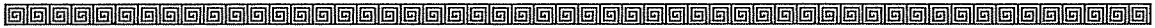


FLORIDA BOARD OF BAR EXAMINERS

CHARACTER AND FITNESS COMMISSION



FINAL REPORT
TO THE
SUPREME COURT OF FLORIDA

SUBMITTED MARCH 2, 2009

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Acknowledgements

The Florida Board of Bar Examiners Character and Fitness Commission would like to acknowledge and extend its appreciation to the Third District Court of Appeal, the law firm of Baker and Hostetler, LLP, the law firm of Holland and Knight, LLP, and The Florida Bar for their generous assistance in hosting the Florida Board of Bar Examiners Character and Fitness Commission meetings.

The Commission is especially indebted to the members and staff of the Florida Board of Bar Examiners who provided the support needed for completion of the Commission's work in an outstanding fashion. Michele Gavagni, Mark Huntsberger, and Thomas Pobjecky are entitled to particular commendation.

Chair's Remarks

It is my privilege to present the final report of the Florida Board of Bar Examiners Character and Fitness Commission. It has been an honor to chair this Commission and to work with the members of the Commission over the past eight months.

Executive Summary

By administrative order, Chief Justice R. Fred Lewis convened the Florida Board of Bar Examiners Character and Fitness Commission (Commission). The Commission's primary purpose is the submission of recommendations pertaining to the character and fitness standards used in Florida's bar admissions process. The full Commission met on four occasions. The Commission divided its work among three committees.

Committee I studied the background investigation for bar applicants conducted by the Florida Board of Bar Examiners (Board). This committee reviewed the bar application, the length of time for completing an investigation, and the involvement of law schools in the admissions process. Committee I recommended a set of goals for achieving a greater involvement by the law school community in the bar admissions process of law students including an increased emphasis on professionalism. The Commission adopted the recommendations of Committee I.

Committee II evaluated the Board's character and fitness standards. This committee initially approved the Board's current procedures for reviewing files that have potential character and fitness concerns. Committee II recommended the following changes to the current standards: convicted felons should be ineligible for admission and disbarment in Florida should be permanent. The committee supported the Board's pending rule amendment that would allow the Board to recommend permanent exclusion in cases involving egregious misconduct. The Commission adopted the recommendations of Committee II.

Committee III considered the program of conditional admission of bar applicants with drug, alcohol, or psychological problems. Committee III recommended the continuation of the program in its current format, including the issuance of confidential orders by the Court. As to the monitoring of conditionally-admitted attorneys, the committee recommended that compliance with the conditions of admission be strictly enforced by The Florida Bar and Florida Lawyers Assistance, Inc. If these agencies are unable to achieve the policy of strict enforcement, then the Court should transfer the monitoring function to the Board. The Commission adopted the recommendations of Committee III.

Summary of Recommendations

- 1) The Commission believes as a general rule, and in all stages of the admission and disciplinary process, increased emphasis should be given to protection of the public with the understanding that the practice of law is a privilege, not a right.
- 2) Inasmuch as the current application is thorough and comprehensive, the Commission recommends no changes at this time to the Florida Bar Application.
- 3) The Commission recommends that the Florida Board of Bar Examiners consider expanding its current review of online personal websites, including whether a question should be added to the Florida Bar Application to require that all such sites be listed and that access be granted to the Florida Board of Bar Examiners.
- 4) The Commission recommends that the Supreme Court of Florida's Commission on Professionalism create a committee to ensure that Florida law schools achieve the following goals:
 - a) Require attendance by all law students at orientation including the presentation of the Florida Board of Bar Examiners Law School Orientation PowerPoint Presentation.
 - b) Encourage early student bar application, registration, and processing.
 - c) Notify students who have potential character "flags" on their law school applications that it would be most appropriate for them to engage in early application, registration, and processing.

- d) Notify all students that acceptance by and graduation from law school does not necessarily require that a person will be entitled to the privilege of membership in The Florida Bar.
 - e) Impress upon all students that, if otherwise unqualified, merely undertaking the time, effort, and expense of law school will not assist them in the admissions process.
 - f) Engage law school faculty members who teach courses on professionalism to further emphasize the importance of full disclosure and cooperation in the bar admissions process.
 - g) Increase awareness of professionalism in the law school community.
- 5) The Commission does not recommend any changes to the Florida Board of Bar Examiners' current standards for flagging files with potential character and fitness issues.
- 6) The Commission supports the Florida Board of Bar Examiners' petition for changes to Rules 2-13.1 and 2-13.2 of the Rules of the Supreme Court Relating to Admissions to the Bar (Rules), which would require readmission to their home state by attorneys who have been suspended or disbarred in another jurisdiction.
- 7) The Commission recommends that Rule 2-13.3 of the Rules be changed to preclude persons who have been convicted of a felony from being eligible to apply for admission to The Florida Bar.

- 8) The Commission supports the Florida Board of Bar Examiners' petition for rules change, which would allow the Board to recommend to the Supreme Court of Florida permanent denial of admission to The Florida Bar in the most egregious of character and fitness cases.
- 9) The Commission recommends no changes to the standards set forth in Rule 3-12—Determination of Present Character and Rule 3-13— Elements of Rehabilitation of the Rules.
- 10) The Commission recommends that the following changes be considered by the Supreme Court of Florida regarding disbarment:
 - a) Disbarment, under the existing Bar discipline guidelines, should be permanent in the State of Florida.
 - b) The Florida Bar discipline guidelines should be revised to allow for suspension from the practice of law for up to five years.
 - c) The Rules should be amended to require attorneys who have been suspended from the practice of law in Florida for three years or more to reapply for admission to The Florida Bar.
- 11) The Commission recommends that the Board continue to be permitted to recommend to the Supreme Court of Florida the conditional admission of an applicant, provided that rehabilitation under Rule 3-13 has been fully established for otherwise disqualifying conduct.
- 12) The Commission recommends that no change be made to Rule 3-23.6 of the Rules, as it relates to providing the Board an option to recommend conditional

admission, including cases involving disbarred or resigned attorneys, when appropriate.

- 13) The Commission recommends no change to the Court's current practice of issuing confidential orders of conditional admission, except in cases involving disbarred and resigned attorneys.
- 14) The Commission recommends that The Florida Bar and Florida Lawyers Assistance, Inc. (FLA) implement changes to the monitoring system to adopt a zero-tolerance policy for noncompliance with any of the terms of the order of conditional admission. If The Florida Bar and FLA are unable to enforce this policy effectively, the Commission further recommends that the monitoring function be transferred to the Florida Board of Bar Examiners.
- 15) The Commission supports the work currently being undertaken by the Supreme Court of Florida's Commission on Professionalism with regard to focusing on professionalism in law schools and newly-admitted attorneys and recommends that the Bar, the Judiciary, the Florida Board of Bar Examiners, and the law schools work with the Commission on Professionalism in support of its goals.

Purpose of the Florida Board of Bar Examiners Character and Fitness Commission

Chief Justice R. Fred Lewis appointed the Florida Board of Bar Examiners Character and Fitness Commission (Commission) by Administrative Order No. AOSC08-21 dated June 17, 2008. The Florida Board of Bar Examiners is an administrative agency of the Supreme Court of Florida and is charged with making recommendations for admission to The Florida Bar to the Supreme Court of Florida. The essential functions of the Florida Board of Bar Examiners are to protect the public and to safeguard the judicial system of the State of Florida (Rule 1-14.1 of the Rules).

The Administrative Order created the Commission to review the current standards of character and fitness. The Administrative Order further charged the Commission to review and evaluate any data, information, and materials necessary for an informed decision, and to formulate and submit recommendations to the Florida Board of Bar Examiners and the Supreme Court of Florida.

The Commission met on August 8, 2008, October 7, 2008, November 20, 2008, and January 30, 2009. The Commission established three committees to consider specific issues and to make recommendations for the full Commission's consideration. These committees met between each of the full Commission's meetings to prepare their reports and recommendations.

Background Information on Florida Board of Bar Examiners Character and Fitness Process

In 1955, the Supreme Court of Florida created the Florida Board of Bar Examiners (Board), which was set up as an agency of the Supreme Court of Florida to administer the admissions process for applicants to The Florida Bar. Pursuant to Rule 1-13, the Board was created by the Supreme Court of Florida to implement the Rules relating to bar admission. To be recommended for admission to The Florida Bar, an applicant for admission must have successfully completed the Florida Bar Examination and must have demonstrated satisfactory character and fitness.

The underlying principle that has guided the work of the Commission, and which the Commission believes should be given increasing emphasis at all stages of the admission and discipline process, is set forth in Rule 1-14.1 of the Rules, which provides:

The primary purposes of the character and fitness investigation before admission to The Florida Bar are to protect the public and safeguard the judicial system.

In pursuit of that goal, the Board conducts a background investigation on each applicant for admission to The Florida Bar. The Board receives approximately 3,400 applications for bar admission each year. The background investigation is initiated by receipt of a completed Florida Bar Application, with the necessary supplemental forms and fees. The initial background investigation is based on the information reported on the Florida Bar Application and received from multiple outside sources. The majority of the Board's resources are utilized to conduct the thorough background investigation of each applicant.

The Board's background investigation takes approximately six to eight months.¹ The Board is to be commended for each step taken to decrease the amount of time necessary to complete the background investigation, provided that the quality of the background investigation remains constant.

The Florida Board of Bar Examiners maintains a student registration program that allows students to file a Registrant Bar Application in the first year of law school at a discounted application fee. Applicants may reduce the application fees by 46% by filing a timely student registration. The benefits of this student registration program are very significant. In addition to the substantial cost savings, students may be alerted to potential character and fitness issues early in their law school careers and make future decisions having that knowledge. Students with a background that includes disqualifying conduct under the Rules have additional time while still in law school to document evidence of rehabilitation. Student registrants who apply with the Board and receive a notice of initial registrant clearance from the Board have the opportunity to participate in the Certified Legal Internship program while in law school. This program also benefits the public by ensuring that certified legal interns meet the requisite character and fitness guidelines of attorneys practicing in the State of Florida.

