

STATE BAR OF MICHIGAN STANDING COMMITTEE ON CHARACTER AND FITNESS RULES OF PROCEDURE

As Amended October 5, 2007

A. Application Processing.

1. An applicant shall complete and file with the State Bar an Affidavit of Personal History on forms required by the Committee. An investigation of the applicant may occur and documents and additional materials may be requested or obtained by staff assigned to assist the Standing and District Committees in the discharge of their duties.
2. Affidavits which are not properly executed and notarized, in which questions have been left unanswered, or which are not accompanied by the correct fees and a signed fingerprint card, or scanning receipt, whichever is applicable, shall be returned to the applicant without processing.
3. For each applicant whose investigation reveals significant adverse factual information, State Bar staff shall prepare a Notice of Referral in a form required by the Committee setting forth all adverse information revealed in the investigation. The Notice of Referral shall set forth with specificity the items which will form the basis of the interview, identify the District Committee Chairperson, and advise the applicant of the burden of proof, the applicant's right to counsel, to call witnesses and to present evidence.
4. The Notice of Referral shall be mailed to the applicant and to the District Committee Chairperson where the interview will be held. The copy of the Notice of Referral sent to the District Committee shall be accompanied by all investigative file materials.
5. If an applicant has criminal charges pending, the District Committee referral should be delayed until the pending proceeding is concluded. An applicant may request that a referral be made prior to the final adjudication of criminal charges, and the request should be granted provided that a District Committee report and recommendation does not issue until the criminal matter is concluded.
6. An applicant's failure to timely respond to requests for information will result in the file being closed. A file closed for failure to respond may not be reopened until the expiration of three years or such lesser period of time as determined by the Committee for good cause shown. A fee of \$200 shall be charged to reopen any file closed for non-cooperation or following a withdrawal of the application, or following a deferred decision of the Committee for more than a year.
7. An applicant's objection to providing information requested shall be included in the referral to a District Committee pursuant to Rule 15, Sec 1(5)(b). If a District Committee has already rendered a report and recommendation prior to the applicant's objection to providing the requested information, the applicant's objection shall be scheduled for hearing by the Standing Committee pursuant to Rule 15, Sec 1(5)(f). If the information the applicant objects to providing is material to a determination of the applicant's current character and fitness to be recommended for admission, or if the applicant's refusal to provide the information materially obstructs the investigation so as to prevent a determination regarding the applicant's current character and fitness from being made, the applicant shall not be recommended for admission.

B. District Committee Proceedings.

1. An applicant is entitled to be represented by counsel of choice at any time during the proceedings. Upon receipt of written notice that a lawyer represents an applicant, or upon

appearance of counsel at any proceeding concerning the applicant, all further communications regarding the applicant matter shall be conducted through applicant's counsel.

2. The District Committee Chairperson may request that State Bar staff conduct additional investigation of any matter, or may have the District Committee members undertake additional investigation. If the District Committee conducts additional investigation, all investigative materials shall be returned to the State Bar with the District Committee report.

3. If additional investigation results in additions or amendments to the Notice of Referral, the applicant will be given at least 10 days notice of the amended referral items.

4. The scope of the District Committee interview is determined by the Notice of Referral and by matters raised during questioning.

5. Within 10 days of receipt of an applicant referral, the District Committee Chairperson shall contact the applicant to set an interview date and to identify the District Committee members assigned to the matter. Disqualification of District Committee members shall be determined by the District Committee Chairperson under the guidelines of MCR 2.003. The District Committee Chairperson shall notify State Bar staff of the interview date. Once an interview is set, one adjournment of the interview date may be granted at the discretion of the District Committee Chairperson for good cause.

6. All proceedings before the District Committee shall be recorded.

7. Within 10 days after the conclusion of the interview, the District Committee shall forward to the State Bar a report and recommendation in a form prescribed by the Standing Committee. If a District Committee is unable to comply with the filing deadline, the District Committee Chairperson shall contact the Standing Committee Chairperson through State Bar staff to explain the delay.

8. The report and recommendation should address each matter in the Notice of Referral specifically and indicate the District Committee's findings and determination. The report should indicate whether the District Committee believes the applicant does or does not currently possess the requisite good moral character and fitness to be admitted to practice law. All files and materials relating to the applicant shall be forwarded to the State Bar with the report and recommendation.

9. The recommendation of a District Committee is not binding upon the Standing Committee.

C. Prehearing Conferences.

1. The State Bar staff assigned to assist the Standing Committee, in addition to conducting investigations, shall also:

a) review each report of a District Committee and advise the Standing Committee (1) whether each issue in the Notice of Referral has been addressed, (2) whether additional information has been received which was not a part of the District Committee report, and (3) whether the recommendation is consistent with previous determinations of the Standing Committee and the State Board of Law Examiners regarding similar conduct;

b) provide nonbinding analysis and recommendations regarding referral matters to the District or Standing Committee; and

- c) perform any other task assigned by the Standing Committee to assist the District and Standing Committee in the discharge of their duties.

The Standing Committee shall take action on the District Committee report at any scheduled meeting, or the members may vote by mail ballot or email ballot. If the Standing Committee determines that a hearing should be held, the applicant shall be notified in writing within ten days of the Standing Committee determination.

2. Within ten days of receipt of an applicant's request for or the Standing Committee's determination for a formal hearing, the State Bar staff shall designate a Committee member to preside at the applicant's hearing, designate from among the associate members of the Committee a counsel to act for the State Bar in the matter, and send the designee all information in the Character and Fitness Department's possession concerning the applicant, with the exception of the confidential tape recordings of the District Committee interview, absent a showing of good cause upon motion to the Presiding Committee Member, and a draft Proposed Prehearing Order.

3. The State Bar staff shall promptly send written notice to the applicant of:
 - a. the name, address and telephone number of the Committee member who shall preside at a prehearing conference in the matter;
 - b. the name, address and telephone number of designated State Bar Counsel;
 - c. a copy of these rules;
 - d. notice that all future communications should be directed to State Bar Counsel and the Presiding Committee Member.

4. Upon written request and upon advance payment of the per page copy fee in effect, the applicant or applicant's counsel will be provided a copy of all information in the Character and Fitness Department's possession concerning the applicant with the exception of the following materials: work product; addresses and phone numbers of witnesses who request that this information be kept confidential; and confidential tape recordings of District Committee interviews, absent a showing of good cause upon motion to the Presiding Committee Member. In person review of information and materials in the Character and Fitness Department's possession is not permitted. Upon showing of extreme and adverse financial hardship and upon discretion of the Chair of the Standing Committee, fees may be reduced or waived.

5. The applicant may obtain subpoenas of witnesses or documents by submitting a request to the Presiding Committee Member, with a copy to the State Bar staff and to State Bar Counsel, sufficiently identifying the witness or document sought and briefly stating the relevance of the witness's testimony or the document to the application matter. State Bar Counsel may obtain subpoenas of witnesses or documents by submitting a request to the Presiding Committee Member, with a copy to the State Bar staff and the applicant, sufficiently identifying the witness or document sought and briefly stating the relevance of the witness's testimony or the document to the application matter. Subpoenas for State Bar Counsel shall be prepared by State Bar staff and issued by the Presiding Committee Member unless the Presiding Committee Member determines the request is improper or wholly without merit. The Presiding Member or State Bar staff shall send the issued subpoenas to the requesting party, who shall be responsible for serving the subpoenas pursuant to MCR 2.506(G).

6. State Bar Counsel and the applicant shall make every effort to stipulate to issues and exhibits prior to the prehearing conference. State Bar Counsel and the applicant may obtain testimony of named witnesses through deposition, a transcript of which shall be accepted by the Standing

Committee as an exhibit in lieu of direct testimony; costs of the transcripts shall be paid by the calling party. Any exhibits which are not stipulated may be offered as evidence in the course of the hearing.

7. Within 30 days of the designation of the Presiding Committee Member and State Bar Counsel, State Bar Counsel shall file with the Presiding Committee Member, with a copy to the applicant and the State Bar staff, a Proposed Prehearing Order setting forth the issues to be addressed at the hearing, accompanied by a proposed witness list and proposed exhibits. The applicant shall have 15 days to file with the Presiding Committee Member, with a copy to State Bar Counsel and the State Bar staff, any stipulation as to issues, witnesses and exhibits, any proposed witnesses and exhibits, and any motions or objections to the Proposed Prehearing Order.

8. Within 15 days of receipt of the applicant's response to the Proposed Prehearing Order, the Presiding Committee Member through State Bar staff shall schedule a prehearing conference by phone or in person to resolve any outstanding issues, hear and rule on motions, finalize the Prehearing Order, determine the amount of hearing time that should be scheduled, and schedule a date for the hearing. The applicant and State Bar Counsel may present motions, ask for rulings, and request subpoenas. The decision of the Presiding Committee Member regarding the contents of the Prehearing Order shall be final.

9. The Prehearing Order shall be issued as soon as practicable after the prehearing conference, and forwarded to the State Bar staff. The Prehearing Order shall set forth the issues to be considered at the hearing, the stipulated exhibits, the witnesses, whether or not the applicant will accept voting by associate members, or waive the quorum requirement, and the date, time and place of the hearing.

10. As soon as possible after receipt of the Prehearing Order, but in no event later than 10 days before the scheduled hearing, the State Bar staff shall provide written notice to State Bar Counsel and the applicant of the date, time and place of the hearing, and the applicant's right to be represented by counsel. The Prehearing Order and any rules to be followed in the proceedings shall be enclosed in the hearing notice.

11. The State Bar staff shall arrange for copies of the Prehearing Order, stipulated exhibits, and deposition transcripts to be marked and circulated to Standing Committee members scheduled to hear the matter as soon as practicable, but in no case less than 10 days prior to the hearing date. Any evidence which is not circulated by the State Bar staff shall be presented at the hearing upon motion of the applicant or State Bar Counsel.

D. Standing Committee Proceedings.

1. Upon arrival at the hearing site, the applicant and State Bar Counsel shall register with hearing staff and identify any witnesses who are expected for the hearing. Witnesses shall remain outside the hearing room until their testimony is called. Hearing attendees shall be limited to members of the Standing Committee, the applicant (and counsel, if any), State Bar Counsel, counsel assistants, State Bar staff, and a court reporter, unless the Presiding Committee Member has previously granted permission for other persons to be in attendance.

2. A quorum consists of five regular members of the Committee. An applicant may waive the quorum and also stipulate to voting by associate members of the Committee. When a hearing is continued, and the same Committee members cannot be present at both sessions, Committee members shall be required to review the record of the proceedings not attended prior to being allowed to vote on the matter. If the applicant objects to participation by a Committee member

who has not been present during the entire proceedings, the member shall be excluded from questioning and voting.

3. The burden is upon the applicant to establish the applicant's good moral character and general fitness to warrant admission to the bar by clear and convincing evidence. The hearing shall proceed with presentation of the applicant's evidence and cross-examination by State Bar Counsel, followed by presentation by State Bar Counsel and cross-examination by the applicant, and finally questioning by the Committee members.

4. At the conclusion of the evidence and questioning, the Committee members will meet in executive session to attempt to reach a determination of the matter. The finding of a majority of those present and voting shall be the decision and recommendation of the Committee. If a resolution is reached in executive session, the Committee has the discretion to verbally advise the applicant of the decision. If a resolution is not reached in executive session, the Presiding Committee Member shall either schedule a telephone conference call among Committee members to be held after receipt of the transcript of the proceedings, shall order additional investigation or additional recorded proceedings, or shall order briefs or supplemental filings from the applicant and State Bar Counsel. If additional investigation, proceedings, or filings are required, the applicant and State Bar Counsel shall be advised.

5. A Committee member will be assigned by the Presiding Committee Member to draft an opinion in a form prescribed by the Committee. The opinion shall address each item in the Prehearing Order and set forth findings and the Committee's determination. The draft opinion shall be circulated within 14 days to each member voting on the matter for comment. Failure to respond with comments is deemed approval of the opinion. Any comments received shall be resolved by consultation between the Presiding Committee Member and the drafter.

6. The opinion shall be forwarded to the applicant and to the State Board of Law Examiners within 30 days of the Committee's decision. The opinion forwarded to the State Board of Law Examiners shall be accompanied by the Prehearing Order, the transcript of the Standing Committee proceedings in the case of a denial or split decision, and the exhibits presented at the Standing Committee proceedings.

7. If a hearing is held before the State Board of Law Examiners, the applicant (through counsel, if any), State Bar Counsel, and the State Bar staff shall be notified. A State Bar Counsel shall be designated by State Bar staff if previous State Bar Counsel is unavailable, and shall be prepared to proceed as if before the Standing Committee, regardless of the Standing Committee decision in the matter.

E. Miscellaneous

1. Time frames stated in these rules should be treated as goals and not as affording any rights to any person for failing to meet any particular time frame. Michigan Rules of Evidence and Michigan Rules of Civil Procedure may be considered as guidelines for these proceedings, but are not binding.

2. Rulings of the Presiding Committee Member regarding motions, procedure, admissibility of evidence, and interpretations of these rules are final.

3. The revelation or discovery of any of the following conduct should be treated as cause for further inquiry and considered when a district or standing Committee makes a recommendation, included, but not limited to:

- unlawful conduct
- academic misconduct
- making of false statements, including omissions
- misconduct in employment
- acts involving dishonesty, fraud, deceit or misrepresentation
- abuse of legal process
- neglect of financial responsibilities
- neglect of professional obligations
- violation of an order of a court
- evidence of mental or emotional instability
- evidence of drug or alcohol dependency
- denial of admission to the bar in another jurisdiction on character and fitness grounds
- activities which constitute practicing law without the benefit of licensure
- disciplinary actions by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

4. The following factors may be considered when assigning weight and significance to applicant's prior conduct, but not limited to:

- the applicant's age at the time of the conduct
- the recency of the conduct
- the seriousness of the conduct
- the reliability of the information concerning the conduct
- the factors underlying the conduct
- the cumulative effect of conduct or information
- the evidence of rehabilitation
- the applicant's positive social contributions since the conduct
- the applicant's candor in the admissions process
- the materiality of any omissions or misrepresentations
- affirmative efforts to rectify situation or prevent a recurrence
- timeliness of the cooperation with application and investigation process

5. An Applicant must successfully meet the general requirements for admission to the practice of law as set forth in the Rules for the Board of Law Examiners. In addition, in order to be recommended for admission by the Standing Committee on Character and Fitness, the Applicant must demonstrate he or she:

- a. Will exercise good judgment, both ethically and professionally, on behalf of clients or oneself when conducting business and when engaging in financial dealings;
- b. Will avoid illegal, dishonest, fraudulent or deceitful conduct in one's personal and professional relationships and with respect to one's legal obligations;
- c. Will avoid acts which exhibit disregard for health, safety, welfare and rights of others;
- d. Will conduct oneself with respect for and in accordance with the law; and
- e. Will conduct oneself professionally and in a manner that engenders respect for the law and the profession.