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THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA
[SEAL] OFFICE OF ADMISSIONS
180 HOWARD STREET • SAN FRANCISCO, CALIFORNIA
94105-1639 • (415) 538-2300

February 4, 2009

PERSONAL & CONFIDENTIAL - VIA CERTIFIED MAIL

Dale Wendall Laue
1630 Dovetail Way
Gilroy, CA 95020

Dear Mr. Laue:

The Committee of Bar Examiners of the State Bar of California ("Committee") has completed the processing of your Application for Determination of Moral Character, and I have been directed to advise you that the Committee has declined to grant you a positive moral character determination. This decision was reached after consideration of factors including your lack of candor on your Application for Determination of Moral Character, due to the finding that a there was an appearance of impropriety in your actions as the Personal Representative of your mother's estate and that you engaged in conduct that indicated a lack of fiduciary responsibility, and, generally, your failure to establish that you were of good moral character as required by Title 4, Division 1, Chapter 4 of the *Rules of the State Bar of California (Admissions Rules).*

Under the provisions of Chapter 4, Rule 4.47, you may appeal the Committee's decision to the State Bar

Court. In order to appeal this decision, you must file an application for hearing and a copy of this letter with the clerk of the State Bar Court, within 60 days of the service of this notice of the Committee's final determination. The application and a copy of the letter must be accompanied by a filing fee of $100 in a check payable to the Committee of Bar Examiners. The application for hearing is in the form of a short pleading drafted by you.

The State Bar Court has two locations: 180 Howard Street, San Francisco, California 94105 and 1149 South Hill Street, 6th Floor, Los Angeles, California 90015.

A copy of the application, should you choose to file it; must be served on the Committee through the Office of Admissions at 180 Howard Street, San Francisco, California 94105 and on the Office of the Chief Trial Counsel at 180 Howard Street, San Francisco, California 94105.

In the event you do not choose to appeal the Committee's decision in State Bar Court, you are eligible to file another Application for Determination of Moral Character two years from the date the Committee made its determination.

A copy of Chapter 4 of the *Admissions Rules* is enclosed for your use.

Yours truly,

/s/ Debra Murphy Lawson
Debra Murphy Lawson
Director, Moral Character Determinations

Enclosure

CHAPTER 4: MORAL CHARACTER DETERMINATION

Rule 4.40 Moral Character Determination

(A) An applicant must be of good moral character as determined by the Committee. The applicant has the burden of establishing that he or she is of good moral character.

(B) "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.

Rule 4.41 Application for Determination of Moral Character

(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, disbarred, or otherwise not in good

standing in any jurisdiction may not submit an application.

(C) 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 4.42 Duty to update Application for Determination of Moral Character

Applicants have a continuing duty to update an Application for Determination of Moral Character and must promptly notify the Office of Admissions whenever there is a change to information previously furnished to the Committee or any new information relevant to the application. Failure to provide updated information may be cause for suspension of a positive moral character determination.

Rule 4.43 Abandonment of Application for Determination of Moral Character

(A) An Application for Determination of Moral Character is deemed abandoned and ineligible for a refund of fees if

(1) it is not complete within sixty days after being initiated; or

(2) it is complete but the applicant has failed to provide additional information requested by the Committee within ninety days of the request.

(B) A new Application for Determination of Moral Character must be submitted with the required fee if an application has been abandoned.

Rule 4.44 Withdrawal of Application for Determination of Moral Character

(A) An applicant may withdraw an Application for Determination of Moral Character any time before being notified that the Committee is unable to make a determination without further inquiry and analysis. Following such a notice, withdrawal requires the Committee's consent.

(B) An applicant may withdraw an application filed with the State Bar Court for a hearing on an adverse determination of moral character by filing a request for withdrawal with the Office of Chief Trial Counsel and forwarding a copy to the Committee at its San Francisco office.

Rule 4.45 Notice regarding status of Application for Determination of Moral Character

(A) Within 180 days of receiving a completed Application for Determination of Moral Character, the Committee notifies an applicant that its determination of moral character is positive or that it requires further consideration or information from the applicant, a government agency, or another source. A positive determination is valid for thirty-six months.

(B) While an Application for Determination of Moral Character remains pending, a status report is issued to the applicant at least every sixty days.

(C) Within sixty days of receiving additional information it has requested, the Committee notifies the applicant that

(1) the applicant is determined to be of good moral character;

(2) the applicant has not met the burden of establishing good moral;

(3) the application requires further consideration;

(4) the applicant is invited to an informal conference with the Committee; or

(5) the applicant is advised to enter into an Agreement of Abeyance with the Committee.

(C) Within sixty days of receiving additional information it has requested, the Committee notifies the applicant that

(1) the applicant is determined to be of good moral character;

(2) the applicant has character; not met the burden of establishing good moral

(3) the application requires further consideration;

(4) the applicant is invited to an informal conference with the Committee; or

(5) the applicant is advised to enter into an Agreement of Abeyance with the Committee.

Rule 4.46 Informal conference regarding moral character Page 1

(A) The Committee may invite an applicant for a determination of moral character to an informal conference regarding the application. Acceptance of an invitation is not mandatory, and declining it entails no negative inference.

(B) An applicant notified of an adverse determination of moral character may request an informal conference with the Committee, provided the applicant has not previously declined the Committee's invitation to an informal conference. The request must be in writing and submitted to the Committee at its San Francisco office within ninety days of the date of the notice. Within sixty days of receiving a timely request, the Committee must schedule the informal conference, and within thirty days of the conference notify the applicant of its final determination. An adverse determination may be appealed in accordance with these rules.

(C) The Committee may establish procedures for an informal conference and create a record of it by tape recording, video recording, or any other means. The applicant may attend the conference with counsel; make a written or oral statement; and present documentary evidence. Counsel is limited to observation and may not participate.

Rule 4.47 Appeal of adverse determination of moral character

(A) An applicant notified of an adverse determination of moral character may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of receipt of the notice of adverse determination.

(B) A copy of the request for hearing must be served on the Committee and the Office of Chief Trial Counsel at the San Francisco office of the State Bar. Upon receipt of service, the Committee must promptly transmit all files related to the application to the Office of Chief Trial Counsel.

Rule 4.48 Agreement of Abeyance

(A) The Committee 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 Committee 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.

Rule 4.49 New application following adverse determination of moral character

The Committee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the Committee's final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.

Rule 4.50 Suspension of positive determination of moral character

(A) Before certifying an applicant for admission to the practice of law the Committee may notify an applicant that it has suspended a positive determination of moral character if it receives information that reasonably calls the applicant's character into question. The notice must specify the grounds for the suspension.

(6) Within sixty days of issuing a notice suspending a positive determination of moral character, the Committee must issue a notice reinstating or revoking the positive determination after investigating the information that prompted the suspension. Revocation entitles an applicant to an informal

conference with the Committee or to appeal the revocation to the State Bar Court.

[SEAL] **The State Bar** ***of California*** **OFFICE OF ADMISSIONS**

March 19, 2021

PERSONAL & CONFIDENTIAL - VIA CERTIFIED MAIL

Dale Wendall Laue
1640 Mantelli Dr
Gilroy, CA 95020

Re: Moral Character Application
File #: 99638

Dear Dale Wendall Laue,

After the informal conference on 3/17/2021, the State Bar of California ("State Bar") considered your Application for Determination of Moral Character and determined that you have not met your burden of establishing good moral character. This decision was reached after a consideration of factors including your insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are 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 Rules of the State Bar of California (Admissions Rules).

Under the provisions of Chapter 4, Rule 4.47.1, you may request review by the Committee of Bar Examiners within thirty (30) days of the date of this notice. You may submit supplemental material with the request: The "Procedures Regarding Requests for

Administrative Review by the Committee of Bar Examiners of Adverse Determinations of Moral Character" are attached.

In the event you do not choose to seek review of the State Bar's decision, you are eligible to file another Application for Determination of Moral Character on 3/17/2023.

A copy of Chapter 4 of the Admissions Rules is enclosed for your use.

Sincerely,

/s/ Tara Clark
Tara Clark
Program Manager,
Moral Character Determinations

[SEAL] **The State Bar** ***of California*** **OFFICE OF ADMISSIONS**

San Francisco Office
180 Howard Street
San Francisco, CA 94105

Los Angeles Office
845 S. Figueroa Street
Los Angeles, CA 90017

www.calbar.ca.gov

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 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 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.

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. 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.

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 another informal conference with the applicant. One 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 program manager" 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 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 certified mail with proof of service.

J. These guidelines and procedures also apply to an applicant's request for review by the committee of a decision by State Bar staff to abandon 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 F, 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.).

[Statutory Addendum Omitted]

[Proof Of Service Omitted]

PERSONAL & CONFIDENTIAL

April 18, 2021

Office of Admissions
The State Bar of California
180 Howard Street
San Francisco, CA b 94105-1617

REQUEST FOR REVIEW BY THE COMMITTEE OF BAR EXAMINERS
Pursuant to Rule 4.47.1 of the Rules of the State Bar of California

Re: Moral Character Application
Applicant: Dale Wendall Laue
1640 Mantelli Dr.
Gilroy, CA 95020
File no. 99638

INTRODUCTION

On December 4, 2006, Applicant Dale Laue ("Applicant") submitted an Application for Moral Character Determination. On February 4, 2009, the Committee for Bar Examiners ("Committee") declined to grant a positive Moral Character Determination, citing "lack of candor on your Application for Determination of Moral Character, due to the finding that a there was an appearance of impropriety in your actions as the Personal Representative of your mother's estate and that you engaged in conduct that indicated a lack of fiduciary responsibility, and, generally, your failure to establish that you were of good moral character."

On April 1, 2009, Applicant filed an "Application for Initiation of a Moral Character Proceeding and Hearing" (simply titled "Request for Hearing") with the State Bar Court via U.S. Mail along with the applicable $100 filing fee payable to the Committee of Bar Examiners. A copy was served on the Committee and on the Office of Chief Trial Counsel ("OCTC"). Both the Committee and the OCTC received the copies served but for some reason the State Bar Court did not receive the original for filing. The Committee refunded Applicant's $100 filing fee on August 10, 2009.

Applicant became eligible to file another application for Determination of Moral Character on February 4, 2011. On January 5, 2018, Applicant filed a new application for Determination of Moral Character. Applicant sent an update (Form 1) on March 20, 2018. Applicant received a letter dated August 8, 2018 requesting "additional information and/or documentation." On September 26, 2018, Applicant provided the requested additional information and/or documentation. Applicant provided periodic updates dated November 19, 2018, December 4, 2018, March 6, 2020, and March 3, 2021.

On March 1, 2021, Applicant received an email inviting Applicant to meet with representatives of the State Bar via video conference on **3/17/21**, at **11:30 a.m.**" Applicant accepted the invitation and fully cooperated with the Moral Character Determination staff during the conference. A recording of the conference is available.

MORAL CHARACTER ISSUES RAISED BY STAFF for February 4, 2009 denial

1. "lack of candor" on your Application for Determination of Moral Character, due to the finding that "there was an "appearance" of impropriety in your actions as the Personal Representative of your mother's estate and that you engaged in conduct that "indicated" a lack of fiduciary responsibility"
2. generally, "your failure to establish that you were of good moral character . . . "

MORAL CHARACTER ISSUES RAISED BY STAFF for March 19, 2021 denial

1. insufficient rehabilitation
2. lack of candor
3. lack of respect for the judicial process
4. generally, "your failure to establish that you are of good moral character . . . "

REASONS WHY THE DETERMINATION BY STAFF SHOULD BE REVIEWED

"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." (Title 4, Division 1, Chapter 4, Rule 4.40 of the Rules of the State Bar of California (*Admissions Rules*).)

Both the **February 4, 2009** and **March 19, 2021** determinations of denial are based on vague, arbitrary and subjective statements and not on any specific admissible evidence of disqualifying conduct by the Applicant amounting to anything more than mere oversight or omission of information deemed to be an included continuation of the same action (such as an appeal). Specifically, the Moral Character Determination staff cites "lack of candor" but has not shown that any omissions were material, intentional, or resulted from a reckless disregard for the truth. Likewise, "insufficient rehabilitation" assumes facts not in evidence that would make rehabilitation necessary. Lastly, the staff has cited "lack of respect for the judicial process" but provided no evidence that the Applicant has violated any statute or rule to support their finding (such as sanctions or contempt of court). The Applicant has fully cooperated with the Moral Character Determination staff during the application process.

A person's reputation is a liberty interest which cannot be arbitrarily denied without violating the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article I of the California Constitution. (See U.S. Const. Amend. XIV, Sec. 1; Cal. Const. Art. I, Sec. 26.) Generally, the question of whether the due process or equal protection clause has been violated arises when a state grants a particular class of individuals the right to engage in an activity yet denies other individuals the same right.

Placing the initial burden on the Applicant to provide the relevant information and documents essential for a proper assessment of moral character is permissible. However, the burden must then shift to the Moral Character Determination staff to "establish" with admissible evidence that the Applicant engaged in a specific act of misconduct. "Guilty until proven innocent" is not an acceptable standard under our Constitutional form of government.

DESCRIPTION OF APPLICANT'S REHABILITATIVE EFFORTS

As stated above, the need for "rehabilitation" assumes facts not in evidence. Before the Moral Character Determination staff can require an Applicant to undergo rehabilitation, it must first identify a specific disqualifying act requiring rehabilitation. Applicant has continuously denied any acts of wrongdoing that would justify denial of his Moral Character application. Therefore, rehabilitation is unnecessary.

[SEAL] **The State Bar** ***of California*** **OFFICE OF ADMISSIONS**

San Francisco Office
180 Howard Street
San Francisco, CA 94105

Los Angeles Office
845 S. Figueroa Street
Los Angeles, CA 90017

www.calbar.ca.gov

June 21, 2021

PERSONAL & CONFIDENTIAL - VIA CERTIFIED MAIL

Dale Wendall Laue
1640 Mantelli Dr
Gilroy, CA 95020

Re: Moral Character Application
File #: 99638

Dear Dale Wendall Laue,

During its June 18, 2021 meeting, the Committee of Bar Examiners ("Committee") considered your Application for Determination of Moral Character pursuant to your request for administrative review. The Committee determined that you have not met your burden of establishing good moral character. This decision was reached after a consideration of factors including your lack of insight, insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are 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 Rules of the State Bar of California (Admissions Rules).

Pursuant to rule 4.47 of the Admissions Rules, you may appeal the Committee's decision to the State Bar Court. in order to appeal the decision, you must file the following documents with the Clerk of the State Bar Court within 60 days of the service of this notice of the Committee's decision:

(1) an application for a hearing;

(2) a copy of this notice;

(3) the filing fee of $500, by check payable to the Committee of Bar Examiners; and

(4) proof of service on the Committee of Bar Examiners, at the Office of Admissions, 180 Howard Street, San Francisco, California 94105; and

(5) proof of service on the Office of Chief Trial Counsel, at either 180 Howard Street, San Francisco, California 94105, or 845 South Figueroa Street, Los Angeles, California 90017.

The State Bar Court has two locations: 180 Howard Street, San Francisco, California 94105, and 845 South Figueroa Street, Los Angeles, California 90017.

In the event you do not choose to appeal the Committee's decision in State Bar Court, you are eligible to file another Application for Determination of Moral Character on 6/18/2023.

A copy of Chapter 4 of the Admissions Rules is enclosed for your use.

Sincerely,

/s/ Tara Clark
Tara Clark
Program Manager,
Moral Character Determinations

[Statutory Addendum Omitted]

[Proof Of Service Omitted]

DALE LAUE
1640 Mantelli Drive
Gilroy, CA 95020

Telephone: (408) 848-9195
Email: dalelaue@aol.com

In propria persona

CONFIDENTIAL

THE STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

DALE WENDALL LAUE, Petitioner, vs. COMMITTEE OF BAR EXAMINERS, Respondent	[SBC-21-M-30591] Case No.: 99638 **APPLICATION FOR HEARING ON AN ADVERSE DETERMINATION OF MORAL CHARACTER BY THE COMMITTEE OF BAR EXAMINERS, Rule 4.47** (Filed Aug. 23, 2021)

INTRODUCTION

1. Petitioner Dale Laue ("Petitioner") received his J.D. from Concord Law School in January 2007. Petitioner was 50 years old at the time following a 25-year professional career in aviation and aerospace, 17 years of which he held a Department of Defense (D.O.D.) "secret" security clearance (1982-1999). On December 4, 2006, Petitioner submitted an Application

for Moral Character Determination with the State Bar of California.

2. Petitioner received requests for additional information and documents dated April 4, 2007, December 7, 2007, and August 5, 2008. Petitioner responded with the requested information and documents on May 18, 2007, March 5, 2008 and August 20, 2008 respectively.

3. In December 2008, Petitioner received an invitation to participate in an informal conference at 180 Howard Street on January 14, 2009 at 11:00 a.m.. Petitioner accepted the invitation and fully cooperated with the Moral Character Determination staff ("Staff") during the conference. A recording of the conference is available. During the conference, the Staff never identified any specific disqualifying conduct by Petitioner.

4. On February 4, 2009, the Committee for Bar Examiners ("Committee") declined to grant a positive Moral Character Determination, citing "lack of candor on your Application for Determination of Moral Character, due to the finding that a there was an **appearance** of impropriety in your actions as the Personal Representative of your mother's estate and that you engaged in conduct that **indicated** a lack of fiduciary responsibility, and, generally, your failure to establish that you were of good moral character." (Copy attached hereto as **EXHIBIT 1** (emphasis added).) The letter did not identify any specific disqualifying event or conduct by the Petitioner, but rather conduct that

subjectively **indicated** a lack of fiduciary responsibility or had an **appearance** of impropriety.

5. On April 1, 2009, Petitioner filed an "Application for Initiation of a Moral Character Proceeding and Hearing" (simply titled "Request for Hearing") with the State Bar Court via U.S. Mail. Copies were served on the Committee and on the Office of Chief Trial Counsel ("OCTC") along with the applicable $100 filing fee payable to the Committee of Bar Examiners. Both the Committee and the OCTC received the copies served but for some unknown reason the State Bar Court did not receive the original for filing. After inquiry, the Petitioner learned that the filing with the State Bar Court was not perfected within the 60-day time limit and the Committee refunded Petitioner's $100 filing fee on August 10, 2009. (Copy attached hereto as EXHIBIT 2) Petitioner became eligible to file another application for Determination of Moral Character on February 4, 2011.

6. On January 5, 2018, Petitioner filed a new application for Determination of Moral Character. Petitioner sent an update (Form 1) on March 20, 2018. Petitioner received a letter dated August 8, 2018 requesting "additional information and/or documentation." On September 26, 2018, Petitioner provided the requested additional information and documentation. Petitioner provided periodic updates of ongoing lawsuits dated November 19, 2018, December 4, 2018, March 6, 2020, and March 3, 2021.

7. On March 1, 2021, Petitioner received an email inviting Petitioner "to meet with representatives of

the State Bar via video conference on 3/17/21, at 11:30 a.m." Petitioner accepted the invitation and fully cooperated with the Staff during the conference. A recording of the conference is available. During the conference, the Staff never identified any specific disqualifying conduct by Petitioner.

8. On March 19, 2021, the State Bar of California ("State Bar") again declined to grant a positive Moral Character Determination, stating that the "decision was reached after a consideration of factors including your insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are 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 Rules of the State Bar of California (Admissions Rules)." (Copy attached hereto as EXHIBIT 3.) The letter did not identify any specific disqualifying event or conduct by the Petitioner.

9. On April 18, 2021, Petitioner sent a Request for Administrative Review by the Committee of Bar Examiners via email and U.S. Mail. (Copy attached hereto as EXHIBIT 4.) On June 24, 2021, Petitioner received a third denial letter dated June 21, 2021 via Certified Mail. The denial letter stated "the Committee of Bar Examiners ("Committee") considered your Application for Determination of Moral Character pursuant to your request for administrative review. The Committee determined that you have not met your burden of establishing good moral character. This decision was reached after a consideration of factors

including your lack of insight, insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are 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 Rules of the State Bar of California (Admissions Rules)" (Copy attached hereto as EXHIBIT 5.) The denial letter further stated that Petitioner could appeal the Committee's decision to the State Bar Court within 60 days.

THE DETERMINATION BY THE COMMITTEE OF BAR EXAMINERS SHOULD BE REVIEWED

10. Petitioner hereby incorporates by reference paragraphs 1 through 9, inclusive, of this Application, as if fully set forth herein.

11. As to moral character, the question before the court is "whether petitioner is a fit and proper person to practice law at this time." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1051.)

12. "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." (Title 4, Division 1, Chapter 4, Rule 4.40 of the Rules of the State Bar of California (Admissions Rules).)

13. The February 4, 2009, March 19, 2021, and June 21, 2021 determinations of denial are based on vague, arbitrary and subjective statements and not on

any specific admissible evidence of disqualifying conduct by the Petitioner amounting to anything more than mere oversight or omission of information deemed to be an included continuation of the same action (such as an appeal).

14. Specifically, the Staff cites "lack of candor" but has not shown that any omissions were material, intentional, or resulted from a reckless disregard for the truth.

15. The Staff has cited "lack of respect for the judicial process" but provided no evidence that the Petitioner has violated any statute or rule to support their determination (such as sanctions or contempt of court).

16. The Petitioner has fully cooperated with the Staff throughout the application process.

17. Likewise, "insufficient rehabilitation" assumes facts not in evidence making rehabilitation unnecessary. Before the Staff can require a Petitioner to undergo rehabilitation, they must first identify a specific disqualifying act requiring rehabilitation. The Staff has not done that. Petitioner has continuously denied any acts of wrongdoing that would justify denial of his Moral Character application. Therefore, rehabilitation is not necessary. (See *Hightower v. State Bar* (1983) 34 Cal.3d 150,157.)

18. Lastly, and most troubling, is the Staff's unwarranted ad hominem attack on the Petitioner's character in retaliation for requesting an Administrative Review by the Committee of Bar Examiners of the

adverse Moral Character Determination dated March 19, 2021, pursuant to Chapter 4, Rule 4.47.1. The Staff responded with the same list of factors considered in March but now included the psychological diagnosis of "lack of insight."[1] The Staff has exceeded its authority when it begins diagnosing a Petitioner as having a severe mental illness simply because he does not agree with the Staff's subjective and unsubstantiated determination that the Petitioner is morally unfit to practice law. Petitioner has not consented to a psychological examination as part of his Moral Character application process, especially by persons unqualified to make such a diagnosis. The "lack of insight" diagnosis by the Staff is reckless, defamatory, and not rationally based on the Petitioner's rejection of any specific disqualifying act.

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[1] "Lack of insight," also called Anosognosia, is a symptom of severe mental illness experienced by some that impairs a person's ability to understand and perceive his or her illness.

https://www.treatmentadvocacycenter.org/key-issues

When someone rejects a diagnosis of mental illness, it's tempting to say that he's "in denial." But someone with acute mental illness may not be thinking clearly enough to consciously choose denial. They may instead be experiencing "lack of insight" or "lack of awareness." The formal medical term for this medical condition is anosognosia, from the Greek meaning "to not know a disease." https://www.nami.org/About-Mental-Illness/Common-with-Mental-Illness/Anosognosia.

