



The State Bar of California

OPEN SESSION

AGENDA ITEM O-500

DECEMBER 2022

COMMITTEE OF BAR EXAMINERS

DATE: December 2, 2022

TO: Members, Committee of Bar Examiners

FROM: Tara Clark, Program Manager, Moral Character Determinations
David Lane, Senior Attorney, Moral Character Determinations
Dolores Heisinger, Chair, Moral Character Subcommittee

SUBJECT: Approval of Revised Procedures Governing Informal Conferences and
Procedures Regarding Requests for Administrative Review

EXECUTIVE SUMMARY

This agenda item is presented to the Committee of Bar Examiners (Committee) as a follow-up to its consideration of the revised Procedures Governing Informal Conferences and the Procedures Regarding Requests for Administrative Review at the October 2022 meeting. The recommendations put forth below require the Committee's approval.

BACKGROUND

At its October 2022 meeting, the Committee considered the revised procedures in conjunction with the amendments to Title 4 of the Rules of the State Bar (Admissions Rules) relevant to Moral Character and the revised application. The Committee decided to revisit the procedures at the December meeting for further consideration. The agenda item from the October 2022 meeting is available here: [Moral Character CBE agenda item](#). The information previously provided for both procedures is reiterated below for the Committee's convenience.

After the October meeting, staff worked with the Chair of the Moral Character Subcommittee to address the Committee's concerns regarding a proposed revision to the Procedures Governing Informal Conferences.

DISCUSSION

Generally, the proposed changes to the procedures are intended to eliminate outdated or duplicative information and ensure clarity. The most substantive proposed revisions are discussed below.

PROCEDURES GOVERNING INFORMAL CONFERENCES

Paragraph “E” states that “the informal conference is intended to be informative and neither the applicant nor staff will be bound by strict rules of evidence.” Staff proposes the elimination of E as the information is unnecessary. The purpose of the informal conference is stated in the definition at the beginning of the procedures, and informal proceedings, by definition, are not governed by the rules and procedures that apply in formal hearings.

Paragraph “G” outlines how an applicant may attend an informal conference. Prior to the COVID-19 pandemic, all conferences were held in person unless the applicant demonstrated good cause to participate remotely. Since adopting video conferencing software in approximately March 2020, the State Bar has held informal conferences remotely. The Committee expressed reservations regarding the previously suggested changes that only allowed applicants to appear for an in-person conference for good cause. Therefore, the proposed revisions were amended to allow the applicant to request an in-person conference at a date scheduled by the State Bar with at least one member of the panel.

The following information supports the change to paragraph “G” in the Procedures Governing Informal Conferences.

Financial considerations for the applicant

In-person conferences require applicants to pay to travel to one of the State Bar offices. An applicant with counsel may also be required to pay their attorney’s expenses. Expenses related to travel from within California can be significant for some applicants, and the cost is more for applicants who reside out of state.

Remote conferences promote equity and accessibility by removing the financial burden associated with an applicant’s travel to an in-person conference.

Fiscal considerations for the State Bar

The State Bar pays for expenses related to staff’s travel to informal conferences, including air travel, lodging, and meals. The Office of Admissions has a budget deficit for the upcoming fiscal year that requires staff to limit travel expenses.

Informality of the Conference

The purpose of the informal conference, as stated in the procedures, is to “discuss issues in the applicant’s background that call into question whether the applicant is of the good moral character required for admission to practice law in California.” Informal proceedings, by definition, are not governed by the rules and procedures that apply in formal hearings. To reflect this informality, the Committee approved the motion¹ related to revisions to the Admissions Rules pertinent to moral character at the October 2022 meeting.

Informal conferences are intended to allow comfortable and open discussions with the applicant. Remote conferences prioritize the comfort of the applicant by allowing them to attend the meeting from a place of their choosing, including their own home.

Scheduling

When the State Bar conducted informal conferences in person, conferences were scheduled twice a month – once in San Francisco and once in Los Angeles.

