



# The State Bar of California

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## **OPEN SESSION**

### **AGENDA ITEM V. A**

**AUGUST 2023**

### **COMMITTEE OF BAR EXAMINERS**

**DATE:** August 18, 2023

**TO:** Members, Committee of Bar Examiners

**FROM:** Larry Kaplan, Committee of Bar Examiners  
Paul Kramer, Committee of Bar Examiners  
Tara Clark, Program Director, Operations, Office of Admissions  
David Lane, Attorney, Moral Character Determinations

**SUBJECT:** Recommendation to Adopt Revised Rule 4.41 of the Admissions Rules: Return from Public Comment

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## **EXECUTIVE SUMMARY**

At its March 24, 2023 meeting, the Committee of Bar Examiners (CBE) adopted a motion recommending that the Board of Trustees (Board) circulate revised rule 4.41 of Title 4, Division 1 of the Rules of the State Bar (Admissions Rules). At its May 18-19, 2023 meeting, the Board concurred. The rule was circulated for 60 days, during which the CBE received one comment in agreement with the proposal. Therefore, the working group recommends no changes to the proposed revision to rule 4.41. Additionally, the working group recommends that the CBE request that the Board approve the proposed change to rule 4.41 and submit the rule to the California Supreme Court for adoption.

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## **BACKGROUND**

Rule 4.41(A) of the Admissions Rules currently states, in relevant part:

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.

A revised version of rule 4.41 of the Admissions Rules is currently under review by the California

Supreme Court as part of the overall Admissions Rules revisions pertaining to Moral Character. The rules revisions included moving the relevant part of rule 4.41 to a newly created subsection C without changing the text. After proposing the general rules revisions related to moral character, the State Bar and the CBE decided to ask a working group to explore whether the strict prohibition against submitting a moral character application in rule 4.41 should be revised to allow California, and not another state, to be the ultimate arbiter of whether an applicant should be afforded an opportunity to meet the requirements for admission in California. Currently, under no circumstance may staff or the CBE allow an attorney applicant who is not in good standing for disciplinary reasons to submit an Application for Determination of Moral Character.

On March 24, 2023, the CBE adopted a resolution by a vote of 13-0 recommending that the Board circulate revised rule 4.41 for public comment. The Board agreed, and the proposed rule change was circulated for a 60-day public comment period. One comment in agreement with the proposal was received.

## **DISCUSSION**

The [agenda item](#) for the March 24, 2023 CBE meeting provides additional background describing the recommended revisions to rule 4.41.

Rule 4.41 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. However, a degree of deference to the judgment of the jurisdiction that imposed discipline on an attorney applicant is appropriate as the 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 working group recommended amending rule 4.41 to allow the State Bar to decide whether an applicant should be admitted to the practice of law in California by allowing an applicant who is currently not in good standing for disciplinary reasons in another jurisdiction to submit a moral character application and obtain a moral character determination, while providing for a rebuttable presumption that the applicant does not possess the requisite moral character for licensure.

Two versions of the redlined rule are attached. The first includes the rule in its current form, and the second is in anticipation of the adoption of the revisions to the Admissions Rules pertinent to Moral Character.

## **PUBLIC COMMENTS**

The CBE received one public comment that agreed with the proposed revision. The comment

chart in Attachment A identifies the commenter, their verbatim comment, their position on the proposal, and the working group's recommendation if the comment identified the need for the proposal to be modified. After reviewing the public comment, the working group does not recommend any changes to the revised rule.

### **FISCAL/PERSONNEL IMPACT**

Adoption of this rule 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 with current resources.

### **RECOMMENDATIONS**

It is recommended that the Committee of Bar Examiners request adoption of the proposed rule, as circulated for public comment and set forth in Attachment B.

### **PROPOSED MOTION**

Should the Committee of Bar Examiners agree with the working group's recommendation, the following motion should be made:

**MOVE**, that the Committee of Bar Examiners recommends that the Board of Trustees adopt the rule revision set forth in Attachment B and request approval of the rule change by the Supreme Court.

### **ATTACHMENTS LIST**

- A. Public Comment Chart
- B. Proposed Amendments to Title 4, Division 1 of the Rules of the State Bar, Rule 4.41

Public Comment Chart

Name	Position	Comment (Verbatim)	Response to Comment
Benjamin Kohn	AGREE with the proposed recommendations	Out of State decisions reached by procedures and practices over which the State Bar has no control and limited knowledge should not be effectively binding upon the State Bar of California's admissions decisions, especially in an area that would conclusively foreclose an applicant's opportunity to qualify for the practice of law.	No change.

**Proposed Amendments to Title 4, Division 1 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)<sup>1</sup>

- (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.

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<sup>1</sup> The revised version refers to the changes to the Admissions Rules pertinent to Moral Character that came before the CBE in October 2022 and are currently under review by the California Supreme Court.

- (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) 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 Aan attorney ~~who~~ is not of good moral character if the attorney is currently suspended for disciplinary reasons, is or ~~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.~~