

AGENDA ITEM

133 NOVEMBER 2016

DATE: November 2, 2016

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

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. In addition under the current Admissions Rules, applicants who have been referred for further investigation who wish to withdraw their applications may only do so with the Committee's consent.

During its April 2016 meeting, the Committee approved in principle proposed amendments to the Admissions Rules, which if approved by the Board of Trustees, would amend the time it could take to bring the investigation to a point where a status report would be meaningful and allow applicants to withdraw their moral character determination applications without the approval of the Committee.

Subsequently, the Board Committee on Admissions and Education authorized the circulation of the proposed amendments for a public comment period. No comments were received. The Committee considered the proposed amendments again during its October 2016 meeting and adopted them in the same form as they were circulated for public comment, subject to the approval of the Board of Trustees.

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 appear 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 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.

At its July 2016 meeting, the Board Committee on Admissions and Education approved the Committee's request to circulate the proposed amendments for a public comment period. The proposed amendments were released for public comment on August 4, 2016 for a 30-day period. No comments were received. During its October 2016 meeting, the Committee once again considered the proposed amendments and adopted them, subject to the approval of the Board of Trustees.

The following are the proposed amendments to Rules 4.44 and 4.45 of the Admissions Rules:

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

If the Admissions and Education Committee agrees with the Committee's recommendation to approve the proposed amendments to the Rules of the State Bar, it should recommend that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves 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 applications as attached hereto, effective immediately.