



The State Bar of California

OPEN SESSION AGENDA ITEM 702 MAY 2023

DATE: May 18, 2023

TO: Members, Board of Trustees

FROM: Tara Clark, Assistant Director, Office of Admissions
Christina Doell, Program Manager, Office of Admissions

SUBJECT: Proposed Amendments to the Admissions Rules Regarding Examinations and Moral Character for Out-of-State Applicants (Rules 4.41 and 4.62): Request to Circulate for Public Comment

EXECUTIVE SUMMARY

The State Bar is undertaking a comprehensive review and evaluation of its Admission Rules and practices to ensure that the requirements and procedures are consistent with applicable law, clear to applicants, applied with consistency, and do not pose barriers that do not support furtherance of the State Bar's public protection mission. This agenda item proposes amendments to (1) align the rules to reflect the current practice of posting exam results electronically so applicants have immediate access to exam scores and answers after the release of exam results (see Attachment A); and (2) modify the prohibition on out-of-state attorneys filing moral character applications if they are not in good standing in another jurisdiction (see Attachment B).

The Committee of Bar Examiners (CBE) recommends that the Board circulate the proposed rule changes set forth for a 60-day comment period.

BACKGROUND

The State Bar is continuing its review and evaluation of the Admission Rules, practices, and procedures to ensure that the requirements, practices, and procedures are consistent with applicable law, clear to applicants, and applied with consistency. Staff is also examining each rule to identify and eliminate or modify any that do not further the State Bar's public protection

mission, but rather serve as unnecessary barriers that may stand in the way of applicants participating in specific Admissions programs.

At its March 24, 2023, and April 21, 2023, meetings, the CBE approved forwarding each of the proposals outlined below to the Board with the recommendation that the Board circulates them for public comment.

EXAMINATIONS

Business and Professions Code¹ section 6065 provides that within four months after the release of bar exam results, unsuccessful applicants shall have the “right to inspect their examination papers at the office of the examining committee. . .” The statute further provides that this right to inspection of the graded exam applies whether or not there are grading marks or other notations on the exam.

Admissions rule 4.62 requires that within 60 days of the release of exam results, exam answers to the written portion of the exam be returned to applicants who failed the California Bar Exam or passed or failed the First-Year Law Students’ Exam.

MORAL CHARACTER RULE 4.41

Applicants for admission to practice law in California must be of good moral character. (See section 6060(b)(1) and Rule 4.40.) All applicants for admission to the State Bar, as well as California’s special admissions programs, are required to submit an application that allows the State Bar to assess whether the applicant possesses the requisite moral character. Currently, out-of-state attorney applicants who have been and remain disbarred, are suspended for disciplinary reasons, or are otherwise not in good standing for disciplinary reasons, may not submit an Application for Determination of Moral Character pursuant to rule 4.41.

DISCUSSION

The rule changes proposed in this item will ensure clarity for applicants, update outdated rules, and eliminate barriers to participation that are not necessary for public protection. A more comprehensive explanation of the rule change can be found in agendas item for the [March 24, 2023](#), and [April 21, 2023](#), CBE meetings.

EXAMINATIONS

As noted above, whereas statute gives the right to “inspect” the results of “examination papers” at the State Bar offices within four months after the release of results, Rule 4.62 states that within 60 days of the release of examination results, examination answers to the written portions of the examination shall be returned to applicants who have failed the California Bar Examination or who have passed or failed the First-Year Law Students’ Examination. Current practice does not conform precisely to either the rule or statute. Prior to 2019, the Office of Admissions mailed exam result letters by USPS to applicants the week after the release of

¹ All further statutory references are to this code unless otherwise noted.

results, and approximately 30 days later, exam answers were mailed. Since the launch of the Admissions Information Management System (AIMS) in 2019, however, applicant answers are posted electronically to the Applicant Portal on the same day as the release of results. Applicants are able to view, print, and download their exam results immediately upon releasing results. Results are no longer mailed to applicant, nor are applicants required to come to the State Bar to view their answers. However, due to space constraints within AIMS, the answers generally remain accessible for 30 days. Answers that are not downloaded or printed by the applicant within 30 days are generally no longer accessible through the Applicant Portal. After 30 days, exam answers from the last administered exam are available upon submitting the Document Copy Request Form and payment of a corresponding fee. The legislative priorities item presented to the Board today recommends a statutory change to address the inconsistency between current practice and section 6065. This agenda item recommends revisions to rule 4.62 to mirror current practice. Since the applicants have the ability to print or download their answers, staff believe this provides significantly better access than envisioned in the rule or statutory language.

Additionally, staff experience suggests that some applicants believe that their review of their graded answer will lead them to see notes, comments, or other markings of the graders, giving them insight as to where their response was not considered strong. Staff believe this expectation may be the result of the statutory language permitting the “inspection of the exam papers,” and the suggestion that these could contain graders’ marks. However, no such markings are made on exam answers. Whether their answers are accessed via the Applicant Portal or in person, there are no markings for applicants to review. The legislative priorities item also recommends a change to this language to help eliminate confusion and set expectations for applicants.

MORAL CHARACTER RULE 4.41

The proposed change to rule 4.41 in this item will modify an outdated rule and eliminate a barrier that CBE does not believe is necessary for public protection.