¹ The background investigation is usually completed within six to eight months. Depending on the complexity of the individual investigation, it can be completed in a much shorter period of time or can extend well beyond that time-frame. For all investigations completed in the Board's 2007-08 fiscal year, the average amount of time to complete the investigation was 136 days, substantially less than the six- to eight-month average.

Review of Florida Bar Application and Background Investigative Process

Committee I of the Commission reviewed the Florida Bar Application and the Board's background investigative process. The committee looked at the scope of the Board's background investigation to make any recommendations for changes. The committee reviewed the current Florida Bar Application, and the depth and breadth of the background investigation completed on each applicant and student registrant. The committee also reviewed the Board's communications with law schools in Florida with regard to the background investigation and the necessity of full disclosure by applicants for admission to The Florida Bar in order to make any recommendations for changes.

The Board provided the following reference materials to this committee:

- Rules of the Supreme Court Relating to Admissions to the Bar
- Florida Board of Bar Examiners Summary of Published Opinions in Applicant Cases
- "The Florida Board of Bar Examiners: The Constitutional Safeguard Between Attorney Aspirants and the Public," Thomas A. Pobjecky, *Nova Law Review*, Winter 1994
- "Character and Fitness Process Before the Florida Board of Bar Examiners," Richard C. McFarlain, *The Florida Bar Journal*, January 1989
- Confidential Report "Predicting Disciplinary Problems Using Character and Fitness Issues of Florida Bar Applicants," Chad W. Buckendahl, Ph.D., Rebecca L. Norman, B.A., Brett P. Foley, M.S.
- ABA Standards for Approval of Law Schools

- Memo of General Investigative Steps completed by Senior Analysis Supervisor Melissa A. Benn of the Florida Board of Bar Examiners
- Florida Bar Application Items
- Florida law school Admission Applications
- "Introduction to the Bar Admissions Process" PowerPoint presentation by the Florida Board of Bar Examiners for first-year Florida law school students

Review of the Florida Bar Application

The committee reviewed the Florida Bar Application and concluded that the current application is thorough and comprehensive, and recommended no changes unless the Florida Board of Bar Examiners determines that a change is required as it relates to the investigation of personal websites such as "Facebook" and "MySpace."

Investigation of Personal Websites

The committee considered the expanded use of personal websites such as "Facebook" and "MySpace" and how items posted on personal websites may reflect an applicant's character and fitness. The Board does not currently request information on the Florida Bar Application regarding personal websites, although staff reports that these websites may be evaluated during the course of the background investigation as deemed necessary. The committee recommended that the Board consider expanding its current review of personal websites in order to determine whether information should be examined in all investigations; whether access to limited-access websites, such as "Facebook," should or should not be sought; and whether a question should be added to the Florida Bar Application to require that all such sites be listed and access granted to the Board. The committee

determined that any such decision regarding these matters should be made by the Board after thorough review and consideration.

Length of Application Processing Time

The committee requested additional information regarding perceived delays in the processing of individual background investigations. Although the average time for completing investigations in 2007-08 was 136 days, the committee reviewed an extensive report that is completed every six months on the progress on each outstanding application that is either older than six months or the applicant has passed all parts of the examination.² The report pointed out a limited number of instances where delay resulted from human error. The committee was satisfied that the Board has instituted new procedures and training to further reduce such instances, which will provide for increased supervision and an expedited process on the rare occasion when an application has been delayed through no fault of the applicant. The committee believes that, in the vast majority of instances, review of applications and completion of the background investigations are completed promptly, as demonstrated by the average processing time in 2007-08 of 136 days per file.

Law Schools' Role in the Bar Admissions Process

The committee reviewed the first-year PowerPoint presentation that is currently presented at each of the Florida law schools. A copy of the PowerPoint presentation

² Rule 4-62.3 of the Rules requires the Board to advise the status of the background investigation for all applicants who have passed all parts of the examination, but have not been recommended to the court for admission at the time of grade release. The file of each applicant whose file is more than six months old or who has passed all parts of the examination is individually reviewed to determine why the investigation is not complete.

has also been added to the Board's website in PDF format. The PowerPoint presentation is designed to introduce first-year law students to the bar admissions process. The presentation outlines the character and fitness issues the Board most frequently encounters—lack of candor, financial irresponsibility, criminal history, and untreated substance abuse or untreated mental health issues. Students are advised that these issues do not constitute an exhaustive list of disqualifying conduct and refers students to Rule 3-11 of the Rules for a more inclusive list. The presentation highlights published cases from the Supreme Court of Florida where disqualifying conduct resulted in denial of admission to The Florida Bar.

The first-year orientation program also makes law students aware of the benefits of filing a student registration in the first year of law school. Students are provided with a significant discount of the application fees by applying in the first year of law school as well as the ability to receive a preliminary determination of their character and fitness in the first two years of law school.

Members of the committee contacted law school deans and faculty members to discuss Florida law schools becoming more involved in character and fitness issues related to the Florida Bar Application and the investigative process of the Florida Board of Bar Examiners. Without exception, the committee members found enthusiasm in the law school community for an increased role. The committee commends the law schools for making professionalism part of their orientation program at each Florida law school.

The committee therefore recommends that the Supreme Court of Florida's Commission on Professionalism create a committee consisting of several members of the Commission on Professionalism, several members of the Board, and all or several deans of the Florida law schools to work out the details and implement the following goals:

- (a) Ensure that attendance is required at the Florida Board of Board Examiners' Law School Orientation PowerPoint Presentation.
- (b) Work together to encourage early student Bar application, registration, and processing.
- (c) Discuss the possibility of notifying students who have potential character "flags" on their law school applications that it would be most appropriate for them to engage in early application, registration, and processing, as they will gain no advantage in delaying the application process.
- (d) Formally notify all students that acceptance to and graduation from law school does not indicate that a person will be entitled to the privilege of membership in The Florida Bar.
- (e) Engage law school faculty members who teach courses on professionalism to further emphasize the importance of full disclosure and cooperation in the bar admissions process.
- (f) Impress upon all students that, if otherwise unqualified, merely undertaking the time, effort, and expense of law school will not assist them in the admissions process.
- (g) Otherwise promote the law schools' role in the shared goal of increasing professionalism.

The Commission reviewed and adopted each of the committee's recommendations related to the Florida Bar Application and the investigative process.

Consideration of Standards of Character and Fitness

Committee II of the Commission considered the Board's current character and fitness standards in order to make recommendations for changes deemed necessary. Committee II considered whether there are applicants being recommended for admission who should not be admitted, or applicants not being admitted who should be; whether there is any character and fitness issue that is so egregious that it should be an automatic bar to admission to The Florida Bar; whether the Board's current rule on rehabilitation should be revised; and whether the current standards for flagging files for potential character and fitness issues should be revised.

The Board provided the following reference materials to this committee:

- Rules of the Supreme Court Relating to Admissions to the Bar
- Florida Board of Bar Examiners Summary of Published Opinions in Applicant Cases
- "The Florida Board of Bar Examiners: The Constitutional Safeguard Between Attorney Aspirants and the Public," Thomas A. Pobjecky, *Nova Law Review*, Winter 1994
- "Character and Fitness Process Before the Florida Board of Bar Examiners," Richard C. McFarlain, *The Florida Bar Journal*, January 1989
- Confidential Report "Predicting Disciplinary Problems Using Character and Fitness Issues of Florida Bar Applicants," Chad W. Buckendahl, Ph.D., Rebecca L. Norman, B.A., Brett P. Foley, M.S.

- Excerpts from the Board's confidential policy manual regarding Character and Fitness Processing Guidelines
- "Beyond Rehabilitation: Permanent Exclusion from the Practice of Law," Thomas Arthur Pobjecky, The Bar Examiner, February 2007
- Memo to the Florida Board of Bar Examiners Character and Fitness Commission re: Minimum Employment Qualifications and Employment Disqualifiers, dated August 19, 2008, by Thomas Arthur Pobjecky, General Counsel of the Florida Board of Bar Examiners
- Florida Board of Bar Examiners Confidential Character and Fitness Guidelines regarding the items for which an applicant investigation is flagged for additional Board review

The committee initially considered whether the issues the Board flagged for additional review should be revised. This list identifies different responses, either revealed on the Florida Bar Application or from outside sources, which require Board review and clearance. Following this review, the committee recommended no changes to the current standards for flagging files with potential character and fitness issues that may be found disqualifying for admission to The Florida Bar.

Disqualifying Conduct that Should Preclude Application to The Florida Bar

The committee then considered whether there should be any conduct that is a complete bar to applying for admission to The Florida Bar. The Rules currently preclude persons in one of the following categories from applying for admission to The Florida Bar:

2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings. A person who has been disbarred from the practice of law, or who has resigned pending disciplinary proceedings, will not be eligible to apply for a period of 5 years from the date of disbarment, or 3 years from the date of resignation, or such longer period as is set for readmission by the jurisdictional authority.

2-13.2 Suspension for Disciplinary Reasons. A person who has been suspended for disciplinary reasons from the practice of law in a foreign jurisdiction is not eligible to apply until expiration of the period of suspension.

2-13.3 Convicted Felon. A person who has been convicted of a felony is not eligible to apply until the person's civil rights have been restored.

2-13.4 Serving Felony Probation. A person who is serving a sentence of felony probation, regardless of adjudication of guilt, is not eligible to apply until termination of the period of probation.

