

# A MODEL FOR DIALOGUE

A Meeting Manual on Character and Fitness Issues for  
Bar Examiners and Law Schools



Prepared by the Bar Admissions Committee  
ABA Section of Legal Education and Admissions to the Bar

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## **I. Discussion Topics on Character and Fitness Issues**

The following is a list of thirteen discussion topics on character and fitness issues.

These topics were developed by members of the Bar Admissions Committee and are designed to lead to better communication between bar admission authorities and law schools. The topics might form the framework for a meeting of law school officials who are involved in bar admissions and representatives of the bar admissions authority who participate in character and fitness reviews.



## **Discussion Topics on Character and Fitness Issues**

1. What information should the bar admission authority and law schools exchange?
2. What information is in the law school's file?
3. Do law schools have confidence in the way the bar admission authority will use information provided by the law schools? What does the bar admission authority do with the information?
4. Why don't the law schools hear back from the bar admission authority regarding applicants about whom the law schools have reported adverse information? When should the bar admission authority give a law school feedback as to the disposition of a particular graduate about whom the law school provided requested information?
5. What is an honor code, and when is it considered to have been violated?
6. Is the law school immune from tort liability when it discloses information about a graduate to the bar admission authority?
7. When is it appropriate, if ever, for law schools to plea bargain with a student with regard to what is in the student's permanent record?
8. Are law professors who are members of the bar under a special obligation to respond to the bar admission authority's inquiries regarding misconduct if there is a provision in the local disciplinary rules that requires attorneys to reply to valid requests for information from bar admission authorities?
9. Will law schools ever revoke a JD degree if it is determined that the recipient of the degree was not truthful on the law school application or for some other reason?
10. Does a conflict exist between the role a law school plays in counseling law students with substance abuse or mental health problems and the role the law school plays in certifying good character to the bar admission authority?
11. What, if any, responsibility do law schools have to prevent or deter students from defaulting on student loans or from overextending themselves with student loans?
12. Should the bar admission authority publish the names of applicants to the bar and solicit character and fitness information from the bar or the public?
13. Should the law schools agree to give the bar admission authority information regarding law suits threatened by students or former students after they have applied to the bar?



## II. Discussion Hypotheticals

The following hypothetical situations were developed to elicit discussion and increase understanding between bar admission authorities and those law school officials whose work involves communication about student conduct that could implicate fitness for admission.

Of particular concern are the law school's obligation or interest in reporting certain information to the bar admission authority, and the bar admission authority's obligation to act upon the matters revealed.



## Hypothetical A

In his first year in law school, Howard sent a dozen roses to a woman law student whom he knew only from class. The card expressed his love. The woman complained to the assistant dean who asked her what she wanted done with Howard. The woman said, "Tell him to leave me alone. I don't know him and I don't want to get to know him." The dean talked to Howard and conveyed the message.

In his second year a similar incident occurred with another woman law student. The woman complained to the assistant dean who spoke to Howard and told him not to do it again. Later that year a third incident occurred with a third woman. The assistant dean heard about this incident through the grape vine. He did not talk to Howard.

At the beginning of his third year, Howard became upset when he saw another acquaintance (a female student) and a male student talking. Howard rushed at the male student, knocked him to the ground, bruising him slightly, and embarrassing him and the woman in front of fellow students. Howard then turned to the woman student in a loud voice and said, "You know I have always loved you." The two students complained to the assistant dean and recommended that Howard go for counseling. They said they would not make an official complaint so long as the dean assured them that Howard would see a counselor. The assistant dean talked to Howard who agreed to go for counseling.

Which of these incidents should be reported to the bar admission authority in the jurisdiction in which Howard applies for admission?

## Hypothetical B

June is a law student who had two clerk positions while in law school. She quit the first position after working for five months. She filed a sexual harassment complaint against the employer. The matter was settled with a payment of \$4000 to her and a promise by the employer to attend sensitivity training classes. The second position was with the legal department of a large corporation. After being employed for seven months, June quit and filed a complaint alleging gender discrimination. June alleged that she had not been given an offer for permanent employment while a male law clerk was offered a permanent position. Although the employer said June's work was poor compared with the clerk who was hired, the matter was settled when June agreed to accept a payment of \$2000 severance pay. Then June sued her landlord in small claims court alleging that the landlord had failed to maintain the residence properly. The landlord agreed to settle the matter by allowing June to keep her deposit. All three of these matters were discussed openly by June at law school. The assistant dean had heard the stories from several sources.

In her third year in law school, June signed up for a clinical practice course. The professor advised the class that students must make themselves available for clinic work on a schedule to be coordinated by the clinical professor. June informed the professor that she did not intend to schedule her entire life to accommodate the professor. She informed him that she had paid over \$500 in tuition for the course and, unless the professor agreed to her schedule for clinic time, she would bring suit in small claims court for a refund of \$500 alleging breach of contract. The professor complained to the assistant dean but later agreed to allow Jane to pick the clinic times that would be easiest for her.

What if anything should be told to the bar admission authority about Jane's involvement in these matters? The form sent by the bar admission authority asks if the dean has any knowledge of Jane's being involved in litigation or if the dean has any knowledge of character issues that should be considered by the bar admission authority.

## Hypothetical C

You are the dean of a law school. You have the following information about three students.

1. Joan was academically disqualified after her first year of law school, when her grade point average was below the minimum 2.0. She petitioned for readmission, indicating that she was a recovering alcoholic but was in treatment. After a year off, during which her treatment program proceeded successfully, she was readmitted. Her second year grades were above 3.0. During the first semester of her third year, however, she was absent a great deal; her grades dropped, but they remained high enough for her to graduate. During Joan's third year of law school, you received reports from other students that Joan was drinking heavily.

2. Tom was accused by a professor of plagiarizing substantial portions of his course paper in Federal Courts. The professor demonstrated that large portions of the paper were identical to a published law review note on the topic; Tom did not quote the material or attribute it to the law review note. The professor gave Tom an "F" in the class on the basis of the plagiarism, but Tom's overall grades were well above the minimum required for graduation. When you discussed the matter with Tom, he said that he wrote this paper just as he had been writing papers since high school. No disciplinary action was taken against Tom.

3. During his first year of law school, Brad spent a lot of time in the Assistant Dean's office. He seemed to suffer from the stress of law school even more than most students. His grades for first year were average. During his second year, he seemed more seriously depressed, and his grades declined. You heard from other students that he was having marital problems. One day during the spring semester of his third year, Brad stopped by your office to talk; during that conversation, he made some comments that might be interpreted as suicidal.

Joan, Tom, and Brad have graduated and applied for admission to the bar. What information about them should the law school provide to the bar admission authority?

## Hypothetical D

What course of action should Law School take with regard to notifying the bar admission authority under the following circumstances:

1. Law School learns via the local newspaper that Bradley, a third year law student, has been charged with molesting two boys, ages 7 and 9, over a period of months while he served as a volunteer Big Brother.
2. Is the outcome any different if Bradley is convicted of child molesting?
3. Is the outcome any different if sentence is withheld by the court, with the agreement that the charges will be dismissed if Bradley completes a year of psychiatric counseling?

## Hypothetical E

During applicant's second year of law school, he and his wife were indicted in federal court for conspiracy to manufacture LSD. Apparently they were desperate for funds to complete school and rented the kitchen of their apartment to two graduate chemistry students who manufactured and sold the LSD. Among the purchasers was an FBI agent. The house was raided and the paraphernalia for manufacture of the LSD, as well as a small quantity of the drug, were found.

