



The State Bar *of California*

Moral Character Working Group

**Moral Character and Areas of Misconduct:
Compare and Contrast California and Other Jurisdictions**

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Identified Topics of Discussion

Meeting 2

- Unauthorized Practice of Law
- Abuse of the Legal Process
- Violation of Court Orders/ Respect for the Law
- Professional Obligations/ Discipline
- Fraud
- Candor/ Honesty

Meeting 3

- Honor Code/ Student Conduct Violations
- Prior License Denial
- Past Due Debt/ Financial Responsibility/ Bankruptcy
- Cooperation with the Moral Character Process

Meeting 4

- Criminal History
- Drug/ Alcohol Abuse
- Compliance with Probation
- Lack of Respect for Others

Meeting 5

- Rehabilitation
- Remorse
- Aggravating and Mitigating Factors



California Current Language – Unauthorized Practice of Law (UPL)

- Moral Character Statement
 - Not mentioned
- Factors regarding Moral Character Determination
 - An act of misconduct may include a sustained allegation of unauthorized practice of law



Other Jurisdictions – UPL

- **Arizona** – Not specifically mentioned, however, this may relate - Determination of Character & Fitness Burden of Proof relevant factors and evaluation – Respect for law and legal institutions and ethical codes governing attorneys (pg. 5{14}).
- **Colorado** – Not mentioned.
- **Massachusetts** – Not mentioned.



Other Jurisdictions - UPL

- **Ohio** – Not mentioned.
- **Texas** – Not mentioned.
- **Florida** – Not mentioned specifically, but in the Background Investigation, Standards of and Attorney, Essential Eligibility Requirements *Rule 3-10.1, c-6* – one must comply with the requirements of applicable state, local, and federal laws, rules and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct (pg. 8).



UPL -

Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

Business and Professions Code section 6125 limits the practice of law to licensed attorneys in order to “protect local citizens ‘against the dangers of legal representation and advice given by persons not trained, examined and licensed for such work, whether they be laymen or lawyers from other jurisdictions.’” (*Birbrower v. Superior Court* (1998) 17 Cal.4th 119, 132)

Allegations of the unauthorized practice of law (“UPL”) will be considered during the investigation of an individual’s moral character. UPL may include, but is not limited to, appearing in court or other tribunals, providing legal advice, preparing legal instruments and contracts, or holding oneself out as practicing or entitled to practice law without the benefit of licensure or another status that confers the ability to practice law in a limited capacity in California, such as Registered In-House Counsel, or in other jurisdictions.



California Current Language – Abuse of the Legal Process

- Moral Character Statement
 - The fact that an applicant has availed himself or herself of rights under the federal bankruptcy laws does not reflect on moral character. However . . .if bankruptcy was resorted to in an effort to defraud creditors, moral character issues may arise.



Other Jurisdictions – Abuse of the Legal Process

- **Arizona** – Determination of Character and Fitness Burden of Proof Relevant Factors and Evaluation (pg. 5), 3, *Other Relevant Conduct*, F – Abuse of Legal Process – (d) Further Investigation (pg. 7) 1-4A-D, an informal conference may ensue.
- **Colorado** – Relevant Conduct which shall be treated as cause for scrutiny – filing of vexatious or frivolous lawsuits or the raising of vexatious or frivolous defenses. Evidence of Rehabilitation (pg. 3) *Rule 208.1 (8)* (pg. 4(b)), strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable. However, (a-k) may apply.
- **Massachusetts** – (pg. 2) Relevant Conduct Standard used as guidance rather than a finite List – Revelations of such will be treated as cause for further inquiry before the Committee. (pg. 3) includes abuse of legal process.



Other Jurisdictions – Abuse of the Legal Process

- **Ohio** – Factors Considered in Making Character and Fitness Determinations (pg. 3), 10) Abuse of Legal Process – no specifics given.
- **Texas** – Dispositions based on Particular Findings (pg. 3) (F), Examples include litigation of frivolous civil actions or imposition of sanctions by any court due to abusive litigation conduct...may result in a conditional admission or denial. Evidence of Rehabilitation (pg. 6)(A-E) may apply.
- **Florida** – *Rule 3* (pg. 7) Background investigation, Standards, and Essential Eligibility requirements – must comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of the court or tribunal; and the Rules of Professional Conduct. *Rule 3-11* Disqualifying Conduct f, (pg. 8) *Rule 3-12* Determination of Present Character (b-j) and *Rule 3-13* – Elements of Rehabilitation (a –strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable. (b-g) may also apply per circumstance.)