The committee supported the decisions of the Supreme Court of Florida, which require readmission to their home state by attorneys who have been disbarred in another jurisdiction. The committee supported the Board's pending rules petition which seeks to incorporate these rulings into Rule 2-13.1. The committee also supported the Board's pending rules petition which will extend this principle to suspended attorneys. The proposed amendment to Rule 2-13.2 will require reinstatement of suspended attorneys in their home states in order to be eligible for admission to The Florida Bar. The committee would encourage the Supreme Court of Florida to adopt the proposed changes to Rules 2-13.1 and 2-13.2.

The committee also reviewed the Board's current Rule 2-13.3 as it applies to convicted felons. Currently, if convicted of a felony, an applicant may apply for admission to The Florida Bar if his or her civil rights have been restored. The

committee, after reviewing the standards for admission to other licensed professions, found this threshold to be too low. It was compelling to the committee that someone with a felony conviction is precluded from seeking to be a state law enforcement officer, pursuant to section 943.13(4) of the Florida Statutes; however, that person could apply for admission to The Florida Bar and serve as an officer of the courts. The Florida Fish and Wildlife Conservation Commission and the Federal Bureau of Investigation also have an employment disqualification for a felony conviction. Section 1012.315 of the Florida Statutes disqualifies individuals from education-related positions of employment if convicted of a felony under one of over 45 listed statutes.

The committee was unable to reconcile these contrasting standards and thus recommends a change to the bar admission standards. The committee recommended that Rule 2-13.3 be changed to preclude persons who have been convicted of a felony from eligibility for admission to The Florida Bar. If adopted by the Supreme Court of Florida, a person convicted of a felony would not be eligible to apply for admission to The Florida Bar.

Rehabilitation Standards of the Florida Board of Bar Examiners

The committee also reviewed the Board's standards for determination of present character and elements of rehabilitation, as set forth in Rules 3-12 and 3-13 of the

Rules:

3-12 Determination of Present Character. The board must determine whether the applicant or registrant has provided satisfactory evidence of good moral character. The following factors, among others, will be considered in assigning weight and significance to prior conduct:

- (a) age at the time of the conduct;
- (b) recency of the conduct;
- (c) reliability of the information concerning the conduct;
- (d) seriousness of the conduct;
- (e) factors underlying the conduct;
- (f) cumulative effect of the conduct or information;
- (g) evidence of rehabilitation;
- (h) positive social contributions since the conduct;
- (i) candor in the admissions process; and,
- (j) materiality of any omissions or misrepresentations.

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

- (a) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (b) unimpeachable character and moral standing in the community;
- (c) good reputation for professional ability, where applicable;
- (d) lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- (e) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- (f) restitution of funds or property, where applicable; and,
- (g) positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate

for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar.

The committee also reviewed Rule 3-23.6 of the Rules:

3-23.6 Board Action Following Formal Hearing. Following the conclusion of a formal hearing, the board will promptly notify the applicant or registrant of its decision. The board may make any of the following recommendations:

- (a) The applicant or registrant has established his or her qualifications as to character and fitness.
- (b) The applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol, or psychological problems on the terms and conditions specified by the board.
- (c) The applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed 2 years. At the end of the specified period of time, the board will recommend the applicant's admission if the applicant has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law.
- (d) The applicant or registrant has not established his or her qualifications as to character and fitness. In cases of denial, a 2-year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In cases involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In cases involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years, but not more than 5 years.

The Board has petitioned the Supreme Court of Florida to change Rule 3-23.6(d) of the Rules to allow the Board the discretion to recommend an applicant's permanent denial of admission to The Florida Bar in the most egregious of cases. Under the Board's current rules, the Board may recommend a denial of admission, typically for

a two-year period, be extended to up to five years for egregious misconduct, including but not limited to lack of candor in the bar admission proceedings. Both the Supreme Court of Florida and the Ohio Supreme Court have ruled in bar admission matters that there is conduct for which no amount of rehabilitation would be sufficient to demonstrate the requisite character and fitness to be admitted to the practice of law.

The Ohio Supreme Court, *In re Application of Cvammen*,³ reasoned:

Evidence of false statement, including material omissions, and lack of candor in the admissions process reflect poorly on an applicant's character, fitness, and moral qualifications. Where, as here, these ethical infractions so permeate the admissions process that the applicant's honesty and integrity are shown to be intrinsically suspect, our disposition must be to permanently deny his application to register as a candidate for admission to the Ohio bar.

The Supreme Court of Florida, in the case of *Florida Board of Bar Examiners re: W.F.H.*,⁴ held:

Upon consideration of W.F.H.'s Petition for Review filed in the above cause, based on the totality of the circumstances, the findings of fact and conclusions of law, the recommendation of the Florida Board of Bar Examiners that W.F.H. not be admitted to the Florida Bar is approved. This Court concludes that the total circumstances and underlying facts of the instant case, which involve misconduct by a sworn law enforcement officer, are so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendation of the Florida Board of Bar Examiners must be approved. We further conclude that under the totality of the circumstances, the grievous misconduct mandates that W.F.H. not be admitted to the Bar now or at any time in the future. Accordingly, W.F.H.'s petition is hereby denied.

³ *In re Application of Cvammen*, 806 N.E.2d 498, 503 (Ohio 2004).

⁴ *Florida Board of Bar Examiners re: W.F.H.*, 933 So. 2d 482 (Fla. 2006), *cert. denied*, 549 U.S. 1020 (2006).

One justice (with two justices concurring) concurred in the result only and filed the following opinion:

I concur only with this result. However, I believe that the Board erred and we erred in not making this decision at the time of W.F.H.'s first petition, rather than allowing W.F.H. to reapply when reapplication was futile. I regret this for reasons of fundamental fairness.

In 2007, the Court again reached the same result.⁵ In the Helmich case, the Court held:

Upon consideration of Bruce L. Helmich's petition for review filed in the above cause, we approve the Florida Board of Bar Examiners' findings of fact, conclusions of law, and recommendation that Helmich not be admitted to The Florida Bar. We further conclude that under the totality of the circumstances, the seriousness of Helmich's prior disqualifying conduct mandates that he not be admitted to the Bar now or at any time in the future. See Fla. Bd. of Bar Exam'rs re W.F.H., SC04-185 (Fla. order filed April 20, 2006). Accordingly, Helmich's petition is hereby denied, and he may not reapply for admission to The Florida.

The committee supports the Board's petition for rules changes that would allow the Board to recommend to the Supreme Court of Florida permanent denial in the most egregious of character and fitness cases.

After review of the standards for determination of present character (Rule 3-12) and rehabilitation (Rule 3-13), the committee recommended no changes to the standards set forth in these rules. It was the committee's finding that the Board is tasked with an enormous responsibility to protect the public of Florida and that this task is not taken lightly by the Board. The committee commended the Board for the work that it does and encourages the Board to continue to apply the standards of character and fitness as set forth in the Rules.

⁵ *Florida Board of Bar Exam'rs re: Helmich*, No. SC07-255 (Fla. Order filed September 11, 2007).

One of the factors considered by the committee was the relationship between applicants who had identified character and fitness issues in their bar admissions process, and subsequent bar discipline. After reviewing the confidential report provided by Chad W. Buckendahl, et al. titled "Predicting Disciplinary Problems Using Character and Fitness Issues of Florida Bar Applicants," the committee considered the issue of disbarment. It was the committee's recommendation that the following changes be also considered by the Supreme Court of Florida:

1. Disbarment, under the existing bar discipline guidelines, should be permanent in the state of Florida.⁶
2. The Florida Bar discipline guidelines should be revised to allow for suspension from the practice of law for up to five years.
3. The Rules of the Supreme Court Relating to Admissions to the Bar should be changed to require attorneys who have been suspended from the practice of law in Florida or any other jurisdiction for three years or more to reapply for admission to The Florida Bar (as is currently required for disbarred attorneys).

Each of these recommendations related to character and fitness standards were adopted by the Commission.

⁶ As of 2005, five states had permanent disbarment: New Jersey, Ohio, Oregon, Kentucky, and Indiana. Several other states, including Florida, have permanent disbarment as an option. Inter-Office Communication from Scott J. Drexel, Chief Trial Counsel, to Members of the Bd. Comm. on Regulation, Admissions & Discipline Oversight (Nov. 7, 2005), available on the Cal. Bar website at http://calbar.ca.gov/calbar/pdfs/public-comment/2006/Perm-Disbar-RAD-Memo_C.pdf

Standards for Conditional Admission

Committee III of the Commission reviewed the issue of conditional admission to The Florida Bar. The committee considered the following issues: whether conditional admission should continue to be an option for bar admission; whether there should be more specific standards concerning conditional admission; whether the conditional admission program should remain confidential; and whether the current process of monitoring conditionally-admitted attorneys is sufficient.

The Board provided the following reference materials to this committee:

- Rules of the Supreme Court Relating to Admissions to the Bar
- Florida Board of Bar Examiners Summary of Published Opinions in Applicant Cases
- “The Florida Board of Bar Examiners: The Constitutional Safeguard Between Attorney Aspirants and the Public,” Thomas A. Pobjecky, *Nova Law Review*, Winter 1994
- “Character and Fitness Process Before the Florida Board of Bar Examiners,” Richard C. McFarlain, *The Florida Bar Journal*, January 1989
- Confidential Report “Predicting Disciplinary Problems Using Character and Fitness Issues of Florida Bar Applicants,” Chad W. Buckendahl, Ph.D., Rebecca L. Norman, B.A., Brett P. Foley, M.S.
- Confidential Discipline Cases After Conditional Admission for July 2005 through June 2008.

The first issue considered by the committee was whether conditional admission should continue to be an available option in the bar admissions process. Since its

inception in 1986, over 580 attorneys have been admitted conditionally to the practice of law in Florida.