The applicant and his wife were not involved in the actual manufacture of the drug, and they agreed to testify against the chemistry students in return for a first offender sentence. They pleaded guilty but adjudication was withheld pending their completion of a period of five years' supervised probation. The probation was terminated after one year, and no adjudication of guilt was entered. The applicant did not miss any school and will complete his courses on schedule.

While the applicant did not inform the law school of the charge or its disposition, the dean is aware of the charge because it was reported in the newspaper. However, he is not aware of the disposition except for rumors that the applicant "cut a deal" in return for a lightened sentence. What should the dean report to the bar admission authority?

## Hypothetical F

During the applicant's time as a student in law school, she was orally admonished several times for disobeying the school's rule prohibiting eating in the law library. Each time she was admonished, she said that she would not do it again. She told the assistant dean who talked to her that the library staff were jerks and too stupid to do anything but manual labor.

The applicant participated in an extern program for credit. Her supervisor where she did the externship rated her performance as unsatisfactory and, as a result, she received no credit for the externship. She called the supervisor and made ethnic slurs and cursed the supervisor for her report. The applicant also called the law professor in charge of the externship and cursed him and said that she would get even.

Subsequently, the applicant walked up to a minority student and began a tirade against affirmative action programs and told the student that he was so stupid that the world would be better off if he died. The applicant also told another minority student pretty much the same thing. After this was reported to the dean's office, the applicant was called in by the assistant dean and told that her conduct was unacceptable and that she should seek counseling. The applicant replied that everyone was out to get her, that counseling hadn't done any good in the past because she didn't need it, and that she didn't need it now. The assistant dean again advised counseling and said that she would arrange for a confidential session with one of the university counselors, but the applicant refused.

The assistant dean did nothing more other than to report all of this to the dean with the statement that she (the assistant dean) thought that the applicant had absolutely no conception that others had feelings and that she thought the applicant would end up in the bar's discipline system if she was admitted. The assistant dean made some notes of her various conversations with the applicant, but no official discipline was ever imposed, and the applicant's record reflects none of what went on. The dean is sure in her unscientific way that the applicant is mentally or emotionally unstable or both. Should she share her concerns with the bar admission authority?

## Hypothetical G

During his second year of school the applicant is convicted by the honor court of taking unfair advantage of his fellow classmates by circulating a resume which contains a falsely inflated grade point average and class standing. He is suspended from school for one term (which is not reflected on his transcript) and is required to write each law firm to which the resume was circulated advising the firm that the resume was false. He does this and sits out the term and then returns to school. He continues his studies in good standing and graduates in due course.

Should this be reported to the bar admission authority?

## Hypothetical H

Jackson graduated from Law School B in May 2002 and applied for the July 2002 bar examination.

The bar admission authority determines that Jackson did not disclose her academic dismissal from Law School A to Law School B at the time she filed her law school application or at any time thereafter. Law School B would not have admitted Jackson had she been truthful on her law school application form. In fact, had Law School B discovered Jackson's dishonesty while she was enrolled, she would have been dismissed.

What action on the part of Law School B is appropriate when the discovery of Jackson's lack of candor occurs two weeks after the J.D. was conferred?

## Hypothetical I

Preston plagiarized a paper his last semester of law school. The discovery of the plagiarism occurred following his graduation, when a journal to which the paper was submitted performed a cite check.

When the law school is notified by the journal, should it in turn notify the bar admission authority?

Should the law school allow the student's grade of "A" to remain on his transcript?

## Hypothetical J

Vaughan was a poor student at Law School. She graduated in May and immediately began employment in the corporate counsel department of a national insurance company. In late June it came to the attention of the company that Vaughan's law school transcript was a forgery, and the company fired Vaughan and notified Law School of the fraud.

What should Law School do with respect to Vaughan, and with respect to the bar admission authority?

## Hypothetical K

The bar admission authority receives three applications for the bar examination, and learns that all three applicants were involved in similar instances of academic dishonesty (such as cheating on a test) during law school at three different institutions.

Law School A suspended its student for one year.

Law School B gave its student an “F” in the course.

Law School C required the student to perform 100 hours of community service, after which the dean agreed not to disclose the cheating incident to the bar admission authority.

Should the differing dispositions affect the weight accorded to the offense by the bar admission authority?

Are any of the law schools obligated to report the underlying cheating incident? If not, what factors would change that?

## Hypothetical L

During his second year in law school, Joe Student was an officer of the Student Bar Association. Under the policies of the school, this office entitled Joe to a telephone credit card issued in the name of the university. Joe had a girlfriend some thousand miles distant from the law school to whom he enjoyed talking on the telephone. By the end of the semester, Joe had run up \$2,643 in unauthorized telephone calls on the university credit card.

At the start of his third year in law school, the Honor Court found Joe guilty of misuse of the credit card. As a sanction, three hours were subtracted from his total credits and he was required to reimburse the university. By the end of his third year, Joe had reimbursed the university for the improper charges and had accumulated sufficient hours to graduate. Joe then made application to the bar admission authority which, in the course of processing his application, sent a character inquiry to the dean of his law school. The dean has personal knowledge of the incident described above, and her file contains a copy of the Honor Court decision.

How should the dean respond to the bar admission authority's inquiry? How should the bar admission authority resolve the question about Joe's character?

## Hypothetical M

Mary Student is convicted by the Honor Court of improper collaboration with another student in the preparation and execution of a major writing requirement. Mary's defense before the Honor Court was that she, in good faith, believed that collaboration was authorized and encouraged by the professor who made the writing assignment. The professor denies that collaboration was authorized. However, several other students from the class testified before the Honor Court that they also believed collaboration was appropriate under the professor's guidelines. Mary was convicted by a divided vote of the Honor Court. Her punishment was an "F" in the professor's course and suspension from law school for one semester.

Mary has now finished law school, received her J.D., and made application to the bar admission authority for permission to take the bar exam. The bar admission authority has requested a character report from her law school. In response, the law school has sent a copy of the Honor Court's written decision. Mary appears at a character hearing before the bar admission authority represented by a faculty member who was a member of the Honor Court that convicted her but who himself had voted for her acquittal.

Discuss the law school's action in this case. What decision should the bar admission authority make about Mary's character?

## Hypothetical N

Ginger is a third-year law student. Although her LSAT score predicted that she would do well in law studies, she has proven to be an indifferent student. She claims that her mediocre grades are a result of a conspiracy by the faculty because she challenges their political beliefs in the classroom. On three different occasions she has sued the law school claiming that the grade she received in a particular class was less than what she had actually achieved on her examination. In each of these suits she acted pro per, and each was ultimately dismissed by the court. She has also filed numerous law suits against her landlord and various creditors. All were filed pro per and all were resolved against her, most by dismissal and a couple by summary judgment.

Ginger's teachers have reported her classroom behavior as being disruptive and her responses to questions as being often completely unrelated to the topic under discussion. In addition, students have complained to the assistant dean that Ginger intentionally misplaces library and other class research materials to keep them to herself. Both the assistant dean and the dean have spoken to Ginger about her behavior, and she told them that she was just following instructions that came from electronic devices such as radios and tape recorders. She wasn't sure who was giving the instructions, but she thought they came from dogs. One of Ginger's law teachers has an advanced degree in psychology in addition to her law degree, and the instructor has told the dean that she thought that Ginger was psychotic and should never be licensed to practice law. To the best of the dean's knowledge, Ginger has never been professionally diagnosed as having any sort of mental disorder.

Ginger has applied for admission to the bar and, in the processing of her application, the bar admission authority has sent an inquiry to the law school which asks, among other things, for a general evaluation of the applicant's character and fitness to be licensed as an attorney and, specifically, if the dean (to whom the inquiry was addressed) knows of anything that would make licensure inappropriate.

