out-of-state attorney arbitration counsel, an attorney must comply with all of the applicable provisions of Code of Civil Procedure section 1282.4 and the requirements of this rule and the related rules and regulations adopted by the State Bar of California.

(Subd (c) amended effective January 1, 2007.)

(d) Discipline

An out-of-state attorney arbitration counsel who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of licensees of the State Bar of California is subject to the disciplinary jurisdiction of the State Bar of California with respect to any of his or her acts occurring in the course of the arbitration.

(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)

(e) Disqualification

Failure to timely file and serve a certificate or, absent special circumstances, appearances in multiple separate arbitration matters are grounds for disqualification from serving in the arbitration in which the certificate was filed.

(Subd (e) amended effective January 1, 2007.)

(f) Fee

The State Bar of California may set an appropriate application fee to be paid by the out-of-state attorney arbitration counsel.

(Subd (f) amended effective January 1, 2007.)

(g) Inherent power of Supreme Court

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

(Subd (g) amended effective January 1, 2007.)

Rule 9.43 amended effective January 1, 2019; adopted as rule 983.4 by the Supreme Court effective July 1, 1999; previously amended and renumbered effective January 1, 2007.