



The State Bar *of California*

Moral Character Working Group Session Three

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Issues Communicated by Law Schools Regarding the Moral Character Determination Process

- The moral character determination process is not transparent
- Law school staff feel unable to answer questions about the moral character process
- Law schools are unsure what to ask about criminal history in their applications



Remedial Steps to Aid the Law Schools

- The Moral Character Working will develop:
 - Revised Statement and Guidelines
 - Mission Statement
 - Decisional Matrix
 - Possible Best Practices Guide
- The end products will:
 - Increase transparency
 - Contain more detailed information
 - Provide guidance to applicants and law schools



Proposed Law School Best Practices/Talking Points

- Prior students submitting MC applications, law school staff should:
 - Review all materials related to moral character
 - Clarify any questions with staff
 - Inform students of the admissions requirements in California
 - Be a point-of-contact for students with questions related to moral character
 - Encourage students to review all materials related to moral character prior to submitting their application
 - Encourage students to apply early in their law school career
 - Encourage students to begin collecting information and documentation early



Proposed Law School Best Practices/Talking Points

- After students have submitted MC applications, law school staff should:
 - Communicate the State Bar's goal of advising if an application is filed or incomplete within 60 days of submission
 - Advise students that the initial processing time may vary based on the time of year as the volume of applications fluctuate
 - Provide further information on the timeline and the investigation process



Proposed Law School Best Practices/Talking Points

- If a student requests more information on the timeline or the investigation process, law school staff should:
 - Timeline –
 - Advise the student that they have 90 days to respond to a request for more information
 - Advise the student that they will receive notification of next steps at least every 120 days during the process
 - Investigation process –
 - Suggest that the student respond completely and to the best of their ability
 - Suggest that the student contact applicable organizations to obtain supplemental documents
 - Suggest the student request a letter from the organization if the documentation cannot be provided



Proposed Law School Best Practices/Talking Points

- If a student is invited to attend an informal conference, law school staff should:
 - Assure the applicant that attendance is not mandatory, but provides them with an opportunity to further discuss/clarify their background
 - Confirm that the student may obtain legal counsel, but it is not required
 - Advise that if obtained, legal counsel may observe the informal conference, but cannot participate



Proposed Law School Best Practices/Talking Points

- If a student discloses serious misconduct to the law school or misconduct occurs during law school matriculation, law school staff should:
 - Assure the student that no specific act precludes admission to practice law in California
 - Stress the importance of candor, honesty, and rehabilitation
 - Explain the standard of rehabilitation and suggest next steps
 - Advise that applicants who are denied a positive moral character determination may seek avenues of appeal and are allowed to reapply after a specified period of time



Proposed Law School Best Practices/Talking Points

- If an applicant has general questions that cannot be answered by law school staff:
 - Direct the applicant to submit an inquiry in the Admissions Information Management System
 - Direct the applicant to call the State Bar and ask to speak with the Moral Character Person of the Day



Statement and Guidelines Template - Timeline

- Topic discussion – Began August 2019
- Discuss template – October 2019
- Final comments submitted – February 2020
- Presented to the Committee of Bar Examiners – April 2020
- Presented to the Board of Trustees for approval – May 2020



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 – Honor Code/Student Conduct Code Violations

- Moral Character Statement
 - Not mentioned.
- Factors Regarding Moral Character Determination
 - An act of misconduct may include, but is not limited to ... the violation of a school's honor code that involves moral turpitude or results in expulsion ...



Other Jurisdictions – Honor Code/Student Conduct Code Violations

- Arizona
 - Academic misconduct (pg. 15/3B).
- Colorado
 - Academic misconduct (pg. 1/b).
- Florida
 - Academic misconduct (pg. 9/3-11 b).



Other Jurisdictions – Honor Code/Student Conduct Code Violations

- Massachusetts
 - Academic misconduct (pg. 3/V.1.1).
- Ohio
 - Violation of the honor code of the applicant's law school or any other academic misconduct (pg. 3/4).
- Texas
 - Failure to Maintain Personal Integrity ... violation of the honor code or other academic or behavioral misconduct as determined by the Applicant's education institution (pg. 4/VII.G).



Honor Code/Student Conduct Code Violations – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

Law school students are expected to have a “particular commitment to honesty.” (*In re Glass* (2014) 58 Cal.4th 500, 525.)

The Supreme Court found that an applicant’s misconduct during law school was “particularly ominous,” because he “presumably understood that such conduct was offensive and could jeopardize his ability to practice law.” (*In re Gossage* (2000) 23, Cal.4th 1080, 1101.)

Disciplinary action resulting from a violation of university or law school rules of conduct that does not involve moral turpitude or result in criminal prosecution will not be used as the sole basis for denying an applicant admission to practice law. (Bus. & Prof. Code, section 6060.1.) However, a violation of a school’s honor code or student conduct code will be considered when determining if an applicant is of good moral character. Such violation, particularly one that involves moral turpitude, may reflect negatively on an applicant’s moral character. This is especially true of a law student, who is expected to have a particular commitment to honesty and is presumed to understand that misconduct could jeopardize the student’s ability to practice law.



California Current Language – Prior Admission/License Denial

- Moral Character Statement
 - Not mentioned.
- Factors Regarding Moral Character Determination
 - Not mentioned.



Other Jurisdictions – Prior Admission/License Denial

- Arizona
 - Denial of admission to the practice of law in another jurisdiction on character and fitness grounds (pg. 16/3L).
- Colorado
 - Denial of admission to the bar in another jurisdiction on character and fitness grounds (pg. 1/I).
- Florida
 - Denial of admission to the bar in another jurisdiction on character and fitness grounds (pg. 10/3-11 I).



