

AGENDA ITEM

A&EII.D. March 2014

DATE: February 23, 2015

TO: Members, Admissions and Education Committee

FROM: Patricia P. White, Chair, Committee of Bar Examiners
Gayle E. Murphy, Senior Director, Admissions

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

EXECUTIVE SUMMARY

The Committee of Bar Examiners (Committee) has approved in principle, subject to a public comment period and approval by the Board of Trustees (Board), an amendment to Rule 4.47 of the *Admissions Rules*. Rule 4.47 currently bases the timing of an applicant's ability to request a hearing with the State Bar Court on the applicant's **receipt** of an adverse moral character determination. The proposed amendment would make the Rule consistent with the Rules of Procedure of the State Bar, which bases the timing on when the adverse determination is **served** on the applicant. Also approved in principle by the Committee is a proposed amendment to Rule 4.49 of the *Admissions Rules*, which changes the time period for reapplication for moral character after denial. Currently, the time period commences from the date of the Committee's denial. Under the proposed change, the period would commence from the date of the final decision -- regardless of whether the decision is made by the Committee, the State Bar Court or the California Supreme Court. Before final consideration and adoption of the amendments by the Committee and the Board of Trustees, however, it is recommended that the proposed amendments be released for a 45-day public comment period. After consideration of any comments received, it is anticipated that a final version of the proposed amendments will be forwarded to the Board of Trustees for approval.

BACKGROUND

Rule 4.47 of Title 4, Division 1, Chapter 4 of the *Rules of the State Bar of California (Admissions Rules)*, Appeal of adverse determination of moral character, provides as follows:

(A) An applicant notified of an adverse determination of moral character may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character

Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of receipt of the notice of adverse determination.

Rule 4.49 of the *Admissions Rules*, New application following adverse determination of moral character, provides as follows:

The Committee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the Committee's final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.

ISSUE

Whether to authorize a 45-day public comment period for proposed amendments to Rule 4.47 and Rule 4.49 of the *Admissions Rules*.

CONCLUSION

Proposed amendments to Rule 4.47 and Rule 4.49 of the *Admissions Rules* should be released for a 45-day public comment period.

DISCUSSION

An applicant can seek review of the Committee's denial of his or her Application for Determination of Moral Character by requesting a hearing in the State Bar Court Hearing Department, subsequent review by the State Bar Court Review Department and ultimately the California Supreme Court. The findings of each of these courts is a decision on the merits of the person's Application for Determination of Moral Character.

Admissions Rule 4.47 currently states that an applicant has 60 days from his or her **receipt** of the notice of an adverse moral character determination to request a hearing with the State Bar Court. This is in conflict with the State Bar Rules of Procedure, which require 60 days from **service** of the notice.

Pursuant to *Admissions Rule 4.49*, when the Committee denies a moral character application, the time a person must wait before submitting a new application is calculated from the date of the **Committee's** adverse decision. An applicant may arguably seek to file a new Application for Determination of Moral Character while his or her prior application is being considered in the State Bar Court or the California Supreme Court, or immediately after such proceedings have concluded. The Committee believes that applicants receiving adverse moral character decisions should not be permitted to submit new applications from the date of a decision from the State Bar Court or the California Supreme Court is final. This would give applicants adequate

time to demonstrate rehabilitation following a denial by the Committee or the courts, and it would also improve efficiency since applications would not be double tracked.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

If ultimately adopted, the *Admissions Rules* will need to be updated accordingly.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Board Committee agree that the proposed amendments to Rule 4.47 and Rule 4.49 of the *Admissions Rules* in the form below be released for public comment:

Rule 4.47 Appeal of adverse determination of moral character

(A) An applicant notified of an adverse determination of moral character may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of the date of service ~~receipt~~ of the notice of adverse determination.

Rule 4.49 New application following adverse determination of moral character

The Committee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the ~~Committee's~~ final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Admissions and Education Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Admissions and Education Committee recommends that proposed amendments to Rule 4.47 and Rule 4.49 of the *Admissions Rules* in the form below be released for public comment for a period of 45 days:

Rule 4.47 Appeal of adverse determination of moral character

(A) An applicant notified of an adverse determination of moral character may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of the date of service receipt of the notice of adverse determination.

Rule 4.49 New application following adverse determination of moral character

The Committee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the Committee's final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.;

and it is

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