

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 21-9099

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## ORDER AMENDING RULE 4 OF THE RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

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**ORDERED** that:

1. The Court approves the following amendments to Rule 4 of the Rules Governing Admission to the Bar of Texas, effective September 1, 2021.

2. The Clerk is directed to:

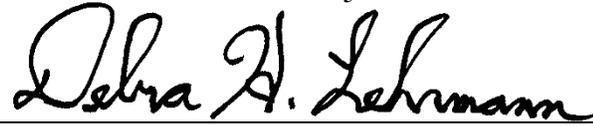
- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

Dated: August 27, 2021



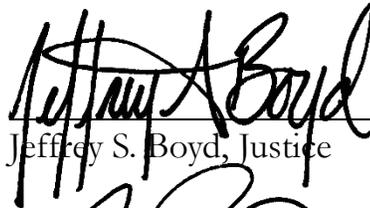
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Nathan L. Hecht, Chief Justice



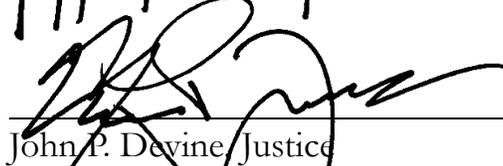
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Debra H. Lehrmann, Justice



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Jeffrey S. Boyd, Justice



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John P. Devine, Justice



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James D. Blacklock, Justice



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J. Brett Busby, Justice



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Jane N. Bland, Justice



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Rebeca A. Huddle, Justice

# RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

## Rule 4

### Present Good Moral Character and Fitness Requirement

- (a) No one shall be eligible for admission to the Bar or for certification as a Foreign Legal Consultant until the investigation of such person's moral character and fitness has been completed, and it has been determined by the Board that such individual possesses present good moral character and fitness.
- (b) Good moral character is a functional assessment of character and fitness of a prospective lawyer. The purpose of requiring an Applicant to possess present good moral character is to exclude from the practice of law those persons possessing character traits that are likely to result in injury to future clients, in the obstruction of the administration of justice, or in a violation of the *Texas Disciplinary Rules of Professional Conduct*. These character traits usually involve either dishonesty or lack of trustworthiness in carrying out responsibilities. There may be other character traits that are relevant in the admission or certification process, but such traits must have a rational connection with the Applicant's present fitness or capacity to practice law and accordingly must relate to the legitimate interests of Texas in protecting prospective clients and in safeguarding the system of justice within Texas.
- (c) Fitness, as used in these Rules, is the assessment of mental and emotional health as it affects the competence of a prospective lawyer. The purpose of requiring an Applicant to possess this fitness is to exclude from the practice of law any person having a mental or emotional illness or condition which would be likely to prevent the person from carrying out duties to clients, courts or the profession. A person may be of good moral character, but may be incapacitated from proper discharge of his or her duties as a lawyer by such illness or condition. The fitness required is a present fitness, and prior mental or emotional illness or conditions are relevant only so far as they indicate the existence of a present lack of fitness.
- (d) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or an Applicant who has been convicted of a felony in Texas or placed on ~~probation for a felony with or without an adjudication of guilt~~ Texas deferred adjudication community supervision in Texas, or who has been convicted or placed on ~~probation with or without an adjudication of guilt~~ deferred adjudication community supervision or similar in another jurisdiction for a crime ~~which~~that would be a felony in Texas. A Declarant or Applicant may be found lacking in present good moral character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication community supervision, as well as based on the conviction or ~~probation through~~ deferred adjudication community supervision itself.
- ~~(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.~~
- ~~(21) An individual guilty of a felony under subsection (d) is conclusively not to have deemed~~ Except as otherwise provided in paragraph (2), a felony conviction or

felony deferred adjudication community supervision creates a rebuttable presumption that the Declarant or Applicant lacks present good moral character and fitness and shall not be permitted to file a Declaration or an Application for a period of five years after the completion of the sentence and/or period of probation deferred adjudication community supervision. Such presumption may be rebutted based on the evidence shown under subsection (f).

~~(32) 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 executive pardon has been granted, the Declarant or Applicant shall be permitted to file a Declaration or an Application deferred adjudication community supervision does not create a presumption that the Declarant or Applicant lacks present good moral character and fitness, if:

(A) the felony conviction or felony deferred adjudication community supervision has been reversed on review by an appellate court;

(B) the Declarant or Applicant has been pardoned for the felony; or

(C) the felony for which the Declarant or Applicant received deferred adjudication community supervision has been dismissed and discharged under Article 42A.111, Code of Criminal Procedure, unless the Declarant or Applicant was placed on deferred adjudication community supervision for a felony:

(i) listed in Article 42A.054(a), Code of Criminal Procedure;

(ii) described by Article 62.001(5) or (6), Code of Criminal Procedure;

(iii) committed under Chapter 21 or 43, Penal Code; or

(iv) related to the practice of law.

(e) The following provisions shall govern the determination of present good moral character and 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 and fitness and is therefore ineligible to file a Declaration or an Application 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 paragraph (e)(2) ~~and except as provided in paragraph (d)(2)~~, if the period of discipline imposed by another jurisdiction exceeds five years, the disciplined individual may file a Declaration or 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 subsection (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 and fitness by the Board during the period required under the provisions of subsection (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 paragraph (d)(2) subsection (d)~~ above or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under paragraph (e)(2) 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 ~~action~~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 an adverse determination based on a felony conviction, felony ~~probation with or without adjudication of guilt~~deferred adjudication community supervision, 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.
- (h) If an Applicant is alleged to have violated the Texas Bar Examination Security Policy, the Executive Director may withhold delivery of the Applicant's Texas Bar Examination results until the allegation is resolved by the Board. If, after notice and a hearing, the Board determines that an Applicant violated the policy, the Board may deem the Applicant to have failed the Texas Bar Examination and prohibit the Applicant from taking the Texas Bar Examination in the future.