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Facing the Klieg Lights: Understanding the "Good Moral Character" Examiniaton for Bar Applicants

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FACING THE KLIEG LIGHTS: UNDERSTANDING THE "GOOD MORAL CHARACTER" EXAMINATION FOR BAR APPLICANTS

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> The term "good moral character" has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However the term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.
>
> – Justice Hugo Black[1]

I. INTRODUCTION

A. The "Other" Bar Examination

The bar exam is such common knowledge it has even been woven into the lyrics of a Jay-Z song.[2] Yet a second test is required for bar entry.[3] Each bar applicant must affirmatively prove her good moral

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1. Konigsberg v. State Bar of Cal., 353 U.S. 252, 262-63 (1957).

2. JAY-Z, *99 Problems*, *on* THE BLACK ALBUM, (Roc-A-Fella/Island Def Jam) (2003) (Jay-Z declines to consent to a police search by declaring "I know my rights, so you gon' need a warrant for that." The officer responds "You some type of lawyer or something?" Jay-Z counters, "Tah, I ain't pass the bar, but I know a little bit.").

3. Kristin Booth Glen, *When And Where We Enter: Rethinking Admission To The Legal Profession*, 102 COLUM. L. REV. 1696, 1708 (2002).

character to earn the privilege of practicing law.[4]

This character test is "a mysterious concept that is not easily defined."[5] Predicting results is difficult.[6] The brightest can fail.[7] This character examination, approved by each state's highest court,[8] will delay some applicants' admission by months, years, or even deny it permanently.[9] Courts routinely reject claims that delay in bar admission alone is sufficient penalty.[10]

B. Defining Good Moral Character

What is good moral character? Moral character could be described by bar authorities as Justice Potter Stewart described pornography: "I know it when I see it."[11]

How is character observed? Entering the mind is impossible,[12] so character must be determined empirically. In the case of an applicant who has engaged in prior criminal conduct, the American Bar Association (ABA) suggests weighing certain factors.[13] These factors

4. Avrom Robin, Comment, *Character and Fitness Requirements For Bar Admission In New York*, 13 TOURO L. REV. 569, 575-76.

5. Marcus Ratcliff, *The Good Character Requirement: A Proposal For A Uniform National Standard*, 36 TULSA L.J. 487, 487 (2000).

6. Richard R. Arnold, Jr., Comment, *Presumptive Disqualification and Prior Unlawful Conduct: The Danger Of Unpredictable Character Standards For Bar Applicants*, 1997 UTAH L. REV. 63, 99 (1997).

7. *In re* Roots, 762 A.2d 1161, 1166-67 (R.I. 2000).

8. *See, e.g.,* 3A FLA. JUR. 2d *Attorneys at Law* § 29 (2007).

9. James T. Hogan, *Legal Resources On Character And Fitness*, MICH. B.J., Oct. 2004, at 56, 56 (2004).

10. George L. Blum, Annotation, *Failure To Pay Creditors As Affecting Applicant's Moral Character For Purposes Of Admission To The Bar*, 108 A.L.R. 5th 289, § 2(b) (2003); *but see In re* VMF, 491 So.2d 1104, 1107 (Fla. 1986).

11. Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

12. *See, e.g.*, *In re* Maria C. for Admission to the Bar of Maryland, 451 A.2d 655, 656 (Md. 1982) ("We are unable to see inside [the applicant's] head. A person's character is far more accurately indicated by his prior actions.").

13. Arpa B. Stepanian, *Law Student Clerkships; Walking A Thin Line Requirement Of 'Good Moral Character' For Admission To The Bar*, 3 J. LEGAL ADVOC. & PRAC. 67, 71-72 (2001) (citing Maureen M. Carr, *The Effect of Prior Criminal Conduct on the Admission to Practice Law: The move to More Flexible Admission Standards*, 8 GEO J. LEGAL ETHICS 367, 385 (1995))

The factors cited by the ABA include:

(1) the applicant's age at the time of the conduct;
(2) the recency of the conduct;
(3) the reliability of the information concerning the conduct;
(4) the seriousness of the conduct;
(5) the factors underlying the conduct;
(6) the cumulative effect of the conduct or information;
(7) the evidence of rehabilitation;

cannot be objectively measured, so when an applicant has such a past, predicting results is difficult.[14]

Although the character requirement is part of each state's bar admission process, no universal definition exists.[15] According to the U.S. Supreme Court, "the character requirement is 'unusually ambiguous' and has 'shadowy rather than precise bounds.'"[16] The bar recognizes this, given that "the Bar Examiner's Handbook states: 'No definition of what constitutes grounds for denial of admission on the basis of faulty moral character exists.'"[17]

Some issues will raise red flags for any applicant. These issues include financial irresponsibility, past criminal history, mental illness and treatment, substance abuse, lack of academic integrity, and failure to cooperate with bar examiners, among others.[18]

C. Criticism of Character Examination

Some critics claim that "the lack of meaningful standards addressing specific criteria to gauge fitness of character has rendered 'the filtering process . . . inconsistent, idiosyncratic, and needlessly intrusive.'"[19] Research suggests that few applicants answer all of the bar's invasive inquiries completely, yet rarely is admission denied.[20]

Another perceived flaw is under-inclusiveness. Professor Stanley

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(8) positive social contributions since the conduct;

(9) the applicant's candor in the admissions process;

(10) the materiality of any omissions or misrepresentations.

Carr, *supra* at 385 (quoting *Comprehensive Guide to Bar Admissions Requirements*, 1994-1995 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS & NAT'L CONF. OF BAR EXAMINERS, at vii-viii).

14. Ratcliff, *supra* note 5, at 488 ("Character screening, like science, deals with ascertaining certain variables, placing these variables into a formula and obtaining a result. Unlike an absolute that may be found in science, the concept of character has no universally accepted definition; thus, a major problem arises. Ambiguous notions of good character coupled with vague tests for judging an applicant's character, have resulted in inconsistent results in bar admission cases.").

15. Stepanian, *supra* note 13, at 69.

16. Peter A. Joy & Robert R. Kuehn, *Conflict Of Interest And Competency Issues In Law Clinic Practice*, 9 CLINICAL L. REV. 493, 504 (2002) (quoting Konigsberg v. State Bar of Calif., 353 U.S. 252, 263 (1957); Schware v. Bd. of Bar Exam'rs, 353 U.S. 232, 249 (1957)).

17. Joy & Kuehn, *supra* note 16, at 504 (quoting THE BAR EXAMINER'S HANDBOOK 122 (Stuart Duhl ed., 2d ed. 1980)[hereinafter HANDBOOK]).

18. Jayne W. Barnard, *Renewable Bar Admission: A Template For Making "Professionalism" Real*, 25 J. LEGAL PROF. 1, 2 (2001).

19. Robin, *supra* note 4, at 570 (quoting Deborah L. Rhode, *Moral Character As a Professional Credential*, 94 YALE L.J. 491, 494 (1985)).

20. Stanley S. Herr, *Questioning The Questionnaires: Bar Admissions And Candidates With Disabilities*, 42 VILL. L. REV. 635, 642 n.36 (1997) ("[I]n 1993, 31% of first-year students surveyed at University of Connecticut School of Law reported past treatment while only 47 of 1,072 applicants, constituting 4.4%, disclosed such treatment to bar examiners in that same year.").

Herr noted that mental health questions do not ask about conditions such as narcolepsy and chronic fatigue syndrome, ailments that may raise fitness concerns.[21] The bar's failure to check mental health at all post-admission means that "bar questionnaires ferret out few candidates, impose intrusions on the privacy of novices that their more senior and powerful colleagues do not bear and single out mental health conditions for more stigmatizing examinations."[22] The porous screening process and the double standard for applicants compared to bar members mean that "critics will continue to ask if the benefits of the mental health questions justify their price."[23]

The danger exists for the character examination to punish those who promote unpopular views, such as opposition to war.[24] Such negative collateral impacts may be acceptable if the public is protected by them, yet critics say that the lack of "correlation between problem character and fitness histories and later bar disciplinary actions" suggests that the screening process misses those who will "disserve their clients or embarrass the bar."[25]

Other critics say that the character examination is under-inclusive because marginal applicants often gain conditional admission instead of outright rejection.[26] The tendency to admit questionable applicants is due to "the natural inclination to not deny someone the ability to enter the legal profession after they have devoted three years and a substantial amount of money to a legal education . . . ."[27]

Regardless of criticism,[28] the process exists. It will prevent or delay admission for many,[29] including some ignorant of this test until it prevents their admission.

21. *Id.* at 642.

22. *Id.*

23. *Id.* at 642-43.

24. *See* Konigsberg v. State Bar of Cal., 353 U.S. 252 (1957); *see also, e.g.*, Theresa Keeley, *Good Moral Character: Already An Unconstitutionally Vague Concept And Now Putting Bar Applicants In A Post-9/11 World On An Elevated Threat Level*, 6 U. PA. J. CONST. L. 844, 866-67 (2004).

25. Barnard, *supra* note 18, at 3.

26. Don Murray, *The President's Message: Other Half of the Equation: Supreme Court Takes a Fresh Look at Character & Fitness*, 27 MONTANA LAWYER 4, 30 (2002).

27. *Id.*

28. Ratcliff, *supra* note 5, at 487-90; M.A. Cunningham, *The Professional Image Standard: An Untold Standard Of Admission To The Bar*, 66 TUL. L. REV. 1015, 1043 (1992) ("Moral fitness requirements serve to protect the profession's status quo and supplements a variety of procedural devices used to promote the current power structure.").

29. Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 493-494 (1985) ("Although the number of applicants formally denied admission has always been quite small, the number deterred, delayed, or harassed has been more substantial.").

D. Providing a Framework for Understanding Character Examination

Potential bar applicants should know what might result in the denial of their admission to the bar.[30] Ideally, sanctions would be unnecessary to modify behavior.[31] This Article aims to help secure compliance with each bar's standards by revealing the typical reasoning behind these rules, as well as how to comply with them.

Part II of this Article describes the inception and evolution of the character requirement. Part III outlines the issues that the bar examines to discern character. Part IV proposes methods for applicants to deal with problems areas. Part V contains closing remarks.

The best advice for any applicant with concern regarding admission is to contact an attorney familiar with the bar admission process in the targeted jurisdiction. Because "[c]haracter is much easier kept than recovered,"[32] early legal advice and action can be invaluable.[33] Even potential law school applicants and current law students may benefit from this Article by preventing later delays in their bar admission process.

II. A SHORT HISTORY OF CHARACTER EXAMINATION

A. Early Foundations

The success of lawyer regulation can be judged by considering how closely the implementation of the rules meets the stated goals or justifications for these rules.[34] The meaning of good moral character has changed dramatically over time. It originated in ancient Roman times.[35] The term first appeared in American bar admission statutes in the

30. *See* Arnold, *supra* note 6, at 95 (citing Michael K. McChrystal, *A Structural Analysis of the Good Moral Character Requirement for Bar Admission*, 60 NOTRE DAME L. REV. 67, 69 (1984)).

31. *See, e.g.*, Stuart P. Green, *Why It's a Crime to Tear the Tag Off a Mattress: Overcriminalization and the Moral Content of Regulatory Offenses*, 46 EMORY L.J. 1533, 1592 n.192 (1997).

32. *In re* Maria C. for Admission to the Bar of Maryland, 451 A.2d 655, 656 (Md. 1982) (quoting THOMAS PAINE, THE AMERICAN CRISIS XIII (1783)).

33. *See, e.g.*, Elizabeth Gepford McCulley, *School Of Sharks? Bar Fitness Requirements Of Good Moral Character And The Role Of Law Schools*, 14 GEO. J. LEGAL ETHICS 839, 851 (2001) (discussing Ky. Bar Ass'n v. Guidugli, 967 S.W.2d 587, 589 (Ky. 1998), where the Kentucky Supreme Court found that an applicant who followed counsel's erroneous advice "had acted in good faith.").

34. Benjamin Hoorn Barton, *Why Do We Regulate Lawyers?: An Economic Analysis Of The Justifications For Entry And Conduct Regulation*, 33 ARIZ. ST. L.J. 429, 432 (2001).

35. Ratcliff, *supra* note 5, at 490.

nineteenth century, likely dating to British precedents.[36] Although the American legal tradition owes much to the British,[37] the character requirement developed simultaneously in both countries.[38]

History is silent about the implementation of the character requirement until the last century, perhaps due to the previous informality of early mechanisms to ensure good moral character.[39] One striking similarity between the early British and American bars was that both used a facially neutral character requirement to deny admission to undesirables.[40] The British used it to exclude members of the lower classes,[41] while the American bar's character requirement placated those who wanted to totally ban lawyers.[42] The requirement was used to exclude recent immigrants,[43] Jews,[44] women,[45] and ethnic minorities from bar admission.[46]

A 1985 study funded by the Stanford Legal Research Fund "found almost no instances of denial of admission on character-related grounds in the nineteenth century."[47] During that time, virtually any white man could practice law.[48] The character requirement's practical impact was slight even at the end of the nineteenth century. The required personal references were hard to obtain only by "undesirable" classes of people.[49] The first rule governing federal admission "required only that an applicant's private and professional character 'shall appear to be fair.'"[50] This rule provided discretion to deny women and ethnic or religious

36. Roger Roots, *When Lawyers Were Serial Killers: Nineteenth Century Visions Of Good Moral Character*, 22 N. ILL. U. L. REV. 19, 19 (2001) (citing HANDBOOK, *supra* note 17, at 15).

37. Carol Rice Andrews, *Standards of Conduct For Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1389 (2004).

38. Rhode, *supra* note 29, at 496.

39. *Id.* at 494-95.

40. Roots, *supra* note 36, at 20; Ratcliff, *supra* note 5, at 490.

41. Roots, *supra* note 36, at 20 n.10.

42. *See id.* at 21 n.12.

43. Rhode, *supra* note 29, at 499-500.

44. *Id.* at 500; Martin H. Belsky, *Law Schools As Legal Education Centers*, 34 UTOLR 1, 4 & n.28 (2002).

45. Audrey Wolfson Latourette, *Sex Discrimination In The Legal Profession: Historical And Contemporary Perspectives*, 39 VAL. U. L. REV. 859, 859 (2005).

46. *See, e.g.*, Robert T. Begg, *Revoking The Lawyers' License To Discriminate In New York: The Demise Of A Traditional Professional Prerogative*, 7 GEO. J. LEGAL ETHICS 275, 275 n.2 (1993); Cunningham, *supra* note 28, at 1041.

47. Roots, *supra* note 36, at 21 (internal quotation marks omitted); *but see In re* Attorney's License, 1848 WL 3476, *1-2 (N.J. 1848).

48. *See* Barton, *supra* note 34, at 429.

49. Roots, *supra* note 36, at 21-22 (citing Rhode, *supra* note 29, at 497-98).

50. *Id.* at 22 (citing *Ex parte* Garland, 71 U.S. 333, 336 (1866)).

minorities, but otherwise provided little screening.[51]

B. Evolving Bar Admission Standards: When Lawyers Dueled, Judges Led Lynch Mobs, and Justice Field Was Arrested for Murder

Some have said that lawyers' ethical standards recently sank.[52] It was wistfully noted that "the core values of the legal profession are in decline,"[53] but earlier attorneys once distinguished themselves with violent acts, not high ethical standards.[54] Moral character standards have grown much stronger over time.[55]

1. Dueling as Attorneys' Dispute Resolution

Attorneys dueled so often in 1801 that the Tennessee legislature banned dueling and made new lawyers swear to not duel.[56] The District of Columbia followed this lead in 1839 after Kentucky Congressman and lawyer William Graves killed Maine Congressmen and lawyer Jonathan Cilley during a duel.[57] Modern courtroom incivility pales in comparison.[58] Lawyers still commit violence,[59] but far less frequently than before.[60]

Punishment was once nonexistent.[61] St. Louis attorney Thomas H. Benton killed attorney Charles Lucas in 1816 after Lucas claimed that Benton misstated evidence during a case before the Missouri Supreme Court.[62] Benton put a bullet in Lucas's heart during a duel, their second,[63] yet was still elected U.S. Senator.[64]

51. *C.f.* Andrews, *supra* note 37, at 1433-34.

52. Murray, *supra* note 26, at 35.

53. *Id.*

54. Roots, *supra* note 36, at 19.

55. *See* Andrews, *supra* note 37, at 1457-58.

56. Roots, *supra* note 36, at 23 (citing DON C. SEITZ, FAMOUS AMERICAN DUELS: WITH SOME ACCOUNT OF THE CAUSES THAT LED UP TO THEM AND THE MEN ENGAGED 30 (1966)).

57. UNITED STATES GOVERNMENT PRINTING OFFICE, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1148 (2005) [hereinafter Biographical Directory] *available at* http://a257.g.akamaitech.net/7/257/2422/26jan20061725/www.gpoaccess.gov/serialset/cdocuments/hd108-222/g.pdf

58. *See*, Glenn Pruit, *Attorney spars with judge, cited for contempt*, LAS VEGAS REVIEW-JOURNAL, October 13, 2005, http://www.reviewjournal.com/lvrj_home/2005/Oct-13-Thu-2005/news/3810304.html.

59. Seattle Times Eastside Bureau, *Former prosecutor guilty in shooting of rival attorney*, SEATTLE TIMES, December 20, 2005, http://seattletimes.nwsource.com/html/localnews/2002694527_webjoice20.html.

60. *See infra* Part II.B.1-4.

61. *See generally* Roots, *supra* note 36.

62. Roots, *supra* note 36, at 24 n.32 (citing SEITZ, *supra* note 56, at 169-170).

63. *Id.* (citing SEITZ, *supra* note 56, at 173).

President-lawyers participated, too. Andrew Jackson challenged attorney and Tennessee Governor John Sevier after Sevier accused Jackson of engaging in petty, shifty, or insignificant legal practice.[65] Dueling was so pervasive that even Abraham Lincoln almost fought a saber duel with another lawyer, the Illinois state auditor.[66] Lincoln was challenged in 1842 after he was unmasked as the author of some embarrassing newspaper articles,[67] but he quickly apologized to avoid bloodshed.[68] Under those rules, after Ann Coulter leaked that her legal advisee, Paula Jones, knew of some "distinguishing characteristic" of Bill Clinton, the then-president should have challenged her.[69] Fortunately for Coulter,[70] modern attorneys only take aim with Rule 11 sanction motions, not pistols.[71]

Further examples of dueling attorneys include: a "young Tennessee lawyer [who] fatally stabbed a sketch artist after the artist drew him in a humorous and satirical fashion;"[72] "[a]n Arkansas superior court judge [who] killed another Arkansas superior court judge in a duel after the latter judge offended the former's wife during a card game;"[73] "a Massachusetts attorney [who] took offense to a newspaper article drafted by another lawyer under another assumed name;"[74] a Georgia attorney, William Crawford, who killed a man for embarrassing a Georgia Superior Court Judge by putting on the record in a civil case "some foolish letters written by the judge to the attorney's client;"[75] and a

64. *Id.* (citing SEITZ, *supra* note 56, at 173).

65. *Id.* at 24 n.33

66. *Id.* at 24 (citing HAMILTON COCHRAN, NOTED AMERICAN DUELS AND HOSTILE ENCOUNTERS 126-27 (1963)).

67. *Id.*

68. *Id.* at 28.

