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Appointed by the Supreme Court of Texas

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January 7, 2020

Justice Brett Busby
Supreme Court of Texas
201 West 14th St., 3rd Floor
Austin, Texas 78701

Re: Proposed Order Amending Rule 4 of the Rules Governing Admission to the Bar of Texas

Dear Justice Busby:

With this letter, I am delivering the Board of Law Examiners' proposed amendments to Rule 4 for the Court's consideration.

Currently, Rule 4(d)(2) creates a conclusive finding against the character and fitness of an applicant who has been convicted or placed on deferred adjudication probation for a felony, if less than five years have elapsed since the applicant was released from incarceration or probation.

Affected applicants are currently barred from filing any application or declaration of intention to study law, subject to the Board's decision to waive application of the rule, if requested. The effect of the proposed amendments will be to eliminate the conclusion against a finding of good character and eligibility for any such potential applicant. A rebuttable presumption as to lack of character and fitness will remain but it will now be subject to evaluation and Rule 4 will no longer bar the filing of an application or declaration.

The proposed revisions are intended to provide a more equitable and efficient means to consider the qualifications of affected applicants. These applicants will now be able to apply for evaluation of their character and fitness when they are otherwise eligible, like all other applicants. The Board will then evaluate any mitigating evidence such as good conduct and rehabilitation, as provided by Rule 4(f).

Thank you for your consideration of the attached proposed rule revisions. Should you have any questions, you may contact me at 512-463-8929.

Sincerely,



Susan Henricks
Executive Director

(d) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or an Applicant who has been finally convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been finally convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Declarant or Applicant may be found lacking in present good moral character ~~and or~~ fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

(1) The record of conviction or order of deferred adjudication for a felony offense is conclusive evidence of guilt, in the absence of an executive pardon for that offense:

(2) An individual guilty of a felony under this rule is ~~conclusively deemed presumed~~ not to have present good moral character and fitness ~~and shall not be permitted to file a Declaration of Intention to Study Law or an Application~~ for a period of five years after the completion of the sentence and/or period of probation.

~~(3) Upon a credible showing that a felony conviction or felony probation, either with or without an adjudication of guilt, has been reversed on review by an appellate court, or that an executive pardon has been granted, the Declarant or Applicant shall be permitted to file a Declaration of Intention to Study Law or an Application.~~

(e) The following provisions shall govern the determination of present good moral character ~~and or~~ fitness of a Declarant or Applicant who has been licensed to practice law in any jurisdiction and has been disciplined, or allowed to resign in lieu of discipline, in that jurisdiction.

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the individual in question has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

- (2) An individual disciplined for professional misconduct in the course of practicing law in any jurisdiction or an individual who resigned in lieu of disciplinary action (“disciplined individual”) is deemed not to have present good moral character ~~or~~ fitness and is therefore ineligible to file an Application for Admission to the Texas Bar during the period of such discipline imposed by such jurisdiction, and in the case of disbarment or resignation in lieu of disciplinary action, until the disciplined individual has properly filed an application for re-licensure in the disciplining jurisdiction, in accordance with the procedures established for re-licensure in that jurisdiction, and has obtained a final determination on that application.

Notwithstanding the foregoing provision of this subsection(c)(2) and except as provided in Rule 4(d)(2), if the period of discipline imposed by another jurisdiction exceeds five years, the disciplined individual may file an Application after the expiration of five years from the date of imposition of such discipline, provided that (s)he has obtained a final determination on his/her application for re-licensure in the disciplining jurisdiction.

- (3) The only defenses available to an Applicant or Declarant under section (e) are outlined below and must be proved by clear and convincing evidence:
- (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
 - (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.
 - (C) The deeming of lack of present good moral character ~~or~~ fitness by the Board during the period required under the provisions of section (e) would result in grave injustice.
 - (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.

- (4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.
- (f) An individual who applies for admission to practice law in Texas or who files a petition for redetermination of present moral character and fitness ~~after the expiration of the five-year period required~~ under subsection (d)(2) above or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (e) above shall be required to prove, by a preponderance of the evidence:
- (1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice law;
 - ~~(2)~~ that (s)he is of present good moral character and fitness; and
 - ~~(3)~~ that during the five years immediately preceding the present application action, (s)he has been living a life of exemplary conduct.
- (g) An individual who files a petition for redetermination of present moral character and fitness after a negative determination based on a felony conviction, felony probation with or without adjudication of guilt, or professional misconduct or resignation in lieu of disciplinary action and whose petition is denied after a hearing, is not eligible to file another petition for redetermination until after the expiration of three years from the date of the Board's order denying the preceding petition for redetermination.

- (d) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or an Applicant who has been finally convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been finally convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Declarant or Applicant may be found lacking in present good moral character or fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.
- (1) The record of conviction or order of deferred adjudication for a felony offense is conclusive evidence of guilt, in the absence of an executive pardon for that offense
 - (2) An individual guilty of a felony under this rule is presumed not to have present good moral character and fitness for a period of five years after the completion of the sentence and/or period of probation.
- (e) The following provisions shall govern the determination of present good moral character or fitness of a Declarant or Applicant who has been licensed to practice law in any jurisdiction and has been disciplined, or allowed to resign in lieu of discipline, in that jurisdiction.
- (1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the individual in question has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.
 - (2) An individual disciplined for professional misconduct in the course of practicing law in any jurisdiction or an individual who resigned in lieu of disciplinary action (“disciplined individual”) is deemed not to have present good moral character or fitness and is therefore ineligible to file an Application for Admission to the Texas Bar during the period of such discipline imposed by such jurisdiction, and in the case of disbarment or resignation in lieu of disciplinary action, until the disciplined individual has properly filed an application for re-licensure in the disciplining

jurisdiction, in accordance with the procedures established for re-licensure in that jurisdiction, and has obtained a final determination on that application.

Notwithstanding the foregoing provision of this subsection(e)(2) and except as provided in Rule 4(d)(2), if the period of discipline imposed by another jurisdiction exceeds five years, the disciplined individual may file an Application after the expiration of five years from the date of imposition of such discipline, provided that (s)he has obtained a final determination on his/her application for re-licensure in the disciplining jurisdiction.

- (3) The only defenses available to an Applicant or Declarant under section (e) are outlined below and must be proved by clear and convincing evidence:
 - (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
 - (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.
 - (C) The deeming of lack of present good moral character or fitness by the Board during the period required under the provisions of section (e) would result in grave injustice.
 - (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.
- (4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.
- (f) An individual who applies for admission to practice law in Texas or who files a petition for redetermination of present moral character and fitness under subsection (d)(2) above or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (e) above shall be required to prove, by a preponderance of the evidence:

- (1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice law;
- 2) that (s)he is of present good moral character and fitness; and
- (3) that during the five years immediately preceding the present application, (s)he has been living a life of exemplary conduct.

- (g) An individual who files a petition for redetermination of present moral character and fitness after a negative determination based on a felony conviction, felony probation with or without adjudication of guilt, or professional misconduct or resignation in lieu of disciplinary action and whose petition is denied after a hearing, is not eligible to file another petition for redetermination until after the expiration of three years from the date of the Board's order denying the preceding petition for redetermination.