Should the dean report what the faculty and students have reported to him? Based on the information about Ginger available to the dean, is Ginger fit or unfit to practice law? Should mental and emotional stability be considered in the licensing process? Under the terms of the Americans with Disabilities Act, may they be considered?

## Hypothetical O

Michael is a third-year law student. Prior to law school, he was in the military service for several years before being involuntarily separated because of defense cutbacks. He received an honorable discharge and is receiving veteran's benefits while attending law school. While in the service Michael became addicted to alcohol, but he joined AA prior to his discharge. He no longer attends AA meetings because he is uncomfortable with what he considers AA's religious overtones, but he has been active in the law school community speaking about the danger of alcohol and drugs, especially to those in stressful situations.

While at a non-law school social function, the dean ran into Michael and noticed that he had a cocktail in his hand. The dean was surprised but didn't think too much about it until it became obvious during their conversation that Michael was drunk. Michael volunteered that he had started drinking again, but he said that he was keeping it under control and that it was not affecting his studies or his part-time employment with a local law firm. The dean asked how he could continue to speak about the dangers of alcohol when he was drinking. Michael responded by saying that since he was so well known as a speaker about alcoholism, he couldn't just stop talking about the disease without signaling that he had lapsed back to active alcoholism, which he did not think was the case.

A couple of days later Michael's employer called the dean to ask if anything was going on at the law school that would have caused Michael to miss the last three days of work. The dean said she wasn't sure about Michael's class assignments but they might have been heavy in the last week or so, and she would leave a note for Michael to call the employer. After hanging up, the dean checked with Michael's three professors; two said that there had been a noticeable falling off in class performance but they didn't know why, and one said that he couldn't see any difference in class performance.

Following Michael's application for admission to practice law, the bar admission authority sent a confidential background inquiry addressed to the law school, which found its way to the dean's desk. The inquiry asks specifically whether the completer of the form has any reason to believe that, for character and fitness reasons, Michael should not be licensed to practice law.

How should the dean respond? How should the dean respond if the form had asked if the completer had any reason to believe that the applicant was actively addicted to the use of alcohol or mind altering substances? Would the response be different in either case if Michael had come to the dean's office and sought counseling about the effects of his drinking?

## Hypothetical P

Frank is in his final year of law studies. Under a student practice rule, he has been certified to appear in court when under the direct supervision of a lawyer. In addition to taking law school courses, Frank works part-time for a sole practitioner as a paralegal/law clerk/secretary. He has appeared in court with his employer, who has introduced him as “my associate.”

Recently the dean’s secretary received a call complaining about “one of your lawyers.” The caller said that he had gone to the practitioner’s office and talked to a lawyer named Frank. The caller said that he then retained Frank to file an action against a supermarket in a slip-and-fall case. According to the caller, Frank had taken a retainer but did not file the case, and now the statute of limitations has expired. The caller was informed that the law school had no lawyers who practiced law other than clinical teachers and that Frank was not one of them. The caller grumbled and hung up.

The substance of the call was reported to the dean, who then called Frank’s employer and related the story told to the law school. The employer said he would look into it and call the dean back. When he did so, he told the dean that although he had referred to Frank as his associate, he did not mean that Frank was a lawyer, but that he intended to convey that Frank was his assistant. The practitioner confronted Frank with the allegations, and Frank reported to him that he had received a retainer and had deposited it into the practitioner’s trust account. In the rush of things Frank had forgotten about it, and that is why he had not reported the retainer or the client or case.

The practitioner also told the dean that he had discovered that Frank had been telling persons who called and came into the office that he was a lawyer, and that he had a business card printed which clearly implied that he was a lawyer. Frank told his employer that he had the cards printed up in anticipation of graduation and passing the bar examination. The practitioner fired Frank but told the dean that he would not report the matter to the bar admission authority when Frank applied for admission. Subsequently, the client filed a malpractice action against both Frank and the practitioner, and that case is pending. The dean is aware that the case was filed but does not know its current status.

Should the dean report Frank’s conduct to the bar admission authority? Is there anything to report? Should the dean report Frank’s conduct to the agency that authorized his limited right to appear in court?

Would your responses be any different had Frank been a participant in an externship or in-house clinical program?

### **III. Summaries of Character and Fitness Processes**

Many jurisdictions prepare documents for public distribution to describe the character and fitness investigation process. These documents promote a better understanding of the investigation process and provide a means of improving dialogue among law schools, bar admission authorities and law students.

The following are examples of how two jurisdictions--Ohio and Georgia--have summarized their character and fitness process for the benefit of applicants and law schools.



## **SUMMARY OF CHARACTER AND FITNESS PROCESS IN OHIO**

### **Admissions Authority**

The Ohio Constitution grants the Supreme Court of Ohio exclusive jurisdiction to regulate admission to the practice of law in Ohio. Pursuant to this grant of authority, the Court has promulgated Rule I of the Rules for the Government of the Bar, “Admission to the Practice of Law.” This rule outlines the requirements for admission and the procedure for seeking admission.

### **General Admission Requirements**

To be admitted to the practice of law in Ohio, an applicant must:

- 1) be at least 21 years old;
- 2) have a bachelor’s degree from an accredited college or university;
- 3) have a law degree from an ABA approved law school;
- 4) be approved as to character, fitness, and moral qualifications;
- 5) pass the Ohio bar examination (or qualify for admission without examination);
- 6) pass the Multistate Professional Responsibility Examination; and
- 7) take an oath of office.

### **Importance of Character and Fitness Approval**

Approval of an applicant’s character and fitness is one of the most important components of the admissions process. No one may take the Ohio bar examination without **first** receiving character and fitness approval. The Supreme Court does not waive this requirement.

### **Application Process**

Applying for admission in Ohio is a two-step process. First, in the second year of law school, an applicant must file an Application to Register as a Candidate for Admission (Application to Register). This is a preliminary application which includes a character questionnaire to provide background information regarding the applicant. An Application to Register triggers an investigation of the applicant’s character, fitness, and moral qualifications to practice.

Second, in the third year of law school, the applicant must file an Application to Take the Bar Examination (Exam Application). The Exam Application signals the applicant’s desire to sit for a particular bar exam. It also provides updated character and fitness information covering the period of time following the filing of an Application to Register.

## Character and Fitness Review Process

Upon its receipt in the Admissions Office, a completed Application to Register is sent to the National Conference of Bar Examiners (NCBE). The NCBE verifies background information provided in the application, contacts the applicant's references, conducts police checks, provides additional background investigation, and issues a report.

The Application to Register and the NCBE report are then sent to and reviewed by the Admissions Committee of a local bar association. At least two members of the Admissions Committee conduct a personal interview of the applicant. The Admissions Committee may conduct additional investigation before making a recommendation regarding the applicant's character and fitness.

If an Admissions Committee recommends that an applicant **not** be approved or be approved **with qualifications**, the applicant may appeal to the Board of Commissioners on Character and Fitness (Board), which consists of 12 attorneys appointed by the Court (one from each appellate district) to oversee character and fitness matters. If the applicant decides not to appeal an adverse Admissions Committee recommendation, the application is considered withdrawn. If the applicant files an appeal with the Board, a three-member panel is appointed to hold a non-adversarial, *de novo* hearing. The applicant, the applicant's attorney, if any, and the Admissions Committee participate as parties to the hearing.

After a hearing, the full Board votes on whether to approve the applicant. The Board may either approve the applicant or recommend disapproval with or without an opportunity to reapply. If the Board recommends that the applicant not be approved, the applicant is entitled to an automatic review on the record before the Supreme Court. The Court makes the ultimate decision regarding whether an applicant will be disapproved on character and fitness grounds.