69. David Daley*, Spin on the Right; Ann Coulter: Light's All Shining on Her*, HARTFORD COURANT, June 25, 1999, at F1.

70. Max Blumenthall, *Ann Coulter at CPAC on 'Ragheads' and Assassinating Bill Clinton*, THE HUFFINGTON POST, Feb. 10, 2006, http://www.huffingtonpost.com/max-blumenthal/ann-coulter-at-cpac-on-r_b_15434.html.

71. *See, e.g.,* FED. R. CIV. P. 11; 28 U.S.C. § 1927 (2000).

72. Roots, *supra* note 36, at 24 & n.34 ("Although the lawyer was indicted for murder, his attorneys argued he was defending his honor against Yankee disrespect, and a jury acquitted him." (citing DICK STEWARD, DUELS AND THE ROOTS OF VIOLENCE IN MISSOURI 88-89 (2000)))

73. *Id.* (citing Lynn Foster, *Their Pride and Ornament: Judge Benjamin Johnson and the Federal Courts in Early Arkansas*, 22 U. ARK. LITTLE ROCK L. REV. 21, 30 (1999)).

74. *Id.* at 25 (citing ROGER TILLINGHAST CLAPP, DUELING IN RHODE ISLAND (AND ELSEWHERE) 19 (1977)).

75. *Id.* at 25-26. After Crawford killed on behalf of the judge, he gained "renewed professional approval," including election to the United States Senate, followed by latter appointments as Minister to France and Secretary of the Treasury under Presidents Madison and Monroe. *Id.*

Vicksburg, Mississippi attorney, Alexander McClung, who "killed as many as fourteen men in duels during his violent life."[76] McClung was despised for his "ill manners, bad credit, gambling, and drunkenness."[77] These bar members surely lack good moral character by today's standards.

2. Violent Judges: Donning Robes Didn't Prevent Intemperate Conduct

Judges also acted outrageously.[78] In the 1880s, a Florida Judge "led a lynch mob assault on a courthouse."[79] Texas judge Roy Bean "began his adult life as a drifting brawler, a two-time killer and a prison escapee."[80] Bean's neck was so injured during an aborted lynching that he could no longer turn his head.[81] John Smith T., a judge on the Court of Common Pleas in Missouri, killed at least fourteen men, "mainly in duels,"[82] including a Missouri sheriff killed "with a single shot to the brain."[83]

The nineteenth century involved one of the highest profile judicial offenders in American history. California Chief Justice David S. Terry "engaged in violent brawls while presiding over the State Supreme Court and was once imprisoned for stabbing a San Francisco man during an argument."[84] Terry only escaped a murder trial, and likely execution, when the man quickly recovered.[85] Terry lost his seat when he stepped down to duel, and slay, U.S. Senator David Broderick, allowing Terry's future nemesis, Stephen J. Field, to become California's Chief Justice.[86]

Justice Field was elevated to the U.S. Supreme Court by Lincoln in 1863.[87] In 1888, Field presided in a three-judge panel over a California case involving fraud, perjury, and contempt committed by Judge Terry's

76. *Id.* at 25 (citing WILLIAM O. STEVENS, PISTOLS AT TEN PACES: THE STORY OF THE CODE OF HONOR IN AMERICA 116 (1940)).

77. *Id.*

78. *Id.* at 27.

79. *Id.* (citing Rhode, *supra* note 29, at 498 n.23)

80. *Id.* at 27 (citing MIKE FLANAGAN, THE COMPLETE IDIOT'S GUIDE TO THE OLD WEST 290 (1999)).

81. *Id.*

82. *Id.* (citing Steward, *supra* note 72, at 27, 175).

83. *Id.* (citing Steward, *supra* note 72, at 49-50).

84. *Id.* (citing CARL B. SWISHER & STEPHEN J. FIELD: CRAFTSMAN OF THE LAW 74 (1963)).

85. *Id.*

86. *Id.* at 28 (citing SWISHER & FIELD, *supra* note 84, at 73-75).

87. OYEZ, U.S. SUPREME COURT JUSTICES: A LISTING OF ALL SUPREME COURT JUSTICES, http://www.oyez.org/oyez/portlet/justices/ (last visited Jan. 7, 2006).

wife.[88] After Field ordered the wife's removal for contempt, Judge Terry pulled out a bowie-knife and declared that "no man living should touch his wife."[89] Terry then knocked out a U.S. Marshall's tooth as courtroom personnel tried to restrain him.[90] Terry was subsequently sentenced to six months' imprisonment for contempt and was disbarred.[91]

Justice Field was no stranger to disbarment either, though his problems came far earlier in his career. In 1850, a young Field was disbarred after he ignored a judge's order for silence, calling the judge "a 'd——d old jackass.'"[92] Then, an armed Field started stalking the judge, including sending "a provocative message that he was prepared to kill the judge if he 'came at (Field) in a threatening manner.'"[93] Not to be deterred, "[s]hortly after readmission to the bar, Field was again disbarred for similar disrespect in the courtroom of the same judge."[94]

Field presciently had protection when he next visited California less than a year after he had Terry arrested in his court.[95] *In re Neagle*[96] describes Terry's confrontation of Field and his bodyguard, Deputy U.S. Marshal David Neagle, during a railway trip.[97] During Field's stop in Lathrop, California,[98] Terry punched Field's face twice, knocking him out of his seat before a crowd of railway passengers, when Neagle shot and killed the unarmed Terry.[99]

Field and Neagle fled before a lynch mob gathered.[100] Justice Field was arrested, his third arrest, in San Francisco's federal court building.[101] The federal circuit court issued a writ of habeas corpus for both Neagle

88. *In re* Terry, 128 U.S. 289, syllabus (1888) (denying a writ of *habeas corpus* by former Chief Justice Terry objecting to his six month sentence for contempt); *See also* Cunningham v. Neagle, 135 U.S. 1, 42-43 (1890) (finding that Sarah Althea Hill, now Mrs. Terry, forged her marriage degree and committed fraud and perjury).

89. *Neagle*, 135 U.S. at 45-46. Terry violently resisted, including trying to draw a bowie-knife, and Mrs. Terry tried but failed to get access to a pistol. *Id. See also* Roots, *supra* note 36, at 28 (citing SWISHER & FIELD, *supra* note 84, at 333-34.); *Terry*, 128 U.S. at 305-06.

90. 135 U.S. 1, 42-43 (1890).

91. Roots, *supra* note 36, at 28. Mrs. Terry was imprisoned for one month and both Terrys were under federal indictment for their activities. *See Neagle*, 135 U.S. at 45-46.

92. Roots, *supra* note 36, at 28 & n.62 (citing SWISHER & FIELD, *supra* note 84, at 38-39).

93. *Id.* at 28 (citing SWISHER, & FIELD, *supra* note 84, at 40).

94. *Id.* (citing SWISHER & FIELD, *supra* note 84, at 42-43).

95. *Id.* at 28-29 (citing *Neagle*, 135 U.S. at 48-51).

96. *Neagle*, 135 U.S. at 1.

97. *Id.* at 55-56; Roots, *supra* note 36, at 29 (citing *Neagle*, 135 U.S. at 44).

98. Roots, *supra* note 36, at 29 (citing SWISHER & FIELD, *supra* note 84, at 348).

99. *Id.*

100. *Id.*

101. *Id.* (citing SWISHER & FIELD, *supra* note 84, at 352).

and Field.[102] Then, the U.S. Supreme Court issued "a writ in Neagle's favor to protect him from a murder conviction (and probably an execution) in California state courts."[103] The landmark case of *In re Neagle* established immunity for federal agents from state court criminal charges.[104]

3. Violent Bar "Stars:" Preston Brooks, Andrew Jackson, and John Hardin

During the nineteenth century, the national "halls of legislatures were no havens from the gunplay and violence of lawyers."[105] In 1856, the Senate chamber resounded with the sounds of South Carolina Senator and attorney Preston Brooks beating Senator and attorney Charles Sumner with a cane.[106] The thirty blows made Sumner an invalid for several years.[107] Beatings, canings, and stabbings were common among lawyers and lawmakers.[108]

Andrew Jackson was a North Carolina attorney and a Tennessee Superior Court Justice before he became President.[109] Jackson "exemplified the traits of good lawyering most respected by the bar of the nineteenth century: bravery, brashness, and the ability to unleash violence upon the disrespectful."[110] Jackson's "lust for bloodshed and vengeance"[111] against those who wronged him was so great that he had "at least 103 duels, fights, and altercations."[112] He was shot during his 1806 duel with Tennessee attorney Charles Dickinson.[113] After his wound, Jackson killed Dickinson, who was ordered back to the mark by referees.[114] Jackson's dueling wounds "tormented him throughout his entire life."[115]

John Wesley Hardin, the "Dark Angel of Texas," was admitted to

102. *Id.* (citing SWISHER & FIELD, *supra* note 84, at 351, 355).
103. *Id.* (citing SWISHER & FIELD, *supra* note 84, at 355).
104. *See id.* at 76. *See also* Roots, *supra* note 36, at 29 (citing Idaho v. Horiuchi, 215 F.3d 986 (9th Cir. 2000)).
105. *Id.* at 33.
106. *Id.*
107. *Id.*
108. *See id.* at 33-34.
109. *Id.* at 30.
110. *Id.*
111. *Id.* at 30 n.84.
112. *Id.* at 30.
113. *Id.*
114. *Id.* at 30-31.
115. *Id.* at 31. *See also id.* at 31 n.95 (citing Ludwig M. Deppisch et al., *Andrew Jackson's Exposure to Mercury and Lead: Poisoned President?*, 282 JAMA 569-71 (1999)).

the bar after murdering thirty to forty men.[116] Hardin's history involved great criminality:

> A fugitive at age fifteen, Hardin roamed the cowtowns of east Texas engaging in murder, mayhem, horse theft and cattle rustling. In a two-week period in 1871, Hardin escaped from custody twice by killing four Texas officials. By the time of his capture at age twenty-four, Hardin had gunned down a dozen Texas lawmen and probably at least one judge.[117]

Hardin received a twenty-five year prison term in 1878.[118] The Texas governor, however, pardoned Hardin in 1894 despite his poor prison behavior.[119] Hardin secured bar admission five months after release from prison,[120] three years after he pled to manslaughter while facing yet another murder charge and as several indictments remained pending.[121]

4. Evaluating the Old Admission Standards

It is wrong to "reminisce about a bygone era when [proper] civility allegedly reigned."[122] Frontier law was dangerous, but in no small part due to lawyers.[123] These nineteenth-century lawyers escaped punishment.[124] Admission denial and disbarment "were generally reserved for courtroom-related conduct or for serious crimes committed in the course of practicing law."[125] Non-felonious criminal conduct must relate to court activities to mandate disbarment.[126] *Ex parte Bradley*[127] describes an attempt to disbar the defense attorney for John Surratt, a man accused of murdering Lincoln.[128] During the trial, the attorney "assaulted the presiding judge as the judge descended from the

116. *Id.* at 31 (citing LEON METZ, JOHN WESLEY HARDIN: DARK ANGEL OF TEXAS (1996)).

117. *Id.*

118. *Id.* at 31-32

119. *Id.* at 32.

120. *Id.*

121. *Id.* at 31-32.

122. *Id.* at 33.

123. *Id.* (noting a "distinguished Louisiana attorney [who] left the Missouri bar, citing the practice of dueling and the need to be armed at all times as two of his principal reasons.").

124. *Id.* at 34.

125. *Id.*; *but see id.* at n.119 (discussing *Ex parte* Wall, 107 U.S. 265, 272-74 (1883)).

126. Roots, *supra* note 36, at 34 n.119 ("Thus, the Supreme Court stressed the vicinity to the courthouse steps of a Florida lawyer's crime when upholding his disbarment in 1883.") *See Wall*, 107 U.S. at 274 (noting attorney's conduct perpetrated "in the virtual presence of the court!").

127. 74 U.S. 364 (1868).

128. *Id.*

bench."[129] The U.S. Supreme Court held that the assaulted judge could disbar the attorney from his court, but not from other D.C. courts.[130]

Lawyer conduct standards have evolved. Compare the historical attorneys to modern disbarred attorneys F. Lee Bailey,[131] William Jefferson Clinton,[132] and Richard M. Nixon.[133] Character screening may have begun after racists[134] thought too many immigrants "threatened the profession's public standing,"[135] but the moral fitness standard has evolved from admitting a serial killer to modern days, where evidence of an applicant's "divorce, cohabitation, and even violation of fishing license statutes" is scrutinized, despite empirical research establishing "no correlation between 'problem' applications and later disciplinary proceedings."[136]

C. Modern Justifications for the Good Moral Character Requirement

Whereas the character requirement developed to exclude certain groups, modern justifications not only prevent irrational discrimination, but also require legitimate explanations for exclusion. The Court in *In re Griffiths*[137] held that the state has a legitimate interest in evaluating bar members' character,[138] but not in excluding aliens.[139] The Court cited *Schware v. Board of Bar Examiners of New Mexico*, which established that the bar's qualifications must rationally connect "with the applicant's fitness or capacity to practice law."[140] In *Griffiths*, the state "failed to show the relevance of citizenship to any likelihood that a

129. Roots, *supra* note 36, at 34 n.119.

130. *Id.* (citing Bradley v. Fisher, 80 U.S. 335, 374-375 (1871)).

131. Fla. Bar v. Bailey, 803 So.2d 683 (Fl. 2001).

132. Anne Gearan, *Clinton Disbarred from Supreme Court*, FAMILY GUARDIAN, Oct. 1, 2001, http://www.famguardian.org/Subjects/LawAndGovt/News/ClintonDisbar-011001.htm.

133. Jeremy Derfner, *Was Nixon Disbarred or Not*?, SLATE, May 24, 2000, http://www.slate.com/id/1005375.

134. Roots, *supra* note 36, at 34 (citing Rhode, *supra* note 29).

135. *Id.* at 34.

136. *Id.* at 35. Subjectivity in character standards still "often leads to inconsistent decisions." Cunningham, *supra* note 28, 1031.

> Rhode identifies three cases taking place in the same state at about the same time. [One] applicant was denied the right to practice law because he had violated a fishing license statute ten years earlier. Two other applicants, however, were admitted to practice despite convictions for child molestation and conspiring to bomb a public building.

Id. at 28 n.70 (citing Rhode, *supra* note 29, at 538).

137. 413 U.S. 717 (1973).

138. *Id.* at 722-23.

139. *See id.*; *see also* LeClerc v. Webb, 419 F.3d 405, 415 (5th Cir. 2005) (denying the right of non-resident aliens to sit for the bar).

140. Schware v. Bd. of Bar Exam'r State of N.M., 353 U.S. 232, 239 (1957).

lawyer will fail to protect faithfully the interest of his clients."[141]

1. Client Protection

A common rationale for lawyer regulation is protecting consumers from substandard practitioners.[142] Because the bar certifies those able to represent the public,[143] the bar must feel secure telling the public to trust its members with all their personal affairs.[144] Lawyers, as experts on the law, frequently deal with very sensitive issues, including the handling of a client's money.[145] Accordingly, applicants who may injure the public must be rejected.[146]

The bar must examine an applicant's character to vouch for her.[147] The bar searches for "negative character traits that show a pattern of dishonesty, misconduct, or mental instability."[148] These precautions help foster a relationship where "the lawyer is physically in a position to best represent his or her client."[149]

Critics argue both that these efforts are ineffective and that they ignore possible free-market solutions.[150] These regulations depend on "faulty assumptions[] that the legal market is swamped by information asymmetry, and that substandard lawyers can cause irremediable harms to clients."[151] Critics say that modern clients are more organized and better informed; informational asymmetry has lessened substantially after legal market structural changes.[152] Because the prospective harm resulting from nearly all legal transactions is monetary, clients can "handicap the potential harms involved[] and account for them in their

141. *Griffiths*, 413 U.S. at 724; *see also id.* at 725 (citing *Schware*, 353 U.S. at 239).

142. Barton, *supra* note 34, at 436.

143. Michael D. Fritz, Case Comment, *Constitutional Law—Attorney & Client: Denial Of Admission To The Bar Because Of Past Conduct And Present Moral Character.* Layon v. N.D. State Bar Bd., 458 N.W.2d 501 (N.D.1990), 68 N.D. L. REV. 969, 970 (1992).

144. *In re* Maria C. for Admission to the Bar of Md., 451 A.2d 655, 656 (Md. 1982)

145. *Id.*

146. *See id.*

147. *See also* Debra Moss Curtis & Billie Jo Kaufman, *A Public View Of Attorney Discipline In Florida: Statistics, Commentary, And Analysis Of Disciplinary Actions Against Licensed Attorneys In The State Of Florida From 1988-2002*, 28 NOVA L. REV. 669, 718 (2004).

148. Jennifer Kucklick Watson, *Protecting The Public Through The Legal Licensing System*, 1 FLA. COASTAL L.J. 547, 555 (2000); *see also* Barton, *supra* note 34, at 441.

149. Watson, *supra* note 148, at 555.

150. Barton, *supra* note 34, at 436.

151. *Id.* at 433.

152. *Id.* at 439; *but see id.* at 441 (noting that "limited subsections of the market, for example lawyers who represent clients in serious criminal matters or lawyers who tend to represent less savvy clients, may need to be regulated").

behavior."[153] Only a few legal harms, notably those in criminal defense, "are potentially irremediable and may justify regulation."[154] More information, not regulation, will solve this information asymmetry.[155] If public protection were truly important, the bar would release more information.[156]

Critics say that bar regulators have wrongly focused on raising entry barriers, which actually inflicts more harm by inhibiting competition and inflating legal service costs.[157] Because of these flaws, modern bar regulations that ignore informational asymmetry and instead focus on denying entry cannot be justified as consumer protection.[158] Arguably, these restrictions serve mainly a public relations purpose.[159] It is unclear, however, if the character requirement protects consumers or is just window-dressing.[160]

2. Inadequate Post-Admission Policing

Another view is that bar applicants deserve scrutiny because of the bar's self-regulating nature.[161] Lawyering can be compared to driving:

> Exercise of either activity without a valid license is a crime. Both fields condition the continued grant of the license on compliance with an extensive set of rules and regulations—the rules of the road and the legal profession's rules of professional conduct—and in both, self-

153. *Id.* at 440.

154. *Id.*

155. *Id.* at 485-86 ("Current lawyer disciplinary systems offer minimal public information about client complaints or lawyer competency. Disciplinary bodies should make all client complaints a matter of public record.") (footnote omitted).

156. *Id.* at 446-47 ("Attorney regulatory authorities, by contrast, have kept their proceedings almost entirely secret, and have similarly kept even their existence unpublicized. A well-publicized lawyer-disciplinary agency that shared information about attorney competence or complaints with the public would likely alleviate most, if not all, information asymmetry problems.") (footnotes omitted); *id.* at 449-50 ("[A] substantial portion of the regulation of attorney behavior has exacerbated any information asymmetry that exists. Attorney regulation has a long tradition of restricting advertising, client solicitation, client referrals, statements concerning lawyer credentials, and law firm affiliation.") (footnotes omitted); see also Curtis & Kaufman, *supra* note 147, at 673 (noting that the Florida Bar did not release any information for this study).

157. Barton, *supra* note 34, at 441-42.

158. *See id.* at 441-444.

