

## **AGENDA ITEM**

### **A&E III D. JULY 2016**

**DATE:** July 6, 2016

**TO:** Members, Admissions and Education Committee

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

**SUBJECT:** Proposed Amendments to Admissions Rules re Processing of Moral Character Determination Applications – Request to Circulate for Public Comment

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#### **EXECUTIVE SUMMARY**

Applicants seeking admission to the practice of law in California 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. A positive determination from the Committee is required for an applicant to be certified to the Supreme Court as qualified for admission to practice law in California. 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. Title 4, Division 1, Chapter 4 of the *Rules of the State Bar* (Admissions Rules) currently require that a status report be given to the applicants every sixty days after reaching the six-month status, which has proved to be problematic for those applications that require extensive investigation, and in most cases would be premature, as while the investigation process is continuing it has not been completed.

During its April 2016 meeting, the Committee approved in principle proposed amendments to the Admissions Rules, which if ultimately adopted by the Committee and approved by the Board of Trustees, would allow the time it could take to bring the investigation to a point where a status report would be meaningful. The Committee requests authorization from the Admissions and Education Committee to circulate the proposed Rules 4.44 and 4.45 for a 45-day public comment period.

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#### **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.

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, which is better than keeping a file pending as the information in it can become stale.

## DISCUSSION

During its April 2016 meeting, the Committee approved in principle proposed amendments to the Admissions Rules, which if ultimately adopted by the Committee and approved by the Board of Trustees, 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.

The Committee requests authorization from the Admissions and Education Committee to circulate the following proposed amendments to Rules 4.44 and 4.45 of the Admissions Rules for a 45-day public comment period:

### **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.

#### **FISCAL/PERSONNEL IMPACT**

None

#### **RULE AMENDMENTS**

Rules 4.44 and 4.45 of the Admissions Rules.

#### **BOARD BOOK IMPACT**

None

#### **BOARD GOALS & OBJECTIVES**

None

#### **BOARD COMMITTEE RECOMMENDATIONS**

It is recommended that the Admissions and Education Committee authorize the release of the proposed amendments for a 45-day public comment period. If the Board Committee agrees, it is recommended that the Admissions and Education Committee approve the following resolution:

**RESOLVED**, that the Admissions and Education Committee authorizes staff to release the proposed amendments to the Title 4, Division 1, Chapter 4, Rules 4.44 and 4.45 of the *Rules of the State Bar* regarding the processing of moral character determinations for a 45-day public comment period; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.