The chart below outlines the number of applicants who were conditionally admitted from 1998 to 2008. The chart reflects the number conditionally admitted each year, the number involved in an incident⁷, the number disciplined⁸, the number with pending incidents (who were not previously disciplined), and the total number of incidents reported by The Florida Bar with regard to those conditionally admitted.

Year Admitted	Number Conditionally Admitted	Number Involved in an Incident	Number Disciplined	Number with Pending Incidents (not previously disciplined)	Number of Incidents Reported
1998	20	6	4	2	18
1999	24	6	6	0	29
2000	43	13	8	0	24
2001	34	9	4	1	17
2002	36	10	3	0	13
2003	35	10	7	0	22
2004	37	10	7	0	12
2005	22	7	2	0	16
2006	39	1	0	0	1
2007	26	0	0	0	0
2008	19	0	0	0	0
Total	335	72	41	3	152

The committee also reviewed confidential information regarding individuals who were conditionally admitted and twenty-one disciplined between July 1, 2005, and June 30, 2008. During the three-year period, twenty-one individuals received discipline from The Florida Bar ranging from an admonishment to permanent

⁷ An incident includes, but is not limited to, an inquiry, complaint, or self-reported misconduct made to The Florida Bar.

⁸ We have reported as discipline any action taken by The Florida Bar, except those that resulted in an inquiry, closed at the staff level, or were dismissed.

disbarment. Of the twenty-one individuals who received discipline, six individuals received discipline twice. Of the twenty-one individuals, seven received discipline during the conditional admission period as summarized in the following chart:

Year	Admonishment	Public Reprimand	Suspension	Felony Suspension	License Revoked	Disbarred	Permanently Disbarred
07/05 to 06/06					3	1	
07/06 to 06/07		1			2		
07/07 to 06/08							1 ⁹
Total		1			5	1	1

The chart below reflects the discipline received by the fourteen individuals disciplined after the completion of their conditional admission period:

Year	Admonishment	Public Reprimand	Suspension	Felony Suspension	License Revoked	Disbarred	Permanently Disbarred
07/05 to 06/06	1	1	2	1 ¹⁰		1	
07/06 to 06/07	2	2					
07/07 to 06/08	1	4 ¹¹	2 ¹²	1 ¹³			
Total	4	7	4	2		1	

After discussion, the committee recommended that conditional admission remain an option for the Board to recommend to the Supreme Court of Florida, provided that rehabilitation under Rule 3-13 has been established for otherwise disqualifying

⁹ This individual was permanently disbarred for continuing to practice law after revocation of his license in 2006-07.

¹⁰ This individual was subsequently suspended for eighteen months in 2006-07.

¹¹ One individual was reprimanded in 2005-06. One individual was admonished in 2006-07. One individual was reprimanded in 2006-07.

¹² This individual was admonished in 2006-07.

¹³ This individual was subsequently suspended for eighteen months in October 2008.

conduct. The committee recommended that applicants who have not otherwise demonstrated rehabilitation from prior disqualifying conduct should not be recommended for admission, on a conditional basis or otherwise.

Following consideration of this issue, the committee recommended no change to the current rules authorizing the conditional admission of bar applicants in appropriate cases. In reaching this recommendation, the committee acknowledged that the disposition of any particular hearing before the Board must be made on a case-by-case basis.

The committee also noted that over the years, the Board has adopted policy positions pertaining to conditional admission. For example, in recent years, the Board has approved and implemented policies that required documented sobriety before conditional admission and a minimum of five years of sobriety before conditionally-admitted attorneys should be allowed to practice unconditionally. The committee believes that the specifics of the program of conditional admission are best achieved through the Board's continuing use of its policymaking powers.

The second issue the committee considered was whether conditional admission should be available to disbarred and resigned attorneys seeking admission or readmission to The Florida Bar. The committee observes that should disbarment become permanent for Florida attorneys, this issue would be moot as to those individuals.

Conditional admission following a formal hearing is authorized by Rule 3-23.6:

3-23.6 Board Action Following Formal Hearing. Following the conclusion of a formal hearing, the board will promptly notify the applicant or registrant of its decision. The board may make any of the following recommendations:

- (a) The applicant or registrant has established his or her qualifications as to character and fitness.
- (b) The applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol, or psychological problems on the terms and conditions specified by the board.
- (c) The applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed 2 years. At the end of the specified period of time, the board will recommend the applicant's admission if he or she has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law.
- (d) The applicant or registrant has not established his or her qualifications as to character and fitness. In cases of denial, a 2-year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In cases involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In cases involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years, but not more than 5 years.

As set forth above, Rule 3-23.6 does not bar any class of individuals from being eligible for conditional admission.

Following consideration of this issue, the committee recommended no changes to Rule 3-23.6. The committee concluded that the tool of conditional admission should continue to be available to the Board in all appropriate cases, including cases

involving disbarred or resigned attorneys. In reaching this conclusion, the committee recognized that conditional admission has been an effective program in protecting the public by monitoring newly admitted or readmitted attorneys who have had past difficulties in the areas of drugs, alcohol, or mental health.

The third issue the committee considered is whether orders of the Supreme Court of Florida granting conditional admission should remain confidential.

Currently, the Board is permitted to recommend to the Supreme Court of Florida the conditional admission of a bar applicant. If the Court approves the Board's recommendation, the Court issues a confidential order granting conditional admission. The only exception to this rule concerns disbarred and resigned attorneys. In those cases, Rule 3-23.7 provides: "All reports, pleadings, correspondence, and papers received by the court [in cases involving disbarred and resigned attorneys] are public information and exempt from the confidentiality provision of rule 1-60."

Following consideration of this issue, the committee by majority vote recommended no change to the Court's current practice of issuing confidential orders of conditional admission, except in cases involving disbarred and resigned attorneys. In reaching this recommendation, the committee noted that the Model Rule on Conditional Admission to Practice Law adopted by the House of Delegates for the American Bar Association in February 2008 contains a confidentiality provision. The Commentary to that provision in the ABA model rule states in part "confidentiality will promote early disclosure and treatment of impairments."

The committee then considered whether the current monitoring function of the conditional admission program should be changed.

Regarding this issue, the committee considered concerns expressed by the Board as to the level of monitoring of conditionally-admitted attorneys by FLA. These concerns arose out of the dual roles of FLA to support the recovering conditionally-admitted attorney and to enforce the provisions of the Court's order granting conditional admission. It was unclear whether the Board's concerns gave rise to a level of significant problems for conditionally-admitted attorneys. The committee did not believe an additional level of review should be established at this time.

The committee, however, did recommend that the standards of monitoring applicant compliance with an order of conditional admission should be increased. When a person is admitted to The Florida Bar on a conditional basis, it is paramount that compliance with the terms of admission be strictly monitored. To that end, the committee recommended that The Florida Bar and FLA adopt a zero-tolerance policy for noncompliance with any of the terms of the consent agreement concerning the conditions for admission. If The Florida Bar and FLA are unable to enforce this policy effectively, the committee further recommended that the monitoring function be transferred to the Board.

The Commission unanimously approved each of the recommendations of Committee III, with the exception of the continuance of the confidentiality of conditional admission status, which was instead recommended by majority vote.

Presentation from The Florida Bar's Commission on Professionalism

At the Florida Board of Bar Examiners Character and Fitness Commission meeting in October, 2008, John Berry, Legal Division Director of The Florida Bar, sought the support of the Character and Fitness Commission for the work of the Supreme Court of Florida's Commission on Professionalism. Mr. Berry reported that the Commission on Professionalism had reviewed the Carnegie Report entitled "Educating Lawyers," which references that the responsibility of law schools should be threefold: knowledge, skills, and character/values. The Commission on Professionalism is changing goals to focus on professionalism as a priority in law school. Mr. Berry asked that the Character and Fitness Commission support the Commission on Professionalism's goals: 1) to investigate curriculum opportunities to enhance professionalism in law school; 2) to locate faculty who are supportive of enhanced professionalism opportunities and involve them in Bar committees and research; 3) to look at practice management and how it is taught in law schools; and 4) to encourage schools to get students involved in pro bono work/clinics.

The goal of the Commission on Professionalism is to make character and fitness the priority of every aspect of becoming and remaining a lawyer in Florida. Mr. Berry asked for the Commission's support of the focus and work of the Commission on Professionalism, particularly as it relates to working with law schools to increase focus on the professionalism of law students.

The Commission considered Mr. Berry's presentation and reviewed the following materials provided by the Commission on Professionalism:

- PowerPoint Presentation
- "The Way Ahead" Executive Summary
- Five Votes of Commission on Professionalism from 2008 Spring Retreat
- Action Items of Commission on Professionalism from 2006 and 2007 Spring Retreats
- Grant Proposal
- Carnegie Report - Educating Lawyers Summary

After Mr. Berry's presentation and review of the materials provided for the Florida Board of Bar Examiners Character and Fitness Commission's review, the Commission agreed that the work of the Supreme Court of Florida's Commission on Professionalism is commendable. The Character and Fitness Commission supports the goals of the Commission on Professionalism in focusing on professionalism in law schools, and finds that any program that increases professionalism beginning with law school students is of benefit to the character and fitness aspect of the Florida Board of Bar Examiners and ultimately, a benefit to the public of Florida and Florida's judicial system.