PRAYER

WHEREFORE, Petitioner prays for relief as follows:

That this Court order the Committee of Bar Examiners to:

1. certify that the Petitioner has met his burden of establishing good moral character; and
2. certify that the Petitioner is qualified to be admitted to practice law; and
3. Formally apologize to Petitioner for stating that he has a "lack of insight" for requesting an Administrative Review of the Committee staff's adverse moral character determination dated March 19, 2021, pursuant to Chapter 4, Rule 4.47.1.

Dated: August 20, 2021 Respectfully Submitted,

By: /s/ Dale Laue
DALE LAUE
Petitioner, *in pro per*

[Exhibits 1-5 Omitted]

[Proof Of Service Omitted]

CONFIDENTIAL MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	) Case No.
DALE WENDALL LAUE,	) SBC-21-M-30591-MC
Applicant for Admission.	) **DECISION**
	) (Filed May 27, 2022)

After receiving his second adverse moral character determination from the Committee of Bar Examiners of the State Bar of California (Committee), Dale Wendall Laue seeks a de novo determination of his moral character by this court. The court concludes Laue has failed to establish the requisite good moral character for admission to practice law in California.

I. Procedural History

On December 7, 2006, Laue submitted his first application for moral character determination to the Committee. At various points, the Committee solicited, and Laue provided, additional information pertaining to the application. On February 4, 2009, the Committee issued an adverse moral character determination, finding Laue displayed a lack of candor in the application itself, conveyed an appearance of impropriety as personal representative of his mother's estate, engaged in conduct indicating lack of fiduciary responsibility, and generally did not establish good moral character. Laue

attempted to appeal that result to this court but failed to timely perfect his request for review, and the Committee's decision became final.

On January 10, 2018, Laue submitted a second application for moral character determination. As before, he provided further information upon request. On March 19, 2021, the State Bar's Office of Admissions served Laue with an adverse decision, relying on multiple factors including Laue's "insufficient rehabilitation, lack of candor, lack of respect for the judicial process" and general failure to establish good moral character. (Exh 4.) Laue requested review by the Committee. (Rules of State Bar, title 4, Admission and Educational Stds.,[1] rule 4.47.1.) On June 21, the Committee concluded that Laue again failed to satisfy his burden, citing his "lack of insight, insufficient rehabilitation, lack of candor, lack of respect for the judicial process" and generally failed to establish good moral character. (Exh. 6.)

On August 23, 2021, Laue filed an application for a moral character proceeding and hearing (Application) in this court. (Rule 4.47; Rules Proc. of State Bar, rule 5.461.) On January 3, and February 18, 2022, respectively, the Committee filed a response and supplemental response opposing the Application. (Rules Proc. of State Bar, rule 5.462(B).) The court held trial on

[1] Unless otherwise specified, all references to rules are to this source.

March 9 and 10.[2] Despite indicating its intent to do so, the Committee did not file a closing argument brief. Laue filed his brief on March 24, and the court submitted the matter that day.

II. Moral Character Standards and Procedures

To qualify to practice law in California, an applicant must possess good moral character. (Bus. & Prof. Code,[3] § 6060, subd. (b); rule 4.40(A); *In re Glass* (2014) 58 Cal.4th 500, 519.) An attorney's good moral character is critical to protect clients and "for the proper functioning of the judicial system itself." (*In re Glass, supra*, 58 Cal.4th at p. 520.) Good moral character includes, among other things, "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." (Rule 4.40(B); *In re Gossage* (2000) 23 Cal.4th 1080, 1095.) An applicant shoulders the burden to prove moral fitness. (*In re Gossage, supra*, 23 Cal.4th at p. 1095.)

A State Bar Court moral character proceeding has three phases. First, the applicant must furnish

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[2] Due to the COVID-19 pandemic, the court held trial via Zoom. The remote trial was initially scheduled under California Rules of Court, emergency rule 3, effective April 6, 2020 through December 31, 2021, but it ultimately occurred under interim rule 5.19 of the Rules of Procedure of the State Bar. No party objected to the remote proceeding.

[3] Unless otherwise specified, all references to sections are to this source.

evidence sufficient to establish a prima facie case of good moral character. (*In re Glass, supra*, 58 Cal.4th at p. 520.) If the first step is satisfied, the Committee may rebut the prima facie showing with clear and convincing evidence of the applicant's poor character. (*Id.*; *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 327.) Upon the Committee's successful rebuttal, the burden shifts back to the applicant to discredit the evidence of bad character and/or prove rehabilitation. (*In re Gossage, supra*, 23 Cal.4th at pp. 1095-1096; *Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 312.) The more serious the bad character evidence, the stronger the rehabilitation must be. (*In re Gossage, supra*, 23 Cal.4th at p. 1096.)

The court ordinarily affords an applicant "the benefit of the doubt as to 'conflicting equally reasonable inferences' concerning moral fitness." (*In re Glass, supra*, 58 Cal.4th at p. 521, quoting *In re Gossage, supra*, 23 Cal.4th at p. 1098.) But where there is notable or criminal transgression, "positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable." (*In re Gossage, supra*, 23 Cal.4th at p. 1098.)

III. Laue's Credibility at Trial

Laue was the sole witness to testify in this proceeding. The court closely observed his testimony, considering, among other things, his demeanor; the manner and character of his testimony; his interest in

the outcome of this proceeding; and his capacity to perceive, recollect, and communicate the matters on which he testified. (See Evid. Code, § 780; see also *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 227 [court should declare how it weighs evidence and determines witness credibility].) Though some of Laue's testimony was imprecise and unconvincing—especially as to his claims that he forgot about certain past legal actions—the court affords him the benefit of the doubt as to points on which no direct contradictory evidence exists and generally accepts his testimony as true to his experience, except as specified. Markedly, though, much of Laue's testimony went to his *opinions and conclusions* about his character and the Committee's findings, comprising argument, rather than probative facts. And many of those opinions and conclusions were unreasonable or contrary to the evidence, as discussed.

IV. Prima Facie Showing of Good Moral Character

A. Laue's cursory testimony in prima facie phase

In support of the Application, Laue testified that he has not violated any laws and has no criminal convictions, other than a South Dakota speeding ticket conviction, which would be an infraction in California. He also averred generally that there is no moral turpitude in his background. Beyond this, he provided no affirmative documentary evidence or testimony of good moral character. Instead, Laue's initial presentation

primarily consisted of arguments and testimony to preemptively rebut negative character evidence he anticipated the Committee would introduce. Thus, the court will address these assertions by Laue below when addressing the Committee's rebuttal.

B. Prima facie case not established

At the close of Laue's initial presentation of evidence, the Committee moved to dismiss this proceeding, arguing Laue failed to satisfy his prima facie burden. The court denied the motion, permitting Laue the benefit of the full production of evidence. The court announced that, at that time, it believed Laue had sufficiently made a prima facie case of good moral character, given the low evidentiary bar applicable. Upon further consideration of the relevant authorities, the court now concludes Laue's prima facie showing was lacking.

An applicant's prima facie burden is relatively low. (E.g., *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 735.) It has been met by testimony from just two witnesses, plus the applicant. (*Ibid.*) Still, case law makes clear that, while modest, the initial burdens of production and persuasion lie with the applicant. (*In the Matter of Applicant A, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 322, 326.) At the prima facie phase, Laue's criticisms of the Committee's adverse determination—claiming it relied on "canned"[4] and unsupported findings—are unavailing, as the initial burden to produce

[4] All quotations without citation reference trial testimony.

affirmative evidence of good moral character rests with Laue.

Laue's positive character evidence was scant. His uncorroborated and conclusive testimony that he has good moral character carries limited probative value without facts. Laue presented no testimony or other evidence as to any affirmative positive traits (e.g. "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") or any actions indicative of such traits (e.g. community service or civic contributions). (Rule 4.40(B).)

The court has located no published case in which a moral character applicant failed to meet the prima facie burden. Thus, the minimal required showing is not clearly defined. Here, drawing all reasonable inferences in his favor (*In re Glass, supra*, 58 Cal.4th at p. 521), Laue's scarce affirmative evidence establishes only that (1) he has not suffered any serious criminal conviction and (2) he *believes* he has good moral character. As this showing falls drastically short of any accepted in the published case law, the court determines it insufficient to meet the prima facie threshold, minimal as it may be.

As noted, the court allowed the full presentation of evidence despite Laue's meager initial showing. Recognizing the lack of a clearly defined floor for the prima facie burden, the court summarizes and analyzes the remaining admitted evidence below and concludes

that, even if Laue's prima facie showing were deemed sufficient, his Application would fail. The Committee clearly and convincingly rebutted any minimal initial demonstration by Laue, who did not persuasively counter the Committee's evidence or prove rehabilitation.

V. Committee's Rebuttal and Laue's Counter

Below, the court summarizes the evidence, arguments, and findings as to the Committee's rebuttal as well as Laue's counterarguments and evidence presented preemptively with his initial case.

A. Laue's omissions in real estate applications

In 2016 and 2021, Laue signed and submitted applications to the California Department of Real Estate, certifying under penalty of perjury that the contents were true and correct.

1. 2016 real estate application response inaccurate

The 2016 Salesperson Exam/License Application asked: "Have you ever had a denied, suspended, restricted or revoked business or professional license (including real estate), in California or any other state?" (Exh. 7.) Laue replied no, despite the Committee's 2009 denial of his initial moral character application, which

was final. He reasons that the Committee's adverse decision was not a denial of a professional license because a positive moral character determination is one of multiple requirements for State Bar licensure. As Laue had not passed the bar exam—another precondition—he did not qualify for admission to practice law and believes he was not denied a professional license. Laue maintains his answer in the 2016 real estate application was accurate.

In contrast, two years later, in his 2018 moral character application, Laue responded yes when asked if he had ever been denied a business, trade, or professional license. He elaborated in that application that the Committee declined to grant him a positive moral character determination in 2009. At trial, Laue testified that he should have answered no to this question, based on the same reasoning he applied in the 2016 real estate application.

The Committee argues Laue's failure to disclose the adverse moral character determination on his 2016 real estate application was a misrepresentation showing lack of candor, further confirmed by his contrary response on the 2018 moral character application.[5]

The court appreciates Laue's point that a positive moral character determination is only one of several requirements for admission, such that the Committee's adverse determination may not technically

[5] As noted, the Committee failed to file a closing argument brief. All references to the Committee's arguments refer to those asserted at trial or in its responses to the Application.

qualify as a professional license denial. The Committee presented no authority providing otherwise. Still, a positive character finding is an essential precondition of licensure—one for which Laue underwent a formal and extensive application process which was ultimately unfavorable to him in 2009. The Committee's adverse determination of moral character was plainly material to the Department of Real Estate's purposes in evaluating Laue's fitness for a professional license, something a reasonable person completing the application would recognize.

Viewing the record in the light most favorable to Laue, the court does not find clear and convincing evidence that this omission was an intended misrepresentation. Nevertheless, Laue's reliance on a technicality to avoid disclosing the adverse moral character determination reflected poor judgment, considering the heightened degree of frankness and transparency generally expected of persons (1) applying for professional licenses and (2) certifying information under penalty of perjury. (*In re Glass, supra*, 58 Cal.4th at p. 523 [unreasonable refusal to perceive need for full disclosure of unfavorable information reflects lack of integrity and/or intellectual discernment required of attorneys]; *State Bar v. Langert* (1954) 43 Cal.2d 636, 642 ["Candor and frankness should be the primary concern of a lawyer . . . "].)

2. 2021 real estate application accurate as underlying matter not final

In July 2021, Laue submitted a Salesperson Renewal Application to the Department of Real Estate. The application asked: "Within the six-year period prior to filing this application, have you ever had a denied, suspended, restricted or revoked business or professional license (including real estate) in California or any other state?" (Exh. 7.) Laue again answered no, knowing that the Committee had rendered an adverse determination on his 2018 moral character application the month before.

The Committee argues Laue's statement was untrue, which he disputes. The court agrees with Laue. The 2009 moral character determination was final more than six years before Laue submitted the 2021 real estate application and, hence, was unresponsive to the inquiry. The court does not find that Laue was required to disclose the Committee's 2018 moral character determination because it was not yet final and is the subject of the present proceeding.

B. Omissions in moral character applications

On December 4, 2006, and January 5, 2018, respectively, Laue signed the moral character applications submitted to the Committee. He declared in each, under penalty of perjury, that the answers and statements therein were true and correct.

1. 2006 moral character application

In the 2006 application, Laue was asked: "Have you ever been a party to or are you presently a party to any civil action or administrative proceeding? This includes divorce, dissolution, small claims, worker's compensation, etc." (Exh. 1.) As he responded affirmatively, Laue was required to complete an additional form disclosing any such cases. He did so and offered information about litigation involving his mother's estate. Laue did not include two other civil cases because he had forgotten about them. The first was a divorce case he filed in 1991 against his wife. Laue and his wife reconciled shortly after he initiated the case, and it was dismissed. He also failed to disclose a second civil action, filed against Laue in 1982 by a contractor who had worked on his home (Pardee matter).[6]

2. 2018 moral character application

In his 2018 application, Laue again replied affirmatively when asked whether he ever had been a party to any civil or administrative proceeding. He divulged multiple lawsuits between him and his neighbor (Ortiz matters). He did not separately disclose numerous appeals flowing from the Ortiz matters, though he did note pending appeals (and appellate case numbers) in his disclosures of some of the underlying cases. On

[6] Laue testified inaccurately that the divorce case occurred 40 years ago and the Pardee matter 50 years ago. Though these estimates are off by roughly 10 years each, the court attributes this to mathematical error, not lack of candor, given that Laue disclosed the specific years when each proceeding began.

August 8, 2018, the Committee followed up with Laue about various lawsuits, including the Ortiz appeals, that were not reported in the 2018 application. Laue replied, explaining that the Ortiz appeals were a continuation of underlying cases that he had disclosed.

As in his 2006 moral character application, Laue failed to disclose his divorce case and the Pardee matter in his 2018 application because he forgot about them.

He also did not set forth numerous lawsuits he was involved in relating to his mother's estate. Laue had disclosed these cases during the 2006 moral character application process and did not believe he needed to "repeat" the information in his 2018 application because nothing had changed. Laue was not trying to hide anything and explained at trial that, while he is certain he disclosed some duplicative information between his 2006 and 2018 applications, he used "common sense" to decide what to include.

Laue also failed to disclose a federal petition for a writ of habeas corpus that he filed in January 2008, challenging a misdemeanor South Dakota speeding conviction. He did disclose the conviction itself, on both his 2006 and 2018 applications, but neglected to disclose the subsequent federal habeas proceedings.

Also, in the 2018 application, Laue neglected to include a federal civil lawsuit (Campbell matter) he filed in 2010 against the special administrator of his mother's estate. The U.S. district court dismissed the

case for lack of personal jurisdiction, and Laue forgot about the matter when he completed his application.

Laue also failed to disclose a legal malpractice suit (Wade matter) he filed in June 2016. Laue initiated the case pro se to preserve his rights under the statute of limitations while he sought counsel. When he could not find an attorney to pursue the matter, it was dismissed and never served on the opposing party. He did not disclose the case in his 2018 application because he did not think it was relevant.

Laue also did not disclose a lawsuit he filed in 2017 (State Bar matter) against the State Bar and an attorney involved in the Ortiz matters. In response to the Committee's inquiry about this, Laue replied that he did not disclose the case because he had forgotten about it and commented that disclosure would have been "redundant," as the State Bar was involved.

The 2018 application alerted Laue of his continuing duty to update his responses within 30 days of any change. In February 2018, the month after he submitted the application, Laue filed a lawsuit against the Commissioner of Internal Revenue (IRS matter). He did not disclose this to the Committee until September 2018, after the Committee identified the lawsuit itself and contacted Laue about it. Laue felt that nothing was happening in the case and there was nothing to report. He then forgot about the action, thinking he had already disclosed it because it had happened around the same time as his application submission.

In or about 2018, Laue's father-in law initiated an elder abuse restraining order against him (Lopez matter), which was ultimately dismissed in April 2019. (Exh. 1008.) Though Laue was not served, he learned about the case around March 2019. He did not inform the Committee of the Lopez matter within 30 days after learning of it. In February 2020, a Committee investigator contacted Laue, requesting that he update his application with any further civil actions in which he was a party. In response, Laue submitted a March 5, 2020 update but did not disclose the Lopez matter. Because he was not served and never appeared in the case, Laue did not consider himself a party and did not think he was required to disclose it.

3. *Some omissions reflect poor judgment and lack of due care*

The Committee argues that Laue's omissions in the 2006 and 2018 moral character applications and failures to update the 2018 application, demonstrate lack of candor and good moral character. Laue contends the failures to disclose were excusable and do not show poor character.

"Whether it is caused by intentional concealment, reckless disregard for the truth, or an unreasonable refusal to perceive the need for disclosure, . . . an omission [of information material to a moral character application] is itself strong evidence that the applicant lacks the 'integrity' and/or 'intellectual discernment' required to be an attorney." (*In re Gossage, supra*, 23

Cal.4th at p. 1102.) Yet, where an application is otherwise complete, admission is not negatively impacted when an applicant does not disclose minor information due to an inadvertent mistake. (*Ibid.*)

Laue's failures to disclose his divorce case and the Pardee matter fall into the latter category. Given the time that had passed and the subject matters, neither of these cases was especially relevant to the Committee's assessments, and the court finds it credible that Laue forgot about them. Though an applicant may be expected to conduct research to ensure the accuracy of the disclosures (*In re Gossage, supra*, 23 Cal.4th at p. 1104), the Committee has not proven that Laue's failure to do so regarding the divorce and Pardee matters was due to a lack of integrity or other character flaw.

The court also does not find dishonesty or poor character based on Laue's failures to disclose each of the Ortiz appeals separately from the related underlying cases. (Cf. *Calaway v. State Bar* (1986) 41 Cal.3d 743, 748 [omission of ancillary proceeding not fatal to reinstatement petition, where petitioner disclosed related proceeding].)

Further, the court does not fault Laue for failing to disclose the 2008 habeas corpus petition related to his traffic conviction in South Dakota. To be clear, he should have disclosed the habeas case specifically, as it was a distinct civil action, separate from the state criminal proceedings. (28 U.S.C. § 2254; *Browder v. Director, Dept. of Corrections of Illinois* (1978) 434 U.S.

257, 269 [well settled that habeas corpus is civil proceeding].) Still, because Laue divulged the related criminal matter to which the habeas petition arguably was ancillary, the court affords him the benefit of the doubt on this issue. (Cf. *Calaway v. State Bar, supra*, 41 Cal.3d at p. 748.)

Laue's failures to disclose the remaining cases – those involving his mother's estate and the Campbell, Wade, State Bar, IRS, and Lopez matters – were improper and unreasonable. The court does not find that he was intentionally dishonest or acted nefariously. Still, his level of care in failing to disclose these matters was unacceptably low, showing a lack of appreciation for the transparency, frankness, and attention expected. (*In re Glass, supra*, 58 Cal.4th at p. 523; see also *In re Gossage, supra*, 23 Cal.4th at p. 1104 [failure to take reasonable steps to ensure accuracy and completeness evidences poor character].)

While Laue may have viewed the 2018 application as a continuation of his 2006 moral character application, nothing in the application suggested that he could omit previously disclosed information. The application asked whether he had *ever* been party to a civil action or administration proceeding and was not limited in scope or time.

His unilateral decision to exclude the matters regarding his mother's estate was unreasonable and rendered his response inaccurate. The court finds too that, in failing to disclose the Campbell, Wade, and State Bar matters, Laue exercised an unreasonably

diminished standard of care. Each of these cases was initiated less than eight years before Laue completed the 2018 application. Due to the abundant litigation to which he has been party, the court finds it credible that Laue overlooked these actions, rather than intentionally concealing them. But, given his involvement in numerous civil matters, Laue should have exercised heightened, not less, care in ensuring that he identified and disclosed them accurately, even if research was necessary. (Cf. *In re Gossage, supra*, 23 Cal.4th at p. 1104 [unusual number of criminal matters in which applicant was involved "strengthened—not lessened—his obligation to ensure the accuracy of his Application even if independent research was required"].)

Laue's exercise of judgment and care in failing to timely update the 2018 application as to the IRS and Lopez matters was also poor. He initiated the IRS case only a month after submitting the application. His rationale that disclosure was not necessary because nothing was happening in the case was unreasonable. Laue similarly acted with poor judgment in deciding not to declare the Lopez matter, instead relying on a technical argument that he should not be considered a party because he was not served. There is no question that being named as a respondent in a request for a restraining order is the type of information relevant to a moral character investigation. Any reasonable applicant would appreciate that full disclosure and explanation of this circumstance was appropriate, irrespective of the technicality of what constitutes a

"party." (*Spears v. State Bar* (1930) 211 Cal. 183, 187 [application for admission to practice law requires high degree of frankness, truthfulness and integrity].)

C. Laue's mishandling of his mother's estate

In March 2004, Laue was appointed as personal representative of his late mother's estate. He was required to prepare an inventory of the estate by November 8, 2004, but did not, due to a dispute with his deceased brother's children. Laue believed his brother's estate owed money to their mother's estate. Because his brother's children, who also were heirs to the mother's estate, would not return the purportedly owed funds, Laue refused to complete an inventory or distribute the estate.

On December 16, 2006, a South Dakota probate court removed Laue from his role as personal representative and appointed a special administrator to replace him. The court found Laue had not completed the legally required inventory, more than two years after the statutory deadline. It found further that Laue had donated personal property from the estate without first giving the heirs notice of his intent to do so or providing appraisals or estimates of the property value. The probate court explained: "Such transactions fall within the discretion of a Personal Representative, but the unilateral decision that none of the heirs might want some of their mother's or grandmother's personal property even if only for sentimental value is callous at best and at worst, pushes the borders of a fiduciary

responsibility to those heirs." (Exh. 1014.) In addition, the court determined that Laue failed to provide required notices of estate matters directly to his brother's children, despite their demands that he do so.

The probate court concluded there was (1) "no legal basis for the refusal of [Laue] to provide appropriate inventories, accountings, and notices," (2) "an appearance of impropriety attaching to [Laue's] actions and lack of action" as personal representative, and (3) "no remaining trust or faith" in Laue by his deceased brother's children. (Exh 1014.) The court determined that, despite many opportunities, Laue refused and failed to meet his obligations.

While Laue disagrees with these findings, this court affords them a strong presumption of validity, as they are supported by substantial evidence. (*In the Matter of Applicant A, supra*, 3 Cal. State Bar Ct. Rptr. at p. 325 [prior civil findings made under preponderance of evidence standard are not preclusive in State Bar Court but bear a strong presumption of validity, if supported by substantial evidence]; cf. *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) Indeed, the probate court's findings as to the relevant facts are generally consistent with Laue's testimony before this court; he simply disagrees with the probate court's conclusions.

The record clearly and convincingly establishes that Laue failed to satisfy his statutory duties, allowing personal disputes to interfere with his fiduciary obligations. If personal conflicts or other obstacles

inhibited Laue's ability to fulfill his duties, it was incumbent on him to address them through proper channels. Practicing attorneys similarly are expected to vigilantly avoid and resolve such conflicts. At the very least, Laue's overall conduct in administering his mother's estate showed lack of appreciation for the gravity of his fiduciary responsibilities—a key aspect of responsible legal practice. (*In re Lesansky* (2001) 25 Cal.4th 11, 16 [fidelity to fiduciary duties necessary to practice law]; *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447 [prior misconduct bearing upon fitness to practice law especially relevant to moral character assessment].)