Currently, rule 4.41 creates a situation where attorneys who are disbarred, suspended for disciplinary reasons, or otherwise not in good standing for disciplinary reasons may register with the Office of Admissions, sit for, and pass the California Bar Exam, but cannot be admitted to practice law since they are not entitled to have California consider whether they meet the state’s requirements for good moral character. However, as written, the rule is not a total bar to admission in California. The attorney applicant can address the underlying matter in the other state and take the necessary actions to be reinstated or placed in good standing, allowing submission of a moral character application in California.

In evaluating this rule, staff examined, among other things, the applicable rules from other jurisdictions. Rule 4.41 is largely consistent with how other states deal with attorney applicants who are not in good standing in their home jurisdiction. However, situations may arise in which out-of-state attorneys are disciplined for conduct that would not warrant discipline in California and with respect to which California should maintain the ability to make its own determination as to whether the conduct should bar licensure.

The rule currently provides complete deference to the jurisdiction that imposed discipline on an applicant without allowing the State Bar to consider issues related to the discipline that may be relevant to a moral character determination. In other words, an applicant could have been disciplined for conduct that would not provide a basis for discipline in California, and yet the rules would not allow that individual to submit a moral character application until such time as they “cure” the matter in their home jurisdiction. The CBE and staff propose amending rule 4.41 to allow an attorney who is currently not in good standing for disciplinary reasons in another jurisdiction to submit an Application for Determination of Moral Character, while providing a rebuttable presumption that the person does not possess the requisite moral character. The rebuttable presumption is appropriate for public protection as the Supreme Court has held that an applicant, “having been disbarred in another state, stands in essentially identical circumstances to a disbarred California attorney seeking reinstatement, and the evidence of rehabilitation should therefore be evaluated under the same rigorous standards,” and that a disbarred applicant, “is not entitled to the benefit of the doubt if ‘equally reasonable inferences may be drawn from a proven fact’ [citation].” (*In re Menna* (1995) 11 Cal.4th 975, 986.) The rule revision will afford these attorneys the opportunity to submit an Application for Determination of Moral Character and rebut the presumption that they do not possess the requisite good moral character for admission.

FISCAL/PERSONNEL IMPACT

Adoption of revised rule 4.41 would result in an increase in the number of moral character applications submitted. The amount of the increase is unknown but is anticipated to be small and absorbable within current resources. The amendments to Rule 4.62 are not anticipated to have any impact on the staff or fiscal resources of the Office of Admissions.

AMENDMENTS TO RULES OF COURT

N/A

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 4, Division 1, Chapter 4, Rule 4.41

Title 4, Division 1, Chapter 5, Rule 4.62

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approves circulating for a 60-day public comment period the changes to the rule regarding access to exam answers and scores as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees approves circulating for a 60-day public comment period the changes to moral character rule 4.41 as set forth in Attachment B; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended rules.

ATTACHMENTS LIST

- A.** Proposed amendments to Title 4, Division 1, Chapter 5, Rule 4.62 (Redline)
- B.** Proposed Amendments to Title 4, Division 1, Chapter 4, Rule 4.41 (Redline)

Proposed Amendments to Title 4 of the Rules of the State Bar, Rule 4.62

Rule 4.62 Access to examination answers and scores (Redline)

(A) ~~Within sixty days of the release of examination results,~~ Examination answers to the written portion of the examination are ~~returned~~ made available to applicants for admission who have failed the California Bar Examination or who have passed or failed the First-Year Law Students' Examination.

Applicant answers are available to download, print, or save for 30 days after the release of results. After 30 days, the exam answers from the last administered exam are available upon submitting the Document Copy Request Form and payment of fee. This provision does not apply to the Multistate Professional Responsibility Examination or the multiple-choice portion of the First-Year Law Students' Examination and California Bar Examination.

(B) Applicants who pass the California Bar Examination are not entitled to receive their examination answers or to see their scores.

Proposed Amendments to Title 4 of the Rules of the State Bar, Rule 4.41

Rule 4.41 Application for Determination of Moral Character (Current)

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.
- (B) An Application for Determination of Moral Character may be submitted any time after filing an Application for Registration but is deemed filed only when the application is complete.

Rule 4.41 Application for Determination of Moral Character (Current – Redline)

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. ~~An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.~~
- (B) An Application for Determination of Moral Character may be submitted any time after filing an Application for Registration but is deemed filed only when the application is complete.
- (C) There shall be a rebuttable presumption that an attorney is not of good moral character if the attorney is currently suspended for disciplinary reasons, is disbarred, has resigned with disciplinary charges pending, or is otherwise not in good standing for disciplinary reasons in any jurisdiction.

Rule 4.41 Application for Determination of Moral Character (Revised Version)¹

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.
- (B) An Application for Determination of Moral Character may be submitted any time

¹ The revised version refers to the changes to the Admissions Rules pertinent to moral character that came before the Board in November 2022 and currently before the Board again after returning from public comment.

after filing an Application for Registration but is deemed filed only when the application is complete.

- (C) An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending, or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.

Rule 4.41 Application for Determination of Moral Character (Revised Version – Redline)

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.
- (B) An Application for Determination of Moral Character may be submitted any time after filing an Application for Registration but is deemed filed only when the application is complete.
- (C) There shall be a rebuttable presumption that An attorney who is not of good moral character if the attorney is currently suspended for disciplinary reasons, is or disbarred, has resigned with disciplinary charges pending, or is otherwise not in good standing for disciplinary reasons in any jurisdiction ~~may not submit an application.~~