



The State Bar of California

OPEN SESSION

AGENDA ITEM V. B

AUGUST 2023

COMMITTEE OF BAR EXAMINERS

DATE: August 18, 2023

TO: Members, Committee of Bar Examiners

FROM: Dolores Heisinger, Chair, Moral Character Subcommittee
Tara Clark, Program Director, Operations, Office of Admissions
Christian Harvey, Program Manager, Moral Character Determinations
David Lane, Attorney, Moral Character Determinations

SUBJECT: Action on Guidelines for Extending the Reapplication Period for Applicants
Receiving Adverse Moral Character Determinations, Abeyance Policy, and
Procedures Governing Informal Conferences

EXECUTIVE SUMMARY

This agenda item is presented to the Committee of Bar Examiners (CBE) as part of the Office of Admissions' continuing review of its rules, procedures, and practices. Staff has identified two outdated guidelines and policies that require committee action. Additionally, staff has identified further revisions to the Procedures Governing Informal Conferences. The recommendations put forth below require the CBE's approval.

BACKGROUND

The Office of Admissions is continuing its review of all rules, procedures, and practices. As stated in prior agenda items, the goals of this review process include ensuring clarity for applicants, promoting consistent application of the rules and policies by staff, providing new tools for applicants to understand and meet their obligations, and updating obsolete or outdated rules, procedures, and practices. As part of this effort, staff identified outdated guidelines and policies that are no longer necessary for moral character. Additionally, the Procedures Governing Informal Conference require minor changes following the Office of Admissions' reorganization in April 2023, and to provide additional clarity.

GUIDELINES FOR EXTENDING THE REAPPLICATION PERIOD FOR APPLICANTS RECEIVING ADVERSE MORAL CHARACTER DETERMINATIONS

This one-page document provides guidance to the CBE on several factors that may be taken into consideration when deciding the reapplication period for an applicant following an adverse determination. (Attachment A.) The guidelines appear to have been last adopted or modified by the CBE in October 2009.

ABEYANCE POLICY

This three-page document outlines requirements for an agreement of abeyance between an applicant and the CBE. (Attachment B.) The policy appears to have been last adopted or modified by the CBE in May 2012.

PROCEDURES GOVERNING INFORMAL CONFERENCES

These procedures govern informal conferences conducted by staff as part of the moral character process. The procedures were last revised by the CBE in [December 2022](#); the revisions were intended to eliminate outdated or duplicative information and ensure clarity.

DISCUSSION

As discussed below, staff recommends repealing the guidelines and policy as they are now obsolete or outdated. Additionally, staff recommends revising the procedures following the office's reorganization and to provide clarification.

GUIDELINES FOR EXTENDING THE REAPPLICATION PERIOD FOR APPLICANTS RECEIVING ADVERSE MORAL CHARACTER DETERMINATIONS

Significant changes have occurred in the moral character process since the guidelines were last modified or adopted, rendering them obsolete. The Rules of the State Bar relevant to moral character were amended and adopted in September 2019. The revisions shifted all initial moral character determinations to staff and created the interim step of allowing applicants to seek administrative review by the CBE of an adverse determination before appealing an adverse determination in State Bar Court.

In anticipation of the rule changes, the State Bar convened a Moral Character Working Group (MCWG) from June 2019 to February 2020. The MCWG was tasked with evaluating the standards applied to moral character determinations. The purpose of the review and evaluation was to analyze the existing methodology and develop clear and appropriate guidelines for determining whether an applicant possesses the requisite moral character. The final products of the MCWG, including the [Moral Character Determination Guidelines](#), address factors that may mitigate or aggravate an act of misconduct, or demonstrate rehabilitation. These factors are considered during the totality of the moral character process, including the decision to set the reapplication period for an applicant following an adverse determination.

In April 2020, the CBE approved the final products of the MCWG, including the Moral Character Determination Guidelines, previously known as the Moral Character Determinations – Decision Matrix. The Board of Trustees subsequently approved the final products of the MCWG at its May 2020 meeting.

The creation and approval of the Moral Character Determination Guidelines rendered the Guidelines for Extending the Reapplication Period for Applicants Receiving Adverse Moral Character Determinations obsolete and appropriate for repeal.

