

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

**As Amended December 4, 2024**

## **A. Application Processing.**

1. An Applicant shall complete and electronically 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 complete, or waivers and releases which are not properly executed and notarized, will not be accepted and the Applicant so notified. Waivers not received timely may result in closure of the file.
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 transmitted to the Applicant and to the Chairperson of the applicable District Committee. The copy of the Notice of Referral provided 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 does not issue a report and recommendation 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 or provide requested information 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 decision of the Committee deferred 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.
8. An Applicant is entitled to be represented by counsel of the Applicant's choice at any time during the character and fitness process, at the Applicant's own expense. 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. For the purposes of these rules, the designation "Applicant" shall be construed to mean Applicant's counsel if an appearance has been filed.

## **B. District Committee Proceedings.**

1. The District Committee Chairperson or Panel Chair 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 transmitted to the State Bar with the District Committee report.

2. 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.
3. The scope of the District Committee interview is determined by the Notice of Referral and by matters raised during questioning.
4. Within 10 days of receipt of an Applicant referral, the District Committee Chairperson shall contact the Applicant to set an interview date, determine whether or not the Applicant stipulates to proceed remotely, and, when a date is confirmed, 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.
5. All proceedings before the District Committee shall be audio recorded, and the recording provided to State Bar Staff by mail or uploading to a secure file when the report and recommendation is submitted. The audio recording is for use by the District Committee, and is not transcribed or released except as provided by item C.4., below.
6. 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.
7. The report and recommendation must 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 has or has not shown by clear and convincing evidence that the Applicant currently possesses 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. Reports that do not comport with these requirements may be returned to the District Committee with instructions to issue a report that complies with this rule.
8. The recommendation of a District Committee is not binding upon the Standing Committee.

### **C. Prehearing Matters.**

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. In addition, Staff will remove all identifying information from the reports before providing them to the Standing Committee.;
  - b) provide nonbinding analysis and recommendations regarding referral matters to the District or Standing Committee; and
  - c) perform any other task assigned by the District and 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 by email ballot, and vote to either endorse the recommendation, take the recommendation under advisement pending the receipt of

additional information that it deems necessary, remand the recommendation to the district committee with instructions for further proceedings, or reject the recommendation and conduct a hearing *de novo*, as provided for by Rule 15, Section 1, Supreme Court Rules Concerning the State Bar of Michigan. 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 advisor 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 recording 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 and contact information of the Committee member who shall preside at a prehearing conference in the matter;
  - b. the name and contact information of the designated State Bar Counsel;
  - c. a copy of these rules; and
  - 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 fee in effect, the Applicant will be provided a link to all information in the Character and Fitness Department's possession concerning the Applicant with the exception of the following materials: work product; contact information of witnesses who request that this information be kept confidential; and confidential 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, if necessary, 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 during the course of the hearing, and a ruling will be made by the Presiding Committee Member.
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 list of 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. Witness lists, with the exclusion of the Applicant, should include a brief summary of the witness's anticipated testimony.

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 video conferencing to resolve any outstanding issues, hear and rule on motions, finalize the Prehearing Order, determine the amount of hearing time that should be scheduled, determine whether the hearing will be in- person or conducted remotely, location of in-person hearing, and schedule a date for the hearing. The Applicant and State Bar Counsel may present motions, ask for rulings, and request subpoenas. Following the prehearing conference, a prehearing conference summary will be produced by the Presiding Committee Member, stating the quorum requirements, proposed dates for hearing, and time frame during which exhibits must be submitted. The prehearing conference summary will be provided to Applicant, Applicant's Counsel (if applicable), State Bar Counsel, and State Bar Staff.
9. State Bar Staff will provide e-mail confirmation of the hearing date, time, and place, and that the requisite number and configuration of panel members has been secured, and will provide a deadline, consistent with the time frame identified at the time of the Prehearing Conference, for submission of exhibits and witness lists. No additional reminders for submission of exhibits or witness lists will be provided. Failure to abide by deadlines for providing exhibit and witness lists could result in the preclusion of exhibits and/or witnesses at the hearing.
10. The Hearing Order shall be issued over the Presiding Committee Member's signature no later than 30 days before the scheduled hearing date, and 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 advisor members, or waive the quorum requirement, and the date, time and location of the hearing. The decision of the Presiding Committee Member regarding the contents of the Hearing Order shall be final.
11. In conjunction with the issuance of the Hearing Order, State Bar staff shall provide a written hearing notice to State Bar Counsel and the Applicant of the date, time and location of the hearing, and the Applicant's right to be represented by counsel. The Hearing Order and any rules to be followed in the proceedings shall be enclosed with the hearing notice.
12. The State Bar staff shall arrange for copies of the Hearing Order, stipulated exhibits, and deposition transcripts to be marked and circulated to Standing Committee members scheduled to hear the matter, as well as to State Bar Counsel and Applicant, as soon as practicable, but in no case less than 10 days prior to the hearing date. Any evidence that is not listed on the Hearing Order or circulated by the State Bar staff shall be presented at the hearing upon motion of the Applicant or State Bar Counsel, and will only be admitted upon a showing of good cause. All proposed exhibits offered at the time of the hearing must be identified to the non-moving party as soon as known, and good cause must be shown why the exhibit was not identified or proffered in accordance with the deadline given during the prehearing conference.
13. One adjournment by right is allowed by each party with no less than one week's notice (seven calendar days) of the scheduled hearing date. An adjournment requested with less than one week's notice may be granted by the Presiding Committee Member, and must be accompanied by an affidavit by the requesting party citing with specificity the reason for the request and include why the request was not made timely. All adjournment requests are to be made to the Presiding Committee Member, with a copy to the non-moving party and State Bar staff. Any additional adjournment requests must be set forth in writing to the Presiding Committee Member and set forth good cause. If an adjournment is requested and granted such that 24 hours' cancellation notice cannot be given to vendors (court reporter, caterer), the requesting party bears the cost. State Bar staff will remit payment and seek reimbursement to the State Bar as appropriate.