159. Cunningham, *supra* note 28, at 1026 n.44 (citing *In re* Cason, 294 S.E.2d 520, 523 n.5 (Ga. 1982)); *See also In re* Childress, 561 N.E.2d 614, 622 (Ill. 1990); Ratcliff, *supra* note 5, at 492 (citing Rhode, *supra* note 29, at 509).

160. *See* Barton, *supra* note 34, at 433.

161. *Id.* at 484 ("Lawyers are a de facto self-regulating profession."); *but see, id.* ("There is little evidence to support the claim that self-regulation has provided clients or lawyers protection from government oppression. To the contrary, the bar itself has regularly oppressed disfavored minority viewpoints, races and religions.").

> regulation is the principal means of enforcement. Both systems absolutely depend on the individual to moderate his or her own activity to conform to the rules. Due to the sheer number of persons engaged in driving and law practice, the authorities—whether state troopers or members of the state bar—cannot possibly observe and regulate the conduct of every individual.[162]

The bar metes out punishment slowly.[163] Professor Michael S. Frisch, former senior assistant bar counsel to the D.C. Court of Appeals, believes that the bar has not effectively policed members.[164] This is a problem because post-admission problems necessarily mean public harm has already occurred.[165] Limited prosecutorial resources lead to lengthy delays in prosecution.[166] The "protracted delay from the commission of professional misconduct to the ultimate imposition of sanction"[167] means that even cases involving consent agreements go unresolved for years.[168]

Flaws in the lawyer discipline system justify closely examining applicants and even denying admission for applicants who have not committed a disbarrable offense.[169] Yet, this lack of adequate lawyer

162. Carol Rice Andrews, *Highway 101: Lessons In Legal Ethics That We Can Learn On The Road*, 15 GEO. J. LEGAL ETHICS 95, 97 (2001).

163. *But see* Stephanie Francis Ward, *Voices of Reason: State Bar Attorney-Client Assistance Programs Smooth Ruffled Feathers, Reduce Formal Complaints*, ABA JOURNAL, Mar. 2006, at 48, 48-51 (noting that "state bars that have adopted [consumer-assistance] programs . . . report that they are able to resolve complaints much faster than before"); *see also* Mary S. Diemer, *D.C. Bar Committee Reviews Disciplinary Rules*, ABA'S LITIGATION NEWS, July 2006, at 6 (noting that a D.C. committee "recommends new rules increasing the number of complaints resolved through consent agreements.").

164. Michael S. Frisch, *No Stone Left Unturned: The Failure Of Attorney Self-Regulation In The District of Columbia*, 18 GEO. J. LEGAL ETHICS 325, 347 (2005) ("The reader might wonder what an attorney must do—beyond taking the clients' money, causing the client's wages to be garnished, and filing a fraudulent lawsuit after being fired—in order to get the Board to recommend that the attorney be disbarred.").

165. *Id.* at 352 ("When an attorney has engaged in misconduct meriting lengthy suspension or disbarment, there often is a pattern of behavior that is undiscovered for years.").

166. *See id.* at 336.

167. *Id.* at 360 ("The problem of systemic delay stands apart . . . . Justice delayed is justice denied, particularly in a system that allows the accused attorney to practice during the entire period when original charges are pending. Episodes of egregious delay are legion. . . . In *In re Banks*, the Board noted that the hearing committee had rendered its report five-and-one-half years after the last hearing date.") (footnotes omitted).

168. *Id.* at 361 ("*In re Slaughter* is a particularly notable example of disgraceful delay. The attorney was reported by his firm for lying and falsification of documents to benefit himself financially to the detriment of his firm. He invoked his Fifth Amendment right and did not offer testimony to contradict the allegations. The hearing committee pondered the unchallenged evidence for over three years before rendering its report.") (footnotes omitted); *but see* Diemer, *supra* note 163 (noting proposals aimed at resolving bar discipline issues quicker).

169. George L. Blum, Annotation, *Falsehoods, Misrepresentations Impersonations, and Other Irresponsible Conduct as Bearing on Requisite Good Moral Character for Admission to Bar –*

post-admission discipline implies the disingenuousness of raising entry barriers before attacking the problem of unethical practitioners.[170] Prompt and adequate post-admission discipline provides a greater benefit for consumer protection. Thus, entry barriers may involve practitioner rent-seeking instead of consumer protection.[171]

3. Excluding Competition

Competition has long concerned lawyers.[172] David Hoffman's 1836 publication, *Resolutions In Regard to Professional Deportment*, included a "resolution to not underbid another lawyer's fees," undoubtedly reflecting "trade protectionism concerns."[173] Modern bars often behave like a monopoly.[174] Non-lawyers believe that money motivates lawyer regulations.[175] This view is supported by the "drastic shift" from the previous ideal of law as a learned and distinguished profession involving public service to the modern view that lawyers follow "the single-minded goal of personal wealth accumulation."[176]

Self-interested members have increasingly implemented entry regulations.[177] An attorney earns more without newcomers, especially when her ethical lapses go unpunished.[178] Observers are skeptical about entrenched lawyers' motives because "[b]ar leaders are occasionally caught discussing the admission and marketing restrictions more or less

Conduct Related to Admission to Bar, 107 A.L.R. 5th 167, § 3 (2003) (citing *In re* Wells, 163 P. 657 (Cal. 1917)).

170. Barton, *supra* note 34, at 448 ("The relative disinterest in lawyer competence after licensing further belies any serious worry about substandard practitioners. In fact, attorney regulation focuses almost exclusively on the qualifications of new entrants to the bar, and pays scant attention to guaranteeing the competence of practicing attorneys.").

171. *Id.* at 448 n.70.

172. *See* Keeley, *supra* note 24, at 846 (citing LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 654 (2d ed. 1985)).

173. Andrews, *supra* note 37, at 1428.

174. William H. Simon, *Who Needs The Bar?: Professionalism Without Monopoly*, 30 FLA. ST. U. L. REV. 639, 639 (2003).

175. *Id.* at 641 ("The bar's norms have restricted admission and inhibited price and service competition. The bar has public rationales for these norms, but since a substantial range of its members have a selfish interest in them, nonlawyers tend to be skeptical.").

176. Kevin Hopkins, *The Politics Of Misconduct: Rethinking How We Regulate Lawyer-Politicians*, 57 RUTGERS L. REV. 839, 857 (2005).

177. Barton, *supra* note 34, at 443-44 ("[T]he continual effort to raise standards for admission to the profession is motivated by more than a simple desire for progress; as the standards rise, existing practitioners can profit from decreased supply without personally incurring the costs associated with the new entry regulations. . . . [I]f the entry barriers were suddenly dropped altogether, the existing practitioners could not recoup their own investment in passing the entry regulations.").

178. *See id.* at 439.

openly as devices for insuring the economic welfare of incumbent practitioners."[179] Nonetheless, admission restrictions could serve both the interests of the public and incumbent practitioners. Yet, despite many rules that are highly dependent on "controversial empirical assumptions," the bar has left these assumptions untested.[180]

4. Limiting Access to Legal Representation

Some critics suggest that the bar admission process, including the character requirement, limits attorney supply and reduces legal assistance to the poor[181] by raising the price of legal services.[182] These admission barriers have also "had a substantial negative impact on the number of poor, female or minority lawyers."[183] Critics argue that admission regulation in the name of professionalism should not trump other societal interests.[184]

Ironically joining libertarian critics, the neo-Marxist naturally links new entry barriers to the rise of "industrial capitalism, a professional ideology of amoral, client-centered practice, and specialized, large-firm corporate law practice."[185] This development serves "the needs of emerging corporate capitalists to frame their economic interests and transactions in the legitimating language of the law, and, concomitantly, the needs of elite lawyers performing this task to organize and frame their efforts in a legitimating professional ideology."[186] Neo-Marxists mark 1870 not as the time when real progress began to be made towards professionalization, but as the date of "capitulation of antebellum statesmanship and civic republican values to commercialization, laissez-faire principles, and pure self-interest."[187]

This account accepts "the whiggish[[188]] claim that the rise of formal

179. Simon, *supra* note 174, at 642 (citing Hoover v. Ronwin, 466 U.S. 558 (1984)); *see also* Barton, *supra* note 34, at 431-32 ("[N]o one has comprehensively addressed the underlying justifications for the regulations we have, and whether the regulations are satisfying those justifications.").

180. Simon, *supra* note 174, at 642.

181. *See* Stephen L. Pepper, *Access to What?*, 2 J. INST. FOR STUDY LEGAL ETHICS 269 (1999); *see also* Barton, *supra* note 34, at 441-42.

182. *See* Barton, *supra* note 34, at 444.

183. *Id.*

184. Cunningham, *supra* note 28, at 1030-31.

185. Norman W. Spaulding, *The Discourse Of Law In Time Of War: Politics And Professionalism During The Civil War And Reconstruction*, 46 WM. & MARY L. REV. 2001, 2023 (2005).

186. *Id.* at 2023-24.

187. *Id.* at 2024.

188. *Id.* at 2021 n.56 (referring to the historiographic school, not the political party).

institutional structures is critical to understanding the modern legal profession," but it emphasizes the concomitant rise of these structures with the large corporate law firm.[189] Contradicting the whiggish thesis, the neo-Marxist suggests "a perverse underside to the purpose and effect of those very structures," suggesting that:

> Far from laying the foundations for professional progress, the work of law schools and bar associations (primarily routinized, narrowly doctrinal legal training, formalist legal theory, standardized admission tests, moral character reviews, ethical codes, and attorney discipline) . . . [provides] the profession with the essential tools for protecting its monopoly rents by excluding competitors, restricting entry, and forestalling public regulation—all under the cover of an ethical theory that conveniently rationalizes indifference to the moral and social costs of zealous client-centered service.[190]

According to this theory, "[m]odern professionalization, in short, is equated with elitism, rent-seeking, and, most damningly, moral failure."[191] The neo-Marxists thus conclude that these regulations have coincided "with professional failure—bar associations, law firms, and law schools supposedly endorse an amoral, technical, client-centered approach to practice, at least in part to neutralize criticism that bar elites were caving to the interests of corporate capital."[192] That same criticism was first levied at bar regulations wrongly used to exclude immigrants, women, and minorities,[193] but is now used to suggest that today's "principal moral dilemma in law practice centers around the capitulation of the profession to capitalism and that the ideology of zealous, ethically neutral client service is morally suspect from the start."[194] Despite these ambitious criticisms, the most effective criticism is that despite these barriers' costs, their effectiveness remains untested.[195]

III. ISSUES THAT PIQUE THE BAR'S INTEREST

Certain issues interest the bar. The ABA publishes a list of "prior

189. *Id.* at 2024.
190. *Id.* at 2024-25.
191. *Id.* at 2025.
192. *Id.*
193. *See supra* notes 49-56, 63; *infra* note 203.
194. Spaulding, *supra* note 185, at 2106.
195. Barton, *supra* note 34, at 445 ("[I]t is questionable whether pre-education and a bar exam can guarantee any level of performance over thirty or forty years as a licensed attorney. Perhaps the most damning evidence of the efficacy of the bar exam, however, is a consideration of the skills of the newest members of the bar.") (footnote omitted).

acts of a bar applicant that warrant heightened character investigations."[196] This list is advisory for each bar, which has its own list.[197] The bar's inquiry invariably includes financial irresponsibility, criminal history, mental health and treatment, substance abuse, lack of academic integrity, and failure to cooperate with bar examiners, among others.[198]

A. The Impact of Financial Irresponsibility

The bar worries about applicants mishandling client money,[199] and few acts of professional misconduct are deemed worse.[200] As early as 1836, a core concern of the legal profession was the proper handling of client money.[201] Many modern attorneys are disciplined for mishandling client money,[202] which often provides a rebuttable presumption of

196. Arnold, *supra* note 6, at 68. Arnold goes on to say the following:

> Prior acts that should be viewed as cause for increased inquiry into an applicant's character include a history of: (1) unlawful conduct; (2) making false statements, including omissions; (3) misconduct in employment; (4) acts involving dishonesty, fraud, deceit or misrepresentation; (5) abuse of legal process; (6) neglect of financial responsibilities; (7) neglect of professional obligations; (8) violation of an order of a court; (9) evidence of mental or emotional instability; (10) evidence of drug or alcohol dependency; (11) denial of admission to the bar in another jurisdiction on character and fitness grounds; (and) (12) disciplinary action by a lawyer disciplinary agency, or other professional disciplinary agency of any jurisdiction.

Id. (citing *Comprehensive Guide to Bar Admissions Requirements*, 1995-1996 A.B.A. Sec. Legal Educ. & Admissions & Nat'l Conf. of Bar Examiners, at vii-viii [hereinafter *Comprehensive Guide* (1995-1996)]).

197. *See id.* at 70 ("The Utah Bar has stated that the revelation or discovery of any of the following should be treated as cause for further investigation before the Board decides whether an applicant possesses the requisite character and fitness to practice law: a. the applicant's lack of candor[;] b. unlawful conduct[;] c. academic misconduct[;] d. making false statements, including omissions[;] e. misconduct in employment[;] f. acts involving dishonesty, fraud, deceit or misrepresentation[;] g. abuse of legal process[;] h. neglect of financial responsibilities[;] i. neglect of professional obligations[;] j. violation of an order of a court[;] k. evidence of mental or emotional instability[;] l. evidence of drug or alcohol dependency[;] m. denial of admission to the bar in another jurisdiction on character and fitness grounds[;] n. past or pending disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction[; and] o. other conduct bearing upon moral character or fitness to practice law.") (citing UTAH STATE BAR, RULES GOVERNING ADMISSION TO THE UTAH STATE BAR RULE 6, § 6-5.).

198. *See,* Barnard, *supra* note 18, at 2.

199. David Luty, *In The Matter Of Mitigation: The Necessity Of A Less Discretionary Standard For Sanctioning Lawyers Found Guilty Of Intentionally Misappropriating Client Property*, 32 HOFSTRA L. REV. 999, 1003 (2004).

200. *In re* Buckalew, 731 P.2d 48, 55 (Alaska 1986).

201. Andrews, *supra* note 37, at 1428 n.302 (citing DAVID HOFFMAN, COURSE OF LEGAL STUDY 762 (2d ed. 1836)).

202. Hopkins, *supra* note 176, 925 n.380 ("The Arkansas Bar disciplines approximately 100 lawyers each year and disbarment has been used almost exclusively in cases involving the theft of

disbarment.[203] An applicant who cannot handle her own finances is viewed as risky.[204]

Character deficiency[205] can spring from simply "stiffing" creditors.[206] Court rulings on insufficient character for financial irresponsibility have varied enormously.[207] A rejected applicant was described in *In re Florida Bd. of Bar Examiners ex rel. M.A.R.*[208] The applicant in *M.A.R.* wrote bad checks, neglected to pay child support, and did not timely file or pay income taxes.[209] The court explained that the applicant's aggregate conduct "revealed a general financial irresponsibility and dishonesty"[210] and the applicant's misconduct was "rationally connected to his fitness to practice law because it not only demonstrate[d] a total disregard for the law, it also call[ed] into serious question his ability to properly handle client funds."[211]

1. Standard: Making Good Faith Efforts to Meet Debt Obligations

Debt level alone is never a disqualifying factor, instead it is failure to make "a genuine effort to meet one's responsibilities" that can establish "a lack of the character and integrity expected and required of one who seeks to become a member of the bar."[212] In *Florida Bd. of Bar Examiners re Groot*,[213] the court held that merely accruing debts without present ability to repay them did not, alone, indicate immorality.[214] The unemployed applicant had purchased gas and accrued medical bills during his child's birth, immediately followed by a bankruptcy.[215] Yet

client monies." (citing Neil A. Lewis, *Clinton is Angry and Dispirited Over Disbarment Fight, Friends Say*, N.Y. Times, Sept. 10, 2000, at 1-22)).

203. Debra Moss Curtis, *Licensing And Discipline Of Fiscal Professionals In The State Of Florida: Attorneys, Certified Public Accountants, And Real Estate Professionals*, 29 NOVA L. REV. 339, 364 n.215 (2005) (citing FLA STDS. IMPOSING LAW SANCS. 4.11 (2004); Fla. Bar v. Mart, 550 So.2d 464 (Fla. 1989)).

204. *See infra* Part III.B.

205. An annotation by American Law Reports ("ALR") "collects and analyzes the cases that have determined whether the failure to pay one's creditors reflects adversely on one's moral character and thus renders one unfit to be admitted to the bar." Blum, *supra* note 10.

206. *Id.* ("[F]ailure to pay one's creditors reflects adversely on one's moral character and thus renders one unfit to be admitted to the bar.")

207. *See id.* § 2(a).

208. 755 So.2d 89 (Fla. 2000).

209. Blum, *supra* note 10, § §8(b), 9, 12(b) (citing *M.A.R.*, 755 So.2d 89).

210. Blum, *supra* note 10, § 12(b).

211. *M.A.R.*, 755 So.2d at 92.

212. Blum, *supra* note 10, § 2(b) (citing *In re* R.M.C., 525 S.E.2d 100 (Ga. 2000)).

213. 365 So.2d 164 (Fla. 1978)).

214. *Id.* § 3 (citing *In re* Groot, 365 So.2d 164 (Fla. 1978)).

215. *Id.*

admission has been denied where an applicant made no good faith effort to repay bad checks.[216]

An applicant should try to satisfy debts in good faith or risk facing delay or denial of admission. A successful attempt to face debt was highlighted in *In re Thomas*.[217] The applicant defaulted on student loans, but the applicant's entry into a loan rehabilitation agreement[218] resulted in conditional bar admission with an eighteen-month probationary period during which the applicant could make a good faith effort to obey the loan agreement.[219]

2. Consumer Debt and Child Support

Failing to pay consumer debt, including credit card debt, has often caused rejection,[220] as has the failure to pay child support.[221] The court in *M.A.R.* instructed that:

> It is exceedingly important that potential members of the Bar respect and obey orders of the court and follow proper channels to seek modification of those orders, rather than simply ignoring them. One may always find excuses . . . but the citizens of Florida are entitled to more than excuses when we certify the character and fitness of our lawyers.[222]

3. Defaulting on Student Loans or Bankruptcy

Defaulting on student loans can also cause problems for applicants.[223] Given bankruptcy law changes,[224] the problem may

216. *Id.* § 8 (b) (citing *In re* O'Brien's Petition, 63 A. 777 (Conn. 1906), *overruled in part on other grounds by In re* Dinan, 244 A.2d 608 (Conn. 1968); *In re* E.R.M., 630 So.2d 1046 (Fla. 1994); *M.A.R.*, 755 So.2d 89*; In re* J.A.B., 762 So.2d 518 (Fla. 2000); *In re* Adams, 585 S.E.2d 879 (Ga. 2003); *In re* Charles M., 545 A.2d 7 (Md. 1988); *In re* Cheek, 425 P.2d 763 (Or. 1967)).

217. *In re* Thomas, 761 So.2d 531 (La. 2000).

