

# COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

**AGENDA ITEM:** October 2016 – O-500

**DATE:** October 11, 2016

**TO:** Subcommittee on Moral Character

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

**SUBJECT:** **Proposed Amendments to Admissions Rules re Processing of Moral Character Determinations – Return from Public Comment**

---

## BACKGROUND

In addition to meeting other requirements, such as passing the bar examination and receiving a passing score on the Multistate Professional Responsibility Examination, general and attorney applicants seeking admission to the practice of law in California must apply for and receive a positive moral character determination. Applicants may file an application for moral character determination at any time after registering with the Committee of Bar Examiners (Committee) as a law student or attorney applicant. 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. The Admissions Rules currently require that a status report be given to applicants every sixty days after reaching the six-month mark, which has proved to be problematic for those applications that require extensive investigation and review, and in most cases would be premature, as while the investigation process is continuing it has not been completed and there is nothing new to report. Preparing the status reports take resources that would be better spent processing the applications.

Also, under the current rules, applicants who have been referred for further investigation 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 appears to be few benefits 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. The information contained in a file that is pending becomes stale; current information is needed to conduct an appropriate assessment of an applicant’s background.

## DISCUSSION

The Committee approved in principle proposed amendments to the *Admissions Rules* as follows:

### **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.

If ultimately adopted and approved, the amended rule would allow the time it could take to bring the investigation to a point where a status report would be meaningful and would eliminate the need for an applicant to seek approval before withdrawing a moral character determination application after being notified that further investigation was needed, subject to a period of public comment.

The Board of Trustee's (Board) Committee on Admissions and Education approved the Committee's request to send the proposed amendments out for a public comment period and the request and the proposed amendments were published for 45-day period of public comment. The deadline for submission of public comment ended on September 16. No public comment has been received.

## **RECOMMENDATION**

It is recommended that, following a period of public comment, the proposed amendments to the *Admissions Rules*, [as noted above] be adopted; that the proposed amendments be forwarded to the Board with a request that it approve the amendments; and if approved by the Board, the proposed amendments become effective the date of Board approval.

## **PROPOSED MOTION**

If the Subcommittee agrees with this recommendation, the following motion is suggested:

Move that following a period of public comment, the proposed amendments to the *Admissions Rules* [as follows] be adopted; that the proposed amendments be forwarded to the Board of Trustees (Board) with a request that it approve the amendments; and if approved by the Board, the proposed amendments become effective the date of Board approval.