#### **D. Standing Committee Proceedings.**

1. Upon arrival at the hearing site for in-person hearings, 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. If the hearing is being conducted remotely, all participants must register in advance, and log into the hearing no less than 15 minutes before the scheduled start time. State Bar staff is the designated host, and is responsible for admitting attendees into the hearing, and for managing breakout rooms. The Presiding Committee Member is the designated co-host. Witnesses should log into the hearing at the time designated by the calling party.
2. A quorum consists of five regular members of the Committee. An Applicant may waive the quorum and also stipulate to voting by advisor members of the Committee. When a hearing is continued, and the same Committee members cannot be present at both sessions, a substitute Committee member shall be sought and 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 Applicant shall waive, on the record, the quorum previously requested.
3. The hearing will commence with the Presiding Committee Member providing a recitation of how the hearing will be conducted, introduction of all participants, confirmation of panel configuration and, if remote, confirmation that the Applicant waives an in-person hearing. Additionally, the Applicant will be asked if the Affidavit of Personal History is complete and if all updates have been previously provided to State Bar staff in writing. The hearing panel reserves the right to adjourn the hearing if untimely updates are made on the day of the hearing that would require further investigation prior to proceeding.
4. The burden is on the Applicant to establish the Applicant's good moral character and general fitness to warrant admission to the bar by clear and convincing evidence. Following opening statements, or confirmation that opening statements are reserved or waived, the hearing shall proceed with presentation of the Applicant's witnesses and cross-examination by State Bar Counsel and then questioning by the hearing Panel, followed by presentation of witnesses by State Bar Counsel and cross-examination by the Applicant, and questioning by the Panel members. At the conclusion of the hearing, closing arguments by both the Applicant and State Bar will be heard, with brief rebuttal permitted by the Applicant.
5. 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. A decision may also be deferred until a later date and additional proofs may be requested. If additional investigation, proceedings, or filings are required, the Applicant and State Bar Counsel shall be advised.
6. 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 Hearing 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.

7. 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 Hearing 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.
8. If a hearing is held before the State Board of Law Examiners, the Applicant, 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 for committee action 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, as well as conduct that would violate the Michigan Rules of Professional Conduct, should be treated as cause for further inquiry and considered when a district or standing Committee makes a recommendation, including, 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 the 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 the situation or prevent a recurrence
  - timeliness of the cooperation with the 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, Statutes and Policy Statements 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 that they:
  - 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.

#### **F. Conflict of Interest**

1. A conflict of interest occurs when a Committee member's personal or professional interests interfere, or appear to interfere, with the interests of the Standing Committee on Character and Fitness. A conflict can arise if a Committee member takes actions or has interests that could be adverse or at odds with a decision by the Committee or make it difficult for the Committee to maintain public trust and ensure fair and impartial decision-making by the Committee or Board of Law Examiners.
2. A Committee member who has any known existing or potential conflict of interest must report the conflict in writing to State Bar staff and the Standing Committee Chair. The written disclosure of a conflict shall detail the nature of the conflict. The Standing Committee Chair will review the disclosure and determine if a conflict of interest exists. All disclosures and determinations regarding conflicts of interest will be documented and preserved by State Bar staff.
3. A Committee member shall abstain from investigating, recommending, voting on, or testifying in any applicant matter for which the Committee member has any known or existing or potential conflicts of interest (whether self-determined or otherwise determined by the Standing Committee Chair). Conflicts may include, but are not limited to, instances where the Committee member has a lawyer-client, financial, familial, personal, or professional relationship with an applicant.