Appendix

1. Administrative Order No. AOSC08-21
2. Rules of the Supreme Court Relating to Admissions to the Bar
3. Florida Board of Bar Examiners Summary of Published Opinions in Applicant Cases
4. "The Florida Board of Bar Examiners: The Constitutional Safeguard Between Attorney Aspirants and the Public," Thomas A. Pobjecky, *Nova Law Review*, Winter 1994
5. "Character and Fitness Process Before the Florida Board of Bar Examiners," Richard C. McFarlain, *The Florida Bar Journal*, January 1989
6. "Beyond Rehabilitation: Permanent Exclusion from the Practice of Law," Thomas Arthur Pobjecky, *The Bar Examiner*, February 2007
7. Memo to the Florida Board of Bar Examiners Character and Fitness Commission re: Minimum Employment Qualifications and Employment Disqualifiers dated August 19, 2008, by Thomas Arthur Pobjecky, General Counsel of the Florida Board of Bar Examiners
8. Report to Character and Fitness Commission Outlining the Work of the Supreme Court of Florida's Commission on Professionalism from John Berry, Legal Director of The Florida Bar

Appendix 1

Supreme Court of Florida

No. AOSC08-21

IN RE: FLORIDA BOARD OF BAR EXAMINERS
CHARACTER AND FITNESS COMMISSION

ADMINISTRATIVE ORDER

The Florida Board of Bar Examiners (FBBE) is charged with the responsibility of investigating, reviewing, and evaluating all issues of character and fitness for all persons seeking admission to The Florida Bar. This court has the responsibility to consider the recommendations from the FBBE with regard to character and fitness issues in making the final determination concerning admission of individuals to The Florida Bar. The standards for character and fitness of those seeking the privilege of admission to The Florida Bar with the corresponding privilege of providing legal representation within Florida are essential for the protection of the public and critical in supporting public trust and confidence in the judicial system. The quality of The Florida Bar is dependent upon a continuing analysis and evaluation with regard to the standards of character and fitness required as a condition for admission to The Florida Bar for each individual.

During the last two years The Florida Bar and the FBBE have been engaged in the collection of data, information and material with regard to any relationships

between character and fitness issues disclosed during the admission process and discipline or grievance experiences which have arisen with regard to those individuals who have presented issues of character and fitness concerns before admission. This process has included consideration of different forms of admission to The Florida Bar and any grievance or discipline experience related to those admissions.

There is a need to convene a Commission to review and evaluate the data, information and materials previously collected, to obtain any further data or information that may be necessary for informed decision, and to formulate and submit recommendations to the FBBE and this Court as to the standards of character and fitness which should be applied in the evaluation of applicants for admission to The Florida Bar. Any recommendations should include, but not be limited to, changes, amendments, modifications, eliminations or additions to any current standards, new standards, types of admissions, conditions for admissions, supervision of admissions, or any other matter that would enhance the quality of the character and fitness of individuals admitted to The Florida Bar or the process through which the quality of character and fitness are assessed and enhanced. The membership of this expert Commission is drawn from multiple disciplines which are representative of the broad spectrum of those involved in the legal process, and

FBBE membership.

The following individuals are appointed members of this Commission:

The Honorable Alan R. Schwartz, Chair
Third District Court of Appeal
2001 SW 117th Avenue
Miami, Florida 33175-1716

George LeMieux, Vice Chair
Gunster & Yoakley
215 S. Monroe Street
Tallahassee, Florida 32301

Francisco R. Angones
Angones, McClure and Garcia, P. A.
44 West Flagler Street, Floor 8
Miami, Florida 33130-6802

Randy Hanna
101 North Monroe Street, Suite 900
Tallahassee, Florida 32301

Yvonne Loggins-Coleman
8527 Sand Lakes Shore
Orlando, Florida 32836

The Honorable Paul Huck
United States Courthouse
400 North Miami Avenue, Room 13-2
Miami, Florida 33128-1812

The Honorable E. J. Salcines
Second District Court of Appeal
1700 N. Tampa Street, Suite 300
Tampa, Florida 33602

Benjamin H. Hill, III
101 East Kennedy Blvd., Suite 3700
Tampa, Florida 33601-2231

John G. White, III
Richman, Greer, P. A.
250 Australian Avenue South, Suite 1504
West Palm Beach, Florida 33401

Loretta Fabricant
100 SE 2nd Street, Suite 2311
Miami, Florida 33131

John Anthony Boggs
The Florida Bar
651 East Jefferson, Street
Tallahassee, Florida 32399-2300

The Honorable Kim A. Skievaski
Chief Judge, First Judicial Circuit
190 Governmental Center, 5th Floor
Pensacola, Florida 32502

The Honorable Cynthia L. Cox
Circuit Judge, Nineteenth Judicial Circuit
218 S. Second Street, Suite 312
Ft. Pierce, Florida 34950

Richard T. Fulton
Baker & Hostetler L. L. P.
Post Office Box 112
Orlando, Florida 32802

George E. Schulz, Jr.
Holland & Knight L. L. P.
50 North Laura Street
Jacksonville, Florida 32202

This Commission shall:

1. Meet in person or through technological communication as a full Commission or in sub-committee format at least monthly or more often as the Commission may determine to complete the work of the commission within the established time parameters.
2. Review and evaluate all data, information and materials previously collected by The Florida Bar and the FBBE with regard to issues of character, fitness, discipline and grievances as it may or should relate to admission to The Florida Bar. Obtain, collect, review and evaluate any additional data, information and materials the Commission deems necessary to make informed decision with regard to standards of character and fitness for admission to The Florida Bar.
3. Submit to the FBBE and this Court any recommendations with regard to standards of character and fitness which should be applicable in the determination of admission to The Florida Bar. The recommendations may be in any form including but not limited to changes, amendments, modifications, eliminations or additions to any current standards, new standards, types of admissions, conditions for admissions, supervision of admissions, or any other matter that would

enhance the quality of the membership for admission to The Florida Bar or the process through which the quality is assessed and enhanced.

4. Submit any recommendations to the FBBE and this Court on or before January 1, 2009.

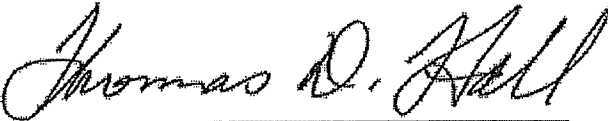
Staff support for this Commission shall be provided by the FBBE. Costs and expenses of this Commission shall be paid by the FBBE.

DONE AND ORDERED at Tallahassee, Florida, on June 17, 2008.

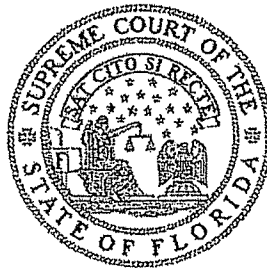


Chief Justice R. Fred Lewis

ATTEST:



Thomas D. Hall
Clerk, Supreme Court



Appendix 2

West's F.S.A. Admission to Bar, Rule 1

**WEST'S FLORIDA STATUTES ANNOTATED
RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR**

→ Rule 1. General

1-10 Authority and Mission.

1-11 Introduction. The admission of attorneys to the practice of the profession of law is a judicial function.

1-12 Rules. The Rules of the Supreme Court Relating to Admissions to the Bar are reviewed, approved, and promulgated by the Supreme Court of Florida. Modifications to the rules require the filing of a petition with the Supreme Court of Florida and subsequent order by the court.

1-13 Florida Board of Bar Examiners. The Florida Board of Bar Examiners is an administrative agency of the Supreme Court of Florida created by the court to implement the rules relating to bar admission.

1-14 Background Investigations.

1-14.1 Purpose. The primary purposes of the character and fitness investigation before admission to The Florida Bar are to protect the public and safeguard the judicial system.

1-14.2 Responsibility. The board must ensure that each applicant has met the requirements of the rules with regard to character and fitness, education, and technical competence prior to recommending an applicant for admission.

1-15 Bar Examination.

1-15.1 Purpose. The primary purpose of the bar examination is to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence.

1-15.2 Responsibility. The board is responsible for preparing, administering, and grading written examinations. Board members must be willing and available to discuss with applicants the purposes, policies, and procedures of the admissions process.

1-16 Admission Recommendations. Following each of its meetings, the board will recommend the admission of every applicant who has complied with all the requirements of the applicable rules, who has attained passing scores on the examination, and who has demonstrated the requisite character and fitness for admission.

1-20 Florida Board of Bar Examiners.

1-21 Membership. The Florida Board of Bar Examiners consists of 12 members of The Florida Bar and 3 public members who are not lawyers.

1-22 Attorney Members.

West's F.S.A. Admission to Bar, Rule 1

1-22.1 Qualifications. Attorney members must be practicing attorneys with scholarly attainments and an affirmative interest in legal education and the requirements for admission to the bar. Attorney members must have been members of The Florida Bar for at least 5 years.

1-22.2 Appointments. The Florida Bar Board of Governors must submit to the court not less than 90 days before the expiration of the term of any attorney member of the board, or within 90 days of a vacancy, a group of 3 recommended appointees.

1-22.3 Term of Service. Appointments will be for no more than 5 years and the term of all appointments will extend to October 31 of the last year of the term. Any vacancy occurring during a term must be filled by appointment. No attorney appointed by the court as a result of a vacancy occurring during a term will be appointed for more than 5 years.

1-23 Public Members.

1-23.1 Qualifications. Public members must not be lawyers and must have an academic bachelor's degree. It is desirable that public members possess educational or work-related experience of value to the board such as educational testing, accounting, statistical analysis, medicine, psychology, or related sciences.

1-23.2 Appointments. A joint committee composed of 3 members of the board and 3 members of The Florida Bar Board of Governors must submit to the court not less than 90 days before the expiration of the term of any public member of the board, or within 90 days of a vacancy, a group of 3 recommended appointees.

1-23.3 Term of Service. Appointments will be for no more than 3 years and the term of all appointments will extend to October 31 of the last year of the term. Any vacancy occurring during a term must be filled by appointment. No public member appointed by the court as a result of a vacancy occurring during a term will be appointed for more than 3 years.

1-24 Board Members Emeritus.