Other Jurisdictions – Prior Admission/License Denial

- Massachusetts
 - Denial of admission to the bar in another jurisdiction on character and fitness grounds (pg. 3/V.1.1).
- Ohio
 - Denial of admission to the bar in another jurisdiction on character and fitness grounds (pg. 3/14).
- Texas
 - Finding of Neglect or Violation of Other Professional Duties ... denial of admission to the Bar in another jurisdiction based on a finding of misconduct or lack of good character or fitness (pg. 4/VII.H).



Prior Admission/License Denial – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

“Cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds.” (*In re Gossage* (2000) 23, Cal.4th 1080, 1096.)

An applicant who has reapplied following a negative moral character determination, or who has received a negative moral character determination in another state, must demonstrate sufficient rehabilitation [to be discussed/clarified by MCWG] by showing a substantial period of exemplary conduct [to be discussed/clarified by MCWG] following the misconduct that was the basis for the previous negative moral character determination.



California Current Language – Financial Responsibility/Past Due Debt/Bankruptcy

- 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 ... fiscal responsibility ... if indebtedness is being handled irresponsibly or if bankruptcy was resorted to in an effort to defraud creditors, moral character issues may arise.
- Factors Regarding Moral Character Determination
 - The Committee of Bar Examiners of the State Bar of California ... evaluates whether an applicant possesses ... observance of fiduciary responsibility ...



Other Jurisdictions – Financial Responsibility/Past Due Debt/Bankruptcy

- Arizona
 - Neglect of financial responsibilities (pg. 15/3G).
 - Guidelines on Neglect of Financial Responsibilities.
- Colorado
 - Neglect of financial responsibilities (pg. 1/h).
 - ... Attorney Admissions is interested in whether applicants have dealt honestly and responsibly with their creditors, and whether they are doing so at the time of application ... (pg. 2 – 3).
- Florida
 - Conduct financial dealings in a responsible, honest, and trustworthy manner (pg. 9/3-10.1.c. 3).
 - Financial irresponsibility (pg. 10/3.11.g).



Other Jurisdictions – Financial Responsibility/Past Due Debt/Bankruptcy

- Massachusetts
 - The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others (pg. 2/V.1).
 - Neglect of financial responsibilities (pg. 3/V.1.1).
- Ohio
 - Neglect of financial responsibilities (pg. 3/11).
- Texas
 - Lack of Diligence ... failure to timely file tax returns or pay taxes ... and an uncured default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation or other private or publicly funded student loans (pg. 3/VII.A).



Financial Responsibility/Past Due Debt/Bankruptcy— Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

The mishandling of client funds “constitutes a serious ethical and moral violation, breaches the high duty of loyalty that attorneys owe their clients, and puts in peril the public confidence in the practice of law. . . . absent compelling mitigating circumstances, misappropriation of client trust funds by an attorney warrants disbarment.” (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 565.)

Indebtedness alone is not a basis for a negative moral character determination, nor is the fact that an applicant has discharged debts in bankruptcy. Still, moral character issues may arise if indebtedness is handled irresponsibly or if bankruptcy is used to defraud creditors. Additionally, persons convicted of crimes involving a breach of fiduciary duty are presumed not to be of good moral character in the absence of a showing of overwhelming reform and rehabilitation.



California Current Language – Cooperation with Moral Character Process

- Moral Character Statement
 - Not mentioned.
- Factors Regarding Moral Character Determination
 - Not mentioned.



Other Jurisdictions – Cooperation with Moral Character Process

- Arizona
 - Not mentioned.
- Colorado
 - Not mentioned.
- Florida
 - Not mentioned.



Other Jurisdictions – Cooperation with MC Process

- Massachusetts
 - A candidate's failure or refusal to supply information deemed relevant by the Board of Bar Examiners or otherwise to cooperate with the Board of Bar Examiners may be grounds for denial of a recommendation for admission ... (pg. 3/V.1.2).
- Ohio
 - An applicant's failure to provide requested information ... or otherwise to cooperate ... may be grounds for a recommendation of disapproval (pg. 4).
- Texas
 - Candor and cooperation of the Applicant throughout the application process (pg. 5/VIII.I).



Cooperation with MC Process – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

“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 [of criminal history information] 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.)

“This duty to make a full disclosure is an absolute duty and a justification for a failure to perform it is not to be found in the excuse that an applicant has been advised by some person, no matter how high in official position that person may stand, that such disclosure is not necessary.” (*Spears v. State Bar of California* (1930) 211 Cal. 183, 188.) (discussing omission of criminal history information from bar application)

An applicant has the burden of establishing that he or she is of good moral character (Rule 4.40 of the *Admissions Rules*). An applicant’s candor, honesty, and cooperation with the State Bar during the application process are essential for a proper assessment of moral character. Material omissions from the moral character application may provide grounds for a negative moral character determination, whether the omissions were intentional, resulted from a reckless disregard for the truth, or were predicated on advice of a third party, such as an attorney.



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*



Decisional Matrix Template – Timeline

- Topic discussion – Began August 2019
- Discuss template and seek volunteers – October 2019
- Final comments submitted – February 2020
- Presented to the Committee of Bar Examiners – April 2020
- Presented to the Board of Trustees for approval – May 2020



Next Steps

- Future Meetings:
 - #4 November 19, 2019 – LA
 - #5 December 16, 2019 – SF
 - Final presentation and discussion of topics/areas of misconduct
 - #6 January 2020 – Date and location TBD
 - #7 February 2020 – Date and location TBD
 - If needed to finalize work products



Next Steps

- Target Dates:
 - Target Work Product Finalization Date – February 2020
 - Target CBE Meeting – April 2020
 - Target BOT Meeting – May 2020
 - Target implementation by staff –
 - June 2020 – Public information – website, application, forms
 - August 2020 – Internal documents