The ability to conduct conferences remotely allows them to be held up to four times per month, or twice as frequently as in-person conferences. This allows the State Bar to better serve applicants and the public by decreasing the time required to make determinations and avoiding delays in qualified applicants obtaining law licenses.

Other uses of remote appearances and meetings at the State Bar

As a result of the COVID-19 pandemic, the State Bar quickly shifted to utilize innovative technology to continue its core work. Remote meetings became an essential tool for the Moral Character unit and the State Bar overall. The State Bar has evaluated the usefulness of the tools utilized during the pandemic, such as remote meetings, with the return to normalcy. Other units in the State Bar continue to see the value in remote meetings and have chosen to continue using them.

- The [Commission on Judicial Nominees Evaluation](#) (JNE), which evaluates all candidates who are under consideration for a judicial appointment by the Governor, is continuing to utilize remote interviews for judicial candidates.
- The Office of Chief Trial Counsel is continuing to utilize the remote format for [Ethics School and Client Trust Account School](#). The courses are held for attorneys who have been disciplined, applicants in abeyance, and attorneys or applicants who wish to learn.
- The [Lawyer Assistance Program](#) is also continuing to use remote meetings for intake assessments and group sessions.

Paragraph “J” allows an applicant to attend an informal conference with or without counsel. If

¹ At its October 14, 2022 meeting, the Committee recommended to the Board of Trustees to circulate the proposed rules set forth in Attachments A and C for a 45-day public comment period.

the applicant has counsel, counsel is not allowed to participate in the conference but may confer with the applicant off the record. It also states that “only the applicant may provide oral or written statements and may present documentary evidence” in support of their application. Staff proposes amending this language to state that the applicant “will have the opportunity to present information for consideration,” as it more accurately reflects the process.

Paragraph “N” states that “notices of denials of good moral character must be sent to applicants by certified mail with a proof of service.” The proposed changes allow staff to send the notice via email and eliminate the need to mail a hard copy notice via certified mail.

PROCEDURES REGARDING REQUESTS FOR ADMINISTRATIVE REVIEW BY THE COMMITTEE OF BAR EXAMINERS OF ADVERSE MORAL CHARACTER DETERMINATIONS

Paragraph “E” states, in part, that “the panel will consider the entirety of the record including the informal conference recording, if any, and any supplemental material provided by the applicant at the time of the request for administrative review.” Staff proposes that this information be moved to paragraph “F,” so that paragraph “F” states when the panel will review the record and what it will consider.

Paragraph “I” states that “a notice of denial of a positive moral character determination will be sent to the applicant by certified mail with [a] proof of service.” The proposed changes allow staff to send the notice via email and eliminate the need to mail a hard copy notice via certified mail.

Paragraph “K” describes the process by which an applicant denied a positive moral character determination by the Committee may file a request for hearing with the State Bar Court and the applicable rules. Staff proposes eliminating K as it goes beyond the scope of procedures regarding administrative review by the Committee and is duplicative of the Rules of Procedure of the State Bar, which govern requests for hearing with the State Bar Court.

FISCAL/PERSONNEL IMPACT

If an applicant requests an in-person informal conference, staff travel may cost upwards of \$450 per person, based on recent travel expenses, for each day of informal conferences held in Los Angeles.

RECOMMENDATIONS

It is recommended that the Committee of Bar Examiners approve the proposed revisions to the Procedures Governing Informal Conferences and the Procedures Regarding Requests for Administrative Review.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with the staff recommendation, the following motion should be made:

MOVE, that the Committee of Bar Examiners approve the proposed revisions to the Procedures Governing Informal Conferences and the Procedures Regarding Requests for Administrative Review.