D. Laue's litigation conduct

1. Speeding ticket litigation

In October 2005, Laue was pulled over while driving and cited for speeding in South Dakota. Rather than paying the $99 ticket, he invoked his right to a trial. Following a guilty verdict, on January 13, 2006, a South Dakota magistrate court entered a judgment convicting Laue of a misdemeanor speeding offense and sentencing him to pay the $99 ticket. Laue appealed and a South Dakota circuit court affirmed the conviction, noting there was no evidence contradicting the guilty verdict and that Laue cited no authority supporting relief. Laue next appealed this result to the South Dakota Supreme Court. In a January 16, 2007 order, the Court affirmed the circuit court's ruling. It explained that Laue's appeal was meritless as the

issues raised were "clearly controlled" by settled law and there was abundant evidence to support the findings. (Exh. 35.)

Undeterred, in January 2008, Laue filed a petition for a writ of habeas corpus in the U.S. District Court, District of South Dakota. A federal magistrate judge issued a February 2008 report and recommendation (R&R) to deny the petition because Laue was not in custody. The R&R contained a thorough analysis with citations to controlling case law holding that a criminal sentence like Laue's, imposing only a fine, is not subject to habeas corpus relief. Despite this, Laue objected to the R&R. The district court then considered and rejected his arguments, adopting the R&R and denying Laue's habeas petition on March 4, 2008.

Days later, Laue sent a letter to the court's chief judge, challenging and lamenting the outcome. In the letter, he accused the South Dakota courts of misconduct relating to his conviction. He claimed the courts disregarded the law and violated his right to a fair trial "by the withholding of evidence with exculpatory or impeachment value." (Exh. 40.) Laue suggested the courts had done this with a motive to raise money for the state's schools and commented: "I feel more violated being robbed by the South Dakota court system than I would feel being robbed by a thug on the street." (*Ibid.*)

2. Vexatious litigant designation

Laue has pursued multiple legal actions against his neighbor, the Ortiz matters. In 2013, the Santa

Clara County superior court dismissed one of Laue's complaints under California's anti-SLAPP statute. Laue appealed, and the appellate court affirmed the dismissal. The Supreme Court then denied his request for review. Nevertheless, Laue continued to challenge the final judgment. He initiated an independent action in equity, seeking to set aside or vacate the dismissal. On May 13, 2016, in the action for equitable relief, the superior court entered an order (1) declaring Laue to be a vexatious litigant under Code of Civil Procedure, section 391(b)(2); (2) finding there was no reasonable probability he would prevail in the case; and (3) requiring him to furnish a $25,000 security to continue to pursue the matter under Code of Civil Procedure, section 391.3.[7]

After Laue failed to post the ordered security, the court entered judgment against him in the equity case. He then appealed the dismissal and vexatious litigant order unsuccessfully to the appellate court, which also denied his subsequent request for rehearing. Laue next sought review by the Supreme Court, which was denied.

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[7] This order did not subject Laue to prefiling review requirements for future court actions. For a brief time, Laue was mistakenly included on the list of California litigants subject to prefiling review requirements under Code of Civil Procedure section 391.7, but that was in error, as the Judicial Council of California confirmed on February 4, 2020. (Exh. 1022.)

3. Pursuit of meritless legal matters reflects poor character

Regarding his litigation conduct generally, Laue averrers that he appeals court rulings that do not conform to the law, professing that he is unsure why the courts "always" rule contrary to the law. He confirmed that he "absolutely" does legal research before deciding to appeal.

The Committee argues Laue's conduct in litigating the speeding ticket and Ortiz matters shows a lack of respect for the judicial process. The record confirms that Laue's habeas corpus petition challenging the South Dakota speeding conviction was unreasoned, yet he continued to pursue his arguments, even after the court explained they were plainly foreclosed.

Regarding 2016 vexatious litigant order, Laue claims it is invalid because it did not specify a date for his compliance, as required under Code of Civil Procedure section 391.3. This argument is unavailing. To begin, Laue may not collaterally attack the superior court's order in this proceeding. (*In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 560 [litigants may not collaterally challenge superior court orders in State Bar Court].) In any event, the vexatious litigant order has no preclusive effect on the issues here; instead, it is part of the evidence this court weighs in making its own findings. (*In the Matter of Applicant A, supra*, 3 Cal. State Bar Ct. Rptr. at p. 327-328; *Maltaman v. State Bar, supra*, 43 Cal.3d at p. 947.) A purported technical deficiency in the order does not

undermine the value of the superior court's findings as evidence before this court.

Here, substantial evidence supports the superior court's findings designating Laue as a vexatious litigant under Code of Civil Procedure section 391(b)(2). This court affords those conclusions a strong presumption of validity and finds clear and convincing evidence that Laue's equity action was a meritless attempt to relitigate a final matter. (*In the Matter of Applicant A, supra*, 3 Cal. State Bar Ct. Rptr. at p. 325; *Maltaman v. State Bar, supra*, 43 Cal.3d at p. 947.)

Laue maintains he did nothing improper in pertaining to the speeding ticket and the vexatious litigant designation, that he always acted within the bounds of the law, and that writing to the chief justice about the speeding ticket litigation was within his First Amendment rights. Like all litigants, Laue has a First Amendment right to seek redress of grievances in state courts. (*Bill Johnson's Restaurants, Inc. v. N.L.R.B.* (1983) 461 U.S. 731, 752.) But "baseless litigation is not immunized by the First Amendment right to petition," and may properly subject a litigant to consequences. (*Id.* at p. 743; *Wolfe v. George* (9th Cir. 2007) 486 F.3d 1120, 1125 [rejecting constitutional challenge to California's statutes governing vexatious litigants].) The court is mindful too that "attorneys are officers of the court with a special responsibility to protect the administration of justice" (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781) and are charged with duties to maintain due respect for courts and judicial officers and to counsel or

maintain only those actions that appear to be legal or just. (§ 6068, subd. (b), (c).) The pursuit of groundless litigation unreasonably burdens the courts and other litigants and is a misuse of public resources.

Laue's initiation and pursuit of the legally unsupported habeas and equity actions showed a lack of respect for judicial resources and for the courts' authority to conclusively determine the issues before them. (*Osborne v. Todd Farm Service* (2016) 247 Cal.App.4th 43, 45 [attorneys must respect and follow court orders whether they are right or wrong].) This is particularly troubling, as the repeated undertaking of unsuccessful claims is often a hallmark of culpability under section 6068, subdivision (c) (attorney duty to counsel and maintain only legal or just actions). (E.g. *In the Matter of Schooler* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 494, 503 [attorney culpable for filing frivolous appeals]; *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 365 [attorney culpable for unreasonably pursuing lawsuits after evident losses at trial and appeal].) Laue's testimony reflecting a lack of insight[8] as to the impropriety of these actions only heightens the court's concerns.[9]

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[8] The court rejects Laue's position that the Committee's claim that he lacks insight implies an improper psychological diagnosis. The concept of "lack of insight" is well-established and commonly referenced with no medical implication in authorities governing attorney conduct. (E.g., *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 ["lack of insight" into misconduct raises concerns attorney will repeat it].)

[9] Mindful of the complex interplay between First Amendment rights and attorney ethics, and noting the Committee's

E. Laue's inaccurate deposition testimony

At a May 10, 2016 deposition for one of the Ortiz matters, Laue was asked if he had (1) been a party to any other lawsuits and (2) if he had been involved in any other lawsuits in which he represented a party.[10] Under oath, he responded to both questions in the negative. This was inaccurate. By then, he had been party to the divorce and Pardee cases, the Campbell matter, and the criminal speeding ticket litigation and habeas case. He had also litigated matters relating to his mother's estate.

After Laue's negative responses, the deposing attorney asked specifically about the litigation surrounding his mother's estate. Laue then replied that he was the personal representative and a beneficiary

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burden of proof, this court does not find poor character based on Laue's criticisms of the South Dakota courts. (Cf. *Standing Committee on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1438 [attorneys may be sanctioned for impugning integrity of judge or court only if statements are proved false; hyperbole and figurative language may form basis for discipline].) Still, the court cautions Laue that "baseless accusations [against judges and courts] seriously impair the functioning of the judicial system" and may carry professional consequences. (*In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 785.)

[10] Laue objects to the consideration of exhibit 21, an uncertified copy of the deposition transcript. Because the transcript is uncertified, it is unclear whether it includes corrections Laue made after the fact. Given its relevance, the court admitted the transcript but announced the parties could provide argument as to its weight. Considering Laue's corroborating testimony and confirmation that he does not recall making changes to his response that he was not a party to other litigation, the court finds the transcript reliable as to the pertinent issues.

in litigation for his mother's estate but did not know if that made him a party.

Laue did not disclose his involvement in the divorce, Pardee, Campbell, criminal speeding ticket, or habeas matters at any time during the deposition. He had forgotten about the divorce and Pardee matters and did not disclose the habeas petition because he did not consider it a lawsuit but rather a "last ditch appeal on a criminal case." The record is unclear as to why Laue did not reveal the criminal speeding ticket litigation or the Campbell matter.

The Committee argues Laue's inaccurate deposition testimony was dishonest and showed poor character. Laue maintains his responses were correct.

The court finds Laue's answers untruthful. Though his failure to recall certain older cases is understandable, Laue was conscious of the more recent actions and unjustifiably failed to reveal them. His refusal to disclose the litigation regarding his mother's estate without prompting was evasive at best, showing lack of appreciation for the transparency expected when testifying under penalty of perjury. Further, his failure to disclose the criminal speeding ticket litigation and related habeas corpus proceedings was dishonest.

F. Unauthorized practice of law not proven

In the Lopez matter, Laue and his wife were involved in a dispute with his father-in-law and the

father-in-law's caretaker. Through the caretaker, the father-in-law initiated two separate actions for restraining orders—one against Laue and one against Laue's wife. On or about March 27, 2019, Laue wrote to his father-in-law, urging the father-in-law and caretaker to dismiss the restraining order actions. He enclosed form requests to dismiss each case and demanded they be signed and filed with the court, with file-stamped copies returned to Laue. Laue stated that, if he did not receive the filed copies by an indicated date, he and his wife would hire an attorney to challenge the restraining orders and file anti-SLAPP motions to dismiss. Laue explained that, if the motions were successful, his father-in-law would be required to pay attorney's fees and costs, which the caretaker would ultimately be responsible for, due to her fiduciary duties. He cited the Code of Civil Procedure and case law in the letter. About a week later, Laue sent a follow-up email to his father-in-law's attorney reiterating the dismissal requests.

The Committee contends that, by sending these communications involving both himself and his wife, Laue improperly engaged in the unauthorized practice of law (UPL). Laue disagrees, asserting the March 2019 letter was merely a communication between private parties and that he was not representing his wife.

It is a misdemeanor for any person not actively licensed by the State Bar to practice law. (§§ 6025, 6026(a).) The practice of law "includes both representation of others in court proceedings as well as 'legal advice and counsel and the preparation of legal

instruments and contracts by which legal rights are secured' without regard to whether a court proceeding is pending." (*In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698, 705, quoting *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542-543.) Though case law holds that "purporting to represent someone, even if only impliedly, while negotiating a settlement" constitutes the practice of law, Laue's conduct does not fall into that category. (*People v. Starski* (2017) 7 Cal.App.5th 215, 229.) He did not present himself as an attorney or as representing his wife, instead communicating clearly that he and his wife intended to *hire counsel* to represent them, if necessary. Further, the Committee did not prove that Laue conveyed legal advice to his wife or prepared legal instruments on her behalf. His enclosure of civil forms that are readily available and may be completed by attorneys and non-attorneys alike does not necessarily constitute the practice of law. Under these circumstances, and viewing the facts in the light most favorable to him, the court does not find Laue engaged in UPL.

VI. Committee's Successful Rebuttal

In sum, the Committee argues Laue has shown poor moral character by withholding pertinent information in his applications and at deposition; failing to appropriately update his 2018 moral character application; neglecting fiduciary duties while managing his mother's estate; and engaging in improper litigation conduct and UPL. Laue contends his conduct was

proper or, in some instances, due to reasonable oversights, not indicating poor character.

The court does not find proof that Laue engaged in UPL and does not fault him for certain omissions. Still, the Committee proved that Laue made multiple misrepresentations, under penalty of perjury, in his applications and deposition testimony and failed to properly update the 2018 moral character application. These repeated instances of poor judgment show a problematic lack of appreciation for the level of candor, frankness, and care appropriate to the circumstances and for the gravity of sworn statements. (*In re Glass, supra*, 58 Cal.4th at p. 523; *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 [documents signed under penalty of perjury carry "imprimatur of veracity [putting] reasonable persons on notice to take care that [they are] accurate, complete and true"].) These are issues of particular significance given the fidelity required of practicing attorneys. (*In re Lesansky, supra*, 25 Cal.4th at p. 16 [trustworthiness, honesty, and candor are traits necessary to practice law].) Collectively, this conduct and Laue's explanations, demonstrate a troubling tendency toward evasiveness: he has consistently withheld relevant information when able to concoct any arguable justification to do so.

Laue's neglect of statutory and fiduciary obligations in managing his mother's estate and his pursuit of meritless litigation also raise serious concerns about his moral fitness to practice law. These actions directly implicate important ethical and professional duties

imposed on attorneys. (§ 6068 [duties to support the laws, maintain due respect for courts and judicial officers, and counsel and maintain only just actions and proceedings]; see also *In re Lesansky, supra*, 25 Cal.4th at p. 16.)

For these reasons, even if Laue's minimal prima facie showing were deemed sufficient, the court finds that the Committee successfully rebutted it with clear and convincing evidence of poor character.

VII. Laue Provides No Rehabilitation

Laue presented no evidence of rehabilitation, instead relying on his position that the Committee failed to prove he lacks good character. He contends no rehabilitation is necessary. Indeed, Laue's testimony reflected a concerning lack of appreciation for the wrongfulness of his acts. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 [acknowledging wrongdoing essential to rehabilitation]; *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867, 879 [to assess rehabilitation, court looks for evidence that applicant understands nature of misconduct].) For instance, Laue's faulty claim that the habeas matter was not a lawsuit and continued insistence before this court that his deposition testimony was accurate raises serious concerns about his judgment. Laue made no showing of rehabilitation which the court could "with confidence lay before the world"

to justify his admission. (*In re Menna* (1995) 11 Cal.4th 975, 989.)

VIII. Laue Lacks Necessary Moral Character

The court finds that Dale Wendall Laue has failed to establish that he currently possesses the requisite good moral character for admission to practice law in the State of California. (Bus. & Prof. Code, § 6060, subd. (b); Rules of State Bar, title 4, Admission and Educational Stds., rule 4.40(A).)

/s/ Manjari Chawla
MANJARI CHAWLA
Judge of the State Bar Court

Dated: May 27, 2022

[Certificate Of Electronic Service Omitted]

Confidential Matter

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **DALE WENDALL LAUE,** Applicant for Admission.	Case No. **SBC-21-M-30591-MC** **ORDER DENYING MOTION FOR RECONSIDERATION** (Filed July 19, 2022)

On May 27, 2022, the court issued its decision, concluding that Dale Wendall Laue failed to establish the requisite good moral character for admission to practice law in California. On June 13, Laue filed a motion (Motion) seeking reconsideration of the decision and admission of two additional exhibits into evidence. On June 24, the Committee of Bar Examiners of the State Bar of California (Committee) filed a response opposing the Motion.

To support a motion for reconsideration, the proponent must show either (1) new or different facts, circumstances, or law, as applied under Code of Civil Procedure section 1008, or (2) that the court's decision contains one or more errors of fact and/or law, based on the evidence already before the court. (Rules Proc. of State Bar,[1] rule 5.115(B).) Laue has done neither.

[1] All further references to rules are to this source.

The court first considers Laue's request for "Reconsideration of the Admission of Exhibits 1013 and 1019." (Motion, p. 17.) Although Laue lodged these exhibits before trial, the court's records reflect that he did not seek to introduce them into evidence. As the court did not deny their admission, Laue's current request to admit them does not implicate reconsideration of a prior order and is more appropriately viewed as a motion to reopen the record.[2] The exhibits are not newly discovered—demonstrated by the fact that Laue lodged them before trial—and their admission would not alter the court's conclusions. Thus, they provide no basis to reopen the record. (Rule 5.113(B) [motion to reopen must be accompanied by declaration[3] showing new evidence could not have been produced earlier with reasonable diligence and, if admitted, probably would lead to different result].)

Laue also raises numerous issues as to the findings and conclusions in the court's decision. The court has evaluated the contentions carefully and revisited the record in doing so but finds none compelling. Each

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[2] If evaluated as a motion for reconsideration, Laue's request would fail because he (1) provides no explanation for failing to introduce the exhibits earlier (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839 [establishing new or different facts, circumstances, or law requires showing of diligence, including "satisfactory explanation for not having presented the new or different information earlier"]) and (2) cannot show any court error associated with the exhibits not being admitted previously.

[3] Laue also did not submit a declaration as required to support a motion to reopen.

of Laue's points either misapprehends the nature of this proceeding; misunderstands the findings, analysis, and/or cited authority in the decision; recycles arguments already considered and rejected, providing no persuasive basis for a different outcome; or expresses simple disagreement with the court's conclusions, again, with no convincing ground for an alternate result.

For example, Laue contests various aspects of the Committee's findings, which are not determinative as the court has considered and analyzed his moral character de novo. (Rule 5.460.) He also incorrectly suggests that this court may not rely on different grounds than the Committee in evaluating his moral character. (*Ibid.* [moral character hearings de novo and not limited to matters considered by Committee].) And he takes issue with the citation to particular cases involving facts distinguishable from his matter for general legal propositions. These arguments are not persuasive, as the court did not conclude Laue's case was precisely comparable to those cited. Instead, the findings and moral character determination in the decision at hand are guided by principles set forth in the moral character case law and other authorities.

Finding no grounds to admit the requested exhibits or to reconsider the decision in this matter, the court **DENIES** Laue's Motion.

IT IS SO ORDERED.

Dated: **July 19, 2022** /s/ Manjari Chawla
MANJARI CHAWLA
Judge of the State Bar Court

[Certificate Of Electronic Service Omitted]

Confidential Matter

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **DALE WENDALL LAUE,** Applicant.	Case No. **SBC-21-M-30591** **AMENDED ORDER REFERRING MATTER TO REVIEW DEPARTMENT** (Filed August 25, 2022)

Pursuant to rule 5.151 of the Rules of Procedure of the State Bar, Dale Wendall Laue's Request for Review filed on August 19, 2022, is referred to the State Bar Court Review Department for consideration and ruling.

IT IS SO ORDERED.

Dated: August 25, 2022 /s/ Manjari Chawla
MANJARI CHAWLA
Judge of the State Bar Court

[Certificate Of Electronic Service Omitted]

CONFIDENTIAL MATTER – DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-21-M-30591
DALE WENDALL LAUE,	)	(Confidential)
	)	OPINION
Applicant for Admission.	)	
	)	(Filed May 12, 2023)

Applicant Dale Wendall Laue[1] appeals a May 27, 2022 Hearing Department decision affirming an adverse moral character determination that he lacks the requisite moral character for admission as an attorney. In this appeal, Laue argues the Committee of Bar Examiners of the State Bar (Committee) did not establish he lacks the requisite good moral character. He

[1] Because this case involves an important legal issue to applicants seeking admission to practice law in California, we have deemed it appropriate for publication (Rules of State Bar, tit. 5, Discipline, Rules Proc. of State Bar, rule 5.159(E).) However, the underlying proceedings and hearings in this moral character matter remain confidential, and the applicant has not waived confidentiality. (Rules of State Bar, tit. 4, Admissions and Educational Stds., rule 4.4 [applicant records are confidential].) All further references to rules are to the Rules of the State Bar; rules beginning with a "4" are admission rules under title 4 and rules beginning with a "5" are to the Rules of Procedure under title 5. This version of the opinion, which includes applicant's name and the case's complete case number, will not be published and remains confidential. For purposes of publication, we will issue a separate opinion referring to applicant as Applicant D and not identifying the case by its complete case number.

also raises various constitutional challenges, alleges the Committee used vague standards to deny him a positive moral character determination, and asserts error in discovery and evidentiary rulings. The Committee does not seek review and agrees with the hearing judge's decision.

After independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the decision of the hearing judge that Laue did not make the required prime facie showing of good moral character. As the resolution of this issue is dispositive, we do not address Laue's remaining issues presented on review.

I. BACKGROUND

Laue twice submitted an "Application for Determination of Moral Character" (moral character application) to the Committee. The first moral character application, submitted in 2006, was denied in February 2009. He did not timely perfect a request for review to this court and the Committee's decision became final. Laue was advised he could submit another moral character application in two years. Laue's second moral character application was submitted to the Committee in January 2018. He understood that both the 2006 and 2018 moral character applications were submitted under penalty of perjury and that he had a continuing duty to make disclosures. Laue submitted four amendments to his 2018 moral character application in September and December 2018, March 2020, and March 2021. Approximately two weeks after Laue submitted

his final amendment and following a recorded informal interview, the Committee issued a written determination that Laue had not established his burden of showing good moral character. In its March 19, 2021 letter, the Committee articulated that the reasons for its determination were Laue's lack of candor, lack of respect for the judicial process, insufficient rehabilitation, and his general failure to establish he was of good moral character.

Laue sought and received review by the Committee pursuant to rule 4.47.1. Among other contentions, Laue argued the Committee's decision was based on "vague, arbitrary[,] and subjective statements" and inadmissible evidence of disqualifying conduct. Laue claimed he did not need to establish rehabilitation as there was no misconduct or evidence of bad moral character that required rehabilitation. The Committee was unpersuaded, and in a June 21, 2021 letter, notified Laue of the adverse decision. It repeated the reasons it set forth in its March 19 letter and added that his lack of insight was a considered factor.

Pursuant to rule 4.47 and rule 5.461, Laue filed an application for a moral character proceeding in the Hearing Department on August 23, 2021. Trial was held on March 9 and 10, 2022, during which Laue was the only witness. At the close of Laue's case-in-chief, the Committee argued he did not meet his initial burden of proof and moved to dismiss the proceeding, which was denied. After the close of evidence, Laue filed a closing brief, and the matter was submitted on March 24.

The hearing judge issued her decision affirming the Committee's moral character determination on May 27, 2022. She found, inter alia, that Laue did not meet his burden of proof to establish a prima facie showing of good moral character.[2] Laue submitted a motion for reconsideration on June 13, which was denied on July 19. He filed a request for review pursuant to rule 5.151. Following the submission of briefs, we heard oral argument on February 16, 2023.

II. MORAL CHARACTER PROCEEDINGS

The California Supreme Court may admit an applicant to practice law upon certification by the Committee that the applicant has fulfilled the requirements for admission. (Bus. & Prof. Code, § 6064;[3] rule 4.1; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1067.) One of the requirements is that the applicant be of good

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[2] The hearing judge found in the alternative that the Committee rebutted any prima facie showing of good moral character with sufficient evidence of bad acts, such as Laue: (1) failing to disclose numerous lawsuits and other legal proceedings on his 2018 moral character application and amendments; (2) being removed as a personal representative of his mother's estate due to a probate court's determination that he was not meeting his statutory and fiduciary obligations; (3) pursuing legally unsupportable litigation; (4) being declared a vexatious litigant in one of multiple lawsuits he filed against his neighbor; and (5) providing dishonest deposition testimony. The judge also found that Laue did not present evidence of rehabilitation, because he asserted, as he does on review, that he had done nothing improper that required rehabilitation.