218. Blum, *supra* note 10, §10(a) (citing *Thomas*, 761 So.2d at 532).

219. *Id.*

220. *Id.* §10(b) (citing Kosseff v. Bd. Of Bar Exam'rs, 475 A.2d 349 (Del. 1984); *In re* J.A.F., 587 So.2d 1309 (Fla. 1991); *In re* G.M.C., 658 So.2d 76 (Fla. 1995); *J.A.B.*, 762 So.2d 518; *In re* C.R.W., 481 S.E.2d 511 (Ga. 1997); *In re* R.M.C., 525 S.E.2d 100 (Ga. 2000); *In re* Triffin, 701 A.2d 907 (N.J. 1997); *In re* Samuels, 639 N.E.2d 1151 (Ohio. 1994); *In re* Parry, 647 N.E.2d 774 (Ohio 1995); *In re* Mitchell, 679 N.E.2d 1127 (Ohio 1997); *In re* Bland, 755 N.E.2d 342 (Ohio 2001); *In re* Lecointe, 761 N.E.2d 10 (Ohio 2002); Bd. of Law Exam'rs of State of Tex. v. Stevens, 868 S.W.2d 773 (Tex. 1994)).

221. *Id.* § 9 (citing *E.R.M.*, 630 So.2d1046 ; M.A.R., 755 So.2d 89; *J.A.B.*, 762 So.2d 518; *In re* Chavez, 894 So.2d 1 (Fla. 2004); *In re* Beasley, 252 S.E.2d 615 (Ga. 1979); *In re* La Tourette, 720 A.2d 339 (N.J. 1998); *Mitchell*, 679 N.E.2d 1127 ; *In re* Barilatz, 746 N.E.2d 188 (Ohio 2001)).

222. *M.A.R.*, 755 So.2d at 92. *See also, infra* Parts III.B.2, III.F.

223. Blum, *supra* note 10, § §10, 11, 16.

worsen.[225] Under federal law, bankruptcy may not be the sole disqualifying factor,[226] but bankruptcy concerns the bar.[227] The applicant in *Florida Bd. of Bar Examiners re: Groot* declared bankruptcy but was admitted.[228] Similarly, in *Florida Bd. of Bar Examiners re: Kwasnik*,[229] the court held that an applicant had shed his moral obligation to pay debts discharged during bankruptcy, including debt for killing someone while driving drunk.[230] Yet bankruptcy can establish insufficient character.[231] No steadily employed applicant should tell the bar that he could have managed his debts, including student loans, but that he discharged his loans in bankruptcy because "society owed him an education."[232] The bar excluded that applicant.[233]

4. Failing to Pay Traffic Fines or Federal Income Taxes

Failing to file or pay federal income taxes has resulted in denial,[234] even for applicants admitted to another bar.[235] Failure to pay fines has contributed to denial.[236] The court in *In re Application of Parry*[237] rejected an applicant by pointing to his "history of ignoring traffic and parking citations," noting that over six years Parry got at least 24

224. *Id.* § 11(a) cmt. ("[F]ederal law had [since] been amended to provide that an adjudication of bankruptcy does not always discharge federal student loans.").

225. *See generally* Bruce C. Scalambrino, *Bankruptcy Reform For Non-Bankruptcy Lawyers*, 93 ILL. B.J. 518, 518 (2005).

226. 11 U.S.C.A. § 525 (2006).

227. Blum, *supra* note 10, §11.

228. Blum, *supra* note 10, §11(a) (citing *In re* S.M.D., 609 So.2d 1309 (Fla. 1992); *In re* Scallon, 956 P.2d 982 (Or. 1998)).

229. 508 So.2d 338 (Fla. 1987)).

230. *Id.* § 10(a) (citing *In re* Kwasnik, 508 So.2d 338 (Fla. 1987)).

231. *Id.* § 11(a), (b) (citing Fla. Bd. of Bar Exam'rs v. G.W.L., 364 So.2d 454 (Fla. 1978); *In re* Charles M., 545 A.2d 7 (Md. 1998); *In re* C.R.W., 481 S.E.2d 511 (Ga. 1997); *In re* Gahan, 279 N.W.2d 826 (Minn. 1979)).

232. *In re* Taylor, 647 P.2d 462, 466-67 (Or. 1982) (Holding that this bankruptcy "show[ed] a selfish exercise of legal rights and a disregard of moral responsibilities. . . . We declare to all attorneys and future applicants the importance of scrupulously honoring all financial obligations.").

233. *Id.*

234. Blum, *supra* note 10, §12 (citing *In re* J.A.F., 587 So.2d 1309 (Fla. 1991); *In re* M.A.R., 755 So.2d 89 (2000); *In re* Hyland, 663 A.2d 1309 (Md. 1995); *In re* Admission to Bar of Com., 729 N.E.2d 1085 (Mass. 2000); *In re* Steele, 865 P.2d 285 (Mont. 1993); *In re* Matthews, 462 A.2d 165 (N.J. 1983)).

235. *See, e.g.*, *In re* Manayan, 807 N.E.2d 313, 317 (Ohio 2004) ("The responsibility of properly filing and paying taxes is one that should never be taken lightly by any citizen, especially one who is or seeks to become a member of the bar."); Bd. of Law Exam'rs v. Stevens, 868 S.W.2d 773 (Tex. 1994).

236. Blum, *supra* note 10, §13 (citing *In re* Parry, 647 N.E.2d 774 (Ohio 1995)).

237. 647 N.E.2d 774 (Ohio 1995).

parking citations which were not paid "until he realized it might adversely affect his bar application."[238] Although that applicant also had been involved in an automobile accident while uninsured, failing to pay parking tickets alone might result in rejection.[239]

B. Past History of Criminal Convictions or Activity

Criminal history is a top consideration. The bar requires applicants to reveal unlawful conduct including felony, misdemeanor, traffic, and juvenile convictions or detentions.[240] Character encompasses an applicant's past behavior, along with the community's views of such conduct.[241] Those who violate criminal laws may lack moral character.[242] An annotation by A.L.R. "collects and discusses the cases in which state and federal courts have considered whether the criminal record of an applicant for admission to the bar so adversely affects the applicant's moral character as to preclude admission."[243]

A felony conviction is *per se* disqualifying in several states.[244] A criminal record does not necessarily preclude bar admission.[245] Some legal violations, like speeding,[246] carry less opprobrium than crimes such

238. *Id.*

239. *See infra* Parts III.D.3, III.F.

240. Arnold, *supra* note 6, at 91 (citing Donald H. Stone, *The Bar Admissions Process, Gatekeeper or Big Brother: An Empirical Study*, 15 N. ILL. U. L. REV. 331, 342-43 (1995)). Stone notes that 96% of 48 responding states place no time limit on unlawful conduct inquiries and all responding states seek juvenile convictions. Stone, *supra* at 342-43.

241. George L. Blum, Annotation, *Criminal Record as Affecting Applicant's Moral Character for Purposes of Admission to the Bar*, 3 A.L.R. 6th 49 (2005).

242. *Id.* § 2. *But see* Arnold, *supra* note 6, at 73 ("[A]pplicants with records of prior unlawful conduct may be more committed to their clients and the system of justice because of prior experience on the wrong side of the law. The presumption made by the ABA and state bars that prior unlawful conduct by a bar applicant is predictive of future unlawful conduct or misbehavior as a lawyer has been criticized and remains unproven.") (footnote omitted).

243. *See* Blum, *supra* note 241.

244. Arnold, *supra* note 6, at 73-74 (noting Florida, Indiana, Mississippi, Missouri, Pennsylvania and Texas per se bar admission for felons (citing *Comprehensive Guide* (1995-1996), *supra* note 197, at 6 chart II). *But see* Arnold, *supra* note 6, at 63 n.4 (citing Carr, *supra* note 13, at 381 ("noting number of states adopting per se disqualification approach to bar admissions for prior felony conduct continues to decline")).

245. Blum, *supra* note 241, § 5 ("The courts in the following cases expressly took the position that a criminal record does not necessarily preclude admission to the bar.").

246. Yes, speeding is a moving violation. Deena Trueblood, *Is A Speeding Ticket A Moving Violation?*, NEV. LAW., February, 1997, at 22, 23 ("AND THE NUMBER ONE QUESTION ASKED BY CONFUSED APPLICANTS, AND MY PERSONAL FAVORITE: 1) If the question asks if you have ever been arrested, cited, indicted for or convicted of any criminal charges including moving traffic violations, do you really want me to list all my speeding tickets?").

as embezzlement, rape, or murder, but any crime impacts admission.[247] The more serious the criminal act, the longer it may take to show rehabilitation.[248] The distinction between *malum in se* crimes[249] and *malum prohibitum* crimes[250] is that the former, alone, are grounds for disbarment and, thus, cause greater concern for applicants.[251] An applicant disbarred in one jurisdiction will not be necessarily be automatically denied admission elsewhere, but it doesn't help.[252] Similarly, members of one bar might lack character according to another bar.[253]

Although "an arrest or a charge ending in dismissal does not establish that the accused committed the prohibited act,"[254] a conviction is not required for denial.[255] The bar asks more than that required for lawyers under the Model Rules of Professional Conduct.[256] Criminal acts concern the bar more than case dispositions[257] because, just as a

247. *See* Blum, *supra* note 241, § 6.

248. *Id.* § 14 (citing *In re* Gossage, 5 P.3d 186 (Cal. 2000) (The court noted that "the more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be.")).

249. Legal Information Institute, *Malum in se*, http://www.law.cornell.edu/lexicon/malum_in_se.htm (last viewed January 7, 2006) ("An innately immoral act, regardless of whether it is forbidden by law. Examples include adultery, theft, and murder. *See, e.g.* United States v. Bajakajian, 524 U.S. 321 (1998).").

250. Legal Information Institute, *Malum Prohibitum*, http://www.law.cornell.edu/lexicon/malum_prohibitum.htm (last viewed January 7, 2006) ("An act which is immoral because it is illegal; not necessarily illegal because it is immoral. *See, e.g.*, United States v. Bajakajian, 524 U.S. 321 (1998).").

251. *In re* Ruffalo, 390 U.S. 544, 555 (1968) (White, J., concurring) (Noting that "members of a bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as malum in se.").

252. Blum, *supra* note 170, § 7 (citing *In re* Question Certified by Fla. Bd. of Bar Exam'rs, 265 So.2d 1 (Fla. 1972); *In re* Kimball, 40 A.D.2d 252 (N.Y. App. Div. 2 Dept. 1973), *rev'd*, 301 N.E.2d 436 (N.Y. 1973)).

253. *Id.* § 9 (citing Warbasse v. State Bar of Cal., 28 P.2d 19 (Cal. 1933)).

254. *In re* Taylor, 647 P.2d 462, 463 (Or. 1982) (citing 3A J. WIGMORE, ON EVIDENCE § 980a (Chadbourne rev. ed. 1970)).

255. *See* Blum, *supra* note 241, § 19 (citing *In re* Greenberg, 614 P.2d 832 (Ariz. 1980)). The court in *Greenberg* concluded that the applicant, without a criminal record or any pending charges, failed to demonstrate reformation where he "admitted trafficking in marijuana for six months several years prior to the present proceeding, and had not reported the illegal income to the Internal Revenue Service until shortly before the proceeding." *Id.*

256. *See* McCulley, *supra* note 33, at 845-46. ("The Model Rules explain that a lawyer should only have to answer professionally for offenses relative to the fitness requirements to practice law. [MODEL RULES OF PROF'L CONDUCT R. 8.4(c) cmt. 1 (1983).] These include offenses involving 'violence, dishonesty, breach of trust, or serious interference with administration of justice.' [*Id.* at cmt. 1].")

257. *See generally In re* Glenville, 565 N.E.2d 623 (Ill. 1990).

conviction does not mean factual guilt,[258] a lack of a conviction does not mean innocence.[259] The bar seeks records of arrests,[260] but it also examines acquittals,[261] and conduct not rising to the level of crime may result in denial.[262]

1. Criminal Standard for Good Moral Character

Jurisdictions have varied standards for examining applicants with a criminal history.[263] The court in *In re Menna*[264] held that:

> "Good moral character" has traditionally been defined as the absence of conduct imbued with elements of "moral turpitude." It includes "qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.[265]

258. Bruce A. Antkowiak, *Judicial Nullification*, 38 CREIGHTON L. REV. 545, 556 (2005). "Our system fails to acquit innocent people at a surprisingly high rate." *Id.* "[J]ust because the defendant is innocent . . . does not mean the jury will acquit." Welsh White, *Plea Bargaining In Capital Cases*, 20-FALL Crim. Just. 38, 49 (2005).

259. 2 SUMM. PA. JUR. 2d *Torts* § 19:15 (2005). "[W]here the court or prosecutor nolle prosses, dismisses, or drops charges, the record may not clearly reflect whether the termination was consistent with the innocence of the accused or a reflection of some policy or decision unrelated to the accused's commission of the particular crime." *Id.*

260. Stone, *supra* note 240, at 341.

261. *In re* Taylor, 647 P.2d 462, 464 (Or. 1982) The bar can examine underlying events after dismissal because "acquittal . . . cannot be deemed to be res judicata here upon any issue, for the purpose and scope of an inquiry to determine an applicant's character and fitness to become a member of the Bar are essentially different. * * * Conduct not descending to the level of guilt of the violation of a criminal statute may well present an insuperable obstacle to admission to the Bar." *Id.*

262. Blum, *supra* note 241, at § 6 (citing Spears v. State Bar of Cal., 294 P. 697 (Cal. 1930); Matter of Cassidy, 51 N.Y.S.2d 202 (N.Y. Ct. App. 1944), for the respective propositions that a "conviction is not a condition precedent to a refusal to admit an applicant to the bar" and "conduct that does not establish the violation of a criminal statute may present an insuperable obstacle to admission to the bar if such conduct evidences a lack of the character and general fitness required of an attorney"); *id.* at § 10 (citing cases where a favorable resolution of criminal charges still resulted in denial); *id.* at § 19 (citing *In re* Matt, 829 P.2d 625 (Mont. 1992) (involving a cocaine charge and minimization sufficient for denial)); *but see, id.* § 9 (citing cases where applicant with favorable resolution of criminal charges was admitted).

263. *See id.* at § 3 (citing Reese v. Bd. of Com'rs of Ala. State Bar, 379 So.2d 564 (Ala. 1980); *In re* Menna, 905 P.2d 944 (Cal. 1995); *In re* H.H.S., 373 So.2d 890 (Fla. 1979); *In re* Haukebo, 352 N.W.2d 752 (Minn. 1984); *In re* Strait, 577 A.2d 149 (N.J. 1990); *In re* Farmer, 131 S.E. 661 (N.C. 1926); *In re* Wright, 690 P.2d 1134 (Wash. 1984); Frasher v. W. Va. Bd. of Law Exam'rs, 408 S.E.2d 675 (W.Va. 1991)).

264. 905 P.2d at 944.

265. *Id.* at 948 (internal citations omitted); *See also* Robin, *supra* note 4, at 576. "Justice Black, noting the inherent ambiguity of the term stated, '[i]t can be defined in an almost unlimited number

Applicants with serious criminal convictions can, however, gain admission.[266] Courts will review rehabilitative behavior to determine present moral fitness.[267] Courts weigh "[t]he nature and seriousness of the offense . . . against the evidence of rehabilitation."[268] Time alone will not alleviate the damage of a conviction.[269] No specific time is necessary or sufficient to demonstrate rehabilitation.[270]

Some factors ameliorate the impact of prior criminal activity. Courts will consider whether it was adolescent misconduct;[271] the older and more educated an applicant was at the time of the misconduct, the greater awareness of ethical obligations are imputed.[272] It is positive if a

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of ways . . . [and] can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.'" *Id.* (citing Konigsberg v. State Bar of Calif., 353 U.S. 252, 263 (1957)).

266. *See, e.g.*, Tillie Fong and Hector Gutierrez, *Bush Pardons Denver Attorney*, ROCKY MOUNTAIN NEWS, December 21, 2005, *available at* http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_4331378,00.html (last viewed January 15, 2006) (noting that a woman was "sentenced to four years in prison in Illinois for conspiracy to conduct a narcotics enterprise and distribution of cocaine" in 1984 was admitted to Florida bar in 1995 and the Colorado bar in 2001); *see also* Blum, *supra* note 241, at § 7 (citing cases where "[c]riminal record of applicant does not preclude admission where applicant has been granted pardon of conviction."); *but see, id.,* § 8 (citing cases where "[c]riminal record of applicant is sufficient ground upon which to deny admission even where applicant has been granted pardon.").

267. Blum, *supra* note 241 at § 4 (citing *In re* Adams, 540 S.E.2d 609 (Ga. 2001); *In re* Cason, 294 S.E.2d 520 (Ga. 1982); *see also, e.g.*, *In re* G.L.S., 439 A.2d 1107 (Md. Ct. App. 1982).

268. *In re* D.M.J., 586 So.2d 1049, 1050 (Fla.1991) (stating that "[t]he nature and seriousness of the offense are to be weighed against the evidence of rehabilitation"); compare *In re* Gossage, 5 P.3d 186, 198 (Cal. 2000).

> [M]anslaughter convict who stole from several victims over a nine-year period, betraying the trust of family and friends and stealing from at least one business . . . can be found morally fit to practice law only if the evidence shows that he is no longer the same person who behaved so poorly in the past, and only if he has since behaved in exemplary fashion over a meaningful period of time. This heavy burden is commensurate with the gravity of his crimes.

In re Gossage, supra at 198. *See also In re* Schaeffer, 541 P.2d 1400 (Or. 1975) (dealing with disclosed minor in possession of alcohol citation which did not significantly reflect upon character).

269. Blum, *supra* note 241, at § 4 (citing Gossage, 5 P.3d 186, 186 (Cal. 2000)) (noting that the court could not conclude applicant, convicted 25 years earlier, had established "present good moral character."); *see also, id.,* § 14 (citing Matter of Dortch, 486 S.E.2d 311 (W. Va. 1997)); *see also* Blum, *supra* note 169, at § 10 (citing Reese v. Bd. of Com'rs of Ala. State Bar, 379 So.2d 564 (Ala. 1980)); *In re* Dileo, 307 So.2d 362 (La. 1975)).

270. Blum, *supra* note 241, at § 15 (citing Polin, 630 A.2d 1140 (D.C. Cir. 1993); *In re* Diez-Arguelles, 401 So.2d 1347 (Fla. 1981); *In re* Dileo, 307 So.2d 362; *In re* Rowell, 754 P.2d 905 (Or. 1988); Frasher v. W. Va. Bd. of Law Exam'rs, 408 S.E.2d 675 (W. Va. 1991)).

271. *Id.* at § 13 (citing Hallinan v. Comm. of Bar Exam'rs of State Bar, 421 P.2d 76 (Cal. 1966)) (ordering admission despite "numerous fistfights" because they "could be classified as adolescent behavior.").

272. *In re* Sobin, 649 A.2d 589, 592 (D.C. 1994)

> (Sobin's conduct occurred prior to law school during his teenage years of sixteen to nineteen. While a certain level of awareness as to the ethical obligations of a lawyer may be imputed to a third year, second semester law student (Mustafa), the same level of

conviction was set aside under the Youth Corrections Act[273] (now repealed),[274] but if the misconduct occurred in conjunction with mental health or substance abuse issues, treating these problems will be necessary, but insufficient for admission.[275]

2. Rehabilitation: Going Above and Beyond Simply Following the Law

Positive action must clearly and convincingly establish rehabilitation to allow admission.[276] Bars view rehabilitation to determine if prior unlawful conduct affects present character.[277] One court declared that:

> Rehabilitation is at the heart of our American judicial system. 'Rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct.' This same principle of rehabilitation applies to an applicant seeking initial admission to the practice of law.[278]

Rehabilitation was defined by the ABA[279] as more than simply fulfilling legal expectations. An applicant showing that she currently follows the law by living and doing those things she should have done throughout life, while necessary to establish rehabilitation, is

awareness, should not be attributed to a teenager who has not yet begun the study of law.).

