

AGENDA ITEM

A&E III F. JULY 2017

DATE: July 5, 2017

TO: Members, Admissions and Education Committee

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Proposed Amendments to Admissions Rules re Qualification of Out-of-State Attorney Applicants to File Moral Character Determination Applications – Request to Circulate for Public Comment

EXECUTIVE SUMMARY

During its June 2017 meeting, the Committee of Bar Examiners (Committee) approved in principle a proposed amendment to Title 4, Division 1, Chapter 4, Rule 4.41 of the *Rules of the State Bar* (Admissions Rules), which would, if adopted, clarify the criteria for submission of moral character determination applications by out-of-state attorneys who have been suspended for administrative reasons, subject to a public comment period and final approval by the Board of Trustees. The Committee requests authorization from the Admissions and Education Committee to circulate the proposed amendment for a 45-day public comment period. If permitted to do so, following review of any comments received and final consideration by the Committee, the proposed amendment would be submitted for approval by the Board of Trustees.

BACKGROUND

Attorneys from other jurisdictions seeking to practice law in California are not allowed to file a moral character determination application if suspended or disbarred according to Rule 4.41 of the *Admissions Rules*, which says:

Rule 4.41 Application for Determination of Moral Character

An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.

DISCUSSION

The language above appears to restrict attorney applicants from applying for moral character determinations who have been disciplined in the state where they have practiced, although there is ambiguity with regard to the word “suspended.” A strict reading of the rule would suggest that anyone suspended, for any reason, including administrative reasons like non-payment of fees, not current on CLE requirements, etc., would be prohibited from becoming a lawyer in California. In some cases, an attorney cannot clear up such a suspension because they have moved and the state of suspension requires the attorney to intend to practice in that state in order to seek “good standing” status.

It is recommended that the rule be clarified so it is clear that those who have been administratively suspended are eligible to file a moral character determination application. They would still have to acquire a Positive Determination of good moral character in order to be admitted to the practice of law in California.

The Committee approved in principle the following amendment to Rule 4.41:

Rule 4.41 Application for Determination of Moral Character

An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Admissions Rules – Rule 4.41

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 amendment to the Admissions Rules 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 Admissions Rules as attached hereto, which clarifies the rules for qualification of out-of-state attorney applicants to file Moral Character Determination applications, 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.