[3] All further references to sections are to the Business and Professions Code unless otherwise noted.

moral character. (§ 6060, subd. (b); *Kwasnik v. State Bar, supra*, 50 Cal.3d at p. 1067.) This is because "[a] lawyer's good moral character is essential for the protection of clients and for the proper functioning of the judicial system itself. [Citation.]" (*In re Glass* (2014) 58 Cal.4th 500, 520.)

A. Legal Framework

The applicant bears the burden of establishing good moral character. (*In re Gossage* (2000) 23 Cal.4th 1080, 1095 [burden rests upon applicant for admission to prove own moral fitness].) A moral character proceeding in the State Bar Court has three phases. First, the applicant must present enough evidence to make a prima facie showing of good moral character. (*In re Menna* (1995) 11 Cal.4th 975, 984; *Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 312.) Even though it is the applicant who bears the burden of proof, all reasonable doubts are ordinarily resolved in favor of the applicant. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 937.) A moral character proceeding is a de novo one, and the judge is not limited to those matters considered by the Committee. (Rule 5.460.)

If an applicant makes a prima facie showing, the matter then moves to the second phase during which the Committee must rebut an applicant's prima facie showing with evidence of bad moral character. (*Lubetzky v. State Bar, supra*, 54 Cal.3d at p. 312.) If the Committee rebuts the applicant's prima facie showing, the proceeding enters the third phase in which the burden

shifts back to the applicant to prove his rehabilitation from the misconduct or other bad character evidence established by the Committee. (*Ibid.*) In the second and third phases, the parties' burden of proof is by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) The California Supreme Court has long held that an applicant can be denied admission based on conduct that would not result in disbarment of a licensed attorney. (*In re Stepsay* (1940) 15 Cal.2d 71, 75.)

B. Laue Failed to Establish a Prima Facie Showing of Good Moral Character

Laue asserts that in presenting a prima facie case of good moral character, he need only establish the absence of moral turpitude. He contends that other than a 2006 speeding ticket in South Dakota, he does not have a criminal record, and he has "not violated the rights of any other person." Laue claims that by default, he has shown a respect for laws, others, and the judicial process, and the absence of any disqualifying act shows he has met his prima facie burden that he possesses good moral character. We note the hearing judge reminded Laue at the pre-trial conference and again at trial that he had the initial burden to establish a prima facie case of *good* moral character. Disregarding this admonition, and on at least two occasions, Laue informed the judge he would proceed with his

case by rebutting the Committee's case "in advance." As discussed below, Laue's strategy to focus on refuting the Committee's evidence is not a substitute for his own affirmative burden of proof at the prima facie stage.

A prima facie case of good moral character is not established by default. While an applicant's burden is relatively low, an affirmative showing of good moral character is required. (*Konigsberg v. State Bar of California* (1961) 366 U.S. 36, 41 ["an applicant must initially furnish enough evidence to make a prima facie case"]; *In re Glass, supra*, 58 Cal.4th at p. 520 [applicant must present evidence that is "sufficient to establish a prima facie case"]; *In re Gossage, supra*, 23 Cal.4th at pp. 1095-1096 ["the applicant presents a prima facie case of good character and the Committee rebuts with evidence of bad character"].)

As set forth in rule 4.40(B), "good moral character includes 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." Laue directs us to his application and its amendments for affirmative evidence of his good moral character, specifically citing his education and employment history, various licenses and certifications, and personal references. We consider each in turn.

1. Education and Employment

For several years following high school, Laue had intermittent periods of employment, and then he attended college in Los Angeles from September 1978 to February 1980.[4] While attending college, he was occasionally employed at the Los Angeles International Airport. From March 1982 to August 2000, Laue worked at three different companies as a manufacturing engineer, with his most significant period of employment occurring at an aerospace company from June 1987 to April 1999. Meanwhile, he earned a Bachelor of Science degree in 2000. The last job Laue held was as an aircraft systems engineer from August 2000 to April 2002. Laue attended law school in Los Angeles beginning in January 2003 and earned his Juris Doctor degree in January 2007. Laue has not passed the California Bar exam, although he has spent several years studying for it.

That Laue graduated from college and law school is not itself evidence of good moral character. If Laue had provided evidence of high marks or academic awards, for example, this could have been considered in conjunction with other evidence to make a prima facie case. (See, e.g., *Siegel v. Committee of Bar Examiners* (1978) 10 Cal. 3d 156, 160-164 [prima facie case established by ample evidence, including evidence of high scholarly achievement in high school, college, and

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[4] These are the dates Laue identified in his September 26, 2018 amendment, which differ slightly from the dates provided in his original 2018 moral character application. This minor discrepancy does not affect the outcome of this case.

law school].) And while Laue was continuously employed for 20 years, he has not worked since 2002. Thus, any attribute of good moral character that his prior steady employment reveals, such as, potentially, trustworthiness, is of the distant past and of limited value.

2. Licenses

Turning to Laue's various licenses, in February 1980, he was licensed as an aircraft mechanic from the Federal Aviation Administration (FAA), although the license is currently inactive. From June 1982 to April 1999, he received a secret security clearance from the Defense Industrial Security Clearance Office (DISCO) while employed at the aerospace company. In December 1992, the FAA granted him a commercial pilot license, which is currently inactive. In August 2017, he received from the California Bureau of Real Estate a salesperson license, which states, "This license is issued in a nonworking status. The licensee may not perform licensed activities." Indeed, Laue testified that he is not permitted to sell real estate. Hence, the evidence shows that the most recent *active* license or credential Laue held was his security clearance in 1999.

Laue argues that his commercial pilot license reflects good moral character because it "subjected him to the possibility of regulatory violations," and he has no such violations. Since there is no evidence that Laue ever utilized his pilot license, his assertion has little, if any, value. (Cf. *Hall v. Committee of Bar Examiners*

(1979) 25 Cal.3d 730, 735 [that applicant had a current license to operate employment agency and did so full-time with no recent complaints lodged with the agency overseeing the license was considered as part of a prima facie case].)

Laue further contends that his security clearance demonstrates that the federal government "entrusted [him] with national security secrets for life" and required an extensive background investigation, citing title 50 United States Code (U.S.C.) section 3341 and a 2017 op-ed article.[5] First, title 50 U.S.C. section 3341 is part of the Intelligence Reform and Terrorism Prevention Act of 2004, which was not in effect when Laue held a security clearance, and thus, cannot be relied on to describe the quality of investigation he underwent, the scope of security clearance he held, or any post-employment obligations. (*See* Intelligence Reform and Terrorism Prevention Act of 2004, Pub.L. No.108-458 (Dec. 17, 2004) 118 Stat. 3638, title III § 3001.) Second, Laue's statements do not provide any evidence as to the type of information sought in the background investigation that could illuminate his good moral character. And third, resolving any reasonable doubt in favor of Laue, even if we assumed that a background investigation reflected his good moral character at the time, it is not evidence of his good moral character currently or in the recent past.

Regarding Laue's inactive salesperson license, that application seeks information about prior criminal

[5] The op-ed article is not part of the record on review.

convictions, pending criminal charges, sex offender registration, adverse actions on business or professional licenses, pending disciplinary actions on licenses, and whether there have been any adverse actions by an administrative agency or professional association regarding a breach of ethics or unprofessional conduct—to which Laue responded in the negative (with the exception of a 2006 speeding violation). This is not evidence of good moral character, because the information does not result in *affirmative* evidence of Laue's good character. And finally, we find that his inactive license as an aircraft mechanic itself is not evidence of good moral character, but rather, is evidence of a skill acquired by Laue.[6]

3. Personal References

Lastly, Laue notes that he provided personal references on his application, and indeed there are five listed. In admissions cases, "'significant weight' [is given] in making a prima facie case to testimonials from attorneys on an applicant's behalf [Citations.]." (*Lubetzky v. State Bar, supra*, 54 Cal.3d at p. 315, fn. 3.) Of his five references, one was from an attorney who had known Laue for a year. The remainder consisted of individuals from Laue's past employment and others whom Laue had known for many years. However, what is noteworthy is that none of these individuals

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[6] Laue did not provide evidence or even allege that there was a background investigation associated with this license that could reflect his good moral character.

submitted letters affirming Laue's good moral character or testified on his behalf at trial. Even if not from an attorney, some evidence from those vouching for an applicant's good character, in addition to other evidence, has long been a hallmark of a successful prima facie case. (*In re Garcia* (2014) 58 Cal.4th 440, 446 ["numerous individuals" including an attorney, law school professor, and administrative law judge praised applicant]; *Lubetzky v. State Bar, supra*, 54 Cal. 3d at p. 314 [testimony, declarations, and letters from attorneys, state senator, colleagues, former teachers, schoolmates, and neighbors attested to applicant's good moral character]; *Kwasnik v. State Bar, supra*, 50 Cal.3d at p. 1068 [letters from seven judges, seven attorneys, and one pastor praising applicant's integrity and reputation, professionally and personally]; *Hall v. Committee of Bar Examiners, supra*, 25 Cal.3d at p. 735 [testimony from two non-attorney witnesses averring to applicant's good moral character]; *Greene v. Committee of Bar Examiners* (1971) 4 Cal.3d 189, 192 [numerous favorable letters of recommendation]; *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 453-454 [letters and testimony of attorney, judge, prosecutor, two state assemblymen, and law professor affirming applicant's good character]; *In re Stepsay, supra*, 15 Cal. 2d at p. 76 [letters from judges and attorneys regarding applicant's honesty, integrity, and good character].)

In sum, we are left with Laue's stable employment that lasted until 2002, a security clearance that ended almost 20 years prior to his 2018 moral character

application in addition to other inactive licenses, and not a single witness who vouched, either by testimony or in writing, for his good character. Although the bar is low, we find Laue's submission does not meet the threshold to establish a prima facie case of good moral character.

III. CONCLUSION

Based upon our independent review of the record, we affirm the hearing judge's finding that Laue did not make a prima facie showing of good moral character. A failure to make a prima facie showing of good moral character is outcome determinative; therefore, we need not address Laue's remaining arguments on appeal.[7]

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[7] Resolution of Laue's other arguments would not alter our finding that he failed to make a prima facie showing of good moral character. Laue challenges the hearing judge's failure to admit several exhibits, some of which he did not even introduce at trial, that pertain to his effort to undercut the Committee's rebuttal evidence, rather than to establish his good moral character at the prima facie stage. Similarly, he contests the judge's denial of his motion to compel discovery, which he described in his motion to compel as his "effort to discover the specific disqualifying act(s) upon which the Committee based its decision to deny [his] moral character application." We, accordingly, find this issue is not relevant to establishing his prima facie case. Finally, his federal and state constitutional claims that the Committee violated his substantive due process rights, his rights under the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution, and that the Committee did not afford him equal protection of the law as a self-identified older, white male, are directed at the Committee's actions and are not pertinent to his burden of making a prima facie showing.

We decline to recommend Laue for admission to practice law in California.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.

No. SBC-21-M-30591

In the Matter of

DALE WENDALL LAUE

Hearing Judge
Hon. Manjari Chawla

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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

En Banc

In the Matter of	) SBC-21-M-30591
DALE WENDALL LAUE,	) (Confidential)
Applicant for Admission.	) ORDER
	) (Filed June 16, 2023)

On May 12, 2023, we filed an opinion in this case finding that applicant Dale Wendall Laue did not make the required prima facie showing of good moral character. On May 30, 2023, applicant filed a motion for reconsideration. On June 5, 2023, the Office of Chief Trial Counsel of the State Bar filed an opposition.

Applicant has failed to (1) present new or different facts, circumstances, or law, or (2) show our opinion contained errors of fact or law. (See Rules Proc. of State Bar, rules 5.115(B), 5.158.) Therefore, applicant's motion is denied.

/s/ W. Kearse McGill
Acting Presiding Judge

State Bar Court – No. SBC-21-M-30591

S280895

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Sep. 13, 2023)

In re DALE WENDALL LAUE on Admission.

The petition for review is denied.

/s/ GUERRERO
Chief Justice

CALIFORNIA CONSTITUTION

ARTICLE I DECLARATION OF RIGHTS [SECTION 1 - SEC. 32] *(Article 1 adopted 1879.)*

SEC. 31. (a) The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section's effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.

(f) For the purposes of this section, "State" shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any

other political subdivision or governmental instrumentality of or within the State.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

(Sec. 31 added Nov. 5, 1996, by Prop. 209. Initiative measure.)

CALIFORNIA BUSINESS AND PROFESSIONS CODE

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] *(Heading of Division 3 added by Stets. 1939, Ch. 30.)*

CHAPTER 4. Attorneys [6000 - 6243] *(Chapter 4 added by Stets. 1939, Ch. 34.)*

ARTICLE 4. Admission to the Practice of Law [6060 - 6069.5] *(Article 4 added by Stets. 1939, Ch. 34.)*

6060. To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

(a) Be at least 18 years of age.

(b)(1) Be of good moral character.

(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).

(c) Before beginning the study of law, have done either of the following:

(1) Completed at least two years of college work, which college work shall be at least one-half of the collegiate work acceptable for a bachelor's degree granted on the basis of a four-year period of study by a college or university approved by the examining committee.

(2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking examinations in subject matters and achieving the scores as are prescribed by the examining committee.

(d) Have registered with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon a showing of good cause, may permit a later registration.

(e) Have done either of the following:

(1) Had conferred upon them a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.

(2) Studied law diligently and in good faith for at least four years in any of the following manners:

(A)(i) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.

(ii) A person who has received their legal education in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that the person's education, experience, and qualifications qualify them to take the examination.

(B) In a law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the examining committee as the committee may require.

(C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the examining committee as the committee may require.

(D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.

(E) By any combination of the methods referred to in this paragraph.

(f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.

(g) Have passed the general bar examination given by the examining committee.

(h)(1) Have passed a law students' examination administered by the examining committee after completion of their first year of law study. Those who pass the examination within its first three administrations, or within the first four administrations as provided in paragraph (3), upon becoming eligible to take the examination, shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within the number of administrations allowed by this subdivision, upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for one year of legal study only.

(2)(A) This requirement does not apply to a student who has satisfactorily completed their first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

(B) The law students' examination shall be administered twice a year at reasonable intervals.

(3) If any of the first three administrations of the law students' examination described in paragraph (1) includes the June 2020 administration, the applicant shall be permitted to pass the examination within its first four administrations upon becoming eligible to take the examination and shall receive credit for all law studies completed to the time the examination is passed.

(Amended by Stats. 2020, Ch. 360, Sec. 3. (AB 3362) Effective January 1, 2021.)

CALIFORNIA BUSINESS AND PROFESSIONS CODE

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] *(Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 4. Attorneys [6000 - 6243] *(Chapter 4 added by Stats. 1939, Ch. 34.)*

ARTICLE 4. Admission to the Practice of Law [6060 - 6069] *(Article 4 added by Stats. 1939, Ch. 34.)*

6068. It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any

exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation,

breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of

the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

(Amended by Stats. 2018, Ch. 659, Sec. 50. (AB 3249) Effective January 1, 2019.)

CALIFORNIA CODE OF CIVIL PROCEDURE

PART 4. MISCELLANEOUS PROVISIONS [1855 - 2107] *(Heading of Part 4 amended by Stats. 1965, Ch. 299.)*

TITLE 4. CIVIL DISCOVERY ACT [2016.010 - 2036.050] *(Title 4 added by Stats. 2004, Ch. 182, Sec. 23.)*

CHAPTER 9. Oral Deposition Inside California [2025.010 - 2025.620] *(Chapter 9 added by Stats. 2004, Ch. 182, Sec. 23.)*

ARTICLE 5. Transcript or Recording [2025.510 - 2025.570] *(Article 5 added by Stats. 2004, Ch. 182, Sec. 23.)*

2025.540. (a) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audio or video record of deposition testimony, as described in Section 2025.530, that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(b) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

2023 California Rules of Court

Rule 9.13. Review of State Bar Court decisions

(a) Review of recommendation of disbarment or suspension

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court recommending his or her disbarment or suspension from practice must be served and filed within 60 days after a certified copy of the decision complained of is filed with the Clerk of the Supreme Court. The State Bar may serve and file an answer to the petition within 15 days after filing of the petition. Within 5 days after filing of the answer, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar must serve and file a supplemental brief within 45 days after the order is filed. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

(Subd (a) amended effective January 1, 2019; previously relettered and amended effective October 1, 1973; previously amended effective July 1, 1968, December 1, 1990, and January 7, 2007.)

(b) Review of recommendation to set aside stay of suspension or modify probation

A petition to the Supreme Court by a licensee to review a recommendation of the State Bar Court that a stay of an order of suspension be set aside or that the duration or conditions of probation be modified on account of a violation of probation must be served and filed within 15 days after a certified copy of the recommendation complained

of is filed with the Clerk of the Supreme Court. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

(Subd (b) amended effective January 1, 2019; adopted effective October 1, 1973; previously amended effective December 1, 1990; and January 1, 2007.)

(c) Review of interim decisions

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court regarding interim suspension, the exercise of powers delegated by rule 9.10(b)-(e), or another interlocutory matter must be served and filed within 15 days after written notice of the adverse decision of the State Bar Court is mailed by the State Bar to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

(Subd (c) amended effective January 1, 2019; adopted effective December 1, 1990; previously amended effective January 1, 2007.)

(d) Review of other decisions

A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Trustees of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of

the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be served and filed within 60 days after written notice of the action complained of is mailed to the petitioner and to his or her counsel of record, if any, at their respective addresses under Business and Professions Code section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer and brief. Within 5 days after filing of the answer and brief, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

(Subd (d) amended effective January 1, 2019; previously amended effective July 1, 1968, May 1, 1986, April 2, 1987, and January 1, 2007; previously relettered and amended effective October 1, 1973, and December 1, 1990.)

(e) Contents of petition

(1) A petition to the Supreme Court filed under (a) or (b) of this rule must be verified, must specify the grounds relied upon, must show that review within the State Bar Court has been exhausted, must address why review is appropriate under one or more of the grounds specified in rule 9.16, and must have attached a copy of the State Bar Court decision from which relief is sought.

(2) When review is sought under (c) or (d) of this rule, the petition must also be accompanied by a record adequate to permit review of the ruling, including:

(A) Legible copies of all documents and exhibits submitted to the State Bar Court or the State Bar supporting and opposing petitioner's position;

(B) Legible copies of all other documents submitted to the State Bar Court or the State Bar that are necessary for a complete understanding of the case and the ruling; and

(C) A transcript of the proceedings in the State Bar Court leading to the decision or, if a transcript is unavailable, a declaration by counsel explaining why a transcript is unavailable and fairly summarizing the proceedings, including arguments by counsel and the basis of the State Bar Court's decision, if stated; or a declaration by counsel stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action is requested from the Supreme Court other than issuance of a stay supported by other parts of the record.

(3) A petitioner who requests an immediate stay must explain in the petition the reasons for the urgency and set forth all relevant time constraints.

(4) If a petitioner does not submit the required record, the court may summarily deny the stay request, the petition, or both.

(Subd (e) amended effective January 1, 2019; previously repealed and adopted by the Supreme Court effective December 1, 1990, and February 1, 1991; previously repealed and adopted effective March 15, 1991; previously amended effective January 1, 2007.)

(f) Service

All petitions, briefs, reply briefs, and other pleadings filed by a petitioner under this rule must be accompanied by proof of service of three copies on the General Counsel of the State Bar at the San Francisco office of the State Bar, and of one copy on the Clerk of the State Bar Court at the Los Angeles office of the State Bar Court. The State Bar must serve the licensee at his or her address under Business and Professions Code section 6002.1, and his or her counsel of record, if any.

(Subd (f) amended effective January 1, 2019; adopted by the Supreme Court effective December 1, 1990; previously amended by the Supreme Court effective February 1, 1991; previously amended effective March 15, 1991, and January 1, 2007.)

Rule 9.13 amended effective January 1, 2019; adopted as rule 59 by the Supreme Court effective April 20, 1943, and by the Judicial Council effective July 1, 1943; previously amended and renumbered as rule 952 effective October 1, 1973, and as 9.13 effective January 1, 2007; previously amended effective July 1, 1976, May 1,

TITLE 4. ADMISSIONS AND EDUCATIONAL STANDARDS

Adopted July 2007

DIVISION 1. ADMISSION TO PRACTICE LAW IN CALIFORNIA

Chapter 1. General Provisions

Rule 4.1 Authority

The California Supreme Court exercises inherent jurisdiction over the practice of law in California. The Committee of Bar Examiners ("the Committee") is authorized by law, pursuant to the authority delegated to it by the Board of Trustees, to administer the requirements for admission to practice law; to examine all applicants for admission; and to certify to the Supreme Court for admission those applicants who fulfill the requirements.[1]

Rule 4.1 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.2 Scope of Rules

These rules apply to persons seeking to practice law in California. Nothing in these rules may be construed as affecting the power of the California Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 4.2 adopted effective September 1, 2008; amended effective September 1, 2019.

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[1] Business & Professions Code § 6046.

Rule 4.3 Definitions

These definitions apply to the rules in this Division unless otherwise indicated.

(A) An "American Bar Association Approved Law School" is a law school fully or provisionally approved by the American Bar Association and deemed accredited by the Committee.

(B) An "attorney applicant" is an applicant who is or has been admitted as an attorney to the practice of law in any jurisdiction.

(C) The "Attorneys' Examination" is the California Bar Examination for which attorney applicants may apply, provided they have been admitted to the active practice of law in a United States jurisdiction at least four years immediately prior to the first day of administration of the examination and have been in good standing during that period. The Attorneys' Examination includes essay questions and performance tests of the General Bar Examination but not its multiple-choice questions.

(D) A "California accredited law school" is a law school accredited by the Committee but not approved by the American Bar Association.

(E) The "California Bar Examination" is the examination administered by the Committee that an applicant must pass to be certified to the California Supreme Court as qualified for admission to practice law in California. The California Bar Examination includes the General Bar Examination and the Attorneys' Examination.

(F) "The Committee" is the Committee of Bar Examiners of the State Bar of California or, unless otherwise indicated, a subcommittee of two or more of its members whom the Committee authorizes to act on its behalf.

(G) "Director of Admissions" or "Director, Admissions" means the Director of the State Bar Office of Admissions, or that person's designee.

(H) A "general applicant" is an applicant who has not been admitted as an attorney to the practice of law in any jurisdiction.

(I) The "General Bar Examination" is the California Bar Examination required of every general applicant. The General Bar Examination consists of multiple-choice questions, essay questions, and performance tests.

(J) The "First-Year Law Students' Examination" is the examination that an applicant must pass, unless otherwise exempt.[2] It includes questions on contracts, torts, and criminal law.

(K) An "informal conference" is defined in Rule 4.45.

(L) The "Office of Admissions" ("Admissions") is the State Bar office authorized by the Board of Trustees and the Committee to administer examinations and otherwise act on their behalf.

(M) "Receipt" of a document the State Bar or Committee sends an applicant is

(1) calculated from the date of mailing and is deemed to be five days from the date of

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[2] Business & Professions Code § 6060(h).

mailing to a California address; ten days from the date of mailing to an address elsewhere in the United States; and twenty days from the date of mailing to an address outside the United States; or

(2) when the State Bar or Committee delivers a document physically by personal service or otherwise.

(N) "Receipt" of a document sent to the State Bar or Committee is when it is physically received at the Office of Admissions.

(O) An "unaccredited law school" is a correspondence, distance-learning, or fixed-facility law school operating in California that the Committee registers but does not accredit.