1-24.1 Eligibility. A former member of the board may accept the designation of board member emeritus, if eligible under rule 1-34.

1-24.2 Purpose. To assist the board in fulfilling its investigative and adjudicative functions, a board member emeritus is authorized to participate as a member of an investigative or formal hearing panel as provided by rules 3-22 and 3-23.2. The formal hearing panel must consist of a majority of current members of the board. At least 1 member of an investigative hearing panel must be a current member of the board. All recommendations of investigative hearing panels must be approved by a quorum of the current board.

1-25 Officers.

1-25.1 Vice Chair. During the board meeting preceding November 1 of each year, the board must designate a vice chair who will hold office for a period of 1 year beginning on November 1. The designation will be determined by majority vote. In the event of an irreconcilable tie vote, the matter will be certified to the Supreme Court of Florida, and the court will designate the vice chair for the next year.

1-25.2 Chair. On November 1 of each succeeding year, the previously elected vice chair will become chair for a period of 1 year.

West's F.S.A. Admission to Bar, Rule 1

1-26 Liaison Committee.

1-26.1 Purpose. A permanent committee to coordinate the work of the bench, bar, law schools, and bar examiners is established to make recommendations to the court.

1-26.2 Membership. The committee will consist of: 2 members of the Supreme Court of Florida, designated by the court; 2 members of the Florida Board of Bar Examiners, designated by the board; 2 members of The Florida Bar, designated by The Florida Bar Board of Governors; the deans of all accredited Florida law schools or colleges; and any law student representative(s) designated by the court.

1-26.3 Scheduling Meetings. The committee will convene at the pleasure of the committee members from the Supreme Court of Florida, 1 of whom will be designated by the court as the presiding officer.

1-27 Office Location. The office of the board will be maintained in Tallahassee, Florida.

1-30 Board Member Responsibilities.

1-31 Tenure. A board member should be appointed for a fixed term but should be eligible for reappointment if the board member's work is of high quality. Members of the board should be appointed for staggered terms to ensure continuity of policy but with sufficient rotation to bring new views to the board and to ensure continuing interest in its work.

1-32 Devotion to Duty. A board member should be willing and able to devote whatever time is necessary to perform the duties of a board member.

1-33 Essential Conduct. A board member should be conscientious, studious, thorough, and diligent in learning the methods, problems, and progress of legal education, in preparing bar examinations, and in seeking to improve the examination, its administration, and requirements for admission to the bar. Each board member should be just and impartial in recommending the admission of applicants and should exhibit courage, judgment, and moral stamina in refusing to recommend applicants who lack adequate general and professional preparation or who lack good moral character.

1-34 Board Influences, Conflicting Duties, and Obligations. Board members should not have adverse interests, conflicting duties, inconsistent obligations, or improper considerations that will in any way interfere or appear to interfere with the proper administration of their functions. A member of the board or a board member emeritus may not serve as a judge of any court; a regular or adjunct professor of law; an instructor, advisor or in any capacity related to a bar review course, or in other activities involved with preparation of applicants for bar admission; or as a member of the governing or other policy-making board or committee of a law school or the university of which it is a part. A board member is not prohibited from service on the board or as an officer of alumni groups that support law schools or universities or from assisting them with fund raising activities.

1-35 Compensation. Board members will serve without compensation, but will be reimbursed for reasonable travel and subsistence expenses incurred in the performance of their services for the board.

1-40 Board Meetings.

1-41 Conducting Board Meetings. The board will meet in formal session throughout the State of Florida on a regularly scheduled basis to consider administrative, applicant, and registrant matters and to conduct investigative and formal hearings. Subject to the approval of the board, the place and time of meetings will be determined by the

West's F.S.A. Admission to Bar, Rule 1

chair of the board.

1-42 Special Hearing Panels. Hearings may also be conducted by special hearing panels of the board convened at other times and places fixed by the board.

1-43 Telephone Conference Meetings. On reasonable notice, the chair of the board may conduct a meeting of the board by conference telephone call for routine administrative action or for emergency action.

1-50 Fiscal Authority.

1-51 Budget. The board will annually prepare a budget and submit it to the Supreme Court of Florida for approval.

1-51.1 Income. Subject to the approval of the court, the board may classify applicants and registrants, and fix the charges, fees, and expenses that will be paid by each.

1-51.2 Expenses. The board will make such disbursements as are required to pay the necessary expenses of the board.

1-52 Audit. The board will have an annual audit conducted by a certified public accountant. The annual audit must be filed with the Clerk of the Supreme Court of Florida.

1-53 Staffing. The board will employ an executive director and other assistants as it may deem necessary. It will provide for the compensation of employees and will pay expenses incurred in the performance of their official duties. All employees must be bonded as may be directed by the board.

1-60 Confidentiality.

1-61 Confidentiality. All information maintained by the board in the discharge of the responsibilities delegated to it by the Supreme Court of Florida is confidential, except as provided by these rules or otherwise authorized by the court.

1-62 Custodian of Records. All records including, but not limited to, registrant and applicant files, investigative reports, examination materials, and interoffice memoranda are the property of the Supreme Court of Florida, and the board will serve as custodian of all the records.

1-63 Release of Information. The board is authorized to disclose information relating to an individual registrant, applicant, or member of The Florida Bar, absent specific instructions from the court, in the following situations only.

1-63.1 Public Request. On request, the staff will confirm if a person has filed a Registrant Bar Application, Examination Application, or Bar Application with the board, and will provide the date of admission of any attorney admitted to The Florida Bar.

1-63.2 National Data Bank. The name, date of birth, Social Security number, and date of application will be provided for placement in a national data bank operated by, or on behalf of, the National Conference of Bar Examiners.

1-63.3 The Florida Bar. On written request from The Florida Bar for information relating to disciplinary proceedings, reinstatement proceedings, or unlicensed practice of law investigations, information will be provided with the exception of any information received by the board under the specific agreement of confidentiality or otherwise restricted by law.

West's F.S.A. Admission to Bar, Rule 1

1-63.4 National Conference of Bar Examiners or Foreign Bar Admitting Agency. On written request from the National Conference of Bar Examiners, or from foreign bar admitting agencies, foreign bar associations, or other similar agencies, when accompanied by an authorization and release executed by the person about whom information is sought, information will be provided with the exception of any information received by the board under a specific agreement of confidentiality or otherwise restricted by law.

1-63.5 Documents Filed by Registrant or Applicant. On written request from registrants or applicants for copies of documents previously filed by them, and copies of any documents or exhibits formally introduced into the record at an investigative or formal hearing before the board, and the transcript of hearings, copies will be provided. Costs of copies are set out below:

(a) The fee for a copy of any document or portion of a document is \$25 for the first page and 50 cents for each additional page.

(b) The fee for a copy of the Bar Application or Registrant Bar Application is \$35.

1-63.6 Documents Filed on Behalf of the Registrant or Applicant. On written request from registrants or applicants, copies of documents filed on their behalf, or at the request of the board with the written consent of the party submitting the documents, will be provided. If the documents would be independently available to the requesting registrant or applicant, then consent of the party submitting the documents will be deemed waived. The fees for requested copies are \$25 for the first page and 50 cents for each additional page.

1-63.7 Grand Jury or Florida State Attorney. On service of a subpoena issued by a Federal or Florida grand jury, or Florida state attorney, in connection with a felony investigation only, information will be provided with the exception of any information that is otherwise restricted by law.

1-63.8 Third Parties. The board may divulge the following information to all sources contacted during the background investigation:

(a) name of applicant or registrant;

(b) former names;

(c) date of birth;

(d) current address; and,

(e) Social Security number.

1-63.9 List of Candidates. Following the board's recommendation under rule 5-10 and the court's approval for an applicant's admission to The Florida Bar, the applicant's name and mailing address is public information.

1-64 Breach of Confidentiality. Whenever any person intentionally and without authority discloses confidential information maintained by the board, the person may be in contempt of the board. The board must report to the Supreme Court of Florida the fact that the person is in contempt of the board for proceedings against the person as the court may deem advisable.

1-65 Disclosure of Information. Unless otherwise ordered by the Supreme Court of Florida, the chair of the board,

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or the presiding officer at a hearing before the board, nothing in these rules prohibits any applicant or witness from disclosing the existence or nature of any proceeding under rule 3, or from disclosing any documents or correspondence served on, submitted by, or provided to the applicant or witness.

1-70 Immunity and Privilege.

1-71 Board and Employee Civil Immunity. The board and its members, employees, and agents are immune from all civil liability for damages for conduct and communications occurring in the performance and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

1-72 Immunity and Privilege for Information. Records, statements of opinion, and other information regarding an applicant for admission to The Florida Bar, communicated without malice to the board, its members, employees, or agents by any entity, including any person, firm, or institution, are privileged, and civil suits for damages predicated on those communications may not be instituted.

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West's F.S.A. Admission to Bar, Rule 2

WEST'S FLORIDA STATUTES ANNOTATED
RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR
→ **Rule 2. Application requirements**

2-10 Application Qualifications. To seek admission to The Florida Bar, a person must meet the qualifications, file the appropriate applications and fees as set out in this rule, and comply with rules 3 and 4.

2-12 Proof of Character and Fitness. All applicants seeking admission to The Florida Bar must produce satisfactory evidence of good moral character, an adequate knowledge of the standards and ideals of the profession, and proof that the applicant is otherwise fit to take the oath and to perform the obligations and responsibilities of an attorney. See rule 3, Background Investigation.

2-13 Prohibitions Against Application. A person is not eligible to apply for admission to The Florida Bar or for admission into the General Bar Examination unless the time period as indicated below has expired, or the required condition or status has been met.

2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings. A person who has been disbarred from the practice of law, or who has resigned pending disciplinary proceedings, will not be eligible to apply for a period of 5 years from the date of disbarment, or 3 years from the date of resignation, or such longer period as is set for readmission by the jurisdictional authority.