ABEYANCE POLICY

Rule 4.48 of the Rules of the State Bar currently states:

- (A) The State Bar and an applicant may suspend processing of an Application for Determination of Moral Character by an Agreement of Abeyance:
 - (1) when a court has ordered an applicant charged with a crime to be treated, rehabilitated, or otherwise diverted;
 - (2) when a court has suspended the sentence of an applicant convicted of a crime and placed the applicant on probation;
 - (3) when an applicant is actively seeking or obtaining treatment for chemical dependency or drug or alcohol addiction; or
 - (4) if the State Bar and an applicant otherwise agree.
- (B) An Agreement of Abeyance must be in writing and specify the period and conditions of abeyance. A copy must be provided to the applicant.

A revised version of rule 4.48 of the Rules of the State Bar is currently under review by the California Supreme Court as part of the overall rules revisions pertaining to Moral Character. The revised version of rule 4.48 of the Rules of the State Bar states:

- (B) The State Bar or Committee may suspend processing of an Application for Determination of Moral Character upon the State Bar or the Committee and an applicant entering into an Agreement of Abeyance:
 - (1) when a court has ordered an applicant charged with a crime to be treated, rehabilitated, or otherwise diverted;
 - (2) when a court has suspended the sentence of an applicant convicted of a crime and placed the applicant on probation;

(3) when an applicant is actively seeking or obtaining treatment for a substance use issue; or

(4) when the State Bar and an applicant otherwise agree.

(B) An Agreement of Abeyance must be in writing and specify the period and conditions of abeyance. A copy of the agreement must be provided to the applicant.

(C) Once the abeyance period has concluded or the conditions of abeyance have been satisfied, the State Bar or the Committee will continue processing the application.

The amendments to rule 4.48 include the creation of subsection C and other minor changes. The redline version is attached to the [agenda item](#) for the CBE's October 2022 meeting.

Generally, paragraphs "A," "B," "I," and "J" of the Abeyance Policy are unnecessary as they are duplicative of rule 4.48 and the stipulation provided to the applicant. (Attachment C.)

Paragraph "C" of the Abeyance Policy enumerates some activities of misconduct which may result in an offer of abeyance that includes attendance at the State Bar's Ethics School, Client Trust Account School, or other Continuing Legal Education courses. The list is unnecessary as the State Bar and the CBE have the discretion to offer these specific terms of abeyance to an applicant, regardless of the enumerated acts of misconduct, in an effort to have the applicant engage in rehabilitative activities to be considered in the moral character process. The paragraph then reiterates information that is already available to the applicant in the stipulation, such as the fact that the applicant will bear the costs of the activities.

Paragraph "D" of the Abeyance Policy provides that the CBE may place an application in abeyance when the applicant has been denied a positive moral character determination two or more times and has not passed the bar exam, to allow the applicant to engage in further rehabilitative activities. The paragraph, however, is unnecessary as rule 4.48(A)(4) allows the State Bar and the CBE to enter into an Agreement of Abeyance with an applicant if both parties agree.

Paragraphs "E," "F," "G," "H," and part of "I" of the Abeyance Policy relate to an applicant's mental health. Effective January 1, 2020, California Business and Professions Code section 6060 was amended to include the following:

(2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person's medical records relating to mental health, except if the applicant seeks to use the record for either of the following purposes:

(i) To demonstrate that the applicant is of good moral character.

(ii) As a mitigating factor to explain a specific act of misconduct.

- (B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose such records, except as requested by an applicant and for a purpose specified in subparagraph (A).

Following the amendment of section 6060, participation in the Lawyer Assistance Program (LAP) is the only condition of abeyance related to mental health that the State Bar and CBE utilize. The information that LAP provides regarding an applicant's participation is limited to the applicant's enrollment, whether the applicant has complied with the LAP Monitoring Plan, and the level of insight gained by the applicant. Given the current state of the law and the limited role of LAP participation as a condition of abeyance, paragraphs "E," "F," "G," "H," and part of "I" are outdated.

For the foregoing reasons, the Abeyance Policy is no longer necessary and should be repealed.

PROCEDURES GOVERNING INFORMAL CONFERENCES

In April 2023, the Office of Admissions underwent a reorganization that created several new positions, including the Program Director of Operations, who oversees the Moral Character, Testing Accommodations, and Eligibility units. As such, it is appropriate to amend paragraph "G," which enumerates State Bar staff who may participate in an informal conference, to allow the Program Director of Operations to serve in place of the Program Manager for Moral Character Determinations at an informal conference if necessary. Additionally, the Program Director of Operations or their designee should be authorized to designate another attorney to attend an informal conference if the Moral Character unit's attorney is unavailable.