## *Sua Sponte* Investigations

The Board has authority to conduct character and fitness investigations *sua sponte*. Under this authority, the Board sometimes determines that a hearing should be held even though an Admissions Committee has recommended approval of an applicant. This might happen, for example, when it appears that the Admissions Committee did not thoroughly investigate adverse information regarding an applicant, due to a lack of Admissions Committee resources, unavailability of information to the Admissions Committee, or failure of the applicant to report the information in a timely manner.

## Standard for Determining Character and Fitness

An applicant may be approved for admission if the applicant's record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them **and** demonstrates that the applicant satisfies the essential eligibility requirements for the practice of law as defined by the Board. A record manifesting a significant deficiency in the

honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for disapproval of the applicant.

### **Factors Considered in Making Character and Fitness Determinations**

Before making a recommendation about an applicant's character, fitness, and moral qualifications, an Admissions Committee or the Board considers the following factors:

- 1) commission or conviction of a crime;
- 2) evidence of an existing and untreated chemical (drug or alcohol) dependency;
- 3) commission of an act constituting the unauthorized practice of law;
- 4) violation of the honor code of the applicant's law school or any other academic misconduct;
- 5) evidence of a mental or psychological disorder that in any affects or, if untreated, could affect the applicant's ability to practice law in a competent and professional manner;
- 6) a pattern of disregard of the laws of Ohio, another state, or the United States;
- 7) failure to provide complete and accurate information concerning the applicant's past;
- 8) false statements, including omissions;
- 9) acts involving dishonesty, fraud, deceit, or misrepresentation;
- 10) abuse of legal process;
- 11) neglect of financial responsibilities;
- 12) neglect of professional obligations;
- 13) violation of an order of a court;
- 14) denial of admission to the bar in another jurisdiction on character and fitness grounds; and
- 15) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

### **Weight and Significance Given to Prior Conduct**

The review of an applicant focuses on the applicant's **present** character, fitness, and moral qualifications. The following factors are considered in assigning weight and significance to an applicant's prior conduct:

- 1) age of the applicant at the time of the conduct;
- 2) recency of the conduct;
- 3) reliability of the information concerning the conduct;
- 4) seriousness of the conduct;
- 5) factors underlying the conduct;
- 6) cumulative effect of the conduct;
- 7) evidence of rehabilitation;
- 8) positive social contributions of the applicant since the conduct;

- 9) candor of the applicant in the admissions process; and
- 10) materiality of any omissions or misrepresentations.

### **Factors that May Not Be Considered**

In making a character and fitness determination, the Admissions Committee or the Board may not consider factors that do not directly bear a reasonable relationship to the practice of law. These impermissible factors include, but are not limited to, the following:

- 1) age;
- 2) sex;
- 3) race;
- 4) color;
- 5) national origin;
- 6) religion; and
- 7) disability, provided that the applicant, though disabled, is able to satisfy the essential eligibility requirements for the practice of law.

### **Burden of Proof**

The applicant has the burden to prove by clear and convincing evidence that the applicant possesses the requisite character, fitness, and moral qualifications for admission. An applicant's failure to provide requested information, including information regarding expungements and juvenile court proceedings [see *In re Application of Watson (1987)*, 31 Ohio St. 3d 220, at 221], or otherwise to cooperate in the proceedings before an Admissions Committee or the Board may be grounds for a recommendation of disapproval.

### **Most Common Reasons for Denial**

The initial reasons that an Admissions Committee disapproves or conducts additional character and fitness investigation of an applicant might relate to any of a number of issues regarding the applicant's background, including, for example, a criminal record, a record of financial irresponsibility, or an untreated alcohol problem. However, the most **common** reason the Court has disapproved applicants on character and fitness grounds has been based on the applicants' behavior during the character and fitness review process. The majority of applicants who have been disapproved by the Court were disapproved for failure to disclose relevant information, either on their applications or during their character and fitness investigations; giving false information or misrepresenting the facts; or other dishonesty or lack of candor **during the character and fitness review process**.

## Confidentiality

Under the admissions rule, all information, proceedings, and documents relating to the character and fitness investigation of an applicant are considered confidential, with limited exceptions. Disclosure of character and fitness information is permitted:

- 1) to further any character and fitness investigation of the applicant;
- 2) in connection with post-admission investigations of the applicant under the Court's attorney disciplinary rule;
- 3) pursuant to a written release of the applicant in connection with the applicant's application for admission in another jurisdiction; and
- 4) to report to the appropriate authority any violations of law that are discovered during the character and fitness investigation of an applicant.

An applicant's character and fitness information generally becomes *public* information for those few applicants whose applications reach the Supreme Court level for a character and fitness determination. When the Board votes to disapprove an applicant on character and fitness grounds, it prepares a report to the Court, with findings of fact and its recommendation of disapproval. This report is filed with the Clerk of the Court and is considered public. The Board's record of the proceedings is also filed with the Clerk, but it is filed under seal and remains under seal for a period of 60 days. At the end of this time frame, the record generally becomes public as well. However, in certain cases there may be circumstances that weigh against releasing all of the character and fitness information in the applicant's record (e.g., if the case includes sensitive medical information about the applicant or private matters involving a non-applicant). Therefore, during the 60-day time frame, the Court, either on motion of the applicant or *sua sponte*, may order that the entire record or a portion of the record remain confidential and under seal.

SUPREME COURT OF GEORGIA  
OFFICE OF BAR ADMISSIONS

POLICY STATEMENT OF THE BOARD  
TO DETERMINE FITNESS OF BAR APPLICANTS  
REGARDING CHARACTER AND FITNESS REVIEWS

The Supreme Court of Georgia has delegated to the Board to Determine Fitness of Bar Applicants the responsibility of deciding whether applicants for admission to practice law possess the integrity and character requisite to be members of the Bar of Georgia. The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys.

In order to be certified for fitness, the Board requires that an applicant to the bar be one whose record of conduct justifies the trust of clients, adversaries, courts and others. The hallmark of such a person is honesty, especially in connection with the application for admission to the bar. Persons with a record showing a deficiency in honesty, trustworthiness, diligence, or reliability might not be recommended by the Fitness Board to the Supreme Court for admission. The burden is on the applicant to establish and document his or her fitness for admission.

The Board will conduct a thorough investigation of each applicant, using as a basis for the investigation the Fitness Application submitted to the Office of Bar Admissions by the applicant. There is conduct that the Board may consider the basis for further inquiry. This conduct includes, but is not limited to:

- unlawful conduct
- academic misconduct, including plagiarism
- making of a false statement, including omission of relevant facts in the fitness process
- misconduct in employment
- acts involving dishonesty, fraud, deceit or misrepresentation
- abuse of legal process
- neglect of financial responsibilities, especially failure to repay student loans
- neglect of professional obligations
- violation of an order of a court, especially failure to pay child support
- 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
- disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

The Fitness Application that each applicant completes inquires about each of the above.

The applicant may be asked to provide facts and explanation, in addition to the questions on the Fitness Application. The Board believes that the questions are clear and direct; but, should an applicant ever have a question about whether a question is applicable, the Board's recommendation is that the applicant disclose the information sought. In order to verify the accuracy of the information provided in the application, or to obtain additional information, the Board will contact the applicant's references, employers, colleges and law schools. The Board will contact courts, medical providers,

police agencies, credit agencies and creditors as applicable. A failure by the applicant to cooperate in this process could cause a delay or even denial of the applicant's certification of fitness.

The Board has developed policies and procedures for many of the above-cited examples of questionable conduct. These include but are not limited to:

A. Unlawful conduct:

If an applicant has been convicted of a felony, the Board expects the applicant to seek a pardon before seeking admission. The Board considers restoration of civil rights to be critical to an applicant's ability to function fully as an attorney, so restoration of civil rights at a minimum is required. If an applicant is unable to obtain a pardon, however, documentation should be provided as to the efforts that have been made and the status of the petition.

