

AGENDA ITEM

131 JULY 2015

DATE: July 2, 2015

TO: Members, Admissions and Education Committee
Members, Board of Trustees

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: PROPOSED AMENDMENTS TO ADMISSIONS RULES RE PROCESSING OF
MORAL CHARACTER DETERMINATION APPLICATIONS – RETURN FROM
PUBLIC COMMENT

EXECUTIVE SUMMARY

The Committee of Bar Examiners (“Committee”) approved in principle proposed amendments to Rule 4.47 Title 4, Division 1, Chapter 4 of the Rules of the State Bar of California (*Admissions Rules*) regarding the period of time an applicant has to challenge an adverse moral character determination in State Bar Court and Rule 4.49 of the *Admissions Rules* regarding the timing for reapplication after a final adverse moral character determination, subject to a period of public comment. The Board Committee on Admissions and Education authorized a 45-day public comment period, which ended on May 29, 2015. No comments were received.

It is recommended that the Board of Trustees approve the proposed amendments to the *Admissions Rules*.

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.

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. The following proposed amendments to the *Admissions Rules* would eliminate this conflict.

Rule 4.47 Appeal of adverse determination of moral character. 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 ~~[Deleted Text Begin]receipt[Deleted Text End]~~[Insert Text Begin]service[Insert Text end] of the notice of adverse determination.

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 following proposed amendment to the *Admissions Rules* would begin the calculation of time for submission of a new application on the date of a final decision concerning an applicant, regardless of the source of the determination. 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.

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 ~~[Deleted Text Begin]Committee's[Deleted Text End]~~ final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.

No public comments were received concerning the proposed amendments to *Admissions Rules 4.47* and *4.49*.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Proposed amendments to Rule 4.47 and 4.49, Title 4, Division 1, Chapter 4 of the Rules of the State Bar of California.

BOARD BOOK IMPACT

None

BOARD COMMITTEE RECOMMENDATIONS

If the Admissions and Education Committee agrees that the proposed amendments to the Admissions Rules should be adopted, effective upon adoption, it should recommend that the Board of Trustees approve the following resolution:

RESOLVED, following publication for comment and notice that no comments were received, and upon recommendation of the Admissions and Education Committee, the Board of Trustees adopts the following proposed amendments to Rule 4.47 and 4.49, Title 4, Division 1, Chapter 4 of the *Rules of the State Bar of California*:

Rule 4.47 Appeal of adverse determination of moral character. 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 ~~[Deleted Text Begin]receipt[Deleted Text End]~~[Insert Text Begin]service[Insert Text end] 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 ~~[Deleted Text Begin] Committee's[Deleted Text End]~~ final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.