



# The State Bar *of California*

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## **OPEN SESSION AGENDA ITEM AUGUST, 2019 COMMITTEE OF BAR EXAMINERS ITEM O-500**

**DATE:** August 23, 2019

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

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

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

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### **EXECUTIVE SUMMARY**

At its June 2019 meeting, staff presented to the Committee of Bar Examiners (the "Committee"), proposed procedures to effectuate the Committee's role as an administrative review body to hear objections from applicants who receive adverse moral character determinations. Committee members suggested certain revisions to the procedures which have been incorporated. Staff recommends that the revised procedures be received and filed.

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### **BACKGROUND**

Staff prepared proposed Procedures Regarding Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character (the "procedures") which were discussed at the June 2019 meeting of the Committee. Certain Committee members asked that adjustments be made to the proposed procedures including the following:

- 1) Revise the phrase "alleged misconduct at issue." (Section C.)
- 2) Revise the requirement that one of the members on the review panel must be an "active" California bar member to also permit the inclusion of inactive bar members on the panel. (Section E.)
- 3) Express that any informal conferences initiated by the Committee must be audio or video recorded. (Section F.)

- 4) Indicate the “standard of review” by which the Committee should conduct its evaluation.

## **DISCUSSION**

The revisions requested by the Committee have been made to the draft procedures less the request to specify a standard of review. It is not necessary to include a specific standard of review in the Guidelines. The Committee is not conducting an “appellate” review of moral character determinations when it performs its internal administrative review. Because the Committee has been delegated the authority to render moral character determinations, a determination following a request for administrative review is final only when the internal administrative review is complete. Per proposed Rule 4.47.1, which allows the Committee to consider any and all additional information included with the request for review and to request additional information from the applicant, the record always remains open until the administrative review is completed. Notably, the State Bar Court performs the first “appellate” review of the Committee’s moral character determinations. The standard of review applied by the State Bar Court is “de novo.” (Rule of Procedure 5.460.)

Finally, other adjustments of a minor grammatical nature were also made to the draft procedures.

For the Committee’s consideration, a redlined version of the revised procedures is attached as Exhibit A and a final version of the procedures is attached as Exhibit B.

## **RECOMMENDATION**

It is recommended that the Committee of Bar Examiners receive and file the “Procedures Regarding 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 receive and file the “Procedures Regarding Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character” as attached.

## **ATTACHMENT(S) LIST**

- A. Procedures Regarding Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character (Redlined)
- B. Procedures Regarding Requests for Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character (Final)

## Attachment A

### PROCEDURES ~~RE~~REGARDING 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 applicant’s relevant background and the moral character issues raised by staff ~~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 conduct a review of the record. One of the members of the panel will be ~~an active-a licensee of the State Bar of~~ 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 by the panel as the lead interviewer. The Moral Character Determinations

## Attachment A

unit will facilitate and coordinate any informal conferences initiated by the panel. The Program Manager, Moral Character Determinations unit, may attend any informal conference initiated by the panel. [Informal conferences conducted by staff or by the Committee will be audio or video recorded.](#)

- 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.).

## **Attachment B**

### **PROCEDURES REGARDING 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 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  
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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 applicant's relevant background and the moral character issues raised by staff, (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 conduct a review of the record. One of the members of the panel will be a licensee of the State Bar of California. 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 review 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

## Attachment B

conduct another informal conference with the applicant. One member of the panel will be selected by the panel as the lead interviewer. The Moral Character Determinations unit will facilitate and coordinate any informal conferences initiated by the panel. The Program Manager, Moral Character Determinations unit, may attend any informal conference initiated by the panel. Informal conferences conducted by staff or by the Committee will be audio or video recorded.

- 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.
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