The Board will inquire into all arrests even if no conviction resulted. There are many reasons why arrests do not result in convictions, and many of them have no bearing on guilt or innocence. The Board is required to inquire into all areas of possibly relevant applicant misconduct. The applicant is required to report all incidents, and to provide evidence of rehabilitation and evidence of current good character. The occurrence of an acquittal or dismissal is relevant, but is not dispositive of the issue. This is not to suggest that the Board will assume that any arrest was due to guilty conduct on the part of the applicant. The applicant's obligation is to be completely forthright regarding all matters about which the Board inquires.

If, at the time of the application, criminal charges are pending against the applicant, the Board will table the application until these charges are resolved. If a conviction results in probation, restitution or some other sentence, the Board will not consider the application until the sentence has been served and probation completed. The Board will then proceed to investigate the facts and circumstances that led to the criminal charges.

B. Making a false statement:

A pattern of dishonesty in dealings with employers, schools and authorities, including the Office of Bar Admissions, is the most frequent reason for denial of bar applicants. Giving false information on the application or failing to be entirely forthcoming and completely candid in the application process is a serious error which will have negative consequences for an applicant. The failure to be fully responsive to application questions, or any other lack of candor in the application process, involves sworn statements made to an agency of the Supreme Court itself; since such dishonesty is both current and ongoing, the applicant to whom it might be charged will have a difficult time showing that rehabilitation--which requires more than contrition--has occurred and will be sustained.

C. Neglect of financial responsibilities:

The Fitness Board recognizes that law students sometimes have financial problems associated with the expense of law school, or with ongoing family obligations. The Board also recognizes that mishandling of client funds is a frequent and serious cause for professional discipline. Admission to the bar does not require a perfect credit record. The Board is interested in whether applicants have dealt honestly and responsibly with their

creditors, and whether they are doing so at the time of application. Responsible dealings generally include but are not limited to keeping in contact with the creditor, making payment arrangements, and meeting the terms of those arrangements. If the applicant currently has an unsatisfactory credit record, especially unpaid collections, judgments, liens, or charged off accounts, the Board will typically table the application until the applicant has provided proof of six current consecutive months payments as agreed to show a good faith effort to clear the debts.

Defaulted student loans and failure to make child support payments are of particular concern to the Board. If an applicant has defaulted student loans, the Board will typically table the application until the applicant has made arrangements with the lender(s) for repayment of the loan(s) and has made six current months consecutive and uninterrupted monthly payments pursuant to the plan agreed to by the lender(s). Any arrearage in child support must be paid before an applicant will be certified by the Board.

The six-month payment arrangement should demonstrate a good faith attempt and a reasonable effort to clear the "charged off" accounts, collection accounts, defaults, liens and judgments entered against an applicant. Bankruptcy is a legal process that an applicant may choose to pursue if it is in the applicant's financial interest to do so. The Board will review carefully, however, whether the filing of the bankruptcy was done solely to avoid Board oversight or to avoid the six month policy. The Board will review carefully the applicant's assumption of financial responsibility, but the filing of the bankruptcy will not in and of itself lead automatically to a denial.

D. Evidence of mental or emotional instability:

Evidence of mental or emotional instability, like evidence of chemical dependency, is one of the factors about which the Fitness Board must inquire. Board members recognize that the stresses of law school, as well as other life factors, frequently result in applicants seeking psychiatric or psychological counseling. The Board encourages any applicant to obtain such counseling or treatment if potential benefits might accrue. The applicant should not allow his or her future bar application to color that decision. Only severe forms of mental or emotional problems will trigger an in-depth investigation or have an impact on bar admission decisions. Isolated instances of consultation for conditions associated with emotional stress will not be of serious concern to the Board.

E. Drug or alcohol dependency:

Because evidence of drug or alcohol dependence or abuse is one of the "relevant conduct" factors about which the Board must inquire, the applicant should be prepared to provide treatment records, as well as other records of incidents which were associated with any addictive behavior.

If the applicant has a problem with drugs or alcohol, he or she is strongly encouraged to get the counseling or treatment needed as soon as possible. The applicant's recognition of the problem and the treatment record will be important evidence of rehabilitation, regardless of the seriousness of any misconduct which may have arisen from the chemical dependency. The Board has the option of asking applicants to obtain a drug or alcohol evaluation from a licensed psychiatrist recommended by the Board.

In reviewing this conduct or any other conduct of concern, the Board will use several factors in assigning weight and significance to that conduct. Among those factors are:

- the applicant's age at the time of the conduct
- the recency of the conduct
- the reliability of the information concerning the conduct
- the seriousness of the conduct
- the factors underlying the conduct
- the cumulative effect of the conduct
- 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

Evidence of rehabilitation is the most critical factor the Board uses to determine whether past problems should lead to denial of admission. The Board's standard for admission is current good character and fitness. Any applicant who affirmatively asserts rehabilitation from prior conduct which bears adversely upon such person's character and fitness for admission to the Bar shall be required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:

- strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable
- impeccable character and moral standing in the community
- good reputation for professional ability, where applicable
- lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative or other proceeding
- personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion of the future
- restitution of funds or property, where applicable
- positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service

Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of a positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation to members of the Bar. **In Re: Cason**, 249 Ga 806 (1982) provides guidance on the issue of rehabilitation.

Should there be any questions about the application or the Board's policies, please contact:

The Office of Bar Admissions  
P.O. Box 38466  
Atlanta, GA 30334  
404-656-3490

SUPREME COURT OF GEORGIA  
OFFICE OF BAR ADMISSIONS

NEW DUI POLICY

The Board to Determine Fitness of Bar Applicants, at its June, 2001 meeting, adopted a new policy regarding law students who receive a DUI during their third year of law school. Historically, the Board has tabled an application from any person who is on probation from a crime until probation is completed and the Court's sentence has been completed. The DUI statute in Georgia mandates 12 months probation upon conviction of a DUI. Thus, any third year law student who receives a DUI would be ineligible for the July exam administered immediately after graduation because probation would not yet have been completed. However, some judges have been suspending probation, or terminating it early, in order to remove that procedural bar from a third year student wishing to take the summer exam.

Due to this inconsistent application of the statute, the Fitness Board voted to table the application of any third year law student who receives a DUI regardless of whether the judge in the case sentences the student to probation. This automatic bar applies to all third year students who receive DUI's, and only bars them from the July exam. They may be eligible for the succeeding February exam, even if within twelve months, which will be decided by the Board on a case-by-case basis following its standard (and announced) policies.

It should be understood that this is a procedural bar only. Once the required time has passed, the Board will then review the applicant's file on the merits for a determination of whether to certify the applicant for fitness. The Board may have substantive concerns about the applicant's conduct. Given the seriousness of a DUI, particularly at the applicant's age and of this recency, the Board may well require the applicant to be evaluated for drug or alcohol dependency before acting upon certification.

## **IV. Essential Eligibility Requirements for Practice of Law**

A number of states have developed a statement of essential functions that an attorney must be capable of performing in order to practice law. The basis for most essential eligibility requirements comes from the Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (the “MacCrate Report”), as well as the Code of Recommended Standards for Bar Examiners adopted by the American Bar Association and the National Conference of Bar Examiners. In determining whether an applicant is fit to practice law, the bar admissions authority will consider whether the applicant satisfies the essential eligibility requirements for the practice of law.

The following statement adopted in Ohio is representative of what a number of states have done.