(P) For purposes of calculating law study credit toward meeting the legal education requirements necessary to qualify to take the First-Year Law Students' Examination and California Bar Examination, a "year" is defined as the law study successfully completed in the time between the same calendar dates for consecutive calendar years, minus one day.

Rule 4.3 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.4 Confidentiality

Applicant records are confidential unless required to be disclosed by law;[3] required by the State Bar's Executive Director, Chief Trial Counsel, or General Counsel to fulfill their responsibilities for regulation of the practice of law; or authorized by the applicant in writing for release to others.

Rule 4.4 adopted effective September 1, 2008.

Rule 4.5 Submissions

(A) A document filed with the State Bar or Committee pursuant to these rules must be completed according to instructions; verified or made under penalty of perjury;[4] and submitted with any required fee.

(B) A document, which must be complete as defined by the instructions for filing, is deemed filed upon receipt.

(C) The information obtained by the State Bar as a result of the fingerprinting of an applicant is used to establish identity of the applicant, to determine the moral character of the applicant, and to disclose criminal records of the applicant in California or elsewhere. Any information obtained as a result of fingerprint submission is confidential and for official use of the Committee and the State Bar.

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[3] Evidence Code § 1040, Business & Professions Code §§ 6044.5, 6060.2, 6060.25, 6086, and 6090.6.

[4] Code of Civil Procedure § 2015.5.

(D) Information on an examination application that is not required but submitted voluntarily, including ethnic survey and identification information furnished with applications to take the California Bar Examination, is separated from the applications at initial processing and may not be associated with applicants, their files, or their examination answers during grading unless there is reasonable doubt about the identity of a person taking an examination and the State Bar requires the information to verify identity.

Rule 4.5 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.6 Investigations and hearings

In conducting an investigation or hearing, the Committee or the State Bar Court may receive evidence; administer oaths and affirmations; and compel by subpoena the attendance of witnesses and the production of documents.

Rule 4.6 adopted effective September 1, 2008.

Rule 4.7 Statistics

The State Bar may publish statistics for each examination in accordance with its policies.

Rule 4.7 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.8 Extensions of time

The time limits for State Bar or Committee actions specified in these rules are norms for processing. The

time limits are not jurisdictional and the State Bar or Committee may extend them for good cause.

Rule 4.8 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.9 Review by Supreme Court

An applicant refused certification to the Supreme Court of California for admission to practice law in California may have the action of the Committee reviewed by the Supreme Court of California in accordance with its procedures.

Rule 4.9 adopted effective September 1, 2008.

Rule 4.10 Fees

Applicants shall pay reasonable fees, fixed by the Board of Trustees, for services such as application filing, reports, copying documents and providing letters of verification.

Rule 4.10 adopted effective November 14, 2009; previously amended effective January 1, 2012; amended effective September 1, 2019.

Chapter 2. Overview Of Admission Requirements

Rule 4.15 Certification to California Supreme Court

To be eligible for certification to the California Supreme Court for admission to the practice of law, an applicant for admission must:

(A) be at least eighteen years of age;

(B) file an Application for Admission with the State Bar;

(C) meet the requirements of these rules regarding education or admission as an attorney in another jurisdiction, determination of moral character, and examinations;

(D) be in compliance with California court-ordered child or family support obligations pursuant to Family Code § 17520;

(E) be in compliance with tax obligations pursuant to Business and Professions Code section 494.5;

(F) until admitted to the practice of law, notify the State Bar within thirty days of any change in information provided on an application; and

(G) otherwise meet statutory criteria for certification to the Supreme Court.[5]

Rule 4.15 adopted effective September 1, 2008; previously amended effective January 17, 2014; amended effective September 1, 2019.

Rule 4.16 Application for Admission

(A) An Application for Admission consists of an Application for Registration, an Application for Determination of Moral Character, and an application for any required examination. Each application must be submitted with the required documentation and the fees set forth in the Schedule of

[5] Business & Professions Code § 6060.

Charges and Deadlines. The State Bar determines when an application is complete.

(B) The Application for Registration must be approved, before any other application is submitted. The applicant is required by law either to provide a Social Security Number[6] on the application or to request an exemption because of ineligibility for a Social Security Number.[7] Registration is deemed abandoned if all required documentation and fees have not been received within sixty days of submittal. No refund is issued for an abandoned registration.

(C) After approval of the Application for Registration, an applicant for admission may submit an Application for Determination of Moral Character, an application for any examination as required by these rules and any other document or petition permitted by these rules.

Rule 4.16 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.

Rule 4.17 Admission certification and time limit

(A) No later than five years from the last day of administration of the California Bar Examination the applicant passes,

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[6] Business & Professions Code § 30, Family Code § 17520.

[7] Business & Professions Code § 6060.6.

(1) an applicant must meet all requirements for admission for certification by the Committee to the California Supreme Court; and

(2) upon receipt of an order from the Court, take the attorney's oath and meet State Bar registration requirements to be eligible to practice law in California.

(B) The State Bar may extend this five-year limit for good cause shown by clear and convincing evidence in a particular case but not for an applicant's negligence or the result of an applicant having received a negative moral character determination.

(C) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of decision.

Rule 4.17 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.

Chapter 3. Required Education

Rule 4.25 General education

Before beginning the study of law, a general applicant must have completed at least two years of college work or demonstrated equivalent intellectual achievement, which must be certified by the law school the applicant is attending upon request by the Committee.

(A) "Two years of college work" means a minimum of sixty semester or ninety quarter units of college credit

(1) equivalent to at least half that required for a bachelor's degree from a college or university that has degree-granting authority from the state in which it is located; and

(2) completed with a grade average adequate for graduation.

(B) "Demonstrated equivalent intellectual achievement" means achieving acceptable scores on Committee-specified examinations prior to beginning the study of law.

Rule 4.25 adopted effective September 1, 2008.

Rule 4.26 Legal education

General applicants for the California Bar Examination must

(A) have received a juris doctor (J.D.) or bachelor of laws (LL.B) degree from a law school approved by the American Bar Association or accredited by the Committee; or

(B) demonstrate that in accordance with these rules and the requirements of Business & Professions Code §6060(e)(2) they have

(1) studied law diligently and in good faith for at least four years in a law school registered with the Committee; in a law office; in a judge's chambers; or by some combination of these methods; or

(2) met the requirements of these rules for legal education in a foreign state or country; and

(C) have passed or established exemption from the First-Year Law Students' Examination.

Rule 4.26 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.27 Study in a fixed-facility unaccredited law school

To receive credit for one year of study in a fixed-facility unaccredited law school registered with the Committee, a student must receive passing grades in courses requiring classroom attendance by its students for a minimum of 270 hours a year.

Rule 4.27 adopted effective September 1, 2008.

Rule 4.28 Study by correspondence or distance learning

(A) To receive credit for one year of study by correspondence or distance learning in an unaccredited law school registered with the Committee, a student must receive passing grades in courses requiring at least 864 hours of preparation and study over no fewer than forty-eight and no more than fifty-two consecutive weeks in one year evidenced by a transcript that indicates the date each course began and ended.

(B) To receive credit for one-half year of study by correspondence or distance learning in an unaccredited law school registered with the Committee, a student must receive passing grades in courses requiring at least 432 hours of preparation and study over no fewer than twenty-four and no more than twenty-six consecutive weeks, evidenced by a

transcript that indicates the date each course began and ended.

(C) To receive credit, a student studying by correspondence or distance learning may not begin a subsequent year of study prior to completion of one year of study as defined in rule 4.3(P) of these rules.

Rule 4.28 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.29 Study in a law office or judge's chambers

(A) A person who intends to comply with the legal education requirements of these rules by study in a law office or judge's chambers must

(1) submit the required form with the fee set forth in the Schedule of Charges and Deadlines within thirty days of beginning study;

(2) submit semi-annual reports, as required by section (B)(5) below on the Committee's form with the fee set forth in the Schedule of Charges and Deadlines within thirty days of completion of each six-month period; and

(3) have studied law in a law office or judge's chambers during regular business hours for at least eighteen hours each week for a minimum of forty-eight weeks to receive credit for one year of study or for at least eighteen hours a week for a minimum of twenty-four weeks to receive credit for one-half year of study.

(B) The attorney or judge with whom the applicant is studying must

(1) be admitted to the active practice of law in California and be in good standing for a minimum of five years;

(2) provide the Committee within thirty days of the applicant's beginning study an outline of a proposed course of instruction that he or she will personally supervise;

(3) personally supervise the applicant at least five hours a week;

(4) examine the applicant at least once a month on study completed the previous month;

(5) report to the Committee every six months on the Committee's form the number of hours the applicant studied each week during business hours in the law office or chambers; the number of hours devoted to supervision; specific information on the books and other materials studied, such as chapter names, page numbers, and the like the name of any other applicant supervised and any other information the Committee may require; and

(6) not personally supervise more than two applicants simultaneously.

Rule 4.29 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.30 Legal education in a foreign state or country

Persons who have studied law in a law school in a foreign state or country may qualify as general applicants provided that they

(A) have a first degree in law, acceptable to the Committee, from a law school in the foreign state or country and have completed a year of legal education at an American Bar Association Approved Law School or a California accredited law school in areas of law prescribed by the Committee; or

(B) have a legal education from a law school located in a foreign state or country without a first degree in law, acceptable to the Committee, and

(1) have met the general education requirements;

(2) have studied law as permitted by these rules in a law school, in a law office or judge's chambers, or by any combination of these methods (up to one year of legal education credit may be awarded for foreign law study completed); and

(3) have passed the First-Year Law Students' Examination in accordance with these rules and Committee policies.

Rule 4.30 adopted effective September 1, 2008.

Rule 4.31 Credit for law study after passing the First-Year Law Students' Examination

(A) An applicant who is required to pass the First-Year Law Students' Examination will not receive

credit for any law study until the applicant passes the examination. An applicant who passes the examination within three consecutive administrations of first becoming eligible to take the examination, will receive credit for all law study completed to the date of the administration of the examination passed, subject to any restrictions otherwise covered by these rules. An applicant who does not pass the examination within three consecutive administrations of first becoming eligible to take the examination but who subsequently passes the examination will receive credit for his or her first year of law study only.

(B) If any of the first three administrations of the First-Year Law Students' Examination described in paragraph (A) includes the June 2020 administration, that examination shall not be counted towards the requirements set forth in paragraph (A).

Rule 4.31 adopted effective November 14, 2009; amended effective January 1, 2021.

Rule 4.32 Repeated courses

The Committee does not recognize credit for repetition of a course or substantially the same course.

Rule 4.32 adopted as Rule 4.31 effective September 1, 2008; renumbered as Rule 4.32 effective November 14, 2009.

Rule 4.33 Evaluation of study completed or contemplated

An applicant may request that the Committee determine whether general or legal education contemplated or completed by the applicant meets the eligibility requirements of these rules for beginning the study of law, the First-Year Law Students' Examination or the California Bar Examination. The request must be submitted on the required form with certified transcripts and the fee set forth in the Schedule of Charges and Deadlines. A written response indicating whether or not the education is sufficient will be issued within sixty days of receipt of the request.

Rule 4.33 adopted as Rule 4.32 effective September 1, 2008; renumbered as rule 4.33 effective November 14, 2009.

Chapter 4. Moral Character Determination

Rule 4.40 Moral Character Determination

(A) An applicant must be of good moral character as determined by the State Bar . The applicant has the burden of establishing that he or she is of good moral character.

(B) "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.

Rule 4.40 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.41 Application for Determination of Moral Character

(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 adopted effective September 1, 2008; amended effective November 14, 2009; previously amended effective July 22, 2011; amended effective March 9, 2018.

Rule 4.42 Duty to update Application for Determination of Moral Character

Until admitted to practice law, an applicant who has submitted an Application for Determination of Moral Character has a continuing duty to promptly notify the Office of Admissions whenever information provided in the application has changed or there is new information relevant to the application. Failure to provide updated information within thirty days after the

change or addition to the information originally submitted may be cause for suspension of a positive moral character determination.

Rule 4.42 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.43 Abandonment of Application for Determination of Moral Character

(A) An Application for Determination of Moral Character is deemed abandoned and ineligible for a refund of fees if

(1) it is not complete within sixty days after being initiated; or

(2) it is complete but the applicant has failed to provide additional information requested by the State Bar within ninety days of the request.

(B) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of abandonment.

(C) A new Application for Determination of Moral Character must be submitted with the required fee if an application has been abandoned.

Rule 4.43 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.44 Withdrawal of Application for Determination of Moral Character

(A) An applicant may withdraw an Application for Determination of Moral Character any time before being notified that the State Bar is unable to make

a determination without further inquiry and analysis.

(B) An applicant may withdraw an application filed with the State Bar Court for a hearing on an adverse determination of moral character by filing a request for withdrawal with the Office of Chief Trial Counsel and forwarding a copy to the Office of Admissions.

Rule 4.44 adopted effective September 1, 2008; previously amended effective November 18, 2016; amended effective September 1, 2019.

Rule 4.45 Notice regarding status of Application for Determination of Moral Character

(A) Within 180 days of receiving a completed Application for Determination of Moral Character, the State Bar notifies an applicant that its determination of moral character is positive or that it requires further consideration. A positive determination is valid for thirty-six months.

(B) While an Application for Determination of Moral Character remains pending, a status report is issued to the applicant at least every 120 days.

(C) Within 120 days of receiving additional information it has requested, the State Bar notifies the applicant that

(1) the applicant is determined to be of good moral character;

(2) the applicant has not met the burden of establishing good moral character;

(3) the application requires further consideration;

(4) the applicant is invited to an informal conference; or

(5) the applicant is advised to enter into an Agreement of Abeyance with the State Bar.

Rule 4.45 adopted effective September 1, 2008; previously amended effective November 18, 2016; amended effective September 1, 2019.

Rule 4.46 Informal conference regarding moral character

(A) Prior to rendering an adverse determination on a moral character application, the State Bar shall invite the applicant to an informal conference regarding the application. Acceptance of an invitation is not mandatory, and declining it entails no negative inference.

(B) The Committee may establish procedures for an informal conference with the State Bar and require the State Bar to create a record of it by tape recording, video recording, or any other means. The applicant may attend the conference with counsel; make a written or oral statement; and present documentary evidence. Counsel is limited to observation and may not participate.

Rule 4.46 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.

Rule 4.47.1 Request for Review By the Committee of Adverse Determination

(A) An applicant notified of an adverse determination of moral character may request a review by the Committee. The request must be submitted to the Office of Admissions within 30 days of the date of the notice of the State Bar's determination. The applicant may submit supplemental material with the request.

(B) Within 60 days of receipt of the request for a review, the Committee will conduct a review of the record, which may include a review of the transcript or recording of the informal conference. The Committee may request additional information from the applicant or from the State Bar. The Committee must notify the applicant of its final determination within 30 days of its decision.

Rule 4.47.1 adopted effective September 1, 2019.

Rule 4.47 Appeal of adverse determination of moral character issued by Committee

(A) If the Committee issues an adverse determination of moral character, an applicant may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of the date of service of the notice of adverse determination.

(B) A copy of the request for hearing must be served on the Office of Admissions and the Office of Chief Trial Counsel. Upon receipt of service, the

Committee must promptly transmit all files related to the application to the Office of Chief Trial Counsel.

Rule 4.47 adopted effective September 1, 2008; previously amended effective July 24, 2015; amended effective September 1, 2019.

Rule 4.48 Agreement of Abeyance

(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.

Rule 4.48 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.49 New application following adverse determination of moral character

The State Bar may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the final determination or at some other time set by the State Bar, for good cause shown, at the time of its adverse determination.

Rule 4.49 adopted effective September 1, 2008; previously amended effective July 24, 2015; amended effective September 1, 2019.

Rule 4.50 Suspension of positive determination of moral character

(A) Before certifying an applicant for admission to the practice of law, the State Bar may notify an applicant that it has suspended a positive determination of moral character if it receives information that reasonably calls the applicant's character into question. The notice must specify the grounds for the suspension.

(B) The application of an applicant whose positive determination has been suspended is processed in accordance with Rule 4.45.

Rule 4.50 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.51 Validity period of positive moral character determination

A positive determination of moral character is valid for thirty-six months. An applicant with a positive determination who has not been certified to practice law within this validity period must submit an Application for Extension of Determination of Moral Character.

Rule 4.51 adopted effective September 1, 2008.

Rule 4.52 Extension of positive moral character determination

(A) An applicant who has received a positive moral character determination may submit an Application for Extension of Determination of Moral Character. The application must be filed in the last six months of the initial thirty-six month validity period with the required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. If the State Bar makes a positive determination before the initial thirty-six months expires, the initial thirty-six months is extended an additional thirty-six months. If the State Bar makes a positive determination after expiration of the initial thirty-six months, an extension of thirty-six months begins at the time of its determination.

(B) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of decision.

Rule 4.52 adopted effective September 1, 2008; amended effective September 1, 2019.

Chapter 5. Examinations

Rule 4.55 First-Year Law Students' Examination requirement

(A) A general applicant intending to seek admission to practice law in California must take the First-Year Law Students' Examination unless the applicant

(1) has satisfactorily completed

(a) at least two years of college work as defined by these rules and the Committee's guidelines; and

(b) the first-year course of instruction

(i) at a law school that was approved by the American Bar Association or accredited by the Committee when the study was begun or completed; and

(ii) the law school has advanced the person, whether or not on probation, to the second-year of instruction; or

(2) is exempt by reason of study in a foreign law school as provided by these rules.

(B) An applicant who passes the First-Year Law Students' Examination will receive credit for

(1) all law study completed upon passing the examination within three administrations of the examination after first becoming eligible to take it; or

(2) the first year of law study only upon passing the examination after more than three administrations of the examination after first becoming eligible to take it.

Rule 4.55 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.56 First-Year Law Students' Examination

The First-Year Law Students' Examination is given each year in June and October at test centers in California designated by the State Bar. The State Bar develops the questions. Pursuant to the authority delegated to it by the Board of Trustees, the Committee determines the examination's format, scope, topics, content, grading process, and passing score.

Rule 4.56 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.57 Exempt applicants taking First-Year Law Students' Examination

An applicant who is exempt from the First-Year Law Students' Examination may apply for and take the examination. Failing the examination does not affect the applicant's status under these rules.

Rule 4.57 adopted effective September 1, 2008.

Rule 4.58 Application for the First-Year Law Students' Examination

(A) An application to take the First-Year Law Students' Examination in June must be submitted by April 1. An application to take the examination in October must be submitted by August 1. Applications received after these deadlines and by May 15 or September 15 are subject to a late fee. Applications are not accepted after those dates. Application fees and late fees are set forth in the Schedule of Charges and Deadlines. If a deadline falls on a non-business day, the deadline will be the next business day.

(B) Different deadlines for initial filing and late fees apply to applicants who fail the First-Year Law Students' Examination and intend to take the next scheduled examination. These deadlines are set forth in the notice of examination results and are more than ten days from the date those results are released.

(C) Applications that are unsigned or incomplete for any reason as of the final examination application filing deadline are deemed abandoned and ineligible for a refund of fees.

(D) Applications for which eligibility documents have not been received by the date set forth in the Schedule of Charges and Deadlines are abandoned and ineligible for a refund of fees.

Rule 4.58 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.59 Multistate Professional Responsibility Examination

Every applicant must take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, and receive a passing score as determined by the Committee. The examination may be taken following completion of the first year of law study or later. The Committee must receive official notice of an MPRE passing score before an applicant is deemed to have passed the examination.

Rule 4.59 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.60 California Bar Examination

(A) The California Bar Examination is given each year in February and July at test centers in California designated by the State Bar. Pursuant to the authority delegated to it by the Board of Trustees, the Committee determines the examination's format, scope, topics, content, questions, and grading process.

(B) The State Bar provides the California Supreme Court a report on each administration of the examination as soon as practical.

Rule 4.60 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.61 Applications for the California Bar Examination

(A) Applications for the California Bar Examination are available March 1 for the July examination and October 1 for the February examination. To avoid imposition of a late fee, an application must be submitted no later than April 1 for the July examination or November 1 for the February examination. Applications received after these deadlines and by June 1 or January 1 are subject to late fees. Applications are not accepted after those dates. Application fees and late fees are set forth in the Schedule of Charges and Deadlines. If a deadline falls on a non-business day, the deadline will be the next business day.

(B) Different deadlines for initial filing and late fees apply to applicants who fail the California Bar Examination and intend to take the next scheduled examination. These deadlines are set forth in the notice of examination results and are a minimum of ten days from the date those results are released.

(C) Applications are deemed abandoned and ineligible for a refund of fees if

(1) they are incomplete or unsigned by the final examination application filing deadline;

(2) the applicant has not provided additional information requested by the final eligibility deadline; or

(3) eligibility cannot be determined by the final eligibility deadline.

Rule 4.61 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.

Rule 4.62 Access to examination answers and scores

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

Rule 4.62 adopted effective September 1, 2008.

Chapter 6. Conduct At Examinations

Rule 4.70 Conduct required at examinations

Applicants are expected to conduct themselves professionally at all times at an examination test center. Conduct that violates the security or administration of an examination may be reported to the State Bar as a Chapter 6 Notice or, in extreme cases, may require dismissal from the examination test center. Unacceptable conduct may include, but is not limited to, having unauthorized items, writing or typing after time has been

called, looking at another applicant's answers, talking when silence is required, or abusive behavior. A copy of the Chapter 6 Notice is provided to the applicant during or following an examination.

Rule 4.70 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.71 Reports of conduct violations

(A) The State Bar considers reports of the Chapter 6 Notices that have been issued to applicants during or following an administration of an examination as soon as practicable and no later than the first Committee meeting following the examination.

(B) If the State Bar affirms the Chapter 6 Notice, the applicant must be notified of its proposed sanction within thirty days. Sanctions may include assigning a score of zero for a question, a session, or an entire examination. An examination score may be held in abeyance pending resolution of the matter.

(C) The Committee may establish guidelines for the processing of conduct violations. The Committee may establish specific sanctions for certain undisputed conduct violations, such as bringing an unauthorized item into the examination room. An applicant sanctioned for an undisputed conduct violation is not entitled to an administrative hearing.

Rule 4.71 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.72 Request for an administrative hearing on conduct violation

(A) An applicant notified of a conduct violation for which a specific sanction has not been established by examination rules or guidelines may file a request for an administrative hearing. The request must be filed within twenty days of receipt of the notice or the proposed sanction will take effect. For good cause shown by clear and convincing evidence the State Bar may extend the filing deadline.

(B) Once an applicant has filed a request for an administrative hearing on a conduct violation, the State Bar must schedule an administrative hearing within ninety days, or at a later time for good cause, and notify the applicant of the time and place of the hearing.

Rule 4.72 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.73 Procedure for an administrative hearing on conduct violation

(A) The Committee may establish procedures for conducting administrative hearings on conduct violations. A record of a hearing can be established by tape recording, video recording, or any other means. The applicant may attend the administrative hearing with counsel; make a written or oral statement; and present documentary evidence. Applicant's counsel is limited to observation and may not participate.

(B) The State Bar has the burden of establishing by clear and convincing evidence that a violation occurred.

(C) The State Bar must render Findings and Recommendations no later than thirty days after the administrative hearing, which must be served on the applicant and counsel present at the hearing. The State Bar may recommend the sanction originally proposed or any other action it deems appropriate.