273. *See* Blum, *supra* note 241, at § 9 (citing Appeal of Estes, 580 P.2d 977 (Okla. 1978)).

274. 18 U.S.C.A. § 5005 (repealed Oct. 12, 1984).

275. *See* Blum, *supra* note 169, § 11 (citing Bernstein v. Comm. of Bar Exam'rs, State Bar, 443 P.2d 570 (Cal. 1968); *In re* Belsher, 689 P.2d 1078 (Wash. 1984)).

276. Blum, *supra* note 241, at § 13 (citing, among others, *In re* Strait, 577 A.2d 149 (N.J. 1990). Rehabilitation can be established by "complete candor in all filings and proceedings required by the committee, . . . attitude as expressed in hearings before the Board of Bar Examiners and any reviewing courts, . . . a renunciation of the past misconduct," and a period of time without misconduct and positive use of time since the misconduct. *Id.*

277. Arnold, *supra* note 6, at 87.

278. *In re* McMillian, 557 S.E.2d 319, 323 (W. Va. 2001) (Starcher, J., concurring) (internal citation omitted).

279. Arnold, *supra* note 6, at 87.

> [C]ourts have held that an applicant's rehabilitation is to be determined by examining the following factors: (1) community service and achievements of the applicant, including opinions of others regarding the applicant's present character; (2) the applicant's age at the time of the conduct; (3) the recency of the conduct; (4) the nature or seriousness of the conduct; (5) the applicant's candor before the court and in the admission process, including 'the materiality of any omissions or misrepresentations.'

Id. (footnote omitted) (citing Comprehensive Guide, *supra* note 197, at viii).

insufficient.[280] Rehabilitation means an applicant "has undertaken a useful and constructive place in society."[281] It cannot occur simultaneously with getting caught.[282] An applicant bears the burden to demonstrate appreciation of the "moral and legal implications" of past misconduct;[283] the bar will not take her word.[284] Although one jurisdiction denies rehabilitation, another jurisdiction could find rehabilitation and grant admission.[285]

Some missteps demonstrate a lack of rehabilitation, such as arguing that a guilty plea was entered "to avoid being labeled a 'snitch'"[286] or "for the sake of avoiding the expense and uncertainty of a trial."[287] Similarly, it is unwise to deny wrongdoing and argue that one "pled for convenience" despite a criminal conviction, particularly when a video shows that the theft was committed immediately before law school matriculation.[288] Any potential applicant should follow the law,[289]

280. *See* Blum, *supra* note 169, at § 9 (citing Bernstein v. Comm. of Bar Exam'rs, State Bar, 443 P.2d 570 (Cal. 1968); *In re* Ascher, 411 N.E.2d 1 (Ill. 1980)).

281. Blum, *supra* note 241, at § 14 (citing *In re* Prager, 661 N.E.2d 84 (Mass. 1996)).

282. *Id.* (citing *In re* K.B., 434 A.2d 541 (Md. Ct. App. 1981)). In *K.B.*, the applicant claimed that when "'they put those handcuffs on me, I was rehabilitated then and there.'" *K.B.*, 434 A.2d at 545. The court responded "[i]t would be a most unusual case indeed where rehabilitation, sufficient to permit admission to the Bar of a convicted adult thief, can be shown to have taken place simultaneously with getting caught, and this is not such a case." *Id.*

283. *Id.* (citing *In re* Easton, 610 P.2d 270 (Or. 1980)). The *Easton* court found no reformation where felonies were committed by a 43-year-old 3L, "rather than that of a youngster in his formative years" because applicant "had presumably been exposed to professional concepts of . . . legal ethics." *Easton*, 610 P.2d at 271. The court considered his conduct "the reaction of a generally unstable person faced with a stressful situation," rather than "as the isolated acts of a naive young person." *Id.*

284. Blum, *supra* note 241, at § 14 (citing *In re* Wright, 690 P.2d 1134 (Wash. 1984) ("[A]pplicant's words, without remorse, 'I am a bit more stable now,' were not sufficient to meet the court's high standards")).

285. *Id.* at § 13 (citing *In re* Kleppin, 768 A.2d 1010 (D.C. 2001)).

286. *Wright*, 690 P.2d at 1136.

287. *In re* R.B.R., 609 So.2d 1302, 1302 (Fla. 1992) (denying admission for application "false, misleading, or lacking in candor" because an "entire explanation implied that he was completely innocent of any criminal charges, but pled guilty for the sake of avoiding the expense and uncertainty of a trial"). The applicant "failed to disclose significant facts" and "falsely implied" innocence. *Id.*

288. *In re*. M.L.B., 766 So.2d 994, 995-96 (Fla. 2000). Denial was based on a finding that applicant: (1) just before law school, helped steal a large number of CDs from employer, pleading no contest to third-degree grand theft; (2) wrote bar application that was "false, misleading, and lacking in candor because he denied doing anything illegal and stated that his plea was a plea of convenience;" and (3) testified falsely before the Board by denying anything illegal. *Id.*

289. *See* Keeley, *supra* note 24, at 844-45 (noting that because she will appear before the bar after having "invested three years of hard work and accumulated a debt of over $100,000 to become an attorney," she is "uncomfortable with the notion that [she] must choose between [her] future law career and exercising [her] First Amendment right of free expression." Also worrisome is that she "may have already jeopardized [her] chances of admission" via her pre-law school activities.

especially while attending or planning to attend law school.[290] Breaking the law or any rules will diminish any effort at showing rehabilitation.

Clerking for a judge who will provide a favorable recommendation can help establish rehabilitation, but soliciting character testimony in violation of judicial canons is unwise.[291] Character recommendations from law school professors or bar members in good standing can help.[292] Letters of recommendation will carry more weight when coming from someone with knowledge of the misconduct,[293] while recommendations from those lacking knowledge are discounted.[294] Rehabilitation can be shown for non-criminal misconduct. For example, a former communist party member can show rehabilitation.[295] Rehabilitation from a prior lack of candor to judicial officials[296] or the bar[297] can also be shown.

3. The Specific Criminal Conduct Will Be Considered

Courts, such as in *In re Polin*,[298] examine the nature of the criminal conduct when determining moral character.[299] For example, criminal non-violent civil disobedience does not require denial.[300] Neither does a conviction for driving while intoxicated (DWI) mandate denial.[301] Even an applicant with three DWI convictions has managed to establish rehabilitation.[302]

Charges sufficient for disbarment include accepting bribery as a public official and failing to report the bribe on a tax return,[303] mail

Moreover, "the possibility of being denied admission has already had a negative impact simply because [she] ha[s] not engaged in certain activities.") (footnote omitted).

290. *See id.*

291. *In re* Krule, 741 N.E.2d 259, 262 n.1 (Ill. 2000). "Judge Fernandez's decision to support Krule at his hearing may violate canon 2(B) of the Code of Judicial Conduct which expressly states that 'a judge should not testify voluntarily as a character witness.'" *Id.* (internal citation omitted).

292. Blum, *supra* note 241, at § 13 (citing *In re* D.M.J., 586 So.2d 1049 (Fla. 1991)).

293. *M.L.B.*, 766 So.2d at 997. Recommendations must "be viewed only through the scope of knowledge of facts upon which it has been based" and "[m]ere knowledge that one has been previously refused admission is far different than knowledge that past criminal conduct was the reason for the denial." *Id.*

294. *Id.*

295. Blum, *supra* note 169, at § 20 (citing *In re* Jolles, 383 P.2d 388 (Or. 1963)).

296. *Id.* (citing *In re* McLaughlin, 675 A.2d 1101 (N.J. 1996)).

297. *Id.* (citing *In re* Farris, 489 P.2d 1156 (Nev. 1971)).

298. 596 A.2d 50 (D.C. Ct. App. 1991).

299. Stone, *supra* note 240, at 364.

300. Blum, *supra* note 241, at § 11 (citing Hallinan v. Comm. of Bar Exam'rs of State Bar, 421 P.2d 76 (Cal. 1966)).

301. *Id.* (citing *In re* Haukebo, 352 N.W.2d 752 (Minn. 1984)); *see also id.* at § 16 (citing *In re* Ogilvie, 623 N.W.2d 55 (S.D. 2001)).

302. *Id.* at § 13 (citing *Haukebo*, 352 N.W.2d at 752).

303. *In re* Wigoda, 395 N.E.2d 571, 572 (Ill. 1979).

fraud and conspiracy,[304] extortion and making a false statement on a tax return,[305] and bribery of public officials.[306] None of these crimes precludes admission after rehabilitation. Arson is a serious crime for which rehabilitation must be demonstrated.[307]

Even uncharged allegations of perjury gravely concern the bar. Giving false testimony "is rightly held in utter opprobrium by the legal system."[308] Unauthorized practice of law is damaging.[309] Repeated traffic law violations may prevent admission,[310] particularly if they involve a pattern of disrespect to the court, where they were not disclosed, or where an applicant is trying to establish rehabilitation.[311] Courts consider compliance with court ordered probation[312] when determining if rehabilitation has been established.[313]

Criminal conduct coupled with a lack of candor often results in denial.[314] Misstatements cannot be mitigated with excuses that the bar caught an applicant "totally off guard" or that the applicant was "very defensive that day."[315] Fleeing from prosecution establishes lack of responsibility and disrespect for law.[316]

Violent crimes greatly concern the bar. Murder disqualifies[317] until total rehabilitation.[318] A history of battery convictions and a lack of

304. *In re* Silvern, 441 N.E.2d 64, 65 (Ill. 1982); *see also* Attorney Grievance Comm'n v. Klauber, 423 A.2d 578, 578 (Md. Ct. App. 1981).

305. *In re* Kuta, 427 N.E.2d 136, 137 (Ill. 1981).

306. *In re* Fleischman, 553 N.E.2d 352, 352-353 (Ill. 1990).

307. Blum, *supra* note 241, § 14 (citing *In re* Brown, 467 N.W.2d 622 (Minn. 1991)).

308. *In re* Taylor, 647 P.2d 462, 464 (Or. 1982).

309. *In re* Wright, 690 P.2d 1134, 1137 (Wash. 1984)

310. Blum, *supra* note 241, at § 14 (citing *In re* Roots, 762 A.2d 1161, 1166 (R.I. 2000)).

311. *In re* Gossage, 5 P.3d 186, 199-200 (Cal. 2000).

312. Blum, *supra* note 241, at § 13 (citing *In re* V.M.F., 491 So.2d 1104, 1107 (Fla. 1986)).

313. *Id.* at § 14 (citing *Roots*, 762 A.2d at 1166).

314. *See id.*, at § 14 (citing *In re* Peterson, 439 N.W.2d 165 (Iowa 1989)). In *Peterson*, the applicant described his plea to domestic assault and battery: "I threw up my arms to ward off a blow and forced her arm into her glasses. I was technically guilty, so I pled to resolve the charge." *Peterson,* 439 N.W.2d at 167. The bar found that applicant committed aggravated assault, burglary of a conveyance, and kidnapping, then abandoned injured girlfriend in rural area, during winter, without transportation, finding applicant's "attempts to mischaracterize the incident . . . display[ed] a callous and indifferent attitude toward an explosive personal confrontation." *Id.* at 167-69.

315. *See id.* at 165.

316. *See In re* Fine, 736 P.2d 183, 190 (Or. 1987); *In re* McMillian, 557 S.E.2d 319, 323 (W. Va. 2001).

317. *In re* Wright, 690 P.2d 1134, 1136 (Wash. 1984) (finding character lacking in murderer, further being disturbed that in 123 pages of testimony applicant never expressed remorse but instead "characterizes it as 'bad judgment.'"); *see also* Blum, at § 16 (citing *In re* Manville, 538 A.2d 1128 (D.C. 1988)).

318. Blum, *supra* note 241, at § 14 (citing *In re* Moore, 303 S.E.2d 810 (N.C. 1983)).

candor have resulted in denial.[319] Attempted armed robbery where an applicant exchanged gunfire with a bank guard, "a criminal transgression of a most serious nature," mandated "full and complete evidence of rehabilitation sufficient to clearly demonstrate the existence of present good moral character fitness for admission."[320]

The bar takes sexual assault seriously, yet even sexual abuse of a minor, which could result in disbarment, might not result in automatic or permanent denial.[321] Rape and robbery committed as a juvenile, however, have been sufficient to deny admission where accompanied by lack of candor to the law school and by a lack of rehabilitation.[322] A sodomy conviction was not necessarily disqualifying even though it was an illegal act.[323]

4. Narcotics Convictions or Activity Impacting Admission

Drug law violations can result in denial for deficient character[324] because, as one author noted, attorneys are "held to a high standard of conduct, particularly with respect to upholding the law . . . ."[325] Drug convictions do not mandate rejection,[326] but the bar may find deficient character without conviction.[327] Heroin[328] and cocaine[329] related

319. *In re* Adams, 540 S.E.2d 609, 610 (Ga. 2001). *But see In re* Newhall, 532 N.Y.S.2d 179 (N.Y. Ct. App. 1988).

320. Blum, *supra* note 241, at § 14 (citing *In re* George B., 466 A.2d 1286, 1286 (Md. Ct. App. 1983)) (finding six years after release from prison was not enough time to establish rehabilitation).

321. *In re* Hinson-Lyles, 864 So.2d 108, 112 (La. 2003) (reversing recommendation of conditional admission for applicant with felony sexual offense on juvenile); *but see id.* at 115 (Kimball, J., dissenting).

> [T]he record clearly reveals that the applicant overwhelmingly proved that her character has been rehabilitated and that such inclination or instability is unlikely to recur in the future. . . . [T]his appears to be an unusual case with extraordinary facts . . . the applicant has produced an impressive amount of evidence proving that she has good moral character and the fitness necessary to practice law . . . .

Id.

322. Blum, *supra* note 241, at § 14 (citing *In re* Childress, 561 N.E.2d 614 (Ill. 1990)). In *Childress*, the applicant admitted providing false answers on his law school application because "he feared that he would be dismissed from law school if he responded to the questions truthfully." *Childress*, 561 N.E.2d at 617.

323. Blum, *supra* note 241, at § 15 (citing *In re* Kimball, 301 N.E.2d 436 (N.Y. Ct. App. 1973)).

324. *See* Kristine Cordier Karnezis, *Narcotics Conviction as Crime of Moral Turpitude Justifying Disbarment or Other Disciplinary Action Against Attorney*, 99 A.L.R.3d 288 (2005).

325. *Id.* at § 1.

326. Blum, *supra* note 241, at § 4 (citing *In re* Rowell, 754 P.2d 905 (Or. 1988)).

327. Karnezis, *supra* note 324, at § 1 (citing Fla. Bar v. Price, 478 So.2d 812 (Fla. 1985)).

328. *Id.* (citing *In Re* Shepard, 170 P. 442 (Cal. Ct. App. 1917)); *see also, id.* (citing *In re* Floyd, 492 S.E.2d 791 (S.C. 1997)); *see also* Blum, *supra* note 241, at § 14 (citing Nall v. Bd. of

offenses cause problems for applicants,[330] and prescription medication[331] and amphetamine[332] cases warrant concern; in fact, any drug crimes could cause problems.[333] Courts have treated Valium[334] or Quaalude[335] cases like other drug convictions.

Marijuana, particularly distribution, is a serious a problem for applicants.[336] Attorneys in D.C. are consistently disbarred when involved in drug trafficking because "[p]ossession of a controlled substance with intent to distribute is a crime of moral turpitude *per se*, mandating disbarment."[337] Yet, applicants convicted of marijuana[338] or cocaine[339] distribution may gain admittance after rehabilitation.

Misdemeanor drug possession is less worrisome.[340] While addiction may motivate simple possession, addiction will not mitigate when the offense would otherwise warrant disbarment.[341] Applicants with drug misconduct cases related to addiction should seek treatment.[342]

Bar Exam'rs, 646 P.2d 1236 (N.M. 1982)).

329. Karnezis, *supra* note 324, at § 1 (citing Disciplinary Bd. of Haw. Supreme Ct. v. Bergan, 592 P.2d 814 (Haw. 1979); *In re* Gorman, 379 N.E.2d 970 (Ind. 1978); *In re* Lunardi, 537 N.E.2d 767 (Ill. 1989)).

330. *See* McChrystal, *supra* note 30, at 71. ("[P]ersons must demonstrate a better moral character to be granted a license to practice law than to keep it.").

331. Karnezis, *supra* note 324, at § 1 (citing Butler County Bar Asso. v. Schaeffer, 174 N.E.2d 103 (Ohio. 1961)).

332. *Id.* (citing Comm. on Prof'l Ethics & Conduct of Iowa State Bar Ass'n. v. Shuminsky, 359 N.W.2d 442 (Iowa 1984)).

333. For a complete list of proscribed substances see generally Drug Abuse Information, National Institute on Drug Abuse, National Institute of Health, *available at* http://www.drugabuse.gov/drugpages.html (last viewed January 7, 2006).

334. Karnezis, *supra* note 324, at § 1 (citing Office of Disciplinary Counsel v. Mullen, 652 N.E.2d 978 (Ohio 1995)).

335. *Id.* (citing *In re* Kaufman, 526 N.Y.S.2d 818 (N.Y. Ct. App. 1988); Office of Disciplinary Counsel v. Soucek, 523 N.E.2d 513 (Ohio 1988)).

336. *Id.* (citing Fla. Bar v. Beasley, 351 So.2d 959 (Fla. 1977); Fla. Bar, 330 So.2d 12 (Fla. 1976); *In re* Kreamer, 535 P.2d 728 (Cal. 1975); Muniz v. State, 575 S.W.2d 408 (Tex. Ct. App. 1978); Fla. Bar v. Sheppard, 518 So.2d 250 (Fla. 1987); La. State Bar Ass'n. v. Tilly, 507 So.2d 182 (La. 1987)). *But see, id.* (citing *In re* Higbie, 493 P.2d 97 (Cal. 1972)).

337. *In re* Lee, 755 A.2d 1034, 1036 (D.C. 2000).

338. Blum, *supra* note 241, at § 15 (citing *In re* Birmingham, 866 P.2d 1150 (1994)).

339. *Id.* at § 13 (citing *In re* Diez-Arguelles, 401 So.2d 1347 (Fla. 1981)).

340. Karnezis, *supra* note 324, at § 1 (citing *In re* Gardner, 650 A.2d 693, 694 (D.C. 1994) (discussing recreational cocaine use); *In re* Chase, 702 P.2d 1082 (Or. 1985) (discussing misdemeanor attempted possession of controlled substance); *In re* Drakulich, 702 P.2d 1097 (Or. 1985) (discussing misdemeanor attempted possession of controlled substance); *In re* Johnson, 500 N.W.2d 215, 217 (S.D. 1993) (discussing misdemeanor marijuana possession)). *But see*, *id.*, (citing Fla. Bar v. West, 550 So.2d 462 (Fla. 1989) (discussing cocaine possession); Fla. Bar v. Pascoe, 526 So.2d 912 (Fla. 1988) (discussing marijuana use)); *see also id.* (citing *In re* Armstrong, 424 N.W.2d 208 (Wis. 1988) (discussing misdemeanor counts of prescription drug fraud)).

341. *Id.* (citing *In re* Marshall, 762 A.2d 530 (D.C. 2000)).