Paragraph "B" discusses the scheduling of and invitation to an informal conference. Currently, the procedures do not explicitly state what occurs if an applicant fails to respond to the invitation to attend an informal conference within seven days of issuance of the invitation. The proposed amendment clearly states that a failure to timely respond to the invitation will be treated as a request for postponement of an informal conference, which is governed by paragraph "L."

The additional amendments are minor clarifications or corrections.

FISCAL/PERSONNEL IMPACT

None.

RECOMMENDATIONS

It is recommended that the Committee of Bar Examiners repeal the Guidelines for Extending the Reapplication Period for Applicants Receiving Adverse Moral Character Determinations and the Abeyance Policy. It is also recommended that the CBE approve the proposed revisions to the Procedures Governing Informal Conferences.

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 repeal the Guidelines for Extending the Reapplication Period for Applicants Receiving Adverse Moral Character Determinations and the Abeyance Policy.

FURTHER MOVE, that the Committee of Bar Examiners approve the proposed revisions to the Procedures Governing Informal Conferences.

ATTACHMENTS LIST

- A. Guidelines for Extending the Reapplication Period for Applicants Receiving Adverse Moral Character Determinations
- B. Abeyance Policy
- C. Sample Abeyance Stipulation
- D. Proposed Revisions to the Procedures Governing Informal Conferences (Redline)



**THE STATE BAR OF CALIFORNIA
COMMITTEE OF BAR EXAMINERS/OFFICE OF ADMISSIONS**

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**GUIDELINES FOR EXTENDING THE REAPPLICATION PERIOD FOR APPLICANTS
RECEIVING ADVERSE MORAL CHARACTER DETERMINATIONS**

Pursuant to Rule 4.49, Chapter 4 of the *Rules Regulating Admission to Practice Law in California*, the Committee of Bar Examiners has the authority to shorten or lengthen the time for reapplication for an application period should be extended for an applicant who receives an adverse moral character determination, the following factors, although not inclusive, should be taken into consideration:

- (1) Whether the nature of the act of misconduct involved a serious or violent felony or involved an act that would normally result in disbarment if the applicant was a practicing attorney;
- (2) Whether the applicant, at the time of the act of misconduct, was enrolled in law school or committed the act subsequent to a law school education and should have been aware of the ramifications of committing an act involving moral turpitude;
- (3) The length of time between the act of misconduct and the present; and,
- (4) Whether the failure to demonstrate substantial rehabilitation from the act of misconduct and the present is evidenced by any of the following:
 - a. The lack of efforts in recovery from chemical dependency or psychological disorder if applicable;
 - b. The failure to acknowledge commission of the act of misconduct and repercussions to the victims;
 - c. The failure to pay restitution incurred as a result of the act of misconduct; and,
 - d. The lack of any significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.



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ABEYANCE POLICY

The abeyance policy provides, pursuant to Rule 4.48, Title 4, Division 1, Chapter 4 of the *Rules of the State Bar of California*, for the Committee of Bar Examiners of the State Bar of California ("Committee") and an applicant for admission to practice law in California to enter into an agreement in lieu of referring an application for further inquiry.

An agreement shall specify a period of time for the abeyance of inquiry into the applicant's moral character. An agreement entered into shall be lodged with the Senior Director, Admissions or his or her designated designee. All abeyance agreements will be governed by the following regulations:

- A. The abeyance stipulation will be signed by the Director for Moral Character Determinations in the Office of Admissions of the State Bar in California and the applicant for admission to practice law in California.
- B. The abeyance stipulation will specify a date certain for the processing of the application to be reactivated and the Committee will make a decision whether the applicant should receive a positive determination.
- C. In cases where an applicant has been disciplined in another jurisdiction, or has engaged in the unauthorized practice of law, or committed acts of fraud, theft, or breach of fiduciary duty, or such other situations as the Committee and the applicant agree, an applicant may have his/her application placed in abeyance until the applicant has successfully completed the State Bar of California's Ethics School, Client Trust Accounting School, and/or courses approved by the State Bar of California for Mandatory Continuing Legal Education (MCLE) credit. The applicant must attend the course in person. The expense associated with attending and successfully completing Ethics School, Client Trust Accounting School, and or MCLE courses, will be incurred by the applicant. An applicant who fails to comply with the abeyance agreement or fails to successfully complete Ethics School, Client Trust Accounting School, and or MCLE courses, will have the application referred to the Committee for a determination as to whether the abeyance agreement will be terminated or extended. A failure to comply with the abeyance agreement or successfully complete Ethics School and/or Client Trust Accounting School may not necessarily result in the voiding of the abeyance agreement.
- D. In cases where an applicant has had a moral character application denied two or more times and the applicant has not acquired a passing score on the California Bar Examination, the Committee may place the application into abeyance for up to 18 months so that the applicant has an opportunity to engage in further rehabilitative activities before further consideration by the Committee.

- E. In cases involving an applicant who has a chemical dependency problem, other addiction or psychological disorder, the Committee will refer the applicant for treatment and monitoring to a qualified professional. The Committee will require quarterly reports specifying the applicant's progress in treatment or recovery. In addition, the Committee will require a comprehensive report at the end of the abeyance period from the designated qualified professional, which specifies the applicant's continuing recovery efforts and whether the applicant has addressed the addiction or psychological disorder and is participating in recovery. Further, the applicant will be required to sign and comply with an agreement, provided by the designated qualified professional. The expense for evaluation and treatment during the abeyance period will be incurred by the applicant.
- F. The applicant may request that the Committee approve a selected qualified professional for the purposes of monitoring his or her recovery. The applicant must sign a "Waiver of Confidentiality and Release of Information" to allow the professional to report the evaluation and findings to the Committee as required by the abeyance stipulation. If warranted, the qualified professional will recommend to the applicant changes or additions to his or her recovery program. The approval of the applicant's selected professional is subject to the Committee's review, and approval is dependent upon the qualifications of the professional as well as the recovery plan designed to monitor and to treat the applicant's addiction or psychological disorder. The expense for evaluation and treatment during the abeyance period will be paid by the applicant.
- G. Reports from the applicant's selected professional must meet Committee standards. The initial quarterly report should include, but is not limited to, background history, the mental health of the applicant, pertinent family and chemical dependency history, the plan or program for treatment, an assessment of the current stage of recovery, the date of the initial appointment, and the dates, times and duration of subsequent appointments. The Committee will require quarterly reports specifying the applicant's progress in treatment or recovery. In addition, the Committee will require a comprehensive report at the end of the abeyance period from the selected qualified professional specifying the applicant's continuing recovery efforts and whether the applicant has addressed the addiction or psychological disorder and is participating in recovery.
- H. Once the abeyance agreement is received by the Senior Director, Admissions or his or her designee, the applicant will be given a schedule for the submission of the reports. It is the applicant's responsibility to contact the professional, request that the report be submitted and ensure the report is submitted in a timely fashion. Failure to submit the report in a timely fashion will result in the application being referred to the Committee for a determination as to whether the abeyance agreement will be terminated or extended. Failure to submit the report in a timely fashion may not necessarily result in the voiding of the abeyance agreement.

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- I. Failure to comply with the abeyance agreement or a relapse in recovery from chemical dependency, other addiction or psychological disorder will result in tolling the abeyance period. The abeyance period will be tolled from the date of the failure to comply, the relapse or the last use of the chemical. An applicant who fails to comply or relapses in recovery will have the application referred to the Committee for a determination whether the abeyance agreement will be terminated or extended. A failure to comply or a relapse may not necessarily result in the voiding of the abeyance agreement.
- J. The application will be referred to the Committee for decision during the abeyance period if the applicant engages in acts which are indicative that he or she does not possess good moral character.

The Committee delegates to the Office of Admissions the authority to resume the processing of an Application for Determination of Moral Character and approve the application following receipt from the applicant of the appropriate documentation that he or she has complied with the terms of the abeyance stipulation.

MCAbeyancePolicy.0512

Stipulation Pursuant to Rule 4.48

The State Bar of California (State Bar) stipulates and agrees with [name], an applicant for admission to practice law in California, as follows:

That further processing of [name]'s Application for Determination of Moral Character will be held in abeyance until [date]. This stipulation is entered into by the State Bar and [name] in order to allow [name] to successfully complete the State Bar's Ethics School and 20 units of participatory CLE credits in Ethics. The CLE classes must be endorsed by the State Bar and may be completed online.

That failure to submit a signed stipulation by [date], will void the offer of abeyance.

That [name] agrees to the terms of the abeyance stipulation. Failure to comply with the terms of the abeyance stipulation may be considered in moral character proceedings in the State Bar Court and the Supreme Court of California.

That [name] agrees to incur all expenses associated with completing the terms of abeyance.

That [name] will submit to the State Bar proof of successful completion of the terms of abeyance.

That on [date], or upon receipt of proof of successful completion of the terms of abeyance, the State Bar will resume processing the Application for Determination of Moral Character and complete the same pursuant to the time limits specified in Title 4, Division 1, Chapter 4 of the Rules of the State Bar of California.

This stipulation contains the entire agreement between the State Bar and [name].

Dated: _____
[name]
File #: [#]
Case #: [#]

Dated: _____
[name]
Program Manager
Moral Character Determinations



The State Bar of California

OFFICE OF ADMISSIONS

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)*, 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~~ possesses 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.~~ The following procedures shall govern informal conferences.

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 14 days after ~~the an~~ invitation has been issued unless the applicant agrees in writing to an earlier conference. The applicant must confirm in writing if they accept the invitation within seven days of issuance of the invitation. ~~Within seven days after the invitation to confer is sent, the applicant must confirm in writing if they accept the invitation to confer.~~ 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 respond, the conference will be removed from the schedule and the time slot will no longer be available to the applicant. A failure to timely respond will be treated as a request for postponement of an informal conference.
- 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 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 rule 4.4 of Title 4, Division 1, Chapter 4 of the Admissions Rules.
- E. The conference will be audio or video recorded, and ~~if~~ the applicant will be provided with a recording of the conference if they makes a written request within 90 days of the conference, ~~they will be provided with a recording of the conference.~~

- F. Generally, an applicant invited to participate in an informal conference will participate remotely. An applicant may request to attend the conference in person, with at least one member of the panel in attendance in person, at a date scheduled by the State Bar ~~with at least one member of the panel~~.
- G. Staff members allowed to participate at the conference will include the Program Manager, the Moral Character Determinations unit's ~~counsel~~ attorney, supervisors assigned to the Moral Character Determinations unit, and the investigator assigned to the specific matter to be discussed. Unit supervisors or the Program Director of Operations for the Office of Admissions may act in the place of the Program Manager if ~~they are~~ the Program Manager 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. The Moral Character Determinations unit's attorney ~~counsel~~ will attend every informal conference. In the event that the Moral Character Determinations unit's attorney ~~counsel~~ is unavailable to attend an informal conference which cannot be rescheduled, other State Bar counsel may attend with the approval of the Program Director of Operations ~~the Director of~~ for the Office of Admissions or their designee.
- H. Conferences are confidential and attendance will be limited to the applicant and their counsel, staff members of the Moral Character Determinations unit designated to participate, State Bar counsel, and attorneys from the Office of Chief Trial Counsel.
- I. The applicant will have the opportunity to present information for consideration. An applicant may attend without counsel. Applicant's counsel is permitted to attend as a matter of courtesy; however, counsel is not permitted to participate in the conference. Where counsel fails to abide by this policy, staff may take steps including, but not limited to, requiring counsel to leave or suspending the conference. An applicant may request to confer off the record with their counsel ~~at any time, off the record~~. ~~Where counsel fails to abide by this policy, staff may take steps including, but not limited to, requiring counsel to leave or suspending the conference~~. No person other than applicant's counsel may be present with the applicant at an informal conference.
- J. Conferences will be scheduled for approximately 45 minutes.
- K. After having been advised of the scheduled date for the informal conference, an applicant may, upon written request, elect to postpone the informal conference, ~~which and it~~ 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.
- L. A request for postponement of an informal conference must be received at least five days before the scheduled conference. A request for postponement that is received fewer than five days before the scheduled conference must be supported by a showing of good cause or staff may make the moral character determination on the application, supporting materials provided, and information gathered during the investigative process.

M. A notice of denial of a positive moral character determination and a proof of service will be sent to the applicant by email ~~with a proof of service~~.

Approved by the Committee of Bar Examiners on August 18, 2023~~December 2, 2022~~