

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04- 9003

ORDER AMENDING RULE XV
RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

IT IS ORDERED that the *Rules Governing Admission to the Bar of Texas*, are amended in the following manner:

Amend Rule XV to read as follows:

Rule XV
Character and Fitness Hearings

- (a) The Board shall set a time and place for a hearing on the question of the requisite moral character and fitness of an Applicant or Declarant, under the following circumstances:
 - (1) When any Applicant or Declarant who is the subject of a preliminary negative character and fitness determination files a written request for such a hearing within thirty (30) days of his or her receipt of the Board's letter containing the notice of such determination; or
 - (2) When the Board determines that, in the interest of fairness, such a hearing is necessary regardless of whether the Applicant or Declarant files a timely request for hearing.
- (b) If there are pending proceedings involving the Applicant or Declarant, the resolution of which could impact the determination of his/her character and fitness, the Board may exercise its discretion to defer the hearing until such time as the pending proceeding is resolved.
- (c) Board hearings, deliberations, and determinations relating to the moral character and fitness of an Applicant or Declarant shall be closed to the public and records relating to these subjects are confidential. On written request of an Applicant or Declarant, however, the Applicant or Declarant is entitled to have the hearing open to persons designated by the Applicant or Declarant.
- (d) The Applicant or Declarant shall be given reasonable notice, by registered or certified mail, return receipt requested, of the time and place of the hearing.
- (e) Applicant or Declarant, either before or after receiving notice of a hearing, may agree to waive the hearing, stipulate to the facts regarding good moral character and fitness, and allow the Board to proceed with making a final determination as to the Applicant's moral character and fitness under these Rules. An Applicant may additionally agree to a Probationary License and to any conditions imposed by the Board to protect the public.
- (f) At the hearing:
 - (1) The Board or any opponent of approval of the moral character and fitness of the Applicant or Declarant, shall have the burden of proof and be required to present

evidence that the Applicant or Declarant does not have the requisite good moral character or fitness. Upon the admission of such evidence, the burden of proof shall shift to the Applicant or Declarant to show that the Applicant possesses good moral character and fitness as defined in these Rules. However, in a redetermination hearing on a Probationary License, the burden of proof shall be on the Probationary Licensee to demonstrate that (s)he has complied with the conditions of the Probationary License.


- (2) The Applicant or Declarant shall be given the opportunity to be present in person and by attorney, to present evidence, to confront and to cross-examine adverse witnesses, and to present argument to the Board on the issues of law and fact; provided, however, that evidence otherwise inadmissible may be admitted if the evidence is of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.
 - (3) Evidence and argument for or against the Applicant or Declarant may be presented by the Board or any other interested party.
- (g) In connection with hearings conducted under this Rule, the Board shall have the authority to administer oaths, issue subpoenas, take depositions, and employ court reporters.
- (h) After the hearing, in closed deliberations, the Board may:
- (1) determine that an Applicant or Declarant has the requisite present good moral character and fitness and, in the case of an Applicant, should be recommended for admission to the Texas Bar;
 - (2) determine that a Declarant should be granted conditional approval of his or her present good moral character and fitness and be required to meet such conditions as the Board deems appropriate;
 - (3) determine that an Applicant should be granted conditional approval of his or her present good moral character and fitness and be recommended for a Probationary License subject to the terms of Rule XVI, after meeting all other requirements of these Rules;
 - (4) determine that an Applicant or Declarant does not possess the requisite present good moral character and fitness required for admission to the Texas Bar; or
 - (5) defer a decision until such time as the Board has the opportunity to consider further information, evaluations, or documentation as deemed necessary by the Board;
 - (6) in the case of either a temporary or probationary license, recommend to the Supreme Court that the license should be renewed in its present form, renewed with additional or amended conditions, or revoked and no regular license be issued.
- (i) Within a reasonable period of time after the decision is made, the Board shall furnish to the Applicant or Declarant a written order setting forth the decision of the Board. If the decision is adverse, such order shall specify the bases of the Board's determination and shall include an objective list of actions, if any, the Applicant or Declarant may take to become qualified for a license to practice law in Texas. Any such order containing a determination that the Applicant or Declarant suffers from chemical dependency shall include provisions setting out the rights under Section 82.038, Texas Government Code.