Abuse of the Legal Process – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

Examples of abuse of the legal process include the filing of frivolous claims or the raising of frivolous defenses for the purpose of delaying proceedings, or bringing actions for the purpose of harassing litigants. Evidence that an applicant has abused the legal process may include the imposition of judicial sanctions or judicial designation as a vexatious litigant.



California Current Language – Violation of Court Orders/Respect for the Law

- Moral Character Statement
 - In making its determination whether an applicant presently possesses the good moral character necessary for admission to practice law in California, the committee considers ... respect for the law ...
- Factors Regarding Moral Character Determination
 - The Committee of Bar Examiners of the State Bar of California ... evaluates whether an applicant possesses ... respect for and obedience to the law ... and for the judicial process



Other Jurisdictions – Violation of Court Orders/Respect for the Law

- Arizona
 - Violation of an order of court (pg. 15)
- Colorado
 - Violation of a court order, including a child support order (pg. 1)
- Florida
 - Violation of an order of a court (pg. 10)



Other Jurisdictions – Violation of Court Orders/Respect for the Law

- Massachusetts
 - The ability to comply with the requirements of ... any applicable order of a court or tribunal
 - The ability to act diligently and reliably in fulfilling one's obligations to ... courts (pg. 2)
- Ohio
 - Violation of an order of a court (pg. 3)
- Texas
 - Lack of Diligence ... violation of any court order (pg. 3)
 - Lack of Respect for the Law ... failure to appear in a court when required (pg. 3)



Violation of Court Orders/Respect for the Law – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

The California Supreme Court has held, “Disobedience of a court order, whether as a legal representative or as a party, demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney’s fitness to practice law and serve as an officer of the court.” (*In re Kelley* (1990) 52 Cal.3d 487, 495.)

The practice of law requires diligence, respect for the law, and compliance with court orders. Violations of court orders, including failures to appear, failure to satisfy a judgment, or failure to adhere to a restraining order, and other conduct evidencing a lack of respect for the law are relevant to any moral character inquiry.



California Current Language – Professional Obligations/Discipline

- Moral Character Statement
 - In making its determination whether an applicant presently possesses the good moral character necessary for admission to practice law in California, the committee considers ... records of fidelity and trustworthiness in other professions for which he or she is licensed
- Factors Regarding Moral Character Determination
 - An act of misconduct may include, but is not limited to ... professional discipline and license revocation



Other Jurisdiction – Professional Obligations/Discipline

- Arizona
 - Neglect or disregard of ethical or professional obligations (pg. 15)
- Colorado
 - Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction (pg. 1)
- Florida
 - Neglect of professional obligations (pg. 10)



Other Jurisdiction – Professional Obligations/Discipline

- Massachusetts
 - The ability to comply with the requirements of Rules of Professional Conduct ... (pg. 2)
 - The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others (pg. 2)
- Ohio
 - Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction (pg. 3)
- Texas
 - Lack of Diligence ... neglect of obligations in another licensed profession or occupation (pg. 3)
 - Finding of Neglect or Violation of Other Professional Duties... (pg. 4)



Professional Obligations/Discipline – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

An applicant's adherence to, or violation of, ethical rules governing a profession of which the applicant was previously a member is relevant to a moral character determination. (See, e.g., *In re Glass* (2014) 58 Cal.4th 500, 522.)

In making its determination whether an applicant presently possesses the good moral character necessary for admission to practice law, an applicant's adherence to, or violation or neglect of professional obligations are relevant to a moral character determination.