Rule 4.73 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.74 Review of State Bar's Findings and Recommendations by Committee

(A) An applicant may request review by the Committee of the Findings and Recommendations within ten days of service. The Committee must consider the applicant's request, any record of the hearing, the Findings and Recommendations, and any supplemental material the applicant provides in accordance with Committee requirements during the Committee's next regularly scheduled meeting. The Committee may request additional information from the applicant or from the State Bar.

(B) The Committee may adopt the State Bar's Findings and Recommendations or take any other action it deems appropriate.

(C) The Committee will notify the applicant within ten days of its determination.

(D) If the applicant does not request review of the State Bar's Findings and Recommendations within ten days of service, the State Bar's Findings and Recommendations become the decision of the Committee.

Rule 4.74 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Chapter 7. Testing Accommodations

Rule 4.80 Eligibility for testing accommodations

Applicants with disabilities are granted reasonable testing accommodations provided that they are capable of demonstrating that they are otherwise eligible to take an examination and, in accordance with these rules, they

(A) have submitted an approved Application for Registration;

(B) submit a petition for testing accommodations on the State Bar's forms with the required documentation;

(C) establish to the satisfaction of the State Bar the existence of a disability that prevents them from taking an examination under standard testing conditions; that testing accommodations are necessary to address the functional limitations related to their disabilities; and the testing accommodations sought are reasonable and appropriate for their disabilities; and,

(D) separately apply for the examination for which testing accommodations are requested.

Rule 4.80 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.

Rule 4.81 Testing accommodations in general

(A) Petitions for testing accommodations are processed on a case-by-case basis.

(B) The State Bar makes its best effort to process petitions for testing accommodations expeditiously but does not process petitions that are incomplete.

(C) Time limits in testing accommodations rules are solely to expedite the processing of petitions and are not jurisdictional. The State Bar may extend them for good cause.

(D) An examination application fee is not refunded if a request for testing accommodations is denied.

Rule 4.81 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.82 Definitions

These definitions apply to the rules on and petitions for testing accommodations.

(A) A "disability" is a physical or mental impairment that limits one or more of an applicant's major life activities, and limits an applicant's ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination.

(B) A "physical impairment" is a physiological disorder or condition or an anatomical loss affecting one or more of the body's systems.

(C) A "mental impairment" is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.

(D) A "reasonable testing accommodation" is an adjustment to or modification of standard testing conditions that addresses the functional limitations related to an applicant's disability by modifications to rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services, provided that they do not

(1) compromise the security or validity of an examination or the integrity or of the examination process;

(2) impose an undue burden on the State Bar; or

(3) fundamentally alter the nature of an examination or the Committee's ability to assess through the examination whether the applicant

(a) possesses the knowledge, skills, and abilities tested on an examination; and

(b) meets the essential eligibility requirements for admission.

Rule 4.82 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.83 Guidelines for testing accommodations

(A) The State Bar publishes guidelines for documenting the need for testing accommodations based on learning disabilities and attention deficit/hyperactivity disorder, including testing required to establish the existence of the disability and the reasonableness of the accommodations requested.

(B) The State Bar may publish guidelines for other disabilities accommodated on past examinations.

Rule 4.83 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.84 When to file a petition for testing accommodations

(A) A Petition For Testing Accommodations is not an application for a bar examination. Filing one does not constitute filing the other or initiate its processing. An applicant must separately apply for an examination.

(B) An applicant is encouraged to file a Petition For Testing Accommodations as far in advance as practicable. To allow sufficient processing time, general applicants are encouraged to submit their petitions at least by the beginning of their last year of law study and attorney applicants no later than six months prior to the examination they wish to take. If an applicant waits until the final examination application deadline for a particular examination to petition for testing accommodations, it is possible that processing will not be completed or the applicant will not be able to complete

all required or available procedures prior to administration of the examination.

(C) A Petition For Testing Accommodations must be complete and receipt must be no later than

(1) January 1 for the February California Bar Examination;

(2) June 1 for the July California Bar Examination;

(3) May 15 for the June First-Year Law Students' Examination; or

(4) September 15 for the October First-Year Law Students' Examination.

If a deadline falls on a non-business day, the deadline will be the next business day. Deadlines are not extended or waived for any reason except as permitted in Rule 4.87.

(D) Depending on the nature of a disability and the date on which a petition is filed, the State Bar may determine that the changing nature of a disability requires that the applicant file a new petition nearer the examination date or that a decision regarding the petition be deferred.

Rule 4.84 adopted effective September 1, 2008; amended effective November 14, 2009; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.85 Initial Petition For Testing Accommodations

(A) An applicant with a qualified disability seeking testing accommodations must file a Petition for Testing Accommodations on the State Bar's form.

(B) In addition to the Petition for Testing Accommodations, a qualified applicant seeking testing accommodations must also provide with the petition the specific specialist verification forms the State Bar determines are appropriate to verify applicants' disabilities.

(C) If a law school has provided testing accommodations, a qualified applicant must submit the petition with the designated State Bar form, completed by a law school official or legal education supervisor.

(D) If another state has provided accommodations for its bar examination, a qualified applicant must submit the petition with the designated State Bar form, completed by an official responsible for testing accommodations.

(E) If another testing agency has provided accommodations for its examination, a qualified applicant may be required to submit the petition with a copy of the accommodations notice.

(F) A Petition for Testing Accommodations is considered complete only upon receipt of all required forms that have been completed according to instructions. A petition that is incomplete by a final examination application deadline is not processed for that examination.

Rule 4.85 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.86 Subsequent petitions for testing accommodations

(A) Testing accommodations are not automatically extended upon failure of an examination but must be requested for a subsequent examination any time before the examination application deadline.

(B) An applicant who is permanently disabled may petition for the same accommodations rather than submit an entirely new petition. A subsequent petition must be made in accordance with State Bar's requirements.

(C) An applicant who has a temporary disability or who seeks different accommodations than those previously granted must file a new Petition for Testing Accommodations by the application final filing deadline if filed in connection with a particular administration of an examination.

Rule 4.86 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.

Rule 4.87 Emergency petitions for testing accommodations

An applicant who becomes disabled after a final examination application filing deadline may file a Petition for Testing Accommodations, which must include the forms required by Rule 4.85, with a request that it be considered as an emergency petition. Documentation

explaining the nature, date, and circumstances of the emergency must be filed with the petition. Receipt of the petition and supporting documentation must be at least ten days before the first day of the examination. This rule does not apply to disabilities that existed before the final deadline for an examination application, whether or not they were diagnosed or a visit to a treating professional could be arranged.

Rule 4.87 adopted effective September 1, 2008.

Rule 4.88 State Bar response to Petition For Testing Accommodations

(A) An applicant who has filed a Petition For Testing Accommodations in accordance with these rules is notified in writing within thirty days of receipt when additional information is required, and within sixty days when the petition is granted, granted with modifications, denied, or action is pending.

(B) If a complete petition is filed at least six months before the examination for which testing accommodations are sought, the applicant may expect a final determination at least a month before the examination.

(C) With the consent of the petitioner, the State Bar or a consultant may confer with a specialist who has treated the petitioner.

(D) A notice of denial of a Petition For Testing Accommodations or a modified grant states the reasons for the denial or modifications, and advises the petitioner of any right to appeal. The notice may include an excerpt of a consultant's evaluation.

Rule 4.88 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.

Rule 4.89 Applicant response to proposed modification or request for information

An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request is processed on the basis of information submitted.

Rule 4.89 adopted effective September 1, 2008.

Rule 4.90 Committee review of denied or modified petition

(A) An applicant notified that a Petition For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within ten days of the date of the denial or modified grant or some other reasonable period established by the Committee.

(B) Requests for review filed in connection with a particular administration of an examination must be filed no later than the first business day of the month in which the examination is to be administered. Requests received after that date will be considered in connection with future administration of the examination.

(C) After reviewing the request for review and supporting documentation, the Director of Admissions

may withdraw the prior decision and grant the accommodations requested.

(D) If the Director of Admissions does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original petition and supporting documentation provided by the applicant and the Director of Admissions. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

Rule 4.90 adopted effective September 1, 2008; amended effective September 1, 2019.

Rule 4.91 Confidentiality of Petitions for Testing Accommodations

Petitions for Testing Accommodations, documentation submitted in support and evaluations of requests are confidential.

Rule 4.91 adopted effective September 1, 2008.

Rule 4.92 False or misleading information in Petition For Testing Accommodations

False or misleading information in a Petition For Testing Accommodations is considered in determining an applicant's moral character and may result in a negative determination of moral character.

Rule 4.92 adopted effective September 1, 2008.

Excerpts of
Rules of Procedure
of the
State Bar of California

May 19, 2022

Rules of Procedure of the State Bar of California

With Amendments Adopted by the Board of Trustees (formerly Board of Governors) Effective January 1, 2011, with subsequent revisions

Title IV: Standards for Attorney Sanctions for Professional Misconduct

* * *

Rule 5.65 Discovery Procedures

(A) Generally. The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior Court order under rules 5.66 or 5.68.

(B) Timing of Discovery Requests. All requests for discovery must be made in writing and served on the other party within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.

(C) Scope of Discovery. Upon request, a party must provide to the other party:

(1) The name, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;

(2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness, including expert witnesses and those it may call if the need arises, including in mitigation and aggravation;

(3) A copy – or description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes:

(a) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;

(b) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the attorney when it is claimed that an act or omission of the attorney as to the person named or described is a basis for the discipline proceeding;

(c) all investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;

(d) all reports of mental, physical, and blood examinations then intended to be offered in evidence by the disclosing party.

(4) Financial records and/or other proof of financial hardship, including a completed State Bar Court Financial Declaration, if the disclosing party intends to request that any monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended.

(5) When a violation of Business and Professions Code section 6103 is alleged based on a failure to comply with rule 9.20 of the California Rules of Court as ordered by the State Bar Court, discovery is permitted as provided by rule 5.337(B).

(D) Definition of Statement. For purposes of these procedures, statement means either:

(1) a written statement that the person has signed or otherwise adopted or approved; or

(2) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person's oral statement.

(E) Form and Time of Response. All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.

(F) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(G) Continuing Duty. If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the Court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.

(H) Failure to Comply with Discovery Request.

(1) Inadmissible. If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.

(2) Reasonable Continuance. Upon a showing of good cause for failure to comply with a discovery request, the Court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.

(I) Privileged or Protected Material.

(1) Applicable. Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected. Statements of any witness interviewed by the deputy trial counsel, by any investigators for either party, by the attorney, or by the attorney's counsel are not protected as work product.

(2) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other

party to assess the applicability of the privilege or protection.

(J) Protective Orders. The Court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

(K) Discovery requests. Requests served upon an opposing party, as opposed to motions to compel discovery, must not be filed with the court unless attached as an exhibit to a motion.

Eff. January 1, 2011; Revised July 1, 2014; January 1, 2019; January 25, 2019; January 20, 2022.

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Rule 5.69 Motions to Compel Discovery and Sanctions

(A) Informal Resolution of Issues. A party must make a reasonable and good faith attempt to informally resolve any issue before filing a motion to compel compliance with discovery requests. A declaration stating facts showing that the party made the attempt must accompany the motion.

(B) Motion to Compel Compliance with Discovery Requests. A party may move to compel compliance with discovery requests within 15 days after the date on which the discovery response was due or served.

(C) Discovery Sanctions. The Civil Discovery Act's provisions about misuse of the discovery process and permissible sanctions (except provisions for monetary sanctions and the arrest of a party) apply in State Bar Court proceedings. The Court may not order dismissal as a discovery sanction without considering the effect on the protection of the public.

(D) Format of Discovery Motions

(1) **Motion to Compel.** A motion to compel further responses to interrogatories, inspection demands, or admission requests and a motion to compel answers to questions propounded at a deposition or to compel production of documents or tangible things at a deposition must be accompanied by a declaration which sets forth each interrogatory, item or category of items, request, question, or document or tangible thing to which further response, answer, or production is requested, the response given, and the factual and legal reasons for compelling it. Material must not be incorporated by reference, except that in the separate document the moving party may incorporate identical responses and factual and legal reasons previously stated in that document. No other statements or summaries shall be required as part of this motion.

(2) **Identification of Interrogatories, Demands, or Requests.** A motion for further

responses concerning interrogatories, inspection demands, or admission requests must identify the interrogatories, demands, or requests by set and number.

(3) **Reference to Other Responses.** If the response to a particular interrogatory is dependent on the response given to another interrogatory, or if the reasons a further response to a particular interrogatory is deemed necessary are based on the responses to some other interrogatory, the other interrogatory and its response must be set forth.

(4) **Reference to Other Documents.** If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.

(5) **Failure to Respond to Discovery Requests.** Compliance with subparagraphs (A) through (D) of this rule is not necessary where the opposing party has failed to respond to the discovery request

Eff. January 1, 2011; Revised January 1, 2019.

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Rule 5.101 Pretrial Statements and Pretrial Conferences

(A) Preparation of Pretrial Statements. Unless the court orders that a pretrial statement need not be prepared, all counsel must meet

in person or by telephone prior to the date on which the pretrial statement is due to be filed and discuss:

(1) Preparation of a joint pretrial statement;

(2) Coordination of pretrial statements if no agreement is reached on the filing of a joint pretrial statement; and

(3) The factors set forth in paragraph (C).

(B) Time for Pretrial Statements. The parties must file and serve pretrial statements at least 10 days before the pretrial conference, or as the court orders.

(C) Contents of Pretrial Statements and Exchange of Exhibits. Unless otherwise ordered by the court, the pretrial statements shall include the following heading and information:

(1) **Party.** The names of the party or parties on whose behalf the statement is filed.

(2) **Attempts to comply:** If a joint pretrial statement is not submitted, the parties will summarize their efforts to comply with Rule 5.101(A)(1) and Rule 5.101(A)(2).

(3) **Substance of the proceeding.** A description of the substance of the charges or claims and defenses presented and of the issues to be decided.

(4) **Undisputed facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected

to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(5) **Disputed issues.** A plain and concise statement of all disputed factual issues, evidentiary issues, and claims of work product or privilege.

(6) **Disposition sought in disciplinary proceedings.** A statement as to the disposition sought if culpability is found and in other proceedings, a statement of the relief sought. If the disposition sought is actual suspension or disbarment, a statement as to each party's position regarding the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. No party shall be bound by presentations as to disposition sought.

(7) **Points of law.** A concise statement of each disputed point of law with respect to the issues in the proceeding, with reference to statutes, rules, and decisions relied upon.

(8) **Witnesses to be called.** A list of all witnesses likely to be called at trial, together with a statement following each name describing the substance of the testimony to be given, any anticipated difficulty in scheduling the witness, and any special needs of the witness, such as a need for an interpreter.

(9) **Further discovery or motions.** A statement of all remaining discovery or motions.

(10) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.

(11) **Amendments; dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, charges, claims, or defenses.

(12) **Settlement discussion.** A statement summarizing the status, but not the substance settlement, of settlement negotiations and indicating whether further negotiations are likely to be productive.

(13) **Bifurcation; separate trial of issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.

(14) **Limitation of experts.** A statement whether limitation of the number of expert witnesses is feasible and desired.

(15) **Estimate of trial time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.

(16) **Claim of privilege or work product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.

(17) **Failure to cooperate.** A statement as to any failure of opposing counsel to cooperate in meeting and conferring on pretrial issues. If established, such failure may constitute grounds for such orders as the court deems proper, including, but not limited to, the exclusion of evidence and witnesses.

(18) **Miscellaneous.** Any other subjects relevant to the trial of the proceeding, or material to its just, efficient, and economical determination.

(D) Pretrial Conference Rulings. At the pretrial conference, the court may rule on any objections to the pretrial statements and may

order the pretrial statements to be amended or supplemented.

(E) Failure to File Pretrial Statements. If a party fails to file a pretrial statement, the court may order sanctions it deems proper, including, but not limited to, excluding evidence or witnesses.

Eff. January 1, 2011; Revised January 1, 2019; January 1, 2021.
Source: Rules Prac. of State Bar, rules 1221 & 1223.

Rule 5.101.1 Trial Exhibits

(A) Marking of Exhibits. Each proposed exhibit for trial must be pre-marked by the parties for identification using a system of letters or numbers as ordered by the court. Any exhibit consisting of more than a single page must be pre-marked on the initial page with the exhibit number or letter, with each individual page within the exhibit, commencing with the first page of the exhibit, being paginated in numerical sequence. Upon request, a party must make the original or underlying document of any proffered exhibit available for inspection and copying.

(B) Exchange of Exhibits by Parties. Unless otherwise ordered by the court, at least 10 days prior to the pretrial conference, the parties must exchange copies of all documents to be offered as exhibits or otherwise used at trial. Exhibits may be exchanged in electronic or paper form. If a party establishes to the Office of Chief Trial Counsel after a meet and

confer that they do not have a computer or otherwise cannot reasonably access electronic exhibits, the Office of Chief Trial Counsel will provide exhibits to the party in paper form.

(C) Format of Electronic Exhibits: Electronic exhibits must be pre-marked and paginated, as set forth in subdivision (A). Electronic exhibits must be capable of being read using software in the public domain or generally available at a reasonable cost, be text searchable when technologically feasible without impairment of the document's image, and include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

(D) Format of Paper and Oversized Exhibits: Except for oversized exhibits (large exhibits which cannot be reasonably copied or presented in a binder), all paper exhibits exchanged by the parties must be pre-marked and paginated, as set forth in subdivision (A), and be in the same form as those lodged with the court pursuant to paragraph (2) of subdivision (F). The parties may exchange an alternative form of any oversized paper exhibit by reasonably duplicating that exhibit.

(E) Proposed Exhibit List.

(1) **Contents; restriction on evidence of prior discipline.** Together with the pretrial statement, each party must submit, as a separate document, a proposed exhibit list of all documents and other items

to be offered by such party as exhibits at trial, properly described and indexed. Records of prior discipline to be used solely as evidence in aggravation must not be included in the proposed exhibit list.

(2) **Format of exhibit list.** The proposed exhibit list must be in the format approved by the court for use as the master exhibit list at trial. No exhibits are to be attached to the pretrial statement or the proposed exhibit list.

(F) Lodging and Offering of Exhibits at Trial

(1) **Exhibits to be formally offered:** At the time trial commences, or as otherwise ordered by the court, each party must supply to the Clerk the original exhibits identified in such party's proposed exhibit list. Each exhibit must be top-hole-punched, pre-marked, and paginated as described above, and, if over 30 pages, top-bound with a clasp. These original exhibits are not to be presented to the Clerk in binders. A copy of such exhibits, pre-marked and paginated as described above, must have been previously provided to opposing counsel. Except as provided below, these exhibits will become part of the official court record.

(2) **Exhibits lodged for use of court:** In addition to the exhibits to be formally offered, at the time trial commences or by the date ordered by the court, each party must lodge one set of its proposed exhibits for

the use of the court, in either paper or electronic format, as ordered by the court. Exhibits must be formatted pursuant to subdivision (C) or (D). Paper exhibits must be presented in a tabbed exhibit binder, which binder must bear on both its front and spine affixed labels identifying the case name and number and the identity of the proffering party.

(3) **Exhibits lodged for use of witnesses:** Unless otherwise ordered by the court, at the time trial commences or as soon as practicable, the parties must provide to each witness a copy of any exhibit(s) relevant to the witness. The exhibit(s) must be in paper or electronic format as ordered by the court.

(4) **Witnesses:** No exhibit may be shown to a witness during trial until opposing counsel has had an opportunity to examine it.

(G) Withdrawn Exhibits. A proposed exhibit which is withdrawn or not offered into evidence will not become part of the official record.

(H) Exhibits Judicially Noticed. Requests for judicial notice will be governed by California Evidence Code sections 450 et seq. Any document for which judicial notice is requested must be pre-marked, disclosed to the other parties, and lodged with the court in accordance with subdivision (F) of this rule.

(I) **Failure to Comply.** Failure to comply with this rule without good cause may constitute grounds for such orders as the court deems proper, including, but not limited to, exclusion of exhibits from evidence.

Eff. January 1, 2011; Revised January 1, 2019; November 1, 2020.
Source: State Bar Ct. Rules of Prac., rule 1224.

Rule 5.101.2 Objections to Proposed Exhibits

Promptly after the receipt of exhibits from the opposing party and prior to commencement of the trial, any party objecting to the receipt in evidence of any proposed exhibit shall advise the opposing party of all such objections. All parties shall then meet and confer and attempt to resolve all such objections in advance of trial.

Eff. Revised January 1, 2019.
Source: State Bar Ct. Rules of Prac., rule 1225.

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Rule 5.102.2 Order of Proof in Other Proceedings

Unless otherwise ordered by the court, the party initiating the proceeding, or the State Bar if the proceeding was initiated by the court, shall present evidence first.

Eff. January 1, 2019.
Source: State Bar Ct., Rules of Prac., rule 1251.

Rule 5.103 The State Bar's Burden of Proof

The State Bar must prove culpability by clear and convincing evidence.

Rule 5.104 Evidence

(A) Oral Evidence. Oral evidence must be taken only on oath or affirmation.

(B) Rights of Parties. Each party will have these rights:

(1) to call and examine witnesses;

(2) to introduce exhibits;

(3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;

(4) to impeach any witness regardless of which party first called him or her to testify;

(5) to rebut the evidence against him or her; and,

(6) if the attorney does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(C) Relevant and Reliable Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence must be admitted if it is the

sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(D) Hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(E) Privileges. The rules of privilege will be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(F) Judicial Discretion. The hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(G) Letters of Inquiry.

(1) Proof that the Office of Chief Trial Counsel sent an e-mail notification to an attorney in compliance with rule 2409(a), Rules of Procedure of the State Bar, coupled with proof that the e-mail was not returned as undeliverable, creates a presumption affecting the burden of producing evidence that the attorney viewed the e-mail on or about the date it was sent.

(2) Proof that a letter of inquiry was remotely accessed on an attorney's "My State Bar Profile" on a given date creates a presumption affecting the burden of producing evidence that the attorney received the letter of inquiry on that date.

(3) The Office of Chief Trial Counsel may establish the proof necessary under paragraphs (i) and (ii) by submitting copies of State Bar records, supported by declarations(s) of State Bar staff attesting to the authenticity and nature of the records.

(H) Judicial Notice of Court Records and Public Records.

(1) For purposes of this rule, "court records" means pleadings, declarations, attachments, dockets, reporter's transcripts, clerk's transcripts, minutes, orders, and opinions that have been filed with the clerk of any tribunal or court within the United States.

(2) The State Bar Court may take judicial notice of the following:

(a) court records that have been certified by the clerk of the court or tribunal;

(b) non-certified court records of the State Bar Court;

(c) non-certified orders of the California Supreme Court in attorney disciplinary cases;

(d) non-certified court records that have been copied from the tribunal or court's official file and timely provided to the opposing party during the course of formal or informal discovery. The party offering such records must provide a declaration stating the date on which the documents were copied and certifying that the documents presented to the State Bar Court are an accurate copy of the court records obtained from the court's official file; and

(e) non-certified court records that have been copied from a public access website operated by a court or government agency for the purpose of posting official public records or court records, e.g., the federal court website called "Public Access to Court Electronic Records" and more commonly known as PACER. The party offering such records must provide a declaration stating the date on which the documents were copied and certifying that the documents presented to the State Bar Court are an accurate copy of the court records obtained from the website.

(3) The State Bar Court must take judicial notice of the records mentioned in paragraph (2) if they are relevant to the proceeding unless a party proves, e.g., through

certified records, that the proffered records are incomplete or not authentic.

(4) This rule is not intended to limit the judicial notice provisions contained in Evidence Code, section 450 et seq.

Eff. January 1, 2011; Revised May 18, 2018; January 1, 2019; January 25, 2019.

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Rule 5.112 Post-trial Motions in the Hearing Department

(A) Filing Before Decision. Rule 5.45 governs post-trial motions. Additionally, post-trial motions must be in writing.

(B) Filing After Decision. If a post-trial motion is filed after the decision is served, the time to seek review begins when the Hearing Department rules on the motion. A request for review filed before the ruling is automatically vacated and a new request for review must be timely filed.

Rule 5.113 Motion to Reopen Record

(A) When to Make Motion. At any time before the period for requesting review by the Review Department expires, a party may make a motion in the Hearing Department to reopen the record to present additional evidence.

(B) Requirements. A motion to reopen the record must be accompanied by one or more

declarations stating the substance of the evidence and showing that:

(1) it is newly discovered and could not with reasonable diligence have been discovered and produced earlier;

(2) it is not merely cumulative and is the best available evidence on the issue, and

(3) consideration of the evidence would probably lead to a different result.

Rule 5.114 Motion for New Trial

(A) When to Make Motion. Any party may make a motion in the Hearing Department for a new trial within 15 days after the decision in a proceeding is served.

(B) Requirements. A motion for a new trial must be accompanied by one or more declarations setting forth the facts that the moving party contends justify a new trial, under the standards for granting a motion for a new trial in a civil matter in the Courts of this state.

Rule 5.115 Motion for Reconsideration

(A) Who May Make and When to Make Motion. Any party may make a motion for reconsideration in the Hearing Department within 15 days after the decision in a proceeding is served.

(B) Grounds. The grounds for a motion for reconsideration are:

(1) new or different facts, circumstances, or law, as that ground is applied in civil matters under Code of Civil Procedure § 1008; or

(2) the order or decision contains one or more errors of fact or law, or both, based on the evidence already before the Court.

* * *

Rule 5.151 Requests for Review

(A) What May Be Reviewed. Unless expressly provided otherwise in the rules governing a particular type of proceeding, all decisions and orders by hearing judges that fully dispose of an entire proceeding are reviewable by the Review Department at the request of any party under this rule.

(B) Timing. Any party may file and serve a request for review within 30 days after the hearing judge's decision or order is served. If a post-trial motion is filed in the Hearing Department, a party seeking review must file and serve the request within 30 days after the hearing judge's ruling on the post-trial motion is served.

(C) Post-Trial Motion After Request Filed. If a post-trial motion about a decision is filed in the Hearing Department after a request for review is filed, any request for review of that decision will be vacated and the requesting party must file another request for review after the hearing judge's ruling on the post-trial motion is served.

(D) Certification and Transcript. Unless otherwise ordered by the Presiding Judge, the request for review must certify that a trial transcript has been ordered and payment has been made as required under the Rules of Practice of the State Bar Court. Unless otherwise ordered by the Presiding Judge, if the party requesting review fails to timely order a transcript or to timely pay the required transcript cost, the Clerk will notify the party that the request will be dismissed unless, within five days after the Clerk's notice is served, the party: (1) tenders the required cost, or (2) upon a motion and showing of good cause, obtains an order from the Court granting an extension of time or permitting other arrangements satisfactory to the Court.

(E) Additional Parties' Requests for Review. If any party files a request for review under rule 5.151, any opposing party may file a request for review within 10 days after the first party's request for review is served.

(F) Multiple Requests for Review. If more than one party requests review, the requesting parties will equally divide the cost of the transcript. Each will file an appellant's brief under rule 5.152 and a responsive brief under rule 5.153(A). Each may file a rebuttal brief under rule 5.153(B).

(G) When Review Is Permitted. Except as expressly permitted by these rules, no action of a hearing judge is reviewable by the Review Department until after the hearing judge

enters a decision or order fully disposing of the entire proceeding.

(H) Withdrawal of Request for Review.

(1) At any time before service of notice of the time and place of oral argument, a party who requested review may withdraw the request for review.

(2) After the Clerk has served notice of the time and place of oral argument, a request for review may be withdrawn only by order of the Presiding Judge upon written motion by the party who sought review.

(3) Unless otherwise ordered by the court, a withdrawal of request for review in its entirety shall leave standing the decision of the Hearing Department as the final decision of the court.

Eff. January 1, 2011; Revised January 1, 2019.

Rule 5.151.1 Number of Copies of Filed Documents

(A) Any party filing a request for review or any brief or pleading in the Review Department to be considered en banc shall file an original and four copies of such document.

(B) Any party filing a pleading to be determined by the Presiding Judge shall file an original and two copies.

Eff. January 1, 2019.
Source: State Bar Ct. Rules of Prac., rule 1300.

Rule 5.151.2 Record on Review

Upon the filing of a timely request for review, the Clerk shall prepare the record on review. The record on review shall consist of all pleadings filed in the formal proceeding under review, the decision of the judge of the Hearing Department and all other orders relating to the matter under Review, all exhibits offered or received in evidence, and all tape recordings and transcripts of testimony relating to the matter under review.

Eff. Revised January 1, 2019.
Source: State Bar Ct. Rules of Prac., rule 1310.

Rule 5.152 Appellant's Brief

(A) **Time to File.** Within 45 days after the request for review is served or the Clerk serves the trial transcript, whichever occurs later, the appellant must file and serve an opening brief.

(B) **Format of Brief.** Each point in a brief shall appear separately under an appropriate heading, with subheadings if desired. The statement of any matter in the record shall be supported by appropriate reference to the record, including the name of any document referred to and the specific page thereof.

Unless otherwise ordered by the Presiding Judge, the brief must not exceed 30 pages, exclusive of pages containing the table of contents, tables of citations and any addendum

containing statutes, rules, regulations or similar materials.

Every brief in excess of 10 pages shall be prefaced by a topical index of its contents and a table of authorities, separately listing cases, statutes, court rules, constitutional provisions, and other authorities.

(C) Factual Issues on Review. The appellant must specify the particular findings of fact that are in dispute and must include references to the record to establish all facts in support of the points raised by the appellant. Any factual error that is not raised on review is waived by the parties.

(D) Failure to File Brief. Unless otherwise ordered by the Presiding Judge, if the opening brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:

(1) The request for review will be dismissed with prejudice; and

(2) If no other party requested review, the hearing judge's decision will become the State Bar Court's final decision.

Eff. January 1, 2011; Revised January 1, 2019; March 15, 2019.

Rule 5.152.1 Late Filings, Extensions of Time, Continuances, and Preference

Upon motion of a party and for good cause shown, the Presiding Judge may grant permission for late filings, including late filing of a request for review, for extensions of time for filing briefs, for continuance of oral argument, or for preference on the calendar.

Eff. Revised January 1, 2019.
Source: State Bar Ct. Rules of Prac., rule 1301.

Rule 5.153 Subsequent Briefs

(A) Responsive Brief. Within 30 days after the appellant's brief is served, the appellee may file and serve a responsive brief that meets the same formal requirements as the appellant's brief under rule 5.152(B) and (C). Unless otherwise ordered by the Presiding Judge, if the appellee's brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:

(1) the proceeding will be submitted on review without oral argument; or

(2) if appellant requests or the Court orders oral argument, the appellee will be precluded from appearing.

(B) Rebuttal Brief. Within 15 days after the appellee's brief is served, the appellant may file and serve a rebuttal brief whose body is no more than 10 pages. For good cause, the

Presiding Judge may extend the time to file, or may permit the brief's body to exceed 10 pages, or both.

(C) **Brief of Amicus Curiae.** A brief of amicus curiae may be filed by order of the Presiding Judge.

Eff. January 1, 2011; Revised January 1, 2019.

Rule 5.154 Oral Argument Before Review Department

Except as otherwise provided in these rules, the Review Department will give the parties an opportunity for oral argument. The parties may waive oral argument at any time up to five days before the date set for oral argument. Unless oral argument is waived or the parties agree to a shorter period of notice, written notice of the time and place of oral argument must be served by the Clerk on the parties at least 30 days before the oral argument.

(A) **General Provision Requiring Parties to Appear In Person.** The Review Department will hear in-person oral argument in San Francisco and Los Angeles. Oral argument shall be scheduled in the venue in which the trial took place.

(B) **Notice by Party to Appear Remotely.** Notwithstanding subparagraph (A), a party may appear remotely by video or telephone upon notice to the court that is served on the opposing party.

(1) **Notice to the Court.** Within 10 days after the court sends notice of the time and place of oral argument, a party may provide notice of the party's intent to appear remotely. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance.*

(2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within 10 days after the court sends notice of the time and place of oral argument.

(3) **Notice by the Opposing Party.** On receipt of notice under subparagraph (B)(2), should the opposing party elect to also appear remotely, that party must notify the court and all other parties within five days after the notice is served. The notice must be in writing, may be submitted using State Bar Court Form ***Notice re Remote or In-Person Appearance***, and must be served on all parties pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the notice is served.

(C) Information for Remote Appearances. The court will publish information for remote appearances on the State Bar Court website.

(D) Court Discretion to Require In-Person Appearance. If oral argument is conducted remotely in full or in part, the court has discretion at any time during the proceeding being conducted remotely to require an in-person appearance if the court determines that:

(1) An in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;

(2) The quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding; or

(3) The court otherwise determines that an in-person appearance is necessary.

(E) Duration of Oral Argument. In a matter before the Review Department, each side shall have a maximum of 30 minutes for oral argument except as the Presiding Judge may otherwise direct.

(F) Expedited Oral Argument in Proceedings Underlying Business and Professions Code § 6007(c). Any respondent having timely sought review of a decision by the Hearing Department on the matter underlying an order for inactive enrollment under Business and

Professions Code section 6007(c) may move that the review of that underlying matter be set for oral argument on the next available calendar regardless of location. Such motion shall be filed and served no later than the last day for filing briefs.

(G) **Time of Submission.** A proceeding pending in the Review Department is submitted when that Department has heard oral argument or has approved at the conclusion of oral argument unless otherwise ordered by the court.

Eff. January 1, 2011; Revised January 1, 2019; April 4, 2022.

Rule 5.155 Actions by Review Department

(A) **Standard of Review under Rule 5.151.** The Review Department will independently review the record and may make findings, conclusions, or a decision or recommendation different from those of the hearing judge. The findings of fact of the hearing judge are entitled to great weight.

(B) **Remand.** The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other proceedings. If a proceeding is remanded, the same hearing judge will preside unless that judge is unavailable or the Review Department orders otherwise.

(C) **Issues Not Raised for Review.** The Review Department may take action on an issue that

was not raised in the request for review or briefs of any party. Before it does so, the Review Department will notify the parties in writing of the issue before oral argument, and any party may file a supplemental brief about that issue. If the parties are not notified before oral argument, they may make a motion to file supplemental briefs or for reconsideration under rule 5.158.

(D) En Banc Review. The Review Department will decide matters before it en banc. Two judges constitute a quorum. A majority vote of the judges present and voting are sufficient to take any action or arrive at any decision.

(E) Time for Opinion. The Review Department will file its opinion within 90 days after the matter is submitted, unless the proceeding is expedited and a procedural rule, a statute, or a Supreme Court rule requires a shorter period for filing the opinion.

(F) Disqualified Judge. If one or more Review Department judges are disqualified or unavailable to serve, the Presiding Judge may designate a hearing judge appointed under Business and Professions Code § 6079.1 to act in the Review Department judge's place, if the designated hearing judge took no part in considering or deciding the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act and has not designated another judge to act in his or her place, the Acting Presiding Judge may act in place of the Presiding Judge.

(G) **Disbarment Recommendation.** If the Review Department recommends disbarment, it must include in its opinion an order that the attorney be enrolled as an inactive attorney under Business and Professions Code § 6007(c)(4). Unless otherwise ordered by the Court, the order takes effect on personal service or three days after service by mail, whichever is earlier.

(H) **State Bar Court's Annual Report.** By March 1 of each year, the State Bar Court must prepare and submit to the Chief Justice of the Supreme Court an annual report describing how the Review Department complied with the requirements of subsection (E) during the preceding calendar year.

Eff. January 1, 2011; Revised January 25, 2019; May 19, 2022.

Rule 5.156 Additional Evidence Before Review Department

(A) **Record and Excluded Evidence.** Except as provided by this rule or by order of the Review Department, the Review Department considers only evidence that is a part of the record made in the Hearing Department, or evidence offered and excluded that the Review Department determines should have been admitted.

(B) **Augmenting Record: Judicial Notice and Stipulations.** On its own motion or at the request of a party, the Review Department may take judicial notice of orders and decisions of

the Supreme Court or the State Bar Court arising out of any State Bar Court proceeding involving the party who is the subject of the proceeding under review, whether or not such orders and decisions were introduced as evidence in the Hearing Department. The Review Department may also admit other judicially noticeable facts or stipulated facts such as those bearing on restitution or rehabilitation occurring after the evidentiary proceedings before the hearing judge ended.

(C) Augmenting Record: Additional Evidence from a Party. Any party may move to present additional evidence occurring after evidentiary proceedings before the hearing judge ended, including evidence bearing on restitution or rehabilitation. Alternatively, any party may move to remand the proceeding so the party may file a motion to reopen the record under rule 5.113. On this motion, or its own motion after notice to the parties, the Review Department may appoint a hearing judge as a referee to receive evidence and make proposed additional findings of fact.

(D) Procedures to Augment or Correct Record.

(1) A motion or stipulation to augment or correct the record on review must be identified as such and filed and served as a separate pleading on the date the appellant's opening brief is due to be filed.

(2) All other parties may file and serve a response to the motion to augment or

correct the record as a separate pleading on the date the appellee's brief is due to be filed. If a motion to augment or correct the record is filed after the appellant's opening brief is filed, any response to the motion must be filed and served within 10 days after the motion is served.

(E) Augmentation Permitted. The Review Department will grant requests to augment or correct the record on review only if it determines that the original record is incomplete or incorrect, or as permitted by subsections (A) through (D) above.

* * *

Rule 5.158 Reconsideration of Review Department Actions

(A) Reconsideration Not Automatic. The Review Department does not reconsider opinions or orders unless it otherwise orders on its own motion or on a request for reconsideration filed and served by a party within 15 days after the Review Department's ruling is served. If the record in the proceeding has not yet been sent to the Supreme Court and good cause is shown, the time to file a request for reconsideration may be extended.

(B) Opposing Reconsideration. If a request for reconsideration is filed, any opposing party may file a response within 10 days of service after the request is served.

Rule 5.159 Review Department Opinions as Precedent

(A) Published and Unpublished Opinions. Review Department opinions that the Court designates for publication are published in the California State Bar Court Reporter or other publications, as directed by the Board of Trustees. Hearing Department decisions are not published.

(B) Precedential Value. A published opinion that has no review pending and either takes effect without a Supreme Court order, or is adopted by a Supreme Court order, is binding on the Hearing Department and citable as precedent in the State Bar Court.

(C) Petition for Review Filed. If a party to the proceeding files a petition for writ of review with the Supreme Court, the opinion in that proceeding cannot be cited as precedent unless the Supreme Court denies the petition for writ of review, dismisses the writ without issuing an opinion, or orders the Review Department opinion to remain citable.

(D) Depublished Opinions. If the Supreme Court orders a Review Department opinion depublished, the opinion is not citable as precedent.

(E) Criteria for Publication. By majority vote, the Review Department may designate for publication an opinion which:

(1) Establishes a new rule, applies an existing rule to a set of facts significantly

different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;

(2) Resolves or creates an apparent conflict in the law;

(3) Involves a legal issue of continuing interest to the public generally and/or to attorneys of the State Bar, or one which is likely to recur;

(4) Makes a significant contribution to legal literature by collecting and analyzing the existing case law on a particular point or by reviewing and interpreting a statute or rule; or

(5) Makes a significant contribution to the body of disciplinary case law by discussing the appropriate degree of discipline based on a set of facts and circumstances materially different from those stated in published opinions.

(F) Partial Publication. The Review Department may, by majority vote, designate for publication only that part of the opinion which satisfies the requirements of this rule, including any additional material, factual or legal, that aids in the interpretation of the published part of the opinion.

(G) Requirements for Publication of Certain Opinions. Opinions in non-public matters shall not be designated for publication or for partial publication unless all parties to the

proceeding having a right to confidentiality have consented to publication.

(H) Requesting Publication or Non-Publication. Any person may request publication or partial publication of an opinion not designated for publication, or publication in full of an opinion designated for partial publication. The request shall be made promptly by letter stating concisely why the opinion meets one or more of the standards set forth in this rule. The letter shall be addressed to the Presiding Judge, and shall be accompanied by proof of service on all parties to the proceeding. Any party to the proceeding may respond to the letter, within 10 days of service, by means of a letter to the Presiding Judge accompanied by proof of service on all parties to the proceeding and on the person requesting publication. The decision regarding the request shall be made by majority vote of the Review Department.

(1) Within 20 days after the filing of an opinion designated for publication, any person may request by letter that the opinion not be published, that it be published only in part, or that it be published in a form which does not identify any party other than the State Bar. The request shall state the nature of the person's interest and shall state concisely the reasons why the change requested should be made. The request shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding.

(2) Any person may, within 10 days after receipt by the Review Department of a request for depublication, submit a response, either joining in the request or stating concisely the reasons why the opinion should remain published. A response shall state the nature of the person's request. Any response shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding, and person requesting depublication.

Eff. January 1, 2011; Revised January 1, 2019; January 25, 2019.

* * *

Chapter 4. Moral Character Proceedings

Rule 5.460 Scope

These rules apply to proceedings and hearings before the State Bar Court to determine whether an applicant for admission to the practice of law in California possesses good moral character within the meaning of Business and Professions Code § 6060(b) and Chapter 4, Moral Character Determination, under Title 4, Admissions and Educational Standards. The hearings before the State Bar Court are de novo and are not limited to matters considered by the Committee of Bar Examiners.

Rule 5.461 Beginning Proceeding; Time for Filing

If the Committee of Bar Examiners makes an adverse moral character determination, the applicant may file

an application for a moral character proceeding and hearing. Within 60 days after the notice of adverse moral character determination is served, the application and supporting documents must be served under rule 5.25 and filed, accompanied by a copy of the notice of adverse moral character determination, the applicable filing fee, and proof of service upon the Committee of Bar Examiners and the Office of Chief Trial Counsel.

Rule 5.462 Time to Complete Investigation; Response to Application

(A) **Investigation.** For 120 days after the application is filed, the Office of Chief Trial Counsel will conduct an independent investigation of the applicant's moral character. For good cause, the Court may extend the investigation period.

(B) **Response.** Within 10 days after the investigation period ends, the Office of Chief Trial Counsel will file with the Court and serve a response to the application. If the application is opposed, the response will state the grounds for opposition.

Rule 5.463 Discovery

(A) **Discovery.** Except as set forth in subsection (B), after the investigation ends, discovery may be conducted under rule 5.65. Requests for discovery must be made within 15 days after service of the Office of Chief Trial Counsel's response.

(B) Applicant's Deposition. The Office of Chief Trial Counsel may take the applicant's deposition. It must be held no later than 45 days after the date the response is due under rule 5.462(B). An applicant who resides outside California must appear in California at his or her own expense for his or her deposition, on 30 days' written notice of the time and place of the deposition.

Rule 5.464 Abatement of Proceeding

(A) Motion to Abate. Upon motion by any party, or upon the Court's motion after notice to the parties, the Court may order a proceeding under these rules abated for a time and on terms it deems proper.

(B) Staying and Tolling Effects. Abatement stays the proceeding and tolls all time limitations in the State Bar Court. But upon motion, and for good cause shown, the Court may order perpetuation of evidence. Abatement of a proceeding under this rule does not toll or extend the time limitation in rule 4.17 under Title 4, Admissions and Educational Standards.

(C) Abeyance. Abatement under this rule is not intended as a substitute for the program of abeyance agreements administered by the Committee of Bar Examiners under Title 4, Admissions and Educational Standards.

(D) Abatement Alternatives. Before determining the merits of the proceeding, a proceeding cannot be abated or continued to allow a party

to undertake or pass the California Bar Examination. Other forms of relief, such as continuing the trial and withdrawing an application, are preferred to abatement under this rule and will be granted instead of abatement unless the Court determines that no other remedy is adequate to address the issues raised by the party seeking abatement.

(E) Consideration of Motion. In considering a motion under this rule, the Court may consider any relevant factor, including the following:

(1) any prejudice to a party that may result if the proceeding is abated;

(2) any prejudice to a party that may result if the proceeding is not abated;

(3) the delay in the proceeding before it that would result from waiting for the outcome of a related proceeding;

(4) the probability that the proceeding before it would be expedited or aided in determining a material issue by waiting for evidence to be adduced in a related proceeding or by awaiting the outcome of a related proceeding;

(5) the extent to which evidence may be unavailable in the State Bar Court proceeding because of any delay occasioned by withholding further action; and

(6) the extent to which parties, witnesses or documents may be unavailable or unable

to participate in the State Bar Court proceeding for reasons beyond the parties' control.

(F) "Related Proceeding" Defined. For purposes of this rule, a "related proceeding" is any civil, criminal, administrative, or licensing proceeding involving the applicant's conduct that is or is likely to be an issue in the proceeding before the Court.

(G) Review. Review of a hearing judge's ruling on a motion under this rule may be sought under rule 5.150.

Rule 5.465 Effect of State Bar Court Decision

The decision of the hearing judge, or (if review is requested) the decision of the Review Department, is the final State Bar Court decision in the proceeding. Unless the California Supreme Court grants a petition for review, the decision is binding on the applicant, the Office of Chief Trial Counsel, and the Committee of Bar Examiners.

Rule 5.466 Inapplicable Rules

The following rules do not apply in a moral character proceeding:

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) Specific. Rules 5.50 (abatement); rules 5.80-5.100 (default; obligation to appear at trial); and rules 5.105-5.108 (admission of certain evidence).

* * *

RULES OF PRACTICE OF THE STATE BAR COURT

STATE BAR OF CALIFORNIA

NOVEMBER 1, 2020

RULES OF PRACTICE OF THE STATE BAR COURT

(Filed Oct. 28, 2018)

Adopted by the Executive Committee of the State Bar Court pursuant to Business and Professions Code sections 6086.5 and 6086.65, subdivision (c); effective November 1, 2020

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(select Procedures, Programs, and Rules)

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DIVISION I
GENERAL PROVISIONS

CHAPTER 1
TITLE, AUTHORITY, AND DEFINITIONS

RULE 1100. TITLE AND CITATION

These rules shall be known and may be cited as the Rules of Practice of the State Bar Court (Rules of Practice).

RULE 1101. AUTHORITY FOR ADOPTION; APPLICATION

These Rules of Practice have been adopted by the Executive Committee of the State Bar Court pursuant to Business and Professions Code sections 6086.5 and 6086.65, subdivision (c), in order to facilitate and govern the conduct of proceedings within the jurisdiction of the State Bar Court. They apply to and govern all proceedings before the State Bar Court. Fair, equal, and consistent application of these rules by all concerned is vital to the conduct of proceedings before the State Bar Court.

Revised March 1, 2020; November 1, 2020.

RULE 1102. DEFINITIONS

Unless the context otherwise requires, the definitions stated in rule 5.4 of the Rules of Procedure of the State Bar of California (Rules of Procedure) are incorporated by reference and apply to these Rules of Practice.

Revised March 1, 2020.

RULE 1103. OFFICIAL COURT RECORD

The paper record is the official court record of the State Bar Court. Pursuant to these Rules of Practice and the Rules of Procedure, the State Bar Court permits the electronic submission of documents.

Effective November 1, 2020.

[2] RULE 1104. REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES

(a) Except as modified by this rule, California Rules of Court, rule 1.100 applies to requests for accommodations directed to the State Bar Court.

(b) **Requests for accommodations.**

(1) All written requests for accommodations should be on Form MC-410, approved for use by the Judicial Council of California, or be made in person, by U.S. mail, by email, or orally, as the court may allow. If the requester does not utilize Form MC-410, the requester should provide his/her name and address, the case number, the date the accommodation is

needed, the reason an accommodation is necessary, and the type of accommodation.

(A) Requests for physical facility accommodations, or for the provision of auxiliary aides and services, including equipment, devices, materials in alternative formats, and qualified interpreters or readers should be made to the designated State Bar Court ADA Coordinator in the appropriate venue, as listed at http://www.statebarcourt.ca.gov/ADAAccommodations.

(B) Requests for accommodations of a procedural nature, including, but not limited to, extensions of time or appearances by telephone, should be made to the courtroom clerk where the proceeding will take place, or orally to the judge who will preside over the proceeding.

(c) **Review procedure.**

(1) If the determination to grant or deny a request for accommodation is made by a State Bar Court ADA Coordinator, an applicant or any participant in the proceeding may submit a written request for review of that determination to the Hearing Judge assigned to the case for a Hearing Department matter, or the Presiding Judge for a Review Department matter. The request for review must be submitted within 15 days of the date the determination to grant or deny an accommodation

request was delivered in person or sent to the applicant or participant.

(2) If the determination to grant or deny a request for accommodation is made by the Hearing Judge assigned to the case for a Hearing Department matter, an applicant or any participant in the proceeding may file a petition for interlocutory review pursuant to rule 5.150 of the Rules of Procedure. If the determination is made by the Presiding Judge in a Review Department matter, the applicant or any participant may seek review of that decision by filing a motion for reconsideration in the Review Department pursuant to rule 5.158 of the Rules of Procedure. The petition for interlocutory review or request for reconsideration must be filed within 15 days of the date the determination to grant or deny an accommodation request was delivered in person or sent to the applicant or participant by U.S. [3] mail or by email. The petition for interlocutory review must be served on the Hearing Judge who issued the order pursuant to rule 5.150(D) of the Rules of Procedure and served on any participants in the proceeding who were notified by the court of the determination to grant or deny the request for accommodation.

Effective November 1, 2020.

RULE 1105. PROHIBITION ON COMMUNICATIONS WITH STATE BAR COURT JUDGES

Consistent with and subject to the exceptions in the California Code of Judicial Ethics and the California Rules of Professional Conduct relating to ex parte communications, no attorney or party to an action may, either with or without prior notice to the opposing counsel or opposing party, contact any judge or court staff directly in any manner (e.g., telephone, email, or in-person) concerning a case pending before the court or a matter relating to a case pending before the court.

Effective November 1, 2020.

RULE 1106. QUALIFICATIONS OF APPOINTED COUNSEL IN STATE BAR COURT PROCEEDINGS

(a) **Purpose.** The State Bar Court maintains a panel of counsel who desire to receive appointments to represent attorneys in State Bar Court matters pursuant to rules 5.68, 5.174, 5.192, or 5.258 of the Rules of Procedure. This rule sets forth the minimum qualifications for such counsel. An attorney on the appointed counsel panel is not entitled to appointment as counsel simply because the attorney meets these minimum qualifications. Nothing in this rule is intended to limit the discretion of the State Bar Court to appoint counsel it deems appropriate and who meets the qualifications below.

(b) **Qualifications.** An attorney seeking appointment as counsel must satisfy the following minimum qualifications and experience:

(1) *California legal experience.* The attorney must demonstrate that he or she:

(A) Is an active licensee of the State Bar of California and is eligible to practice law;

(B) Has been admitted to practice law in California for at least five years at the time of appointment; and

(C) Has no prior record of attorney discipline, is not currently subject to State Bar disciplinary probation, and has no currently pending attorney disciplinary investigations or proceedings in California or any other state, territory, or court in which the attorney is licensed or admitted.

(2) *Knowledge.* The attorney must have sufficient knowledge of and experience with [4] the State Bar Act, the California Rules of Professional Conduct, the Rules of Procedure of the State Bar of California, and the Rules of Practice of the State Bar Court.

(3) *Skills.* The attorney must have demonstrated proficiency in issue identification, research, analysis, writing, investigation, and advocacy. To enable an assessment of the attorney's skills, he/she must submit:

(A) A resume;

(B) One writing sample written by the attorney and presenting analysis of complex

legal issues. If the attorney has previously served as counsel in an attorney disciplinary proceeding, the writing sample should be from a filing in such a proceeding; and

(C) A recommendation from an attorney familiar with the attorney's qualifications and performance.

(4) *Pending Disciplinary Investigations or Current Disciplinary Probation.* The attorney must confirm that he/she has no knowledge of any currently pending attorney disciplinary investigations or proceedings, and is not currently subject to attorney disciplinary probation, in California or any other state, territory, or court in which the attorney is licensed, admitted, or otherwise engaged in the practice of law.

(5) *Professional Liability Insurance.*

(A) An attorney must inform the State Bar Court whether he/she maintains professional liability insurance and, if so, provide a copy of the policy to the Clerk. An attorney must inform the State Bar Court if he/she no longer maintains professional liability insurance while on the panel.

(B) If the attorney obtains professional liability insurance after he/she is added to the panel or during the attorney's appointment as counsel, the attorney must inform the State Bar Court and provide a copy of the policy to the Clerk.

(c) **Removal of Appointed Counsel.**

The State Bar Court retains full discretion to remove from the panel any counsel who fails to appear for court appearances; fails to follow the Rules of Procedure, these Rules of Practice, or other applicable law; fails to demonstrate a minimum level of proficiency in legal work deemed appropriate by judges of the State Bar Court; or is unavailable. Professional discipline of an attorney will result in removal of that attorney from the panel.

Effective November 1, 2020.

[5] **RULE 1107. COMPENSATION FOR APPOINTED COUNSEL AND APPOINTED MEDICAL PROFESSIONALS IN STATE BAR COURT PROCEEDINGS**

(a) **Requests for compensation by appointed counsel and appointed medical professionals.** Requests for compensation may be made ex parte and must be submitted on the applicable State Bar Court form, available at http://www.statebarcourt.ca.gov/Forms. Detailed and itemized bills for the claimed services and expenses must be attached to the form.

(b) **Timing of requests for compensation by appointed counsel.** Requests for compensation for work performed in the State Bar Court may be made at two separate stages of the proceeding: (1) for services performed from the date of appointment through the filing of the Hearing Judge's decision; and (2) for services performed

following the filing of the Hearing Judge's decision to finality of the proceeding in the State Bar Court. Requests for compensation for work performed in seeking review from the California Supreme Court may be made following the finality of the proceeding in the Supreme Court.

Effective November 1, 2020.

CHAPTER 2
FORMAT AND FILING OF PLEADINGS

RULE 1110. FORMAT OF PLEADINGS SUBMITTED IN PAPER FORM AND INTENDED TO BE FILED IN THE STATE BAR COURT

(a) **Size, pagination, etc.** All pleadings filed in the State Bar Court by any party, except exhibits, must be typewritten or printed or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally legible to printing in type not smaller than 12 point, on white paper of standard quality not less than 13 pound weight, 8-1/2 by 11 inches in size. Only one side of the paper must be used, and the lines on each page must be double spaced and numbered consecutively. Quotations and footnotes may be single spaced. All pleadings must be firmly bound together at the top. "Pleadings," as used in this rule, do not include printed court forms.

(b) **Format of first page.** The first page of all pleadings filed by a party must be in the following form:

(1) In the space commencing with line 1, to the left of the center of the page, must be set forth

the office or law firm name (if any), the name(s) of the attorney(s) within the office or law firm handling the proceeding and their State Bar license number(s), the office address (or, if none, the residence address), email address, [6] and telephone number of the attorney(s) for the party on whose behalf the pleading is presented, or of the party, if the party appears in propria persona. The information required by this subparagraph may be printed instead of typed on the first page of the pleading.

(2) The space between lines 1 and 7 to the right of the center of the page must be left blank.

(3) On or below line 8, on a separate line, must be the words "The State Bar Court," on the next line, the particular department and/or geographical area (i.e., Hearing Department – San Francisco, Hearing Department – Los Angeles, or Review Department), and, on the following lines, to the left, the caption of the particular proceeding; and to the right thereof, the case number.

(4) Beneath the case number described in subparagraph (3) of this rule, there must be a title describing the nature of the particular pleading.

(5) In proceedings pending in the Hearing Department, immediately below the title describing the nature of the pleading, each pleading must specify (1) the date and time of the next event to which the pleading refers, if any (e.g., trial date, settlement conference

date, date of hearing on motion) and (2) the trial date, if set.

(c) **Original pleading.** At least one of all pleadings, which shall constitute the original of the pleading filed, must bear handwritten original signatures or an electronic signature, as defined in rule 5.4(30) of the Rules of Procedure, in all signature blanks. Where possible, all copies of pleadings should display, by photocopy, duplicate signature, or otherwise, all signatures present on the original.

(d) **Pleading pagination.** All pages of a multiple-page pleading, including all attachments, must be numbered consecutively.

(e) **Number of paper copies filed.** An original and two copies must be filed for all pleadings in the Hearing Department. Filings in the Review Department must be in the number specified in the applicable Rule(s) of Procedure.

(f) **Hearing Department pleadings in excess of 25 pages.** Pleadings intended for filing in the Hearing Department in excess of 25 pages, including all attachments, must be two-hole punched in the top center one-half inch from the top of the page and fastened together with a metal fastener.

(g) **Maximum length of briefs in Hearing Department.** No pleading may exceed 20 pages in length unless otherwise ordered by the court. The page limit does not include exhibits, declarations, attachments, or a table of contents. A party may request a [7] higher page limit in writing. Such request must be made at least two court days before

the filing is due and must state the reason(s) why the pleading cannot conform to the standard page limit. The court may grant the extension for good cause.

(h) **Signature of counsel or party.** Every pleading of a party represented by counsel must be signed by at least one counsel of record in the counsel's individual name, whose address, telephone number, and email address must be stated on the first page of the pleading. A party who is not represented by counsel must sign the party's pleading and state the party's address, telephone number, and email address on the first page of the pleading.

(i) **Media files.** Media files such as audio or video must be submitted on an electronic medium such as a flash drive, DVD, or compact disc (CD). If an original electronic media file is converted to a required format for submission, the submitting party must retain the original.

Eff. January 1, 1995. Revised July 1. 1997; January 1, 2001; January 1, 2009; March 1, 2020; November 1, 2020.

RULE 1111. FORMAT OF PLEADINGS SUBMITTED IN ELECTRONIC FORM AND INTENDED TO BE FILED IN THE STATE BAR COURT

(a) Pleadings may be submitted in electronic form by electronic submission pursuant to rule 5.4(31) of the Rules of Procedure for filing in the State Bar Court. The State Bar Court does not accept pleadings submitted by electronic notification as set

forth in rule 5.4(27) of the Rules of Procedure (i.e., by providing a hyperlink at which the served document may be viewed and downloaded) or attached to an electronic submission as a Zip (compressed) file. If the submitting party is unable to meet the requirements of this rule, the submitting party may submit a pleading pursuant to rule 1110.

(b) Pleadings submitted in electronic form must be in text-searchable PDF (portable document format), have an effective resolution of at least 300 dpi, and not be secured or password protected. The printing of pleadings must not result in the loss of text, format, or appearance. If the submitting party possesses only a paper copy of a pleading, it may be scanned to convert it to a searchable PDF format. It is the submitting party's responsibility to ensure that any pleading that is filed is complete and readable.

(c) Pleadings submitted in electronic form must comply with the content and form requirements of rule 1110, with the exception of those provisions dealing exclusively with requirements for paper pleadings.

(d) **Electronic bookmarks.** Pleadings submitted in electronic form must include electronic [8] bookmarks to each section heading and subheading in the text (as listed in the table of contents) and to the first page of any component of the pleading, including any table of contents, table of authorities, declaration, proof of service, tab, exhibit, or attachment. Each electronic bookmark to a tab, exhibit, or attachment must include the letter or number

and a description of the tab, exhibit, or attachment.

(e) **Media files and photographs.** Pursuant to rule 1110(i), media files such as audio or video must be submitted on an electronic medium such as a flash drive, DVD, or compact disc (CD), and must not be submitted as an electronic attachment to an electronic submission. If submitted electronically, photographs must be filed in PDF format and conform to the other requirements of this rule. If an original electronic media file or photograph is converted to a required format for submission, the filer must retain the original.

(f) **Size.** An electronic submission must not exceed a total file size of 25 MB. If a pleading submitted in electronic form exceeds the size limitation, a party must submit the pleading in paper form pursuant to rule 1110. This rule does not change the page limitations set forth in rule 1110 for pleadings submitted to the Hearing Department and in the Rules of Procedure for pleadings submitted to the Review Department. A pleading must be submitted as a single attachment to an electronic submission.

(g) An email will be sent to the email address provided by the submitting party stating that the pleading(s) submitted by electronic transmission is accepted and filed. If a pleading(s) is not accepted and filed, an email stating that the pleading(s) is rejected will be sent to the email address provided by the submitting party.

Effective November 1, 2020.

RULE 1112. REJECTION OF PLEADINGS SUBMITTED FOR FILING

(a) Pleadings submitted for filing in any proceeding in the State Bar Court will be rejected by the Clerk for the following reasons:

(1) The pleading is not accompanied by a proof of service or is not accompanied by a proof of service that (A) bears an original signature or an electronic signature as defined in rule 5.4(30) of the Rules of Procedure; (B) sets forth the date upon which service was made; and (C) contains the exact title of the pleading(s) served.

(2) A party to the proceeding executes the party's own proof of service, unless the pleading was served by personal service or served electronically.

[9] (3) The pleading presented for filing does not contain an original, handwritten signature or an electronic signature as defined in rule 5.4(30) of the Rules of Procedure.

(4) The original, if filed in paper form, is not accompanied by the requisite number of copies.

(5) The assigned case name and/or case number is missing or incorrect and the correct case name and case number is not readily identifiable by the Clerk.

(6) The pleading is submitted by a respondent in a proceeding in which that respondent's default has been entered, except (A) a stipulation signed by all parties, (B) a motion for

relief from default accompanied by a proposed response, or (C) a motion for stay filed concurrently with a petition for interlocutory review to vacate or set aside default under rule 5.150 of the Rules of Procedure.

(7) The pleading is a petition for interlocutory review under rule 5.150 of the Rules of Procedure and was not served on the Hearing Judge who issued the order or if filed in electronic form, the certificate of service did not include the Hearing Judge's name.

(8) The pleading is submitted in electronic form and is not submitted in text-searchable PDF, is secured or password protected, or does not include electronic bookmarks.

(9) The pleading is submitted by electronic notification pursuant to rule 5.4(27) of the Rules of Procedure (i.e., by providing a hyperlink at which the served document may be viewed and downloaded) or is submitted as a Zip (compressed) file.

(10) The electronic submission includes a media file(s).

(11) The pleading is not submitted as a single PDF attachment to an electronic submission.

(b) All other pleadings presented for filing in the State Bar Court will be filed by the Clerk. However, the fact that a pleading is accepted for filing does not mean that it does not contain some other defect that may be raised by an opposing party or the court, such as lack of timeliness, defects in service, failure to comply with the Rules of Procedure,

and other defects in pleadings. Such defect(s) may result in denial of the motion or other relief sought or in striking the pleading, whether or not the defect is raised by the opposing party.

[10] (c) If a party whose pleading has been rejected under this rule submits a corrected pleading for filing, the pleading shall be accompanied by a proof of service showing that the corrected pleading has been re-served on all parties and, if appropriate, by a motion for late filing.

Revised March 1, 2020; November 1, 2020.

RULE 1113. LAST OPPORTUNITY TO FILE MOTIONS

Unless otherwise ordered by the court, all motions, other than motions in limine and motions to continue the trial, regarding the conduct of any trial shall be filed no later than fourteen (14) calendar days before the first trial date in the matter, or the date for filing of the pretrial statement, whichever date is earlier.

Revised January 1, 2001; March 1, 2020.

RULE 1114. REPLIES TO MOTIONS

An issue is deemed submitted to the court on the filing of the opposing party's response brief pursuant to rule 5.45(B) of the Rules of Procedure. Unless ordered by the court, no reply or supplemental brief may be filed.

Effective November 1, 2020.

[12] **RULE 1207. SETTLEMENT CONFERENCE STATEMENTS**

Pursuant to rule 5.525 of the Rules of Procedure, each party shall lodge with the court a settlement conference statement at least five days before a scheduled settlement conference. The statement must include:

(a) A brief statement of facts;

(b) A brief statement of claims or defenses;

(c) Key issues or facts in dispute;

(d) A list of any exhibits or transcripts that are useful to settlement process. These documents should be available at the settlement conference;

(e) A history of settlement discussions including any offers of settlement made;

(f) Each party's current settlement position;

(g) Any pending or anticipated motions; and

(h) Identification of any additional discovery that may be needed to facilitate settlement.

Effective November 1, 2020.

RULE 1215. DISCOVERY

(a) **Meet and confer.** Parties must meet and confer in person or by telephone and in good faith to thoroughly discuss (1) any issues regarding discovery; (2) the substance of any contemplated discovery motion; and (3) any potential resolution prior to filing a discovery motion.

(b) **Discovery motions.** If either party files a discovery motion, such motion must be directed solely to substantive issues requiring resolution by the court. The moving party shall detail in a declaration submitted with its discovery motion the date, duration, participants, and communication method of the meet and confer session. In addition, the declaration shall set forth the matters raised and resolved during the session, as well as the outstanding issues and each party's final proposed resolution on each issue. Failure to strictly comply with this order will result in the striking or denial of the motion.

Effective November 1, 2020.

[13] **RULE 1220. PRETRIAL CONFERENCES**

One or more pretrial conferences may be held in any proceeding at such time as the assigned judge may order, subject to rule 5.101 of the Rules of Procedure. Unless otherwise ordered by the court, the Clerk shall serve upon all parties a written notice of the date, time, and place of the pretrial conference at least thirty (30) days prior to the conference. The conference may be held in court or by telephone or other appropriate means. The agenda for the pretrial conference shall consist of the matters covered by the Rules of Procedure and the Rules of Practice, including Division II, Chapter 2, and any other matter germane to the proceeding. Each party shall be present or represented at the pretrial conference by counsel having authority

with respect to all matters on the agenda, including settlement of the proceeding.

Revised March 1, 2020.

RULE 1224. TRIAL EXHIBITS

(a) A party who would like to offer into evidence an electronic sound or sound-and-video recording, or any other type of digital file, must lodge the recorded or digital evidence on a flash drive, DVD, or compact disc (CD) and file a transcript of the relevant portions sought to be considered by the court as an exhibit.

(b) The State Bar Court will not provide technical assistance to any party in the presentation, playback, review, or submission of electronic exhibits. Any equipment required to view and/or listen to electronic exhibits, including laptops, projectors, and DVD/CD players, is the responsibility of the party who presents the evidence.

(c) **Exhibits lodged for use of the court:** Each party must supply to the courtroom clerk the original exhibits in compliance with rule 5.101.1(F)(1) of the Rules of Procedure. Additionally, each party must lodge one set of its proposed exhibits in paper format, unless otherwise ordered by the court, in compliance with rule 5.101.1(F)(2) of the Rules of Procedure. If a party is exchanging exhibits in electronic form with the opposing party, a courtesy copy of the electronic exhibits must be provided to the court on a USB flash drive. The USB flash drive will not be returned to the submitting party.

(d) **Exhibits lodged for the use of witnesses:** A party must provide a witness with exhibits in advance of trial that are relevant to the matters for which a party calls that witness to testify about in the case. Failure to provide the witness with such exhibits in advance may result in the exclusion of the witness's testimony regarding those exhibits.

[14] (e) **Inadmissible exhibits:** If an exhibit's admission is denied at trial, the exhibit shall be so marked and remain part of the official court record.

Eff. January 1, 1995. Revised July 1, 1997; January 1, 2001; January 1, 2003; March 1, 2020; November 1, 2020.

RULE 1240. NOTICE OF CONFERENCES

The Clerk shall serve upon all parties a written notice of the date, time, and place of any conference pursuant to this chapter at least ten (10) days prior to the conference unless otherwise ordered by the court.

CHAPTER 3
PRESENTATION OF EVIDENCE

RULE 1250. ORDER OF PROOF IN DISCIPLINARY PROCEEDINGS

In disciplinary proceedings, the parties shall present evidence as to culpability prior to presenting evidence as to aggravating or mitigating circumstances, except as ordered by the court. The judge shall not consider evidence as to aggravating or mitigating factors, including a respondent's prior disciplinary record, in

determining culpability. However, evidence of a respondent's other acts of misconduct, including his/her disciplinary record, may be received in the culpability phase of a hearing if this evidence is admissible pursuant to Evidence Code section 1101, subdivision (b).

Revised January 1, 2001.

DIVISION III
REVIEW DEPARTMENT

CHAPTER 1
TRANSCRIPT ON REVIEW

RULE 1311. PROOF OF TRANSCRIPT ORDER

(a) All requests for review filed pursuant to rule 5.151 of the Rules of Procedure must have attached thereto, or be accompanied by:

(1) In the case of requests for review filed by the Office of Chief Trial Counsel or any division thereof, copies of the completed transcript order form signed by the deputy trial counsel.

(2) In the case of requests for review filed by any other party, either:

[15] (A) Copies of the completed transcript order form and of a check, together with a declaration under penalty of perjury stating that the check is in the amount requested by the Clerk for the transcript deposit and that the originals of the transcript order form and check have been delivered to the Clerk; or

(B) A motion for a reasonable extension of time to pay the transcript deposit, supported by one or more declarations under penalty of perjury stating: (i) the amount of the transcript deposit requested by the Clerk; (ii) specific facts regarding the party's assets, debts, income, expenses, and possible sources of credit, establishing the party's present inability to pay; and (iii) specific facts establishing that the requested extension of time will be sufficient to permit the party to obtain the necessary funds.

(b) Requests for review which do not comply with this requirement will not be filed by the Clerk, provided, however, that a request for review which is timely served and submitted for filing, but which is rejected by the Clerk pursuant to this rule, shall be filed, notwithstanding the applicable time limit in rule 5.151(B) or 5.151(E) of the Rules of Procedure, if it is re-served and resubmitted for filing with the proper attachments within ten (10) days after service of the Clerk's rejection notice. The Clerk shall refer to this rule in all rejection notices mandated by this rule.

(c) The requirement of a transcript and of payment therefor by the party requesting review will not be waived except in the case of matters designated for summary review pursuant to rule 5.157 of the Rules of Procedure.

Revised March 1, 2020.

CHAPTER 2
SUBMISSION

RULE 1333. TIME OF SUBMISSION

(a) A proceeding pending in the Review Department is submitted when that Department has heard oral argument or has approved a waiver of oral argument, or when the time has passed for filing all briefs and papers, including any supplemental post-argument briefs permitted by that Department, whichever is latest.

(b) Submission may be vacated only by an order stating the reasons therefor. The order shall provide for resubmission of the proceeding.