

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: April 2016 – O-500

DATE: April 22, 2016

TO: Committee of Bar Examiners

FROM: Gayle Murphy, Senior Director, Admissions
Kelly O’Haire, Director, Moral Character Determinations

SUBJECT: **Proposed Amendments to Admissions Rules re Processing of Moral Character Determination Applications**

BACKGROUND

Applicants may file an application for moral character determination at any time after registering with the Committee of Bar Examiners (Committee); according to the statute, law students are required to register with the Committee within 90 days of beginning the study of law. There is no penalty for registering later and many students do not register until they file their applications for moral character determination and to take the examination during their last year of law study. Applicants are encouraged to file their moral character determination applications no later than at the beginning of their last year of law study and are advised that at a minimum it will take six months for a determination, and often longer if there are issues in an applicant’s background.

The applications of applicants who have no issues are generally processed in less than the six months. Those with issues, however, often take much longer to process. For those applicants for whom there has been decision to invite them in for informal conferences, it can often takes a year or more to complete the process.

DISCUSSION

Under the current rule, applicants who have been referred for further inquiry and analysis who wish to withdraw their applications may only do so with the Committee’s consent. Over the years of working with the rule as written, there does not appear to be any benefit to requiring such consent. If an applicant wants to withdraw the application, he or she will have to file another application in the future and start the process all over again, which is better than keeping a file pending as the information in it can become stale.

With regard to those applications that require further investigation, the rules currently require that a status report be given to the applicants every sixty days, which has proved to be problematic and in most cases would be premature, as while the investigation process is continuing it has not been completed. The time it would take to

prepare a status report would be better spent in continuing the investigation. It would be appropriate for the Committee to consider whether the rules should be amended to allow the time it could take to bring the investigation to a point where a status report would be meaningful.

The following amendments to Title 4, Division 1, Chapter 4 of the *Rules of the State Bar* are provided for the Subcommittee's consideration:

Rule 4.44 Withdrawal of Application for Determination of Moral Character

- (A) An applicant may withdraw an Application for Determination of Moral Character any time before being notified that the Committee is unable to make a determination without further inquiry and analysis. ~~Following such a notice, withdrawal requires the Committee's consent.~~
- (B) An applicant may withdraw an application filed with the State Bar Court for a hearing on an adverse determination of moral character by filing a request for withdrawal with the Office of Chief Trial Counsel and forwarding a copy to the Committee at its San Francisco office.

Rule 4.45 Notice regarding status of Application for Determination of Moral Character

- (A) Within 180 days of receiving a completed Application for Determination of Moral Character, the Committee notifies an applicant that its determination of moral character is positive or that it requires further consideration ~~or information from the applicant, a government agency, or another source.~~ A positive determination is valid for thirty-six months.
- (B) While an Application for Determination of Moral Character remains pending, a status report is issued to the applicant at least every ~~sixty~~ 120 days.
- (C) Within ~~sixty~~ 120 days of receiving additional information it has requested, the Committee notifies the applicant that
 - (1) the applicant is determined to be of good moral character;
 - (2) the applicant has not met the burden of establishing good moral character;
 - (3) the applicant requires further consideration;
 - (4) the applicant is invited to an informal conference with the Committee; or
 - (5) the applicant is advised to enter into an Agreement of Abeyance with the Committee.

RECOMMENDATION:

It is recommended that the Subcommittee recommend to the Committee that the proposed amendments be adopted in principle and that a request to circulate the proposed amendments for a 45-day public comment period be submitted to the Board Committee on Admissions and Education.

PROPOSED MOTION:

If the Subcommittee agrees with the recommendation, the following motion to the full Committee is suggested:

Move that the proposed amendments to Title 4, Division 1, Chapter 4, Rules 4.44 and 4.45 of the *Rules of the State Bar (Admissions Rules)* regarding the processing of moral character determinations as attached hereto be approved in principle; that a request be submitted to the Board Committee on Admissions and Education to circulate the proposed amendments to the Rules for a 45-day public comment period.