ATTACHMENTS LIST

- A. Proposed Revisions to the Procedures Governing Informal Conferences (Redline)
- B. Proposed Revisions to the Procedures Regarding Requests for Administrative Review (Redline)

PROCEDURES GOVERNING INFORMAL CONFERENCES

INTRODUCTION

Pursuant to the provisions of Title 4, Division 1, Chapter 4, of the *Rules of the State Bar of California (Admissions Rules)* ~~(as revised)~~[‡], an applicant who has submitted an Application for Determination of Moral Character may be invited to participate in an informal conference to discuss issues in the applicant's background that call into question whether the applicant is of the good moral character required for admission to practice law in California. (Calif. Bus. & Prof. Code, § 6060(b).) All informal conferences will be governed by the following procedures.

INFORMAL CONFERENCE PROCEDURES

- A. The decision to invite an applicant to participate in an informal conference will be made by the Program Manager, Moral Character Determinations ("Program Manager") or their designee.
- B. An informal conference will not be scheduled sooner than fourteen (14) days after the invitation to confer has been issued unless the applicant agrees in writing to an earlier conference. Within seven (7) days after the invitation to confer is sent, the applicant must ~~will be requested to~~ confirm in writing if that he or she they does or does not wish to accept the invitation to confer ~~within seven (7) days of the date the invitation is sent~~. The invitation will specify a date by which the invitation will be deemed to have been declined if no response has been received. If an applicant declines the invitation or fails to respond timely, in that event, the conference will be removed from the schedule and the time slot will no longer be available to the applicant.
- C. The applicant is not required to accept the invitation to confer, and neither staff nor the Committee will draw any inference from the applicant's decision not to ~~not~~ confer.
- D. The primary issues to be discussed during the informal conference will be set forth in the invitation to confer, but the discussion may extend to whether, generally, the applicant is of good moral character as required by Section 6060 of the California Business and Professions Code and Title 4, Division 1, Chapter 4 of the *Admissions Rules* ~~that may arise during the conference~~.
- ~~E. The informal conference is intended to be informative and neither the applicant nor staff will be bound by strict rules of evidence.~~

[‡] At its regularly scheduled meeting held in May 2019, the Board of Trustees, following a period of public comment, adopted revisions to the Admissions Rules which, among other things, delegated to staff the responsibility for conducting informal conferences and determining whether an applicant retains the requisite good moral character. These revisions further provide that an applicant may request that the Committee conduct an administrative review of an adverse determination made by staff.

~~F.E.~~ The conference will be audio or video recorded, and if the applicant makes a written request within ninety (90) days of the conference, ~~he or she~~they will be provided with a ~~duplicate~~ recording of the conference.

~~G.F.~~ Generally, ~~an~~ applicants invited to participate in an informal conference ~~will must~~ participate remotely~~attend in person. At the discretion of the Program Manager and for demonstrated good cause, a~~ An applicant may request to attend the conference in person at a date scheduled by the State Bar with at least one member of the panel~~participate remotely via Skype or by other compatible means.~~

~~H.G.~~ Staff members allowed to participate at the conference will include the Program Manager, counsel of the Moral Character Determinations unit, supervisors assigned to the Moral Character Determinations unit, and the investigator assigned to the specific matter to be discussed. Unit supervisors may act in the place of the Program Manager if ~~they are~~she is unavailable. Investigator participation will be limited to Investigator IIs and IIIs. Normally, two staff members will be named to lead the discussion. Generally, no more than four staff members will be designated to represent the State Bar at the conference. ~~Counsel of t~~he Moral Character Determinations unit's counsel will attend every informal conference. In the event that ~~counsel of~~ the Moral Character Determinations unit's counsel is unavailable to attend an informal conference which cannot be rescheduled, other ~~counsel in Admissions (otherwise referred to in this document as "State Bar counsel")~~ State Bar counsel may attend with the approval of the Director, of the Office of Admissions.