## **DEFINITIONS OF ESSENTIAL ELIGIBILITY REQUIREMENTS FOR THE PRACTICE OF LAW IN OHIO**

In fulfilling its obligations for investigating whether an applicant possesses the requisite character, fitness and moral qualifications for admission to the practice of law, the Board of Commissioners on Character and Fitness considers the following to be essential eligibility requirements for the practice of law:

1. The cognitive capacity to learn, to recall what has been learned, to reason and to analyze;
2. The ability to communicate clearly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one's professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Code of Professional Responsibility;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and
10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.



## **V. Statistical Summary of Character and Fitness Determinations**

Law schools are often interested in information on the number of character and fitness investigations conducted within a jurisdiction and the number of matters disposed of after evidentiary hearings or after review by the Supreme Court. Jurisdictions that publicize the number of bar admission applications heard and determined are likely to promote a better understanding of the work of the bar admission authority and correct rumors and misconceptions about the process.

The following are examples of how three jurisdictions--Ohio, Georgia and Minnesota--publish their character and fitness statistics.

These types of statistics, along with other published information about a jurisdiction's character and fitness process, can provide an important base of understanding and a starting point for dialogue among persons interested in the bar admission process.



## OHIO

### CHARACTER AND FITNESS DETERMINATIONS

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Applications to register filed	1585	1541	1660	1591	1951	1956	1412	1202	1371

#### Adverse Admissions Committee Recommendations

Disapprovals	11	11	10	10	5	9	9	13	3
Approvals with qualifications	4	4	6	2	6	6	4	2	7
<b>TOTAL</b>	<b>15</b>	<b>15</b>	<b>16</b>	<b>12</b>	<b>11</b>	<b>15</b>	<b>13</b>	<b>15</b>	<b>10</b>

#### Hearings before Board

Applicant appeals of adverse admissions committee recommendations	6	13	12	11	10	13	7	8	7
Hearings held by Board <i>sua sponte</i>	9	3	3	3	7	7	11	6	4
<b>TOTAL</b>	<b>15</b>	<b>16</b>	<b>15</b>	<b>14</b>	<b>17</b>	<b>20</b>	<b>18</b>	<b>14</b>	<b>11</b>

#### Automatic Supreme Court Review of Adverse Board Recommendations

Applicants approved by Court	0	0	0	0	0	1	0	0	0
Applicants disapproved by Court but permitted to reapply after a specified time frame	1	4	4	2	3	4	1	2	2
Applicants disapproved by Court and prohibited from reapplying	2	0	1	0	1	2	1	0	1
<b>TOTAL</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>2</b>	<b>3</b>

## GEORGIA

The Office of Bar Admissions receives over 1,500 fitness applications annually. The following is a summary of the number of applicants the Board invited in for interviews, the number of tentative denials that resulted, and the number of final denials after full hearings.

	Interviews	Tentative Denial	Final Denial
1995	39	5	0
1996	46	10	3
1997	10	3	3
1998	38	4	3
1999	36	5	3
2000	31	4	1
2001	41	4	3

## MINNESOTA

During 2001, the Board of Law Examiners issued adverse determinations to seven applicants for character and fitness reasons. Below is a chart showing the Board's activity:

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
C & F Committee Informal Interviews	20	17	26	17	18	7	8	11	0	1	1	5
Adverse Determinations Issued (Preliminary Denials) for C & F Issues	5	6	4	5	12	8	7	10	9	10	4	7
Formal Hearings (held before Board or Hearing Officers) on C & F Issues	3	2	2	5	4	10	5	5	10	7	7	8
Denials after Formal Hearing on C & F Issues	2	1	2	5	3	5	2	1	4	1	2	2



## **VI. Sample Rosters of Board or Commission Members Responsible for Character and Fitness Determinations**

Most jurisdictions have a board or commission that is responsible for character and fitness reviews and determinations.

The names and addresses of board or commission members are usually public information. However, this information is frequently not publicized.

The publication of member lists similar to the ones that follow may improve the dialogue within the bar admissions community.



## Ohio Board of Commissioners on Character and Fitness

<b>Honorable Sara E. Lioi, Chair</b> Stark County Court of Common Pleas 115 Central Plaza N., Canton, OH 44702 Phone: 330/451-7708 FAX: 330/451-7740	(District Five) (December 31, 2004)
<b>Robert N. Farquhar, Esq.</b> Altick & Corwin 1700 One Dayton Center, One South Main Street , Dayton, OH 45402 Phone: 937/425-6056 FAX: 937/463-2620	(District Two) (December 31, 2002)
<b>Michael B. Michelson, Esq.</b> Stege & Michelson Co., L.P.A. 200 Public Square, 3220 BP Building, Cleveland, OH 44114 Phone: 216/348-0700 FAX: 216/348-0803	(District Eight) (December 31, 2002)
<b>Suzanne K. Richards, Esq.</b> Vorys, Sater, Seymour & Pease 52 East Gay Street, Columbus, OH 43215 Phone: 614/464-6458 FAX: 614/464-6350	(District Ten) (December 31, 2002)
<b>Honorable William Howard Harsha, III</b> Fourth District Court of Appeals 14 South Paint Street, Suite #18, Chillicothe, OH 45601 Phone: 740/779-6662 FAX: 740/779-6665	(District Four) (December 31, 2002)
<b>Ross A. Wright, Esq.</b> Taft, Stettinius & Hollister 1800 Firststar Tower, 425 Walnut Street, Cincinnati, OH 45202-3957 Phone: 513/381-2838 FAX: 513/381-0205	(District One) (December 31, 2003)
<b>Honorable Nancy D. Hammond</b> Fayette County Court of Common Pleas, Probate/Juvenile Division Washington Courthouse, Ohio 43160 Phone: 740/335-0640 FAX: 740/333-3598	(District Twelve) (December 31, 2003)
<b>Rhonda G. Davis, Esq.</b> Zavarello & Davis Co., LPA 313 South High Street, Akron, OH 44308 Phone: 330/762-9700 FAX: 330/762-1680	(District Nine) (December 31, 2003)
<b>Honorable David Tobin</b> Columbiana County Court of Common Pleas Lisbon, OH 44432 Phone: 330/424-7777 Ext. 421 FAX: 330/424-1739	(District Seven) (December 31, 2003)

**Matthew J. Dolan, Esq.**  
Thrasher, Dinsmore & Dolan  
100 7th Avenue, Suite 15, Chardon, OH 44024  
Phone: 440/285-2242 FAX: 440/285-9423

(District Eleven)  
(December 31, 2003)

**D. Michael Reny, Esq.**  
Lackey, Nusbaum, Harris, Reny, Torzewski  
Two Maritime Plaza, 3rd Floor, Toledo, OH 43604  
Phone: 419/243-1105 FAX: 419/243-8953

(District Six)  
(December 31, 2004)

**Scott McBride, Esq.**  
Spurlock, Sears, Pry, Griebeling & McBride  
120 N. Lane Street, Bucyrus, OH 44820  
Phone: 419/562-9856 FAX: 419/562-9883

(District Three)  
(December 31, 2004)

**Georgia Board to Determine Fitness of Bar Applicants (2002)**

Cynthia Trimboli Adams, Esq., Chair  
Solicitor's Office, Room 504  
Bibb County Courthouse  
Macon, Georgia 31201

Judge Deborah Greene  
Atlanta Municipal Court  
170 Garnett Street, SW  
Atlanta, Georgia 30335

John E. Griffin, Esq.  
Fortson, Bentley & Griffin  
P. O. Box 1744  
Athens, Georgia 30603

Dr. Ben Griffith  
Carlyle Place  
5300 Zebulon Road, #3108  
Macon, GA 31210

Judge Denise L. Majette  
5226 Fieldgreen Crossing  
Stone Mountain, GA 30088

Dr. Sandra Maass-Robinson  
1372 Peachtree Street, NE, Suite 105  
Atlanta, Georgia 30309

Mary M. Martin  
5370 North Peachtree Road  
Dunwoody, Georgia 30338

Judge Johnny W. Mason, Jr.  
State Board of Workers' Compensation  
270 Peachtree, NW, Suite 600  
Atlanta, Georgia 30303-1299

Enoch Overby  
P. O. Box 2203  
Calhoun, Georgia 30703-2203



## **VII. Sample Notices of Denial with Reasons for Denial**

When a jurisdiction denies admission to the bar for character and fitness reasons, the applicant is notified of the reasons for the denial and the right to request a hearing on the denial. Because these matters are generally few in number, many members of the legal community are not aware of the procedure.