California Current Language – Fraud

- Moral Character Statement
 - Not Mentioned
- Factors Regarding Moral Character Determination
 - An act of misconduct may include, but is not limited to ... behavior that results in a sustained accusation of fraud ... (pg. 1)



Other Jurisdictions – Fraud

- Arizona
 - Acts involving dishonesty, fraud, deceit or misrepresentation (pg. 15)
- Colorado
 - Acts involving dishonesty, fraud, deceit, or misrepresentation (pg. 1)
- Florida
 - Avoid acts that are illegal, dishonest, fraudulent, or deceitful (pg. 9)
 - Acts involving dishonesty, fraud, deceit, or misrepresentation (pg. 9)



Other Jurisdictions – Fraud

- Massachusetts
 - Acts involving dishonesty, fraud, deceit or misrepresentation (pg. 3)
 - The materiality of any omissions or misrepresentations (pg. 3)
- Ohio
 - Acts involving dishonesty, fraud, deceit, or misrepresentation (pg. 3)
 - Materiality of any omissions or misrepresentations (pg. 3)
- Texas
 - False Statements, Fraud, and Misrepresentation ... (pg. 4)



Fraud –

Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

“Although the problem of defining moral turpitude is not without difficulty . . . it is settled that whatever else it may mean, it includes fraud.” (*In re Hallinan* (1954) 43 Cal.2d 243, 247.)

Acts or allegations of deceit or fraud will be evaluated when determining if an applicant is of good moral character. Issues relating to fraud may include filing false legal claims, making false statements on an employment or school application, making false statements on a credit application, or a conviction for a crime in which an intent to defraud is an element.



California Current Language – Candor/Honesty

- Moral Character Statement
 - In making its determination whether an applicant presently possesses the good moral character necessary for admission to practice law in California, the committee considers evidence of candor ... (pg. 1)
 - Lack of candor in and of itself as it relates to moral character may be enough to deny certification on moral character grounds (pg. 3)
 - In making its determination whether an applicant presently possesses the good moral character necessary for admission to practice law in California, the committee considers evidence of ... honesty (pg. 1)
- Factors Regarding Moral Character Determination
 - ... evaluates whether an applicant possesses the qualities of honesty, fairness, candor ... (pg. 1)



Other Jurisdictions – Candor/Honesty

- Arizona
 - Trustworthiness (pg. 14)
 - Honesty (pg. 14)
 - Making a false statement, including omissions (pg. 15)
- Colorado
 - Making false statements, including material omissions, on law school admission applications (pg. 1)
- Florida
 - Communicate candidly and civilly with clients, attorneys, courts, and others (pg. 9)
 - Making or procuring any false or misleading statement or omission of relevant information ... (pg. 9)



Other Jurisdictions – Candor/Honesty

- Massachusetts
 - Making of false statements, including omissions (pg. 3)
 - The candidate's candor in the admissions process (pg. 3)
- Ohio
 - False statements, including omissions (pg. 3)
 - Candor of the applicant in the admissions process (pg. 3)
- Texas
 - Lack of Candor ... (pg. 4)
 - Failure to Maintain Personal Integrity ... (pg. 4)



Candor/Honesty – Applicable Law/Case Law:

The California Supreme Court has noted that, “Candor and frankness should be the primary concern of a lawyer.” (*The State Bar v. Langert* (1954) 43 Cal.2d 636, 642.)

“Honesty is absolutely fundamental to the practice of law, without it ... the profession is worse than valueless in the place it holds in the administration of justice.” (*In re Glass*; see *Berstein v. CBE* (1968) 69 Cal.2d 90)

With respect to material omissions in moral character applications the California Supreme Ct. has stated: “Whether it is caused by intentional concealment, reckless disregard for the truth or an unreasonable refusal to perceive the need for disclosure, such an omission is itself strong evidence that the applicant lacks the ‘integrity’ and/or ‘intellectual discernment’ required to be an attorney.” (*In re Gossage* (2000) 23 Cal.4th 1080, 1102; see *Spears v. State Bar* (1930) 211 Cal. 183, 187.)



Candor/Honesty – Proposed Language for the Statement and Guidelines:

An applicant's candor and honesty are primary considerations in determining whether an applicant is of good moral character. Issues relating to an applicant's candor and honesty may arise, for example, from a material omission or misrepresentation in an applicant's law school application or moral character application, or during the moral character investigation of an applicant's background.



Sources From Other Jurisdictions

- Arizona, *Rule 36. Procedure Before the Committee on Character and Fitness*
- Colorado, *Character and Fitness Standards and Guidelines*
- Florida, *Rules of the Supreme Court Relating to Admissions to the Bar*
- Massachusetts, *Rules of the Board of Bar Examiners*
- Ohio, *Summary of Character and Fitness Process in Ohio*
- Texas, *Board of Law Examiners Guidelines for Determining Character and Fitness and Overseeing Probationary License Holders*