~~H.H.~~ Conferences are confidential and attendance will be limited to the applicant and ~~their his or her~~ counsel, staff members of the Moral Character Determinations unit designated to participate, State Bar counsel, and attorneys from the Office of Chief Trial Counsel. ~~State Bar counsel, attorneys from the Office of Chief Trial Counsel, and investigators not designated to participate, may attend and observe the informal conference.~~

~~H.I.~~ An applicant may attend without counsel. Counsel is permitted to attend as a matter of courtesy; however, counsel is not permitted to participate in the conference. An applicant may confer with ~~their his or her~~ counsel at any time, off the record. ~~Only t~~he applicant will have the opportunity to present information for consideration~~provide oral or written statements and may present documentary evidence in support of his or her application.~~ Where counsel fails to abide by this policy, staff may take steps including, but not limited to, requiring counsel to leave ~~the room~~ or ~~by~~ suspending the conference. No person other than applicant's counsel may be present with the applicant at an informal conference.

~~K.J.~~ Conferences will normally last be scheduled for approximately forty-five (45) minutes ~~but are not limited to that time frame.~~

~~L.K.~~ After having been advised of the scheduled date for ~~the his or her~~ informal conference,

an applicant may, upon written request, elect to postpone ~~his or her the~~ informal conference ~~date~~, which will be rescheduled at the earliest date possible as determined by the Program Manager or their designee. An applicant may request no more than two postponements.

~~M.L. A R~~requests for postponement of an informal conferences must be received at least five (5) days before the scheduled conference. ~~If a~~ request for postponement that is received fewer ~~less~~ than five (5) days before the scheduled conference ~~or if the applicant has postponed the conference two times, must be supported by a showing of good cause or~~ staff may make theirs moral character determination on the application, supporting materials provided, and information gathered during the investigative process, ~~unless the applicant demonstrates good cause for not having requested the postponement sooner.~~

~~N.M. A n~~Notices of denials of a positive good moral character determination will ~~must~~ be sent to the applicants by email ~~certified mail~~ with a proof of service.

Adopted by the Committee of Bar Examiners on December 2, 2022



The State Bar of California

OFFICE OF ADMISSIONS

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 submit a written request for administrative review by the Committee of Bar Examiners (Committee) within 30 days of the date of the notice of the State Bar's determination.
- B. The request for administrative review may be submitted via email, the Applicant Portal, or 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, (2) expressing the reasons why the determination by staff should be reviewed, and (3) describing the applicant's rehabilitative efforts. Supplemental materials may be included with the request.
- D. Upon receipt of the request for administrative review, the program manager 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, unless the applicant elected not to participate in an informal conference, to the chair of the Moral Character Subcommittee.
- E. The chair of the Moral Character Subcommittee will designate a panel of two members of the Moral Character Subcommittee, or of the Committee, if members of the Moral Character Subcommittee are unavailable, to conduct the administrative review. At least 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 provided by the applicant at the time of the request for administrative review.~~

- F. Within 60 days of receipt of the request for review, the panel will review ~~the record.~~ the entirety of the record including the informal conference recording and any supplemental material provided by the applicant at the time of the request for administrative review.
- G. The panel may request additional information from the applicant or the State Bar. Administrative reviews by the Committee are intended to be limited to a review of the record. In exceptional circumstances, however, the panel may ~~conduct~~ invite the applicant to attend another informal conference ~~with the applicant.~~ In such instances, oOne 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 Moral Character Determinations unit's program manager and counsel may attend any informal conference initiated by the panel. Informal conferences conducted ~~by staff or~~ by the Committee will be audio or video recorded.
- H. 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.
- I. Within 15 days of the Committee's determination, the ~~State Bar program manager~~ will notify the applicant of the Committee's determination. A notice of denial of a positive moral character determination will be sent to the applicant by email ~~certified mail~~ with a proof of service.
- J. These guidelines and procedures also apply to an applicant's request for review by the Committee of a State Bar staff decision ~~by State Bar staff~~ to deem an application abandoned ~~under an application~~ (Admissions Rule, ~~Rule 4.43~~), ~~and staff's decision 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 GF, above, as it refers to informal conferences.
- ~~K. 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.).~~

Approved by the Committee of Bar Examiners on December 2, 2022