



# The State Bar *of California*

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## **OPEN SESSION**

### **AGENDA ITEM**

**JUNE, 2019**

### **COMMITTEE OF BAR EXAMINERS ITEM O-500 (Amended)**

**DATE:** June 21, 2019

**TO:** Members, Committee of Bar Examiners

**FROM:** Mark Torres-Gil, Assistant Director, Office of Admissions  
Tara Clark, Program Manager, Moral Character Determinations

**SUBJECT:** Proposed Guidelines for Conducting Administrative Reviews of Adverse  
Determinations of Moral Character by the Committee of Bar Examiners

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### **EXECUTIVE SUMMARY**

This agenda item presents recommended action needed to implement prior Board of Trustees' decisions regarding the conduct of moral character informal conferences. In September 2018, as part of its review of Board governance and oversight, and the best use of volunteer committees, the Board agreed that the proper division of labor was to have staff conduct moral character informal conferences and have the Committee of Bar Examiners ("Committee") serve as the administrative review body to hear objections from applicants. Presented here for the Committee's consideration are proposed procedures to effectuate the Committee's role as an administrative review body of adverse moral character determinations. It is recommended that the Committee adopt the proposed procedures.

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### **BACKGROUND**

In September 2018, the Board of Trustees adopted recommendations regarding how certain functions were performed by the Committee including moral character reviews, among other things. Specifically, the Board of Trustees directed that staff, rather than the Committee of Bar Examiners, conduct informal conferences with applicants and that the Committee act as an administrative review body for applicants contesting adverse moral character determinations. The Admissions Rules were revised to address the new procedures. Following a public comment period, the Board of Trustees adopted the revised rules, which are now pending consideration by the California Supreme Court.

## **DISCUSSION**

In order to facilitate the Committee's role as an administrative review body to consider adverse moral character determinations upon the Supreme Court's approval of the proposed rules, staff has prepared proposed procedures and guidelines. (See Attachment A.) Following are highlights of the proposed procedures and guidelines:

- A. An applicant may file a written request for administrative review by the Committee within thirty days of the date of notice of the staff determination.
- B. The content of a request for administrative review is described.
- C. Upon receipt of a request for review the Chair of the Moral Character Subcommittee will designate a panel of two members of the Moral Character Subcommittee or the Committee if members of the Moral Character Subcommittee are unavailable, to review the record.
- D. The review of the record must be completed within sixty days.
- E. The Committee may schedule another informal conference in exceptional circumstances.
- F. The Committee may adopt the findings and recommendation of the panel or take any other action it deems appropriate.
- G. These procedures will apply to requests for review of decisions made by staff to abandon an application or to deny a request for an extension of a moral character determination, except with respect to the provision allowing the Committee to initiate an informal conference.

## **RECOMMENDATION**

Approval of the proposed administrative review procedures is requested. Therefore, it is recommended that the Committee of Bar Examiners approve and adopt the "Procedures Re Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character."

## **MOTION**

If the Committee agrees with the recommendation, the following motion is suggested:

Move that the Committee Bar Examiners approve the “Procedures Re Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character.”

## **ATTACHMENT(S) LIST**

- A.** Procedures Re Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character

## **Attachment A**

### **PROCEDURES RE REQUESTS FOR ADMINISTRATIVE REVIEW BY THE COMMITTEE OF BAR EXAMINERS OF ADVERSE DETERMINATIONS OF MORAL CHARACTER**

A. An applicant notified of an adverse determination of moral character determination by staff may file a written request for administrative review by the Committee of Bar Examiners ("Committee") within 30 (thirty) days of the date of the notice of the State Bar's determination.

B. The request for administrative review must be sent to:

Moral Character Determinations Unit  
Office of Admissions  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
ATTN: PROGRAM MANAGER, MORAL CHARACTER DETERMINATIONS

C. An applicant's request for administrative review by the Committee must contain a concise statement (1) describing the alleged misconduct at issue, (2) expressing the reasons why the determination by staff should be reviewed, and (3) describing the applicant's rehabilitative efforts.

D. Upon receipt of the request for administrative review, the Program Manager, Moral Character Determinations, will promptly deliver to the Chair of the Moral Character Subcommittee the applicant's request for administrative review, a complete copy of applicant's moral character application, and a copy of the informal conference recording.

E. The Chair of the Moral Character Subcommittee ("Subcommittee") will designate a panel of two members of the Moral Character Subcommittee or of the Committee of Bar Examiners if members of the Moral Character Subcommittee are unavailable (the panel") to review the record. One of the members of the panel will be an active California attorney. The panel will consider the entirety of the record including the informal conference recording, if any, and any supplemental material the applicant may provide.

F. Within sixty (60) days of receipt of the request for review the panel will conduct a review of the record. The panel may request additional information from the applicant or the State Bar's Moral Character unit. Administrative reviews by the Committee are intended to be limited to a review of the record. In exceptional circumstances, however, the panel may conduct another informal conference with the applicant. One member of the panel will be selected as the lead interviewer. The Moral Character Determinations unit will facilitate and coordinate any informal conferences initiated by the panel. The

## Attachment A

Program Manager, Moral Character Determinations unit, may attend any informal conference initiated by the panel.

- G. The panel will present its findings and recommendation to the Committee for determination at the next regularly scheduled meeting of the Committee. The Committee may adopt the findings and recommendation of the panel or take any other action it deems appropriate.
- H. Within 15 days of the Committee's determination, the Program Manager, Moral Character Determinations, will notify the applicant of the Committee's determination. Notices of denials of good moral character must be sent to applicants by certified mail with proof of service.
- I. These guidelines and procedures also apply to applicant requests for review by the Committee of staff decisions to abandon an application (*Admissions Rule*, Rule 4.43) and staff decisions to deny an applicant's request for an extension of a moral character determination (*Admissions Rule*, Rule 4.52) subject to the specific filing requirements provided by these rules and with the exception of Guideline F, above, as it refers to informal conferences.
- J. An applicant notified of an adverse determination of moral character by the Committee may file a request for hearing on the determination with the State Bar Court pursuant to the applicable Admissions Rules (*Admissions Rules*, rule 4.47) and the Rules of Procedure of the State Bar (*Rules Proc. of the State Bar*, rule 5.460 et seq.).