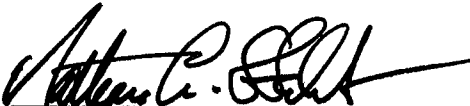
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- (j) An individual who has been the subject of a Board order containing a negative character and fitness determination may petition the Board in writing for a redetermination hearing subject to the provisions of Rule XV herein on the issue of character and fitness, as follows:
- (1) No petition for redetermination may be filed earlier than the date specified in the Board's order (or if none, then no earlier than twelve months from the date of the hearing), nor more often than once every twelve months.
 - (2) Such individual shall have the burden of proof as to rehabilitation and the possession of present good moral character and fitness.
 - (3) Such individual shall complete and file with the Board a Supplemental Investigation Form and pay the requisite fees therefore within thirty (30) days of the filing of the redetermination petition.
 - (4) This subsection (j) shall not apply to character and fitness redeterminations in Probationary License cases, which are governed under the provisions of Rule XVI.
- (k) The following provisions shall govern judicial review of the Board's character and fitness decisions:
- (1) The affected Applicant or Declarant shall institute, in the district courts of Travis County, Texas proceedings for review of such decision within sixty (60) days after the date the written decision is mailed to the Applicant.
 - (2) The petition for review shall name the Board as defendant and shall be served on the Executive Director of the Board.
 - (3) After service of such petition, and within the time permitted for filing an answer, the Board shall file with the district court a certified copy of the record of the Board's proceedings.
 - (4) The review of the Board's decision shall be tried by the court without a jury.
 - (5) The court shall determine from the certified record on file whether or not the Board's decision is reasonably supported by substantial evidence. The reviewing court may affirm the action complained of or remand the matter to the Board for further proceedings.
 - (6) Appeals from any final judgment of the court may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the Board.
- (l) The Board shall have the authority to adopt such other rules of procedure for character and fitness hearings, not inconsistent with these Rules, as the Board deems necessary or appropriate to implement these Rules.
- (m) Decisions of the Board on matters other than character and fitness following a hearing under this Rule shall not be subject to judicial review unless another statute or rule specifically provides to the contrary.
- (n) The Board may assess costs against any Applicant or Declarant who has been sent reasonable notice of a hearing before the Board and who does not appear.

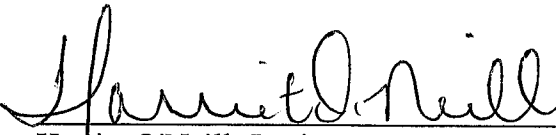
IT IS FURTHER ORDERED THAT this order shall be effective immediately.

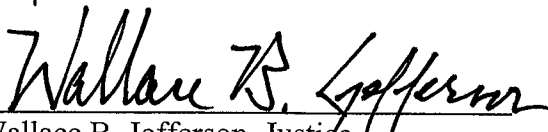
SIGNED AND ENTERED this 27th day of August, 2004.



Thomas R. Phillips, Chief Justice

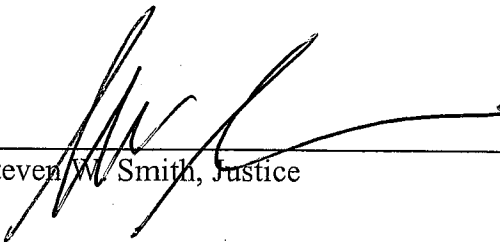

Nathan L. Hecht, Justice

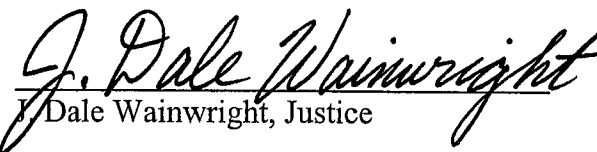

Priscilla R. Owen, Justice



Harriet O'Neill, Justice


Wallace B. Jefferson, Justice


Michael H. Schneider, Justice


Steven W. Smith, Justice


Dale Wainwright, Justice


Scott Brister, Justice