2-13.15 Public Hearing. Once eligibility has been established, and following completion of the background investigation, the applicant who has been disbarred, or who has resigned pending disciplinary proceedings, will be required to appear for a formal hearing that is open to the public as provided by rule 3-22.7.

2-13.2 Suspension for Disciplinary Reasons. A person who has been suspended for disciplinary reasons from the practice of law in a foreign jurisdiction is not eligible to apply until expiration of the period of suspension.

2-13.25 Satisfaction of Court-Ordered Restitution and Disciplinary Costs. A person who was disbarred, resigned with pending disciplinary proceedings, or was suspended from a foreign jurisdiction will not be eligible to apply except on proof of payment of any restitution and disciplinary costs imposed by a court in its order of disbarment, resignation, or suspension. Any request for relief from the terms of the order must be granted by the court that ordered the payment of restitution and disciplinary costs.

2-13.3 Convicted Felon. A person who has been convicted of a felony is not eligible to apply until the person's civil rights have been restored.

2-13.4 Serving Felony Probation. A person who is serving a sentence of felony probation, regardless of adjudication of guilt, is not eligible to apply until termination of the period of probation.

2-13.5 Found Unqualified by Board. Any applicant or registrant, who was previously denied admission by the board through Findings of Fact and Conclusions of Law that has not been reversed by the Supreme Court of Florida, may reapply for admission by filing a new Bar Application after 2 years or such other period as may be set in the Findings. The applicant or registrant will be eligible to take the General Bar Examination during the disqualification

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period.

2-14 Reapplications for Admission. Any applicant or registrant who was previously denied admission by the board through Findings of Fact and Conclusions of Law that has not been reversed by the Supreme Court of Florida may reapply for admission by filing a new Bar Application after 2 years or such other period as may be set in the Findings. The new application must be filed on the form available on the board's website with current references, a fingerprint card, the applicable fee, and a detailed written statement describing the scope and character of the applicant's evidence of rehabilitation as required by rule 3-13. The statement must be sworn and may include corroborating evidence such as letters and affidavits. Thereafter, the board will determine at an investigative hearing, a formal hearing, or both, if the applicant's evidence of rehabilitation is clear and convincing and will make a recommendation as required by rule 3-23.6. In determining whether an applicant should appear before an investigative hearing panel, a formal hearing panel, or both, the board is clothed with broad discretion.

2-20 Applications and Fees.

2-21 Applications. Every applicant for admission to The Florida Bar must file with the board a Bar Application on the form available on the board's website. Law student registrants who register with the board under rule 2-21.2 must file a Registrant Bar Application and a Supplement to Registrant Bar Application. The Bar Application or Registrant Bar Application must be completed interactively online using instructions on the board's website.

2-21.1 Admission to General Bar Examination. A person who, prior to the applicable filing deadline specified in rule 4-42 or the applicable late filing deadline specified in rule 4-43, has not filed with the board the Bar Application (or, in the case of a law student registrant, the Registrant Bar Application and the Supplement to Registrant Bar Application) and paid the appropriate filing fees will not be permitted to take the General Bar Examination.

2-21.2 Registration. Law students are encouraged to register with the board within the first year of law school. Every law student intending to apply for admission to The Florida Bar, following the commencement of the study of law in an accredited law school, may register with the board by filing a Registrant Bar Application on the form available on the board's website accompanied by the applicable filing fee, and any supplemental documents that reasonably may be required by the board. See rule 2-23.1 for a schedule of fees. A basic character and fitness investigation will be conducted in areas of possible concern on each registrant. The Registrant Bar Application must be converted into a Bar Application by the filing of a Supplement to Registrant Bar Application available online on the board's website. Each law student registrant is encouraged to file the Supplement to Registrant Bar Application at the beginning of the student's final year in law school to ensure timely completion of the board's character and fitness investigation.

2-22 Character and Fitness Investigation. On the filing of a Bar Application or a Registrant Bar Application, the board will initiate a character and fitness investigation under these rules. When a law student registrant files a Supplement to Registrant Bar Application, the board will update the character and fitness investigation conducted following such student's filing of the Registrant Bar Application.

2-23 Application Fees. All fees are set by order of the Supreme Court of Florida and are subject to change by published order of the court. The total application fee is due and payable to the Florida Board of Bar Examiners by the applicant when filing the Bar Application, the Registrant Bar Application, or the Supplement to Registrant Bar Application, and no application will be considered complete without the full fee. Any fee paid by an applicant or registrant will not be refunded.

2-23.1 Student Registrant Fee. Except as provided below, every law student filing a Registrant Bar Application with the board must file with the completed Registrant Bar Application the fee of \$500. For any law student who files a Registrant Bar Application by the deadlines established, discounted early registration fees are available as

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follows:

(a) \$75. For those students who commence the study of law in:

- (1) August or September and who file a Registrant Bar Application by the following January 15;
- (2) January or February and who file a Registrant Bar Application by the following June 15; or
- (3) May or June and who file a Registrant Bar Application by the following October 15.

(b) \$300. For those students who commence the study of law in:

- (1) August or September and who file a Registrant Bar Application by the following March 15;
- (2) January or February and who file a Registrant Bar Application by the following August 15; or
- (3) May or June and who file a Registrant Bar Application by the following December 15.

2-23.2 Student Applicant Fee. Applicants who did not file the Registrant Bar Application with the board as law students and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Bar Application the fee of \$875.

2-23.3 Supplement to Registrant Bar Application Fee. Applicants who filed the Registrant Bar Application with the board as law students and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Supplement to Registrant Bar Application the applicable fee as follows:

(a) *Less than 5 years.* If the Supplement to Registrant Bar Application is filed within 5 years of the filing date of the original Registrant Bar Application, the fee is \$375.

(b) *More than 5 years.* If the Supplement to Registrant Bar Application is filed more than 5 years after the filing of the original Registrant Bar Application, the fee is \$875 as set forth in rule 2-23.2, less any fee previously paid.

2-23.4 Attorney Fee. Applicants who have been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Bar Application a fee based on the number of years the applicant has been admitted in another jurisdiction as follows:

(a) *Less than 5 years.* If the applicant has been admitted in another jurisdiction for more than 1 year but less than 5 years, the fee is \$1300.

(b) *5 or more but less than 10 years.* If the applicant has been admitted in another jurisdiction for 5 years or more but less than 10 years, the fee is \$1600.

(c) *10 or more but less than 15 years.* If the applicant has been admitted in another jurisdiction for 10 years or more but less than 15 years, the fee is \$2000.

(d) *15 or more years.* If the applicant has been admitted in another jurisdiction for 15 or more years, the fee is \$2500.

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2-23.5 Fee Determination. The fee for an admitted attorney is determined by the date of the filing of the Bar Application and the status of the applicant on that date as it relates to his or her admission to the bar of any foreign jurisdiction or United States military service.

2-23.6 Disbarred Attorney Fee. Applicants applying for admission after disbarment or resignation pending disciplinary proceedings in Florida or in any other jurisdiction must file with the Bar Application the fee of \$5,000.

2-28 Application Fee for Reapplication for Admission Based on Rehabilitation. Applicants or registrants who are reapplying for admission and asserting rehabilitation from prior conduct that resulted in a denial of admission through Findings of Fact and Conclusions of Law or Consent Judgment must file with the application a fee of \$1800.

2-29 Stale File Fee. An applicant whose Bar Application has been on file for more than 3 years is required to file a new Bar Application on the form available on the board's website with current references, a fingerprint card, and the applicable fee.

(a) *If within 5 Years.* If filed within 5 years of the filing date of the last application filed, a fee of \$425 is applicable.

(b) *If more than 5 Years.* If filed more than 5 years after the filing date of the last application filed, the full application fee under rule 2-23.2, 2-23.4, or 2-23.6 above is applicable.

2-30 Petitions Relating to Administrative Rulings.

2-30.1 Filed with the Board. Any applicant or registrant who is dissatisfied with an administrative decision of the board that does not concern character and fitness matters may petition the board for reconsideration of the decision. Applicants also may petition the board for a suspension or waiver of any bar admission rule or regulation. A petition seeking a suspension or waiver of a rule or seeking review of an administrative decision not related to a character and fitness recommendation may be presented in the form of a letter, must be filed with the board within 60 days after receipt of written notice of the board's action complained of, and must be filed with a fee of \$50.

2-30.2 Filed with the Court. Any applicant or registrant who is dissatisfied with an administrative decision of the board that does not concern character and fitness matters may, within 60 days after receipt of written notice of that decision, file a petition with the Supreme Court of Florida for review of the action. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief.

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WEST'S FLORIDA STATUTES ANNOTATED
RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR
→ **Rule 3. Background investigation**

3-10 Standards of an Attorney. An attorney should have a record of conduct that justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to him or her.

3-10.1 Essential Eligibility Requirements. The board considers the following attributes to be essential for all applicants and registrants seeking admission to The Florida Bar:

- (a) knowledge of the fundamental principles of law and their application;
- (b) ability to reason logically and accurately analyze legal problems; and,
- (c) ability to and the likelihood that, in the practice of law, one will:
 - (1) comply with deadlines;
 - (2) communicate candidly and civilly with clients, attorneys, courts, and others;
 - (3) conduct financial dealings in a responsible, honest, and trustworthy manner;
 - (4) avoid acts that are illegal, dishonest, fraudulent, or deceitful; and,
 - (5) comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

3-11 Disqualifying Conduct. A record manifesting a lack of honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be cause for further inquiry before the board recommends whether the applicant or registrant possesses the character and fitness to practice law:

- (a) unlawful conduct;
- (b) academic misconduct;
- (c) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the board;
- (d) misconduct in employment;
- (e) acts involving dishonesty, fraud, deceit, or misrepresentation;

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- (f) abuse of legal process;
- (g) financial irresponsibility;
- (h) neglect of professional obligations;
- (i) violation of an order of a court;
- (j) evidence of mental or emotional instability;
- (k) evidence of drug or alcohol dependency;
- (l) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; or
- (n) any other conduct that reflects adversely on the character or fitness of the applicant.

3-12 Determination of Present Character. The board must determine whether the applicant or registrant has provided satisfactory evidence of good moral character. The following factors, among others, will be considered in assigning weight and significance to prior conduct:

- (a) age at the time of the conduct;
- (b) recency of the conduct;
- (c) reliability of the information concerning the conduct;
- (d) seriousness of the conduct;
- (e) factors underlying the conduct;
- (f) cumulative effect of the conduct or information;
- (g) evidence of rehabilitation;
- (h) positive social contributions since the conduct;
- (i) candor in the admissions process; and,
- (j) materiality of any omissions or misrepresentations.

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

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- (a) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (b) unimpeachable character and moral standing in the community;
- (c) good reputation for professional ability, where applicable;
- (d) lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- (e) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- (f) restitution of funds or property, where applicable; and,
- (g) positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar.

3-14 Bar Application and Supporting Documentation.

3-14.1 Filed as an Applicant. Applicants are required to file complete and sworn Bar Applications. The application will not be deemed complete until all of the following items have been received by the board:

- (a) an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the applicant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;
- (b) a Certificate of Dean certifying the applicant's graduation from a law school accredited by the American Bar Association;
- (c) an official transcript of academic credit certifying that the applicant has received the degree of bachelor of laws or doctor of jurisprudence, and an official transcript from each post-secondary institution attended subsequently, which must be sent directly from the institution;
- (d) an official transcript from the institution attended that awarded the applicant an undergraduate degree, if the degree was awarded, which must be sent directly from the awarding institution;
- (e) if the applicant has been admitted to the practice of law in 1 or more jurisdictions, evidence satisfactory to the board that the applicant is in good standing in each jurisdiction, and a copy of the application for admission filed in each jurisdiction;
- (f) an affidavit on a form available on the board's website attesting that the applicant has read Chapter 4, Rules of Professional Conduct, and Chapter 5, Rules Regulating Trust Accounts, of the Rules Regulating The Florida Bar;

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and,

(g) supporting documents and other information as may be required in the forms available on the board's website, and other documents as the board may, in addition, reasonably require.

3-14.2 Filed as a Registrant. A Registrant is required to file a complete and sworn Registrant Bar Application. The application will not be deemed complete until all of the following items have been received by the board:

(a) an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the registrant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;

(b) an official transcript from the institution attended that awarded the registrant an undergraduate degree, if the degree was awarded, which must be sent directly from the awarding institution; and,

(c) supporting documents and other information as may be required in the forms available on the board's website, and other documents as the board may, in addition, reasonably require.

3-14.3 Defective Applications. A Bar Application or Registrant Bar Application initially filed in a defective condition (e.g., without notarization, without supporting documents, or having blank or incomplete items on the application) may delay the initiation or the processing of the background investigation. A Bar Application or Registrant Bar Application filed in a defective condition will be accepted, but a fee of \$100 will be assessed.

3-14.4 Filing Timely Amendments. An application filed by an applicant or registrant is a continuing application and the applicant or registrant has an obligation to keep the responses to the questions current, complete, and correct by the filing of timely amendments to the application, on forms available on the board's website, until the date of an applicant's submission to the Oath of Attorney in Florida. An amendment to the application is considered timely when made within 30 days of any occurrence that would change or render incomplete any answer to any question on the application.

3-14.5 Timely Processing. In order to ensure timely processing of the background investigation, an applicant or registrant must be responsive to board requests for further information. The Bar Application or Registrant Bar Application must be vigorously pursued by the applicant or registrant.

3-14.6 Non-Compliance.

(a) An applicant's failure to respond to inquiry from the board within 90 days may result in termination of his or her Bar Application and require reapplication and payment of all fees as if the applicant were applying for the first time.

(b) A registrant's failure to respond to inquiry from the board within 90 days may result in cancellation of his or her application and require full payment of the student registrant fee.

3-15 Withdrawal of a Bar Application without Prejudice. An applicant or registrant may request withdrawal of a Bar Application without prejudice. The board will consider acceptance of the request, but may continue its investigative and adjudicative functions to conclusion.

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3-16 Withdrawal of a Bar Application with Prejudice. An applicant or registrant may request withdrawal of a Bar Application with prejudice. The board will accept the withdrawal and immediately dismiss its investigative and adjudicative functions. An applicant or registrant who files a withdrawal with prejudice will be permanently barred from filing a subsequent application.

3-17 Extraordinary Investigative Expenses.

3-17.1 Transcript or Records Cost. The cost of a transcript or any record or document reasonably required by the board in the conduct of investigative or adjudicative functions will be paid by the applicant or registrant.

3-17.2 Petition for Extraordinary Expenses. On a showing of actual or anticipated extraordinary expenditures by the board, the Supreme Court of Florida may order any applicant or registrant to pay to the board additional sums including attorney's fees or compensation necessary in the conduct of an inquiry and investigation into the character and fitness and general qualifications of the applicant or registrant including the procurement and presentation of evidence and testimony at a formal hearing.

3-20 Investigative Process.

3-21 Inquiry Process. The board will conduct an investigation to determine the character and fitness of each applicant or registrant. In each investigation and inquiry, the board may obtain information pertaining to the character and fitness of the applicant or registrant and may take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of documents.

3-21.1 Noncompliance with Subpoena Issued by the Board. Any person subpoenaed to appear and give testimony or to produce documents who refuses to appear to testify before the board, to answer any questions, or to produce documents, may be held in contempt of the board. The board will report the fact that a person under subpoena is in contempt of the board for proceedings that the Supreme Court of Florida may deem advisable.

3-22 Investigative Hearing. An applicant or registrant may be requested to appear for an investigative hearing. Investigative hearings will be informal but thorough, with the object of ascertaining the truth. Technical rules of evidence need not be observed. The admissibility of results of a polygraph examination will be determined in accordance with Florida law. An investigative hearing will be convened before a division of the board consisting of not fewer than 3 members of the board. Any member of the board may administer oaths and affirmations during the hearing.

3-22.1 Investigative Hearing Cost. Any applicant or registrant requested to appear for an investigative hearing must pay the administrative cost of \$80.

3-22.2 Response and Selection of a Preferred Hearing Date. An applicant or registrant who has been requested to appear for an investigative hearing must promptly respond to written notice from the board and give notice of preferred dates. Failure to respond within 60 days will result in termination of the application for non-compliance as provided in rule 3-14.6.

3-22.3 Investigative Hearing Postponement. Postponement of a previously scheduled investigative hearing is permitted on written request and for good cause when accompanied by the following fee:

- (a) \$50 if the request is received at least 15 days before the hearing; or
- (b) \$75 if the request is received less than 15 days before the hearing.

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3-22.4 Board Waiver of an Investigative Hearing. In cases where the facts are undisputed regarding an applicant's or registrant's prior conduct that adversely affects his or her character and fitness for admission to The Florida Bar, the board may forgo an investigative hearing and proceed directly with the execution of a Consent Agreement or the filing of Specifications as provided in rule 3-22.5.

3-22.5 Board Action Following an Investigative Hearing. After an investigative hearing, the board may make any of the following determinations:

- (a) The applicant or registrant has established his or her qualifications as to character and fitness.
- (b) The board will offer to the applicant or registrant a Consent Agreement pertaining to drug, alcohol, or psychological problems. In a Consent Agreement, the board is authorized to recommend to the court the admission of the applicant who has agreed to abide by specified terms and conditions on admission to The Florida Bar.
- (c) Further investigation into the applicant's or registrant's character and fitness is warranted.
- (d) The board will file Specifications charging the applicant or registrant with matters that, if proven, would preclude a favorable finding by the board.

3-22.6 Investigative Hearing Transcript Cost. The cost of a transcript reasonably required by the board in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-22.7 Public Hearing for Disbarred/Resigned Attorneys. All applicants who have been disbarred from the practice of law, or who have resigned pending disciplinary proceedings must appear before a quorum of the board for a formal hearing. The formal hearing will be open to the public, and the record produced at the hearing and the Findings of Fact and Conclusions of Law are public information and exempt from the confidentiality provision of rule 1-60.

3-23 Specifications. Specifications are formal charges filed in those cases where the board has cause to believe that the applicant or registrant is not qualified for admission to The Florida Bar. If the board votes to prepare and file Specifications, the Specifications are served on the applicant or registrant. The response to Specifications must be filed in the form of a sworn, notarized answer to the Specifications within 20 days from receipt of the Specifications.

3-23.1 Failure to File the Answer. If an applicant or registrant fails to file an answer to the Specifications within the 20-day deadline or within any extension of time allowed by the board, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar, or that the registrant has not established his or her qualifications as to character and fitness.

3-23.2 Formal Hearing. Any applicant or registrant who receives Specifications is entitled to a formal hearing before the board, representation by counsel at his or her own expense, disclosure by the Office of General Counsel of its witness and exhibit lists, cross-examination of witnesses, presentation of witnesses and exhibits on his or her own behalf, and access to the board's subpoena power. After receipt of the answer to Specifications, the board will provide notice of the dates and locations available for the scheduling of the formal hearing. Formal hearings are conducted before a panel of the board that will consist of not fewer than 5 members. The formal hearing panel will consist of members of the board other than those who participated in the investigative hearing. This provision may be waived with the consent of the applicant or registrant. The weight to be given all testimony and exhibits received in evidence at a formal hearing must be considered and determined by the board. The board is not bