

# COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

**AGENDA ITEM:** December 2015 – O-102

**DATE:** November 23, 2015

**TO:** Committee of Bar Examiners

**FROM:** Gayle Murphy, Senior Director, Admissions

**SUBJECT:** **American Bar Association Resolution re Moral Character Review and Mental Health Questions**

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## BACKGROUND

The American Bar Association recently circulated the following:

On behalf of the American Bar Association, which has over 400,000 members, I am pleased to inform you that our House of Delegates adopted the resolution referenced below at its meeting held August 3-4, 2015. The resolution, which now states the official policy of the Association, and the related background report, which is for informational purposes only and does not constitute ABA policy, is available by clicking on the Resolution Number below:

### RESOLUTION 102

RESOLVED, That the American Bar Association urges state and territorial bar licensing entities to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner.

FURTHER RESOLVED, That state and territorial bar licensing entities are not precluded from making reasonable and narrowly-tailored follow-up inquiries concerning an applicant's mental health history if the applicant has engaged in conduct or behavior that may otherwise warrant a denial of admission, and a mental health condition either has been raised by the applicant as, or is shown by other information to be, an explanation for such conduct or behavior.

FURTHER RESOLVED, That this resolution replaces the 1994 policy, ABA Resolution No. 110, Aug. 1994 (94A110).

## DISCUSSION

The specific mental health questions were removed from the California Moral Character Determination application some time ago. The application currently asks the following:

In answering Questions 10.2, applicants should consider the following definitions for the words and phrases:

- "Ability to practice law" includes performing services in a court of justice, in any manner, throughout its various stages and in conformity with adopted rules of procedure. In a larger sense it includes providing legal advice and counsel and preparation of legal instruments and contracts by which legal rights are protected. Law practice may also include the resolution of legal questions for consumers by advice, and action if difficult or doubtful legal questions are involved, which, to safeguard the public, reasonably demand the application of a trained legal mind. These services must be performed in accordance with the duties and ethical obligations of an attorney.
- "Good moral character" includes qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws to the state and the nation and respect for the rights of others and for the judicial process.
- "Currently" does not mean on the day of, or even in the weeks or months preceding the completion of the application. Rather, it means recently enough so that you believe that there is something that may have an ongoing impact on your ability to be an attorney.

10.2 Is there any issue that would currently interfere with your ability to practice law in accordance with the duties and ethical obligations of an attorney?

Yes       No

If YES, complete **FORM 5 – Description of Issue Affecting Ability to Practice Law**. Make as **many COPIES of FORMS 5** as you need to describe the problem.

10.3 Have you been the subject of a conservatorship within the last 7 years?

Yes       No

If YES, complete **FORM 8 – Subject of a Conservatorship**.

## RECOMMENDATION

It is recommended that the resolution from the American Bar Association recommending that bar examiners not include mental health questions on their admission applications be received and filed.

## **PROPOSED MOTION**

If the Committee agrees with the recommendation, the following motion would be in order:

Move that the resolution from the American Bar Association recommending that bar examiners not include mental health questions on their admission applications be received and filed.