342. Blum, *supra* note 241, at § 15 (citing *In re* A.T., 408 A.2d 1023 (Md. Ct. App. 1979)).

Formal treatment of drug or alcohol addiction is not required for admission despite an applicant's past drug history,[343] nor will treatment guarantee admission.[344] Yet, expert testimony about rehabilitation or that no treatment is needed, can persuade the bar.[345] Law school drug misconduct causes problems, particularly when exacerbated by a lack of candor.[346]

5. Theft Convictions or Activity Impacting Admission

Any theft, even uncharged conduct,[347] creates difficulty for applicants.[348] Larceny is a crime of dishonesty that may lead to rejection.[349] Not all thefts, however, require denial.[350] Nevertheless, in one notable case, stealing a girlfriend's cat, along with other minor misconduct and disrespect to the bar, resulted in permanent rejection.[351]

Theft is often compounded by a lack of candor.[352] Applicants may mistakenly argue that they failed to disclose because they thought pretrial diversion followed by a *nolle prosequi*[353] and expungement obviated the need for disclosure. When a lack of candor is discovered, applicants may defensively argue that they forgot to disclose this incident similar to how they forgot what they were accused of stealing.[354] Such memory lapses never impress the bar.

The Jean Valjean[355] defense[356] is unwise. Entreaties for leniency due to financial difficulties should be avoided unless an applicant

343. *Id.* at § 13 (citing *In re* Beers, 118 P.3d 784 (Or. 2005)).

344. *Id.* at § 14 (citing *In re* Glenville, 565 N.E.2d 623 (Ill. 1990)).

345. *Id.* at § 15 (citing *In re* Ogilvie, 623 N.W.2d 55 (S.D. 2001)).

346. Karnezis, *supra* note 324, at § 1 (citing *In re* Tedder, 374 S.E.2d 294 (S.C. 1988)).

347. Blum, *supra* note 241, at § 14 (citing *In re* K.S.L., 495 S.E.2d 276, 276-77 (1998)).

348. *Id.* (citing *In re* G.S., 433 A.2d 1159, 1161 (1981)). *But see id.* at § 18 (citing *In re* Howard C., 407 A.2d 1124 (Md. Ct. App. 1979)).

349. *Id.* at § 14 (citing *In re* T.J.F., 770 So.2d 676, 678 (Fla. 2000)).

350. *Id.* at §§ 15, 18 (citing *In re* Allan S., 387 A.2d 271 (Md. Ct. App. 1978); *In re* Davis, 403 N.E.2d 189 (Ohio 1980); *In re* L. K. D., 397 So.2d 673 (Fla. 1981)).

351. *Id.* at § 19 (citing *In re* Kapel, 717 N.E.2d 704, 704-05 (Ohio. 1999)).

352. Blum, *supra* note 169, § 15(b) (citing *In re* N.W.R., 674 So.2d 729 (Fla. 1996)).

353. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th 2000) *available at* http://www.bartleby.com/61/0/N0130000.html (last visited January 15, 2006). ("A declaration that the plaintiff in a civil case or the prosecutor in a criminal case will drop prosecution of all or part of a suit or indictment.").

354. *T.J.F.,* 770 So.2d at 677.

355. Answers.com, Les Miserables, *available at* http://www.answers.com/topic/les-mis-rables (last visited January 7, 2006) ("A novel by Victor Hugo. The central character, Jean Valjean, is sentenced to prison for stealing a single loaf of bread" in order to feed "his starving family.").

356. *T.J.F.,* 770 So.2d at 677. ("T.J.F. submitted into evidence . . . an affidavit of her mother attesting to T.J.F.'s financial difficulty from 1994 to 1997" (the period of the thefts)).

actually stole necessities to support her starving family. Otherwise, such excuses will antagonize the bar by showing a lack of responsibility, while implying that an applicant feels above the law.[357]

6. Challenging the Bar's Specification of Lack of Good Moral Character

Challenging the bar's specific allegation of a lack of good moral character may not only create delay but also increase the risk of denial. The bar uses the preponderance standard to establish facts relevant to admission.[358] An applicant considering challenging the bar must contact counsel experienced in such cases.[359]

The dire consequences of the bar's finding a lack of candor or failure to take responsibility means that all statements to the bar should be carefully considered. Proclaiming innocence of crimes for which an applicant has been convicted places an applicant in a bind, particularly if the applicant entered a guilty plea.[360] The process might appear as a Catch-22: "either admit wrongdoing and relieve the Board of its burden of proof, regardless of the truth of the allegation, or deny it and, if the Board finds the allegation true, have the Board also conclude he is lying."[361] An applicant should not accept responsibility, however, if she can establish innocence and has always maintained innocence.[362] Yet, "where an applicant is found guilty of and sanctioned for a particular act and the Board's finding and sanction are upheld on review, continued denial of act in subsequent proceedings does not serve the applicant well and is unacceptable."[363]

Demeanor before the bar can make or break an application. Appellate courts defer to the bar on witness credibility.[364] An applicant should speak to an attorney rather than antagonize the bar with attempts to minimize, which may result in denial for lack of candor or failure to

357. *See* Blum, *supra* note 241, at § 14 (citing *In re* Easton, 692 P.2d 592 (Or. 1984)).

358. *Id.* at § 19 (citing *In re* R.D.I., 581 So.2d 27 (Fla. 1991)).

359. An applicant retaining skilled counsel also shows that she recognizes the seriousness of the matter. Unrepresented dealing with the bar can contribute to or exasperate numerous errors.

360. *See In re* Brown, 467 N.W.2d 622, 623-25 (Minn. 1991).

361. *In re* G.J.G., 709 So.2d 1377, 1380 (Fla.1998).

362. Blum, *supra* note 241, at § 14 (citing *G.J.G*., 709 So.2d at 1381); *see also* Blum, *supra* note 169, at § 14(a) (citing *In re* M.C.A., 650 So.2d 34 (Fla. 1995)).

363. *G.J.G*., 709 So.2d at 1381.

364. Fla. Bar v. Batista, 846 So.2d 479, 483 (Fla. 2003); *In re* O.C.M., 850 So.2d 497, 499 n.1 (Fla. 2003); Cincinnati Bar Ass'n. v. Statzer, 800 N.E.2d 1117, 1121 (Ohio 2003); *In re* Huffman, 13 P.3d 994, 999 (Or. 2000).

take responsibility and could prevent a finding of rehabilitation.[365]

C. Mental Illness and Treatment

1. Dealing With the Stress of Law School

First-year law-school exams are difficult.[366] Many students seek counseling for depression or anxiety: "In 1993, one law school reported that twenty-six percent of all first-year law students who were surveyed acknowledged that they had either been diagnosed or received some form of treatment for a mental illness at least once in their lives."[367] Yet, stress continues after law school in the work realm, where yielding to temptation could lead to disbarment and incarceration.[368] Law-school stress foreshadows future stress due to long hours and multiple job pressures.[369]

Ideally, mental health should not impact the character examination, except to the extent it relates to misconduct. The bar's mental health questions are somewhat separate from morality.[370] The scope of these questions has narrowed recently, as society has recognized that mental health is disconnected from morality and is covered by laws prohibiting discrimination against those with a disability.

2. Scrutiny of Mental Health Treatment

Applicants usually must disclose all mental health treatment, with only eight states not inquiring.[371] For example, the Florida Bar's 2004

365. Blum, *supra* note 169, at § 17; *see also infra* Parts III.F, IV.

366. Adam J. Shapiro, *Defining The Rights Of Law Students With Mental Disabilities*, 58 U. MIAMI L. REV. 923, 923 (2004).

367. *Id.* at 925 (citing Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. REV. 93, 105 (2001)).

368. MILTON C. REGAN JR., EAT WHAT YOU KILL 60-62 (Univ. of Mich. Press 2004).

369. Janet Piper Voss, *Helping Lawyers, Judges & Law Students*: *Lawyers' Assistance Program Celebrates 25 Years*, 19-OCT CBA Rec. 49 (2005).

370. *See,* Herr, *supra* note 20.

371. Shapiro, *supra* note 366, at 939 (citing Phyllis Coleman & Ronald A. Shellow, *Ask about Conduct, Not Mental Illness: A Proposal for Bar Examiners and Medical Boards to Comply with the ADA and Constitution*, 20 J. LEGIS. 147 (1994); Deborah Landan Spranger, *Are State Bar Examiners Crazy?: The Legality of Mental Health Questions on Bar Applications Under the Americans with Disabilities Act*, 65 U. CIN. L. REV. 255, 256 n.8 (1996) (noting that these eight states include Arizona, Massachusetts, Hawaii, Illinois, New Mexico, Pennsylvania, Utah, and Virginia.)).

question was very broad.[372] This question applied to treatment for depression, "one of the more prevalent mental impairments that plague American society."[373] Recent studies suggest legal education might contribute to "the development of depression, or at least promotes its manifestation."[374] The Florida Bar's question would also apply to students with anxiety disorder, also exacerbated by law school.[375]

3. Scrutiny May Prevent People From Seeking Help

Critics argue that "no applicant should be punished for seeking help for his or her mental disability" because such questions might discourage students from seeking treatment, inadvertently producing lawyers lesser fit to practice than if these questions were omitted.[376] When applicants realize they must disclose treatment, they may be more reluctant to seek assistance.[377] Fear of scrutiny has likely caused harm by deterring people from seeking treatment. After former White House Counsel Vincent Foster's suicide, it was learned that Foster "had hesitated to see a psychiatrist because it 'could jeopardize his White House security clearance.'"[378] Similar tragedies might occur if applicants avoid treatment for fear of the bar.[379]

Bar admission and insurance coverage is a potential double whammy. If a law student and new mother attended a brief meeting with a doctor to discuss post-partum depression, possibly exacerbated by

372. Florida Bar Application (2004), § (A)(26)(d) (Mental Health – Continued) (on file with author)

> Do you currently (as hereinafter defined) have a mental health condition (not reported above) which in any way impairs or limits, or if untreated could impair or limit, your ability to practice law in a competent and professional manner? If yes, are the limitations or impairments caused by your mental health condition reduced or ameliorated because you receive ongoing treatment (with or without medications) or participate in a monitoring or counseling program? If yes, describe such condition and any treatment or program of monitoring or counseling. 'Currently' does not mean on the day of, or even in the weeks or months preceding the completion of this application; rather, it means recently enough so that the condition may have an ongoing impact on your functioning as a licensed attorney.

Id.

373. Shapiro, *supra* note 366, at 929.

374. *Id.* at 930.

375. *Id.* at 932.

376. *Id.* at 939-40.

377. *Id.* (citing Laura F. Rothstein, *Higher Education and the Future of Disability Policy*, 52 ALA. L. REV. 241, 260 (2000)).

378. Herr, *supra* note 20, at 644 (citing Lloyd Cutler, *Psychotherapy: No Sign of a Security Risk*, WASH. POST, July 12, 1994, at A17).

379. Laura Rothstein, *Disability Law And Higher Education: A Road Map For Where We've Been And Where We May Be*, 63 MD. L. REV. 122, 144-46 (2004).

law school, she might raise character issues while being priced out of insurance coverage.[380]

4. Defending Questions on Mental Health

Bars defend mental health questions as necessary to protect the public "from mentally troubled lawyers" who could commit legal malpractice.[381] Lawyers are particularly susceptible to stress because of working long hours[382] and a perfectionist work ethic.[383] The bar should combat unintended deterrent effects on mental health treatment, given the otherwise wide acceptance of such treatment for attorneys.[384] Critics also claim that scrutinizing the mental health of otherwise suitable candidates is unwarranted because those succeeding in law school despite a mental health disability have already proven that they are "able, intelligent, and most important, highly motivated."[385]

5. Limits Under the ADA

Many applicants find the mental health inquiry "intrusive and discriminatory," particularly after delays for applicants admitting mental health treatment.[386] After the Americans with Disabilities Act ("ADA"), applicants may challenge the bar's questions, which "must comply with the ADA under Titles II and III."[387] Challenges under the ADA to the bar's mental health questions for stigmatizing applicants by focusing on mental health, rather than past behavior, have been partially successful.[388] In the pre-ADA case *Florida Bd. of Bar Exam'rs Re: Applicant*,[389] the court "determined that the public nature of legal practice requires deference to state bar examiners' 'probing' questions."[390] But in *Ellen S. v. Fla. Bd. of Bar Exam'rs*,[391] the federal

380. Whitney Morrill, *Pricey Therapy: The Downside of Making Postpartum Depression Sexy*, SLATE, Aug. 30, 2005, http://www.slate.com/id/2125233/.

381. Shapiro, *supra* note 366, at 940 (citing Herr, *supra* note 20, at 638).

382. Voss, *supra* note 369.

383. Elizabeth Kelley, *Practice Points*, 29-DEC CHAMPION 59 (2005).

384. The bars do encourage treatment for admitted lawyers. *See* Allison Wielobob, *Bar Application Mental Health Inquiries: Unwise And Unlawful*, 24 WTR HUM. RTS. 12, 14 (1997).

385. Shapiro, *supra* note 366, at 940 n.178 (quoting Sande L. Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 SAN DIEGO L. REV. 137, 180 (1999)).

386. *Id.* at 939 (citing Coleman & Shellow, *supra* note 371, at 147-48).

387. *Id.* (citing Herr, *supra* note 20, at 635-36).

388. *Id.* (citing Bauer, *supra* note 367, at 98).

389. 443 So.2d 71, 74 (Fla. 1983).

390. *Id.* (citing *In re* Applicant, 443 So.2d at 74).

district court recognized that the court in the pre-ADA *Bar Examiners* only considered whether the application question "violated the Florida and United States Constitutions," not whether it violated the ADA.[392] The court in *Ellen S.* held that "the Board is not permitted to conduct such investigation in violation of federal law," rejecting the bar's argument that attorneys were not covered by the ADA.[393] The court added that questions on mental disabilities "and the subsequent inquiries discriminate against Plaintiffs by subjecting them to additional burdens based on their disability."[394]

Besides the court in *Ellen S.*, "[v]irtually all of the courts that have considered the ADA's application to mental health inquiries in the bar admissions process have determined that the ADA prohibits at least some disability-related inquiries."[395] Most states have removed the broad question, whether "an applicant has ever received help or treatment for some type of emotional problem."[396] Bars still delve into mental health, however, in narrower terms.[397] Some critics warn that even specific questioning, such as whether a person has schizophrenia, remains troubling because the answer "provides little insight into an individual's past behavior or potential ability to practice law."[398]

How probing can mental health questions be given the answers' value? Professor Herr explained:

> The survey data and direction of case law in this area suggest that bar examiners will increasingly phase out their mental health inquiries. These inquiries are simply too difficult to defend in light of the speculative and doubtful gains they provide. If states like Hawaii, Illinois, and Pennsylvania have decided to discard their mental health

391. 859 F.Supp. 1489 (S.D.Fla. 1994).

392. *Ellen S.*, 859 F.Supp. at 1492.

393. *Id.* at 1492.

394. *Id.* at 1493-94.

395. Mark Murphy and Jennifer Mathis, NAPAS FACT SHEET, Consideration of Mental Health in the Bar Admissions Process, 04/02, *available at* http://www.pai-ca.org/Employee/AntidiscriminationWG/PublicEnt/MH&BarAdmission.htm [January 7, 2006] (citing Clark v. Va. Bd. of Bar Exam'rs, 880 F.Supp. 430, 441-46 (E.D.Va. 1995); McCready v. Ill. Bd. of Admissions to the Bar, 1995 WL 29609 at *5-7 (N.D.Ill. Jan. 24,1995); Applicants v. Tex. State Bd. of Law Exam'rs, 1994 WL 923404 at *7-8 (W.D.Tex. Oct. 11, 1994); *In re* Petition and Questionnaire for Admission to the R.I. Bar, 683 A.2d 1333, 1335-36 (R.I. 1996); *In re* Underwood and Plano, 1993 WL 649283 (Me. Dec. 7, 1993)); *cf.* Doe v. Judicial Nominating Comm'n, 906 F.Supp. 1534, 1540-42 (S.D.Fla. 1995.); Medical Soc'y of N.J. v. Jacobs, 1993 WL 413016 at * 5-8 (D.N.J. Oct. 5, 1993); *see also* Wielobob, *supra* note 384, at 13 ("The Americans with Disabilities Act (ADA) provides a convincing basis for challenging mental fitness questions on bar applications.").

396. Shapiro, *supra* note 366, at 939 (citing Bauer, *supra* note 367, at 96-97).

397. *Id.*

398. *Id.* (citing Coleman & Shellow, *supra* note 371, at 148-49).

> questions, why should other states continue to claim a compelling need to ask them? The ADA makes it clear that state agencies may only use criteria that tend to screen out candidates with disabilities or that force such candidates to give up sensitive privacy rights upon a showing of necessity.[399]

Professor Herr rightly concluded that "[a]pplicants with disabilities who have committed no crime deserve surcease from torment by record."[400]

D. Substance Abuse

Substance abuse can bar admission on character grounds. Substance abuse is a problem for a large portion of society, but lawyers develop substance dependency on illegal drugs, alcohol or both, at a much higher rate than the general population.[401] Law students are also extremely susceptible to substance abuse.[402]

Substance abuse is often considered in conjunction with other misconduct, such as a criminal record, academic dishonesty, or financial irresponsibility.[403] Although alcoholism cannot generally excuse misconduct, the bar will consider it as a factor to determine the proper discipline, including mandated treatment.[404] Proof of present, untreated substance abuse or addiction will result in denial[405] or lead to conditional admission and mandated treatment.[406] The bar's concerns about misconduct connected with addiction means it fears admitting untreated substance abusers.

Those who seek treatment early and voluntarily fare better than

399. Herr, *supra* note 20, at 687.

400. *Id.* at 687 n.218. (Throughout the article, Herr discusses methods by which one can attack the general questions which he finds most invasive).

401. Voss, *supra* note 369 ("Some studies indicate that lawyers use cocaine at twice the rate of non-lawyers.").

402. Stone, *supra* note 240, at 352-53 (citing law student survey data which showed "a large number of law students in this country are very frequent users of alcohol or illicit drugs. [It] revealed that law students may be developing behavior patterns that may eventually become problematic later in their professional careers.") (footnote omitted).

403. *See* Caroll J. Miller, *Bar Admission Or Reinstatement Of Attorney As Affected By Alcoholism Or Alcohol Abuse,* 39 A.L.R.4th 567, § 2(a) (2004).

404. *Id.* (citing Comm. on Prof'l Ethics & Conduct of Iowa State Bar Ass'n. v. Rabe, 284 N.W. 2d 234 (Iowa 1979)).

405. *Id.* at § 2.5 (citing *In re* Samuels, 639 N.E. 2d 1151 (Ohio 1994); *In re* Kemp, 703 N.E. 2d 769 (Ohio 1998)); *see also* Blum, *supra* note 241, sec. 19 (citing *In re* Bean, 766 P.2d 955 (Okla. 1988)).

