



The State Bar *of California*

Moral Character Working Group Session Four

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 – Criminal History

- Moral Character Statement
 - It is the policy of the State Bar of California that persons who have been convicted of violent felonies ... are presumed not to be of good moral character in the absence of a pardon or a showing of overwhelming reform and rehabilitation ... The committee believes that past criminal activity not including violent felonies ... is not necessarily disqualifying ...
- Factors Regarding Moral Character Determination
 - An act of misconduct may include, but is not limited to behavior that results in a criminal conviction ...



Other Jurisdictions – Criminal History

- Arizona
 - Conviction of a Crime (pg. 15/2A & B).
 - Unlawful conduct not resulting in conviction of a crime ... (pg. 15/3A).
 - Commission of a violent crime (pg. 17/(d)4A).
- Colorado
 - Unlawful conduct (pg. 1/a).
 - Attorney Admissions may inquire into arrests even if no conviction resulted ... (pg. 2).
- Florida
 - Unlawful conduct (pg. 9/3-11 a).
- Massachusetts
 - Unlawful conduct (pg. 3/V.1.1).



Other Jurisdictions – Criminal History

- Ohio
 - Commission or conviction of a crime (pg. 3/1).
 - Special provisions for applicants with felony records ... a mandatory review by the Board ... Applicants who have been convicted of the most serious kinds of felonies ... must undergo yet another review by ... the Supreme Court itself (pg. 4).
 - The initial reasons that an Admissions Committee disapproves, or conducts an additional character and fitness investigation of ... a criminal record (pg. 4)
- Texas
 - Lack of Respect for the Law – Examples include commission or conviction of a crime (pg. 3/VII.B).
 - Failure to Maintain Personal Integrity – Examples include commission or conviction of a crime (pg.4/VII.G).



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

“Criminal acts of dishonesty committed for financial gain necessarily involve moral turpitude.” (In re Gossage (2000) 23 Cal.4th 1080, 1098.)

When an applicant has engaged in criminal conduct that does not involve moral turpitude, “investigation into the circumstances surrounding the commission of the act must reveal some independent act beyond the bare fact of a criminal conviction to show that the act demonstrates moral unfitness and justifies exclusion or other disciplinary action by the bar.” (Hallinan v. CBE (1966) 65 Cal.2d 447, 459.)



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

“To the extent that acts of civil disobedience involve violations of the law it is altogether necessary and proper that the violators be punished. But criminal prosecution, not exclusion from the bar, is the appropriate means of punishing such offenders.” (*Hallinan v. CBE* (1966) 65 Cal.2d 447, 462.)



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

Criminal acts involving moral turpitude, such as acts of dishonesty committed for financial gain, may provide a basis for a negative moral character determination absent a showing of rehabilitation. Criminal acts not involving moral turpitude, such as acts of civil disobedience, do not provide a basis for a negative moral character determination absent evidence beyond the act's criminal nature that shows it demonstrates a lack of good moral character.



California Current Language – Drug/Alcohol Abuse

- Moral Character Statement
 - Drug and alcohol abuse and dependencies ... are of particular concern to the Committee ... A determination ... will not be based solely on whether the applicant is afflicted with substance dependency ...
- Factors Regarding Moral Character Determination
 - Abstinence from the use of controlled substances or alcohol for not less than two years if the misconduct was attributable in part to the use of a controlled substance or alcohol ...



Other Jurisdictions – Drug/Alcohol Abuse

- Arizona
 - Guidelines on Substance Abuse.
 - Evidence of conduct indicating substance abuse impairing the ability of an applicant to perform the functions of an attorney (pg. 15/3K).
- Colorado
 - Conduct evidencing current drug or alcohol dependence or abuse that may interfere with the ability to practice law (pg. 1/k).
 - Evidence of impairment due to drug or alcohol dependence or abuse is a factor that must be considered ... in determining an applicant's fitness to practice law (pg. 3).
- Florida
 - Evidence of drug or alcohol dependency (pg. 10/3-11 k).



Other Jurisdictions – Drug/Alcohol Abuse

- Massachusetts
 - Evidence of drug or alcohol dependency (pg. 3/V.1.1).
- Ohio
 - Evidence of an existing and untreated chemical (drug or alcohol) dependency (pg. 3/2).
 - The initial reasons that an Admissions Committee disapproves, or conducts an additional character and fitness investigation of ... an untreated alcohol problem (pg. 4).
- Texas
 - Chemical dependency (pg. 2 - 3/V.A-D).



Drug/Alcohol Abuse – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

An applicant who admits to having habitually used an illicit drug is not required to admit addiction or seek treatment in order to show rehabilitation; however, the applicant “voluntarily enrolling in some form of continuing counseling or substance abuse program may serve as an indicium of rehabilitation.” (*Seide v. CBE* (1989) 49 Cal.3d 933, 941.)

Use of alcohol and illegal drugs alone does not provide a basis for a negative moral character determination, but may be relevant when the substance use is related to or involved with acts of misconduct. Additionally, an applicant who has engaged in acts of moral turpitude related to illegal drug use is not *required* to obtain treatment or admit addiction in order to show rehabilitation; however, voluntary enrollment in some form of substance abuse treatment may serve as an indicium of rehabilitation.



California Current Language – Compliance with Probation

- Moral Character Statement
 - Whether all terms of the sentence, including parole/probation, have been served ...
- Factors Regarding Moral Character Determination
 - Successful completion or early discharge from probation or parole



Other Jurisdictions – Compliance with Probation

- Arizona
 - Not mentioned.
- Colorado
 - Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable (pg. 4).
- Florida
 - Not mentioned.
- Massachusetts
 - Not mentioned.
- Ohio
 - Not mentioned.
- Texas
 - Not mentioned.



Compliance with Probation – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

“[E]xemplary conduct is demanded of a probationer, whose activities are supervised and overseen by probation officers.” (Seide v. CBE (1989) 49 Cal.3d 933, 941.)

Factors in aggravation with respect to an applicant’s rehabilitation from criminal conduct may include the applicant’s failure to refrain from committing additional misconduct that results in the revocation of probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1093.)

Compliance with conditions of probation is required by a probationer and accordingly is not sufficient to demonstrate rehabilitation from the acts that resulted in the probation term. A failure to comply with conditions of probation is considered an aggravating factor with respect to rehabilitation.



California Current Language – Lack of Respect for Others

- 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 ... respect for ... the rights of others ...
- Factors Regarding Moral Character Determination
 - The Committee of Bar Examiners ... evaluates whether an applicant possesses ... respect for the rights of others ...



Other Jurisdictions – Lack of Respect for Others

- Arizona
 - Not mentioned.
- Colorado
 - Acts that demonstrate disregard for the rights or welfare of others (pg. 1/e).
- Florida
 - Avoid acts that exhibit disregard for the rights, safety, or welfare of others (pg. 9/3-10.1.4).



Other Jurisdictions – Lack of Respect for Others

- Massachusetts
 - The ability to avoid acts which exhibit disregard for the rights or welfare of others (pg. 2/V.1).
- Ohio
 - Not mentioned.
- Texas
 - Lack of Respect for Rights of Others – Examples include acts constituting sexual harassment, dangerous behavior, unlawful discrimination, or bullying ... may result in conditional admission or denial (pg. 3 - 4/VIII.C).



Lack of Respect for Others – Applicable Law/Case Law and Proposed Language for the Statement and Guidelines:

“‘Good moral character’ includes but is not limited to qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.” (Rules of the State Bar of Cal., rule 4.40(B).)

The Rules of the State Bar of California define “good moral character” as including respect for the rights of others, which in turn may include, for example, satisfaction of an adverse civil judgment or payment of restitution to a victim in a criminal matter.



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*



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