The following are samples of documents used by three jurisdictions to notify applicants of their denials and reasons for the denials.

OHIO: Disapproval Letter and Admissions Committee Final Report

GEORGIA: Denial Letter and Specifications

MINNESOTA: Adverse Determination Letter



## Ohio Disapproval Letter

[Date]

[Applicant Name]  
[Applicant Address]

[Certified Mail Return Receipt No.]

Dear [Applicant]:

The Admissions Committee of the [Bar Association Name] has concluded its investigation of your character, fitness, and moral qualifications to practice in accordance with Gov. Bar R. I. Enclosed is a copy of the Admissions Committee Final Report that was submitted to the Supreme Court. This report recommends that your application for admission be disapproved. It also identifies the reasons for the Admissions Committee recommendation.

Pursuant to Gov. Bar R. I, Sec. 11, any Admissions Committee recommendation other than an unqualified approval shall be deemed a recommendation that the applicant not be admitted to the practice of law. Therefore, in accordance with Gov. Bar R. I, Sec. 11, you will have 30 days from receipt of this letter to file a written notice of appeal to the Board of Commissioners on Character and Fitness. Your notice of appeal should be filed with me as the Secretary of the Board, and you should serve the Admissions Committee with a copy of the notice.

If you timely file a notice of appeal, you will be entitled to a hearing before a panel of the Board. If you do not timely file a notice of appeal, your application shall be considered withdrawn.

Procedures before the Board of Commissioners on Character and Fitness are outlined in Gov. Bar R. I., Sec. 11. If you have any questions, please contact the Supreme Court Bar Admissions Office at (614) 466-1541 or 466-1528.

Sincerely,

Marcia J. Mengel  
Supreme Court of Ohio  
Secretary, Board of Commissioners on  
Character and Fitness

cc: [Name of Admissions Committee Chair]

# BEFORE THE SUPREME COURT OF OHIO

In the Matter of the Application of

## ADMISSIONS COMMITTEE FINAL REPORT\*

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for Admission to the Practice of Law

An applicant may be approved for admission to the practice of law if the applicant's record of conduct (1) justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them and (2) demonstrates that the applicant satisfies the essential eligibility requirements for the practice of law. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for disapproval of the applicant. The Admissions Committee should determine whether the **present** character, fitness and moral qualifications of an applicant qualify the applicant for admission to the practice of law in accordance with Gov. Bar R. I, Sections 11(D)(3) and (4).

Before making a recommendation about an applicant's character, fitness and moral qualifications, the Admissions Committee should carefully consider the factors enumerated in Gov. Bar R. I, Section 11(D)(3). Those factors are also listed in Section II of this Report. In assigning weight and significance to an applicant's **prior** conduct, the Admissions Committee should consider the additional factors enumerated in Gov. Bar R. I, Section 11(D)(4), which factors are also listed in Section II of this Report.

Please type your responses to this Report.

\* \* \* \* \*

I. The Admissions Committee of the \_\_\_\_\_ Bar Association makes the following recommendation as to the character, fitness, and moral qualifications of the above-named applicant for admission to the practice of law in Ohio:

- Approval (Complete Section IV and return this Report.)
- Approval with Qualifications (Complete Sections II, III and IV, and return this Report.)
- Disapproval (Complete Sections II and IV, and return this Report.)

---

\* The Admissions Committee is required to file this Report with the Clerk of the Supreme Court pursuant to Gov. Bar R.I, Section 3(C).

- II. Please identify in detail (i.e., the specific conduct, date, period of time, location, etc.) which, if any, of the factors set forth below in paragraphs (A) - (Q) resulted in a recommendation other than “Approval” by the Admissions Committee. If additional space is needed, please attach separate sheets, identifying the factor being discussed.

In assigning weight and significance to the applicant’s prior conduct, please remember to consider the following factors: (i) age of the applicant at the time of the conduct; (ii) recency of the conduct; (iii) reliability of the information concerning the conduct; (iv) seriousness of the conduct; (v) factors underlying the conduct; (vi) cumulative effect of the conduct; (vii) evidence of rehabilitation; (viii) positive social contributions of the applicant since the conduct; (ix) candor of the applicant in the admissions process; and (x) materiality of any omissions or misrepresentations.

\* \* \* \* \*

The Admissions Committee’s recommendation of disapproval or approval with qualifications was based on the information set forth under the factors identified below:

(A) Commission or conviction of a crime;

(B) Evidence of an existing and untreated chemical (drug or alcohol) dependency;

(C) Commission of an act constituting the unauthorized practice of law;

- (D) Violation of the honor code of the applicant's law school or any other academic misconduct;
  
- (E) Evidence of mental or psychological disorder that in any way affects or, if untreated, could affect the applicant's ability to practice law in a competent and professional manner;
  
- (F) A pattern of disregard of the laws of this state, another state, or the United States;
  
- (G) Failure to provide complete and accurate information concerning the applicant's past;
  
- (H) False statements, including omissions;
  
- (I) Acts involving dishonesty, fraud, deceit, or misrepresentation;

(J) Abuse of legal process;

(K) Neglect of financial responsibilities;

(L) Neglect of professional obligations;

(M) Violation of an order of a court;

(N) Denial of admission to the bar in another jurisdiction on character and fitness grounds;

(O) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(P) Failure to cooperate with the investigation by failing or refusing to provide information necessary to evaluate the applicant; and/or

(Q) Any other factors considered.

III. The Admissions Committee recommends that the applicant be approved for admission with the following qualifications:

IV. This Report is submitted on behalf of the Admissions Committee of the \_\_\_\_\_  
Bar Association by \_\_\_\_\_, its Chairperson.

\_\_\_\_\_  
Signature of Chairperson

\_\_\_\_\_  
Date

\* \* \* \* \*

The Board of Commissioners on Character and Fitness and the Supreme Court of Ohio appreciate the assistance of your Admissions Committee in reviewing this applicant.

## Georgia Denial Letter

February 15, 2011

Dear :

Thank you for meeting with the Board to Determine Fitness of Bar Applicants this morning. The Board has directed me to advise you that it has tentatively denied your application for certification of fitness to practice law. However, before this determination is made final, you have the right to a formal hearing on your application. Please refer to Part A, Section 8 of that portion of the **Rules Governing Admission to the Practice of Law** in Georgia pertaining to hearings, a copy of which is enclosed.

If you wish to avail yourself of this right, we must receive written notification to that effect within ten (10) business days of the receipt of this letter.

We will be glad to try to answer any questions you might have.

Sincerely,

Hulett H. Askew  
Office of Bar Admissions

Certified Mail #

# Georgia Specifications

## SUPREME COURT OF GEORGIA

### BOARD TO DETERMINE FITNESS OF BAR APPLICANTS

IN RE: Application of \* Bar Admissions Docket  
\* No.  
\*  
\*

TO:

### SPECIFICATIONS

You are hereby advised that the Board to Determine Fitness of Bar Applicants (hereinafter referred to as the "Board") has tentatively determined not to certify you are fit to practice law. However, before it makes a final decision on your application, the Board will hold a formal hearing, which you have requested pursuant to Part A, Section 8, **Rules Governing Admission to the Practice of Law**.

The hearing will be conducted by a hearing officer, appointed for that purpose by the Supreme Court of Georgia. At the hearing you will be given the opportunity, with or without counsel, as you choose, to present evidence disputing these specifications. The Board's power of subpoena for persons located within the State of Georgia will be available to you. Interrogatories may be served on any person not within the State of Georgia. You will be entitled to question witnesses, if any, called by the Board. A list of witnesses, if any, whom the Board may call to testify at the formal hearing will be made available to you upon written request. If you request a list of witnesses, you must submit with such request a list of the witnesses whom you may call to testify at such formal hearing.

If you choose to testify at such hearing, your failure to answer candidly and without evasion any question propounded to you relating to your character, fitness or qualifications may constitute

grounds for the Board to withhold its certification to the Board of Bar Examiners. The Board will consider the hearing officer's recommendation, as well as the testimony given during your hearing, but is not necessarily bound by that recommendation.

Pursuant to the provisions of Part A, Section 8, supra, neither the Board nor the hearing officer will be bound by the technical rules of evidence, but will consider all evidence deemed credible in an effort to discover the truth without causing undue embarrassment to you.

The specifications are as follows:

1.

In December, 1978, you were denied certification of fitness to practice law in Georgia because you were not candid with the Board in your application. In this regard, you failed to disclose, among other matters, various criminal charges that had previously been made against you.

2.

After a mandatory three year waiting period, you reapplied for certification of fitness and were certified in March of 1981.

3.

That certification lapsed on March 31, 1986, and you have recently applied as a new applicant.

4.

You have not been candid in your most recent application for certification in that you did not list the arrests, charges and other incidents that lead to the denial of your certification of fitness in 1978.

5.

On September 12, 1986 you were arrested and charged with conspiring to traffic in cocaine and violations of the Georgia Controlled Substance Act.

6.

On August 17, 1987, you plead guilty to conspiring to possess cocaine with the intent to distribute for which you were sentenced to a 2-year period of probation and were required to pay a \$2,000.00 fine.

7.

When you personally met with the Board on February 7, 1995 to discuss your application for certification of fitness, you were not candid about your knowledge of and involvement in the events giving rise to your arrest in September of 1986 for conspiring to traffic in cocaine.

Within twenty (20) days of the receipt hereof you must file your answer to the specifications contained above in which you admit or deny, in whole or in part, the allegations of each specification.

With your answer, you may file any document, letter or other evidence you desire to have considered by the Board.

If you have affirmative defenses, in addition to, or instead of, a denial of the matters alleged in the specifications, you must set forth the general nature of the evidence you intend to present.

**ALL ALLEGATIONS CONTAINED IN THESE SPECIFICATIONS SHALL BE DEEMED BY THE BOARD TO BE ADMITTED UNLESS SPECIFICALLY DENIED BY YOU IN YOUR ANSWER.**

Following the filing of your answer to the above specifications, you are entitled, upon written request, to examine, prior to the hearing, all documents, reports, files and other exhibits to be offered in evidence upon which the Board will base its findings of fact and conclusions. If you request such examination, you must submit with your request copies of all documents, reports, files and other exhibits to be offered by you in evidence.

**IN THE ABSENCE OF THE TIMELY FILING OF YOUR ANSWER TO THESE SPECIFICATIONS, THE BOARD WILL ENTER AN ORDER DENYING YOU CERTIFICATION OF FITNESS TO PRACTICE LAW.**

Your answer and any exhibits should be filed at the following address:

Office of Bar Admissions  
Suite 610, Health Building  
47 Trinity Avenue, S.W.  
Atlanta, Georgia 30334

A copy must also be served upon counsel for the Board, whose address is shown below.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

**BOARD TO DETERMINE FITNESS OF BAR APPLICANTS**

BY: \_\_\_\_\_  
HULETT H. ASKEW  
Director, Office of Bar Admissions

**COUNSEL:**

Assistant Attorney General  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334-1300  
(404) 656-3097

## Minnesota Adverse Determination Letter

[Date]

### **CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

[name]

[address]

[city state]

Dear Ms. [Name]:

The Minnesota Board of Law Examiners has made an adverse determination with regard to your application for admission to the Bar of Minnesota pursuant to Board Rule 14 of the Minnesota Rules for Admission to the Bar. The issuance of this adverse determination means that you have a right to appeal this decision and ask for a formal hearing before the Board prior to a final determination being made. If you do not ask for a hearing, the adverse determination will become the final decision of the Board.

In bar admission matters in Minnesota, the burden of showing good character and fitness is on the applicant. The fact that this adverse determination letter has been issued means that the evidence in your file, as it currently stands, is insufficient for the Board to recommend your admission to the Bar. If you appeal this decision and ask for a hearing, a full and impartial hearing will be scheduled before the Board.

You may represent yourself at the hearing or you may retain counsel to represent you. At the hearing, you will have an opportunity to present witnesses, offer additional documentary evidence not already in the Board's file, and offer your personal testimony. The Board will be represented by an Assistant Attorney General. The proceedings will be recorded by a court reporter. The record will contain all relevant documents in the application file as well as additional documents admitted during the hearing.

Approximately five (5) days prior to the hearing, counsel for the Board will prepare and serve upon you proposed findings of fact, conclusions of law and a determination. You are invited to serve proposed findings on counsel for the Board. Copies of these two sets of proposed findings will be provided to the Board members prior to the hearing. Following the hearing, the Board or hearing officer will issue its written findings of fact, conclusions of law and determination which will be mailed to you.

The issues for consideration at the formal hearing will be primarily those set forth below. In addition, the Board may inquire about any of the information provided in your application for admission to the Bar of Minnesota, or information obtained as a result of that application.

Ms. [Name]  
[Date]  
Page 2

The grounds upon which the Board makes this adverse determination and the grounds upon which the hearing will be based<sup>1</sup> are the following:

1. In 1999, you pleaded guilty to a felony theft offense. You admitted that during the period June 1997 through September 1999, you stole approximately \$5,000.00 from your employer, the Blank Company.
2. You were ordered by the 4<sup>th</sup> District Court to make restitution. A judgment in the amount of \$3,999.00 was entered against you in January 2000 on behalf of Lightning Rod Mutual Insurance Company, insurer for the Blank Company. To date, you have made restitution in the amount of \$1,400.00.

Based upon the above information, the Board may deny your application for admission to practice law in Minnesota if the Board, after hearing the matter, concludes the following:

- You have engaged in unlawful conduct.
- You have failed to make restitution and pay the judgment entered against you in connection with this theft.
- You have not provided adequate evidence of rehabilitation.

If you intend to appeal this adverse determination, you must do so within 20 days of receipt of this notification by making a written request for a formal hearing. The formal hearing will be held pursuant to Board Rule 14. It is a confidential proceeding which will be scheduled as soon as possible, given the Board's schedule of hearings.

Enclosed you will find a copy of the Rules of the Minnesota Board of Law Examiners. If you have questions regarding this decision or the procedures associated with the appeals process, you may contact the undersigned.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Margaret Fuller Corneille  
Director

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<sup>1</sup>Because you have a continuing obligation to update the Board with respect to any matters disclosed on your application for admission, modifications in the grounds for adverse determination may occur as the result of additional information being received following the issuance of this letter. You will be notified in writing of any modification to the grounds for adverse determination and will be given an opportunity to respond to such modifications prior to the hearing.



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**ABA Section of Legal Education and Admissions to the Bar**

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