406. *Id.* (citing Bd. of Law Exam'rs v. Allen, 908 S.W.2d 319 (Tex. Ct. App. 1995); *In re* Manion, 540 N.W.2d 186 (Wis. 1995)).

those who seek treatment only in reaction to bar proceedings.[407] The longer the misconduct and history of addiction, the more rehabilitation is required.[408] The court's view in *Florida Bar v. Larkin*[409] is common. In *Larkin*, the court found an attorney "would be eligible for reinstatement after 91 days if he could at that time show that he had established full control over his problem with alcohol abuse."[410] In doing so, the court recognized its duty "to protect the public from attorney misconduct."[411] The court found that the bar admission committee should consider the circumstances "where alcoholism [was] the underlying cause of professional misconduct and the individual attorney is willing to co-operate in seeking alcoholism rehabilitation."[412]

E. Integrity in the Academic Setting

The bar uses law schools as a resource to evaluate fitness. A variety of law school misconduct has resulted in denial.

1. Law School Applications: Educational or Laying Traps for the Unwary?

There is an emerging problem of bar applicants submitting misleading law school applications.[413] This dishonesty may result in denial when the bar compares law school applications to bar applications.[414] Law schools' more extensive queries began in the past two decades.[415] Law schools added questions to prevent those with

407. *Id.* at § 3. *Compare* Fla. Bar v. Stewart, 396 So.2d 170 (Fla. 1981) *and In re* Dixon, 744 So.2d 618 (La. 1999) *with In re* L.H.H., 660 So.2d 1046 (Fla. 1995) and Frasher v. W. Va. Bd. of Law Exam'rs, 408 S.E.2d 675 (W.Va. 1991).

408. *Id.* at § 4 (citing *In re* Billings, 787 P.2d 617 (Cal. 1990)).

409. Fla. Bar v. Larkin, 420 So.2d 1080 (Fla. 1982).

410. Miller, *supra* note 403, at § 4.

411. *Id.*

412. *Larkin,* 420 So.2d at 1081.

413. Susan Saab Fortney, *Law Student Admissions And Ethics—Rethinking Character And Fitness Inquiries*, 45 S. TEX. L. REV. 983-84 (2004).

414. Blum, *supra* note 252, at § 12(b) (citing *In re* C.A.M., 639 So.2d 612 (Fla. 1994); *In re* P.K.B., 753 So.2d 1285 (Fla. 2000); *In re.* M.A.R., 755 So.2d 89 (2000); *In re* John Doe, 770 So.2d 670 (Fla. 2000); *In re* Childress, 561 N.E.2d 614 (Ill. 1990); *In re* Silva, 665 N.W.2d 592 (Neb. 2003); *In re* Piro, 613 N.E.2d 201 (Ohio 1993); *In re* Belsher, 689 P.2d 1078 (Wash. 1984); *In re* Martin, 510 N.W.2d 687 (Wis. 1994); *In re* Heckmann, 556 N.W.2d 746 (Wis. 1996); *In re* Saganski, 595 N.W.2d 631 (Wis. 1999)).

415. John S. Dzienkowski, *Character And Fitness Inquiries In Law School Admissions*, 45 S. TEX. L. REV. 921, 923 (2004)

> Two decades ago, few law schools conducted extensive inquiries into law school applicants' character and fitness. . . . [A]t the University of Texas in 1988, . . . [t]he only question that dealt with a law school applicant's character and fitness involved the

serious character issues from entering law school without warning.[416]

Many of these questions have not educated students or deterred unsuitable candidates from matriculation. Law schools vary widely in treatment of application misrepresentations. Some schools, after welcoming new students, ask students to amend applications and include omissions.[417] Other law schools say nothing, yet suspend or expel students who filed a misleading application.[418]

Some students make misrepresentations because they mistakenly believe that an affirmative response could prevent law school admission.[419] One law school focus group reflected the commonly held belief that "classmates felt compelled to lie to get admitted, given the highly competitive market – operating on a misperception that there was an automatic bar to law school admission for persons with criminal histories."[420] It is unclear if law school applicants recognize the necessity for candid answers so law schools can advise them about future bar problems. If applicants misrepresent to gain admission and misunderstand the questions' role, law schools must better explain the reason for disclosure, what questions are disqualifying, and the penalties for non-disclosure from the school and bar.[421]

The best practice would be if law schools educated students on the bar's character requirements during the law school application process. Furthermore, administrators and professors should provide guidance during orientation and enrollment to discuss bar admission character issues. Such efforts could prevent some individuals from training for a

> question about academic dishonesty. . . . Today, a majority of schools asks questions about applicants' past acts relating to character and fitness.

Id.

416. *Id.* at 924.

417. McCulley, *supra* note 33, at 856 n.155 ("The following schools discuss bar requirements of good moral character and fitness during orientation to law school: University of Alabama School of Law, Seton Hall University School of Law, Saint Louis University School of Law, and Washburn School of Law.").

418. Fortney, *supra* note 413, at 986.

419. Linda McGuire, *Lawyering or Lying? When Law School Applicants Hide Their Criminal Histories and Other Misconduct*, 45 S. TEX L. REV. 709, 728-32 (2004).

420. *Id.* at 719.

421. *Id.* at 735

> Even well-intentioned applicants become confused by the current wording of application questions, which should be crafted with care to avoid technical or ambiguous terms that non-legally trained people cannot understand. Additionally, the questions might be accompanied by text calling special attention both to the reasons for asking the question and the consequences of answering falsely.

Id.

profession from which they may be excluded.[422] Further, students who will have problems gaining admission could move forward with knowledge of those potential problems and could try to establish rehabilitation.

Law school application questions that imprecisely elicit past criminal history should be revised "if for no other reason than to minimize an excuse given by students for not disclosing their pasts."[423] Improving question quality and teaching the importance of these questions is a tactic supported by a student focus group which concluded that "restructuring the application was necessary to highlight the question's significance."[424] These students suggested presenting questions in a more obvious font and providing a note of explanation.[425] The University of Houston Law Center is a model for advising applicants in an educational and progressive manner about these issues.[426]

Schools should only ask clear and unambiguous questions so applicants are not "expected to interpret vague or incomplete questions about their character and fitness."[427] This issue is not simply academic. Failure to disclose a criminal history can result in denial.[428] Courts recognize the necessity of educating potential law students on "the types of conduct that will probably preclude them from practicing law before

422. McCulley, *supra* note 33, at 865-67

> Upon entering law school, students are typically unaware of the stringent character and fitness requirements required by state bars. From the outset of law school, schools should provide adequate notice of fitness requirements. . . . Law schools should encourage professors, as well as other members of the legal community, to participate as mentors for law students.

Id.

423. McGuire, *supra* note 419, at 737.

424. *Id.*

425. *Id*.; *see also id*. at n.68

> [W]hile this application may look similar to many you have completed before, it is different. It is different because you are applying to law school, and because you will upon the completion of your training be qualified to seek admission to a profession that maintains high standards for the conduct of its members. Your obligation to be truthful, complete, and responsible begins here. We urge you to take that responsibility seriously. Please read the questions carefully, and provide full and honest answers to them. If you are not certain whether you should include something, err on the side of full disclosure. If you have some doubt about how to interpret a question on this form, please feel free to contact our Admissions Director to discuss the matter.

Id.

426. *See* University of Houston Law Center, Admissions, http://www.law.uh.edu/admissions/ (last visited January 7, 2006).

427. Dzienkowski, *supra* note 415, at 933.

428. 7 AM. JUR. 2D *Attorneys at Law* § 26 (2nd ed. 2006) (citing *In re* Piro, 613 N.E.2d 201 (Ohio 1993)).

they undertake the challenge of law school and, in many cases, incur substantial debt to acquire a legal education."[429] No graduate should be surprised by a delayed or denied bar admission due to her law school's failure to educate her properly about character issues.

2. Plagiarism or Other Cheating

Plagiarism may result in denial.[430] Denial can occur even where plagiarism arguably did not occur.[431] Denial has resulted from lack of repentance for plagiarism, even where the misconduct was arguably only a poorly written research paper.[432] Not all plagiarism requires denial, particularly where the misconduct was not a pattern and where the applicant sufficiently demonstrated remorse.[433] Cheating during law school can also establish deficient character; for example, an applicant has been rejected for using notes during a closed book exam.[434] College cheating may have similar consequences.

3. Harassment During School

Harassment of fellow students or college administration can result in denial. Accordingly, one should not get into a drunken argument with a roommate and use racial slurs.[435] Even if bar admission is eventually granted, such an instance can delay that admission. Similarly, sexual harassment of fellow students is an exceedingly bad idea.[436] An applicant should likewise avoid being insufferable or risk denial.[437]

429. *In re* Hinson-Lyles, 864 So.2d 108, 116 (La. 2003) (Kimball, J., dissenting).

430. *In re* K.S.L., 495 S.E.2d 276, 278 (Ga. 1998); *see also* Blum, *supra* note 252, § 14(b) (citing Doe v. Conn. Bar Examining Comm., 818 A.2d 14 (Conn. 2003); *In re* Valencia, 757 N.E.2d 325 (Ohio 2001)).

431. *K.S.L.*, 495 S.E.2d at 277.

432. *Id.*

433. Stone, *supra* note 240, at 360 (citing *In re* Zbiegien 433 N.W.2d 871 (Minn. 1988)).

434. Blum, *supra* note 252, at sec. 14(b) (Friedman v. Conn. Bar Examining Comm., 824 A.2d 866 (Conn. Ct. App. 2003) (approving rejection of applicant observed during law school "with paper filled with writing 'from margin to margin' both prior to and during closed book examination, in violation of student conduct code.").

435. *In re* Vanderperren, 661 N.W.2d 27, 37 (Wis. 2003).

436. McCulley, *supra note* 33, at 849 n.102 (citing Kenyon v. Hastings Coll. of Law, 1997 WL 732525, at *1 (N.D.Cal. Nov. 19,1997)).

437. *In re* Converse, 602 N.W.2d 500, 508-09 (Wis. 1999); *see also* Barth v. Kaye, 178 F.R.D. 371, 374-76 (N.D. N.Y. 1998) (discussing how rejected applicant repetitively and improperly sought seven billion dollars in damages against his law school, the ABA and several judges).

F. Failure to Cooperate and Lack of Candor

The importance of honesty and candor in a bar application cannot be overstated. Lack of candor will result in difficulty,[438] if not denial.[439] The accuracy of an application can determine the applicant's success or failure. An applicant must be candid,[440] humble, and without excuses or conspiracy theories[441] to the bar. Similarly, candor is required for testimony to the bar.[442]

Each answer to a bar application question should be precise.[443] No answer should be even arguably false, misleading, or lacking in candor.[444] Any such answer should be amended as soon as possible. Even an application filled out recklessly, without intent to deceive, can result in denial.[445] An applicant who has already submitted the application and finds herself facing extended review should hire an attorney to review the bar application, law school application, and all supporting documents[446] to discover errors and correct them as soon as practicable. Providing an honest explanation for errors or omissions is best. Not only should an applicant show respect and deference to the bar, she should be respectful to witnesses appearing before the bar.[447]

The bar seeks strict adherence to the disclosure requirements so it can fully examine the total applicant.[448] Yet, failure to disclose a very minor incident can be found *de minimis* and admission allowed.[449] Similarly, it may be acceptable if only innocuous incidents were omitted,[450] but such lenience should not be relied upon. The best practice is to disclose everything and not worry about potential immateriality.

While there is no litmus test for character, "no moral character qualification for bar membership is more important than truthfulness and

438. Blum, *supra* note 252, at §16(a) (citing *In re* Schaeffer, 541 P.2d 1400 (Or. 1975)).
439. *Id.* at §13(b), 16(a), 16(b).
440. *Id.* at § 5 (citing Shochet v. Ark. Bd. of Law Exam'rs, 979 S.W.2d 888 (Ark. 1998)).
441. Blum, *supra* note 241, at § 19 (citing *In re* Dickens, 832 N.E.2d 725 (Ohio 2005)).
442. Blum, *supra* note 252, at § 17.
443. *Id.* at §16(a) (citing Tex. State Bd. of Law Exam'rs v. Malloy, 793 S.W.2d 753 (Tex. Ct. App. 1990)).
444. *Id.* at § 5.
445. *Id.* (citing Appeal of Lane, 544 N.W.2d 367 (Neb. 1996)).
446. *See id.* at § 18.
447. *Id.* at § 19.
448. *Id.* (citing *In re* Cvammen, 806 N.E.2d 498, 502 (Ohio 2004)).
449. *Id.* at §16(a) (citing Hallinan v. Comm. of Bar Exam'rs of State Bar, 421 P.2d 76 (Cal. 1966)); *see also id.* (citing *In re* Gimbel, 533 P.2d 810 (Or. 1975)).
450. *Id.* (citing Lopez v. Fla. Bd. of Bar Exam'rs, 231 So.2d 819 (Fla. 1969)).

candor."[451] Due to the bar's vast amount of discretion, an applicant should fully disclose, take responsibility, and establish rehabilitation. The bar takes umbrage at ineffective excuses.[452] Dissembling is ill-advised,[453] arguing with the bar is far beyond the pale of acceptable conduct,[454] and lack of candor can sink an otherwise approvable application.[455]

All correspondence or communication from the bar must be answered politely and precisely.[456] Even a decorated veteran with a blemish-free record and impeccable references[457] can be rejected for failing to answer invasive questioning properly.[458] For example, if admission is the aim, do not argue with bar about whether "whenever the particular government in power becomes destructive of these ends, it is the right of the people to alter or to abolish it and thereupon to establish a new government."[459]

Failure to reveal criminal history on a law school application is a problem.[460] However, some courts have found that prompt correction

451. *Id.* at § 3 (citing *In re* J.H.K., 581 So.2d 37 (Fla. 1991); *In re* L.M.S., 647 So.2d 838 (Fla. 1994)).

452. *In re* Vanderperren, 661 N.W.2d 27, 30 (Wis. 2003).

453. Blum, *supra* note 241, § 19 (citing *In re* Greenberg, 614 P.2d 832, 834-35 (Ariz. 1980)).

454. *Id.* (citing *In re* Kapel, 717 N.E.2d 704, 704-05 (Ohio 1999)).

455. *Id.* (citing *In re* Carroll, 572 N.E.2d 657, 658 (Ohio 1991)).

456. Blum, *supra* note 252, §16(b) (citing *In re* N.W.R., 674 So.2d 729 (Fla. 1996)). Understandably, a bar committee would see an applicant's failure to diligently pursue admission as raising a concern of potential future misconduct. *See* Charles M. Kidd & Dennis K. McKinney, *Survey Of 1996 Developments In The Law Of Professional Responsibility*, 30 IND. L. REV. 1251, 1252 (1997) ("Far and away, the most common misconduct dealt with in disciplinary actions is a lawyer's failure to exercise reasonable diligence in pursuing matters with which clients entrust them.").

457. *In re* Anastaplo, 366 U.S. 82, 109 (Black, J., dissenting) ("The majority opinion even concedes that Anastaplo was correct in urging that the questions asked by the [Bar] Committee impinged upon the freedoms of speech and association guaranteed by the First and Fourteenth Amendments.").

458. *Id.* at 111. *But see* Keeley, *supra* note 24, at 854 (citing *In re* Stolar, 401 U.S. 23, 27-28 (1971) (noting that "[t]he Court held that Ohio's questions that required Stolar to first list the organizations of which he had been a member since the age of sixteen and since joining law school were too broad.")).

459. *Anastaplo*, 366 U.S. at 99. *But see* Konigsberg v. State Bar of Calif., 353 U.S. 252, 273 (1957).

> A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members of an Independent Bar.

Stolar, 401 U.S. at 27-28.

460. 7 AM. JUR. 2D *Attorneys at Law* § 26 (2nd ed. 2006) (citing *In re* Piro, 613 N.E.2d 201 (Ohio 1993)).

allows an applicant to satisfy the character requirement.[461] An applicant with a youthful conviction of bank robbery, omitted in the bar application, gained bar admission after proving full disclosure to law school, a lack of intent to conceal information from the bar, and rehabilitation.[462] Courts may listen sympathetically to the argument that an applicant misread a question if other evidence of candor is present.[463] Admitting to perjurious conduct only because the bar discovered it may not show candor and, where coupled with criminal conduct and perjury occurring immediately before law school, can result in denial.[464] Admitting to misconduct after the bar finds it only shows an end to dishonesty; it does not establish candor.

Many cases hold that "false, misleading, or evasive answers to bar application questions may be grounds for a finding of lack of requisite character and fitness."[465] For example, failure to give the bar information about bankruptcy can show deficient character.[466] Establishing a pattern of lack of candor by misrepresenting the amount of money discharged in bankruptcy, along with other misrepresentations, has also resulted in denial.[467] Misstatements about the suspension of license for failure to pay child support can be fatal to an application.[468] No applicant should ignore the bar's information requests or respond, as one applicant did: "I leave it up to you guys to accept or reject me."[469]

G. Other Issues Implicating Lack of Good Moral Character

Other factors can contribute to the bar's denial, such as cheating on the bar exam,[470] trying to hire someone to take the bar exam,[471] or taking the bar while ineligible for failure to receive a final grade and diploma.[472] Driving without automobile insurance disturbs the bar.[473]

461. *In re* Vanderperren, 661 N.W.2d 27, 29-30 (Wis. 2003).

462. *See* Blum, *supra* note 241, at § 17 (citing *In re* G.L.S., 439 A.2d 1107 (Md. Ct. App. 1982)).

463. *See id.* at § 13 (citing *In re* Strait, 577 A.2d 149 (N.J. 1990)).

464. Blum, *supra* note 10, at § 16 (citing *In re* Taylor, 647 P.2d 462 (Or. 1982).

465. Blum, *supra* note 252, at § 5 (citing Appeal of Lane, 544 N.W.2d 367 (Neb. 1996)).

466. Blum, *supra* note 10, at § 11(b) (citing *In re* Harris, 804 N.E.2d 429 (Ohio 2004); *In re* Mefford, 819 N.E.2d 684 (Ohio 2004)).

467. *Id.* (citing Appeal of Evinger, 629 P.2d 363 (Okla. 1981)).

468. *Id.* at § 9 (citing Appeal of Bernath, 962 P.2d 685 (Or. 1998)).

469. *Id.* at § 10(b) (quoting *In* re Bland, 755 N.E.2d 342 (Ohio 2001)).

470. Blum, *supra* note 252, § 14(b) (citing *In re* Wang, 640 N.E.2d 837, 837-38 (Ohio 1994)).

471. *Id.* at § 15 (citing *In re* Knight, 208 S.E.2d 820 (Ga. 1974)).

472. *Id.* at § 16(a) (citing *In re* L.M.S., 647 So.2d 838 (Fla. 1994)).

473. *In re* Parry, 647 N.E.2d 774, 775 (Ohio 1995).

Compulsive gambling may result in denial.[474] Even speaking publicly about betting on football games is dangerous.[475] Engaging in the unauthorized practice of law and disregarding limitations during the pendency of proceedings on an application for admission is unwise.[476] No applicant should use the judicial processes in a way inconsistent with the standards expected of a lawyer.[477] Improper activity as a law clerk can result in denial.[478]

Failure to comply with business regulations and demonstrating unethical business practices can result in denial, particularly where settlement of shady pending business litigation only comes during the bar application process.[479] Lying under oath about sexual orientation for a military discharge can result in denial.[480] Unethical activity as a student attorney in a clinic may provide grounds for denial.[481] Such activity can also provide grounds for "discipline after a law student becomes a lawyer."[482] Finally, preaching hate and white supremacy can result in denial.[483]

IV. DEALING WITH POTENTIAL BAR ADMISSION ISSUES ONCE IDENTIFIED

How should applicants deal with character admission problems? First, remember that the application process is not personal. An attorney has the responsibility to stand "as a shield . . . in defense of right and to ward off wrong."[484] Because of lawyers' obligations, the bar justifiably

474. Blum, *supra* note 252, at § 4 (citing Layon v. N. D. State Bar Bd., 458 N.W.2d 501, 502 (N.D. 1990)).

475. Fla. Bar v. Levin, 570 So.2d 917 (Fla. 1990).

476. 7 AM. JUR. 2D *Attorneys at Law* § 26 (2nd ed. 2006) (citing *In re* Monaco, 856 P.2d 311 (Or. 1993)).

477. *Id.* (citing *In re* Admission to Bar of Commonwealth, 392 N.E.2d 533 (Mass. 1979)); *see* also *In re* Converse, 602 N.W.2d 500 (Neb. 1999).

478. Stepanian, *supra* note 13, at 73-75 (citing *In re* Bowen, 447 P.2d 658 (Nev. 1968)); *see c.f. id.* (citing *In Re* Courtney, 319 P.2d 991 (Ariz. 1957)).

479. Blum, *supra* note 10, at § 14 (citing *In re* Appell, 359 A.2d 634 (N.H. 1976)).

480. See Blum, *supra* note 241, at § 4 (citing *In re* Adams, 540 S.E.2d 609 (Ga. 2001)).

481. Peter A. Joy and Robert R. Kuehn, *Conflict Of Interest And Competency Issues In Law Clinic Practice*, 9 CLINICAL L. REV. 493, 504 n.42 (2002).

482. *Id.*

483. Mathew Stevenson, Book Note, *Hate Vs. Hypocrisy: Matt Haleand The New Politics Of Bar Admissions*, 63 MONT. L. REV. 419, 420-21 (2002); *see also* Richard L. Sloane, Book Note, *Barbarian at the Gates: Revisiting the Case of Matthew F. Hale to Reaffirm that Character and Fitness Evaluations Appropriately Preclude Racists from the Practice of Law*, 15 GEO. J. LEGAL ETHICS 397 (2002).

484. Schware v. Bd. of Bar Exam. Of State of N.M., 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring) (internal quotations omitted).

wants to only admit members with the "qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility."[485]

When deciding if an applicant measures up, bar authorities must assess all the relevant facts before them. Justice Frankfurter described this process in *Schware*:

> No doubt satisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicant for admission, a judgment of which it may be said as it was of "many honest and sensible judgments" in a different context that it expresses "an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth."[486]

Decisions relying on "unnamed and tangled impressions . . . which may lie beneath consciousness"[487] run serious risks of error and inconsistency. These decisions may devastate an applicant's dreams, livelihood, and reputation. Also, any delay may show colleagues that a recent law graduate has character problems.

To foster standardization and predictable outcomes, the ABA has crafted model guidelines for bars to evaluate character.[488] Rehabilitation is an important concept. A criminal record can establish a presumption of denial, rebuttable if an applicant proves rehabilitation.[489] This rebuttable presumption sounds difficult to overcome, yet this approach, now adopted by most states, favors applicants with criminal records far more than "traditional *per se* disqualification."[490]

A. Obtain an Attorney Experienced with Bar Admission in the Targeted Jurisdiction

An applicant concerned about the character examination should retain an attorney experienced with bar admission in the targeted jurisdiction.[491] Only an attorney familiar with the application process

485. *Id.*
486. *Id.* at 248.
487. *Id.*
488. Stepanian, *supra* note 13.
489. Arnold, *supra* note 6, at 63.
490. *Id.* at 63-64.
491. Mark R. Privratsky, Book Note, *A Critical Review Culminating in Practical Bar Examination Application Techniques in Regards to the "Good Moral Character Requirement"—In re* Majorek, *244 Neb. 595, 508 N.W.2d 275 (1993)*, 74 NEB. L. REV. 324, 332-33 (1995).

can provide the advice needed. This Article, while intended to provide a comprehensive overview of issues related to good moral character, cannot substitute for or compare with specific advice from experienced counsel. In particular, the expense of hiring a former bar prosecutor needed to gain bar admission can easily be justified when comparing the earning power of bar members versus non-members.

Anyone who represents herself has a fool for a client and an idiot for a lawyer.[492] To the extent that lawyers should not represent themselves,[493] it is even more ill-advised for a bar applicant to represent herself. Self-representation demonstrates that an applicant is not intelligent enough to realize when counsel is necessary. Even though lawyers often cannot actively assist during bar hearings, impartial advice is invaluable for many applicants who may testify before bar examiners.

An applicant facing a bar investigatory hearing should consider *Scott v. State Bar Examining Committee* before attending without counsel.[494] *Scott* involved a man who had been unanimously recommended for admission, but was rejected after his testimony at that hearing.[495] Proper counsel will prepare an applicant to avoid these problems. Sage advice can save time and money, preventing further bar proceedings by mitigating prior misconduct.

B. Honesty is the Best Policy: Avoid Lame Excuses, Take Responsibility

Honesty to law school and bar is required.[496] Always avoid levity or sarcasm to the bar.[497] Applicants should accept responsibility, not deflect it.[498] Do not correct witnesses, fail to show remorse for victims, or blame counsel.[499] Fill out an application correctly. If mistakes are

492. Chris Tisch, *Defendants, Don't Try This in Court*, ST. PETERSBURG TIMES, April 17, 2005, *available at* http://www.sptimes.com/2005/04/17/Tampabay/Defendants__don_t_try.shtml

493. *Id.*

494. *Scott v. State Bar Examining Comm.* 601 A.2d 1021, 1023-24 (Conn. 1992).

495. *Id.* at 1022-1024.

496. Honesty does not guarantee admission. *See* Avi Brisman, Book Note, *Rethinking The Case Of Matthew F. Hale: Fear And Loathing On The Part Of The Illinois Bar Committee On Character And Fitness*, 35 CONN. L. REV. 1399, 1401-04 (2003).

497. *In re* Rippl, 639 N.W.2d 553, 560 (Wis. 2002) Applicant said she received "enough parking tickets . . . to 'wallpaper a room.'" *Id.* Applicant paid each ticket and "intended that comment as a 'sarcastic, off-the-cuff remark . . . meant for comic effect.'" *Id.* The court held that "[h]er comment may have been ill advised in the context of this proceeding, but we cannot agree [with the Board] that numerous paid parking tickets, without more, necessarily evince a 'continuing disregard for the law.'". *Id.*

498. Blum, *supra* note 241, §17 (citing *In re* Easton, 692 P.2d 592, 596 (Or. 1984)).

499. *In re* Bagne, 808 N.E.2d 372, 374 (2004).

found in a bar or law school application, clear them up immediately.[500] If the error was not yet uncovered, candor will still be appreciated.[501] The sooner the correction, the more likely admission can occur.

An applicant should not make excuses until taking full responsibility and should provide mitigation only after counsel reviews it. The bar has likely heard all potential excuses that might be offered by any defensive, unprepared applicant. Failing memory is ridiculous: it implies a lack of candor, a lack of appreciation for the seriousness of the error, and lack of fitness for memory problems! Arguing forgetfulness may bring this response:

> The fact that the applicant could forget encountering the criminal justice system for writing an insufficient-funds check even as long as 10 years earlier, when he was 22 years old, is, in and of itself, bothersome. Does the lapse of memory indicate that he did not consider the matter serious? Does it indicate that he represses unpleasant experiences and thus does not learn from them? Does the latter hypothesis explain why he has written other insufficient-funds checks? Whatever the explanation, the applicant's self-confessed forgetfulness about so serious a matter does not inspire confidence in his fitness to practice law.
>
> While we can understand that the applicant may well have been unaware that he had not been charged for, and thus had not paid for, the second pack of cigarettes, his explanation that he forgot to disclose the event because he was in a hurry when completing his application for admission to the bar is neither credible nor exculpatory. He either failed in his obligation to accurately complete the application or deliberately tried to conceal the charge against him. Neither is comforting.[502]

The cover-up is often worse than the crime.[503] Problems can be avoided if an applicant discloses everything that may remotely relate to each bar application question.[504] Failure to disclose may result in

500. Arnold, *supra* note 6, at 97 ("[B]ecause complete honesty is important, particularly for applicants with a record of prior unlawful conduct, applicants should be completely forthright when filling out a bar application.").

501. *In re* Maria C., 451 A.2d 655, 655 (Md. Ct. App. 1982) (noting the suggestion that "this young woman should be commended for her frankness because . . . this conviction would never have been discovered had she not disclosed it ").

502. *In re* Majorek, 508 N.W.2d 275, 281 (Neb. 1993).

503. *See* Blum, *supra* note 252, at § 12(b) (citing *In re* B.H.A., 626 So.2d 683 (Fla. 1993)).

504. Arnold, *supra* note 6, at 97.

rejection even for an applicant that would have otherwise been admitted after initial full disclosure.[505]

Even if an applicant has only recently resolved issues related to good moral character, candor shows rehabilitation. If necessary, an applicant should admit that she realized the need to change during a law school ethics class, from the bar's character process, or even from this Article. An applicant with potentially questionable character, particularly where candor is concerned, must demonstrate that she no longer hides misconduct, but will face the truth and any consequences. Rehabilitation will only be found when the applicant abandons excuses.[506]

C. Be Proactive Not Reactive

An applicant in a jurisdiction that permits early filing[507] should apply to the bar as soon as she gathers all the pertinent information. An applicant should start collecting information on every bar question as soon as she understands the questions involved.[508] The bar will require actual records of every fact at issue, and the applicant should obtain such records because memory is often unreliable. Collecting all necessary documents as soon as possible will help an applicant promptly provide a candid picture.

Because the bar requires criminal histories and traffic records, applicants should contact criminal and juvenile courts, as well as the departments of motor vehicles, from every jurisdiction that could possibly have such records.[509] Racking the brain, scanning court records, and requesting reports is better than forgetting even one ticket or arrest. A marginal candidate must be even more careful because establishing candor and rehabilitation is imperative. The bar's inquiry

505. *Id.*

506. *See* Blum, *supra* note 252, at § 21 (citing *In re* John Doe, 770 So.2d 670 (Fla. 2000)); *Id.* at § 12(b) (citing *In re* O.C.M., 850 So.2d 497 (Fla. 2003)).

507. Ratcliff, *supra* note 5, at 513 (noting that law students register in Alabama, California, Florida, Illinois, Iowa, Kentucky, Maryland, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, Texas, Virginia, and Wyoming, as either mandatory or permissibly "for the purpose of identifying issues that may present a problem at the time of licensing, or in order to speed the licensing process at the time of the bar examination.") (citing NATIONAL CONFERENCE OF BAR EXAMINERS, LAW STUDENT REGISTRATION A GUIDE FOR LAW STUDENTS § 1 (1996)); *see also In re* Gossage, 5 P.3d 186, 191 n.4 (Cal. 2000) (noting that bar applicants "may seek a moral character determination . . . when their law school career begins . . . .").

508. Arnold, *supra* note 6, at 97-98 ("It might prove to be a tremendous task to gather the information needed to completely reveal incidents of prior unlawful conduct, but diligent efforts here will not go unnoticed by character committees and courts.") (footnote omitted).

509. *Id.* at 98.

can be extensive.[510] It may inquire about grand jury investigations. It may also inquire about professional licenses and any related discipline.

An applicant needs a comprehensive set of past financial records and a credit report.[511] Credit monitoring during the bar application period could help an applicant because identity theft during the application process might delay an otherwise perfect candidate. The bar may seek child support records and information from delinquent accounts, including revolving credit account such as credit cards or student loans. Past bad checks, any bankruptcy proceedings, and any past judgments or tax liens entered against the applicant or her property might be needed. The bar may ask about tax returns. It might want records of past businesses owned by the applicant and any litigation or customer complaints relating to these businesses.

The bar might seek records of mental health illness and treatment, history of addiction, and records of past incompetence findings. It may want records of past marriages and dissolutions, including child support or custody issues. It could ask about military history, including discharge records. It could seek records of involvement in any prior civil cases, or even records of quasi-judicial administrative proceedings. It could ask whether any court has declared that an applicant failed to live up to any legal obligations. It could ask about past bar applications and proceedings in other jurisdictions. For an applicant previously admitted elsewhere, it could inquire about other jurisdictions' disciplinary actions against the applicant, as well as seek attorney and client references from previously admitted jurisdictions. All these records must be gathered.

The bar may seek a full educational history, including any prior disciplinary activity. It may seek places of past residence and past addresses. It may ask for past employment, including supervisor contact information, whether employment has ever been terminated for any reason, and it may want an explanation for lapses in employment. It might seek personal references. It will likely ask if the applicant has ever been a member of an organization that advocates the overthrow of the government by force, violence, or other unlawful means.

Given the numerous areas of inquiry and the amount of information that must be gathered, a keen applicant should secure an application from the targeted jurisdiction and start gathering information as soon as

510. Following examples taken from Florida Bar Application (2004).

511. Arnold, *supra* note 6, at 98 ("Credit reports not only reveal financial records, but they will often also include arrests, convictions, and other run-ins with the law that an applicant may need to disclose.").

possible. Such proactive efforts are wise as long as the information is verified before submission.

An applicant with a recognized problematic history who has turned her life around should continue the good work and yet go above and beyond what is expected. She should volunteer for the less fortunate. Acting in reaction to the bar,[512] while better than a failure to act, is not as impressive as voluntary action. Action without prompting demonstrates a genuine desire to change behavior. Certainly, anyone would act when facing threat of rejection.[513]

D. Plan to Seek Proof of Your Rehabilitation

An applicant with negative factors must not only turn herself around,[514] but must gain proof of this improvement. Thus, an applicant should ensure people observe her newly ethical behavior and positive attitude about changing her life. She should "discuss the prior unlawful conduct with an appropriate member of the bar in the jurisdiction where the applicant desires to practice."[515] Honesty with character references is important. Discussing character issues helps establish candor and prove rehabilitation.[516] Such a discussion allows an applicant to get a reference from one who understands the misconduct involved and is, therefore, a more valuable reference.[517]

Honestly with references is essential. Bringing up past misconduct with an employer is sensitive, but asking an attorney employer for help should be natural. Bar admission and the law's high ethical standards are reasonable matters of discussion with an attorney because lawyers are accustomed to dealing with other's problems. Some attorneys have histories themselves and may be sympathetic. Further, just as the bar appreciates candor, potential references will respect it too. Candor to references prepares one for candor to the bar.

V. CLOSING REMARKS

The trend is to streamline and standardize admission requirements, including the character examination.[518] Many modern character

512. Blum, *supra* note 252, at §12(a) (citing *In re* Silva, 665 N.W.2d 592, 598 (Neb. 2003)).

513. Blum, *supra* note 10, at §16 (citing *In re* Parry, 647 N.E.2d 774 (Ohio 1995)).

514. See *supra* Part.III.B.2.

515. Arnold, *supra* note 6, at 99.

516. *Id.*

517. Blum, *supra* note 170, § 4 (citing *In re* Gimbel, 533 P.2d 810 (Or. 1975)).

518. *See, e.g.*, Paul Hayden, *Putting Ethics To The (National Standardized) Test: Tracing The Origins Of The MPRE*, 71 FORDHAM L. REV. 1299, 1335 (2003).

requirements may eventually be challenged as exclusionary rules lacking minimum rationality.[519] Even if admission regulations are remnants of discriminatory practices that may soon fade away,[520] the requirement exists now. Thus, any pragmatic potential applicant with concerns should first contact an attorney familiar with admission to the targeted jurisdiction.

An applicant must be candid and complete when communicating with retained counsel and the bar. Failure to disclose compounds all problems. Lack of complete candor during the character examination is often a key justification for denial of bar admission. Before meeting with counsel, all necessary documents must be assembled, reviewed, and then provided to the attorney. Proactivity is key. Securing official copies of all government records an applicant may need can take a long time. Once a targeted jurisdiction or jurisdictions have been selected, an applicant should examine those bar applications to discover what documents are needed to fully answer all required questions. Securing these records before answering any questions is important because no applicant has a perfect memory. If an applicant omits something in any testimony or statement to the bar, or even in any other official disclosure such as a law school application or a student-attorney admission application, it becomes her burden to prove that she did so without ill-motive.

Acting early is also important because the longer an applicant waits to discover landmines in her application or background, the more difficult it becomes to disarm them. For example, if the bar must tell an applicant how she erred, the applicant may have shown the bar that she did not take the matter seriously enough. Conversely, if an applicant is already rectifying past misconduct, this will be looked upon favorably. After all, how competent is a future attorney that has missed errors on her own bar application or failed to address errors that should have been uncovered? Any applicant with potential red flags for the character examination would benefit from consulting an experienced bar

519. Simon, *supra* note 174, at 642-43.

520. Susan Poser, Symposium, *Multijurisdictional Practice For A Multijurisdictional Profession*, 81 NEB. L. REV. 1379, 1381 (2003) (noting in the unauthorized practice of law arena, "lawyers must acknowledge the fact that, as the MJP Commission put it, 'keeping antiquated laws on the books breeds public disrespect for the law,' and that this is 'especially so where the laws relate to the conduct of lawyers, for whom there is a professional imperative to uphold the law.'") (citing A.B.A. Center for Professional Responsibility, Client Representation in the 21st Century: Report of the Commission on Multijurisdictional Practice 12 (Aug. 12, 2002), http://www.abanet.org/cpr/mjp/final_mjp_rpt_121702.pdf) (discussing how discrimination may exist in the character process)). *See* Cunningham, *supra* note 28, at 1037.

admission attorney if simply so the lawyer can review all the documents and suggest ameliorative action, if necessary. In sum, the best applicant is one who avoids making mistakes needing correction. This means carefully answering all questions on any official documents that the bar will examine, including any law school applications. Consulting a lawyer for advice before answering any questions about which an applicant may have hesitation is far smarter than consulting a lawyer after an applicant has already provided conceivably deceptive answers to the bar, or in any document the bar may review.

Successful admission requires taking responsibility for past misdeeds, acting to fix errors, and establishing rehabilitation by following the law while going above and beyond what is expected. A person cannot take responsibility for misdeeds that she forgot to disclose. Simply following the law is insufficient to establish rehabilitation, but backsliding can be seen as a continuation of a pattern of bad character. Actual improvement in character must be proven to the bar. When trying to show a change of character, service to disadvantaged populations helps. Given the dramatic disadvantages for denial of a bar application, taking steps to demonstrate rehabilitation by volunteering or providing community service is strongly advisable to anyone with even a slightly questionable background. Making respected members of the bar aware of an applicant's past and her efforts to improve is essential.

An applicant bears the burden to establish present good moral character. The individual bar committee members, with their personal views and predilections, determine if an applicant has met this unusually ambiguous qualification.[521] This fact makes the application process less certain, but undoubtedly certain rules govern. A positive and contrite attitude during each bar appearance or communication is crucial. Disrespect to the bar or any witness can clearly demonstrate lack of character fitness. An experienced lawyer can not only help draft written communication to the bar but can help prepare an applicant for testimony and potential cross-examination. Candid applicants who have consulted a good lawyer and bring a positive attitude have the best prospects of overcoming any character issues and joining the bar. Once admission has been secured, an applicant can rest easily knowing that she has established what Justice Black described as the unusually ambiguous, vague qualification of good moral character.

521. *See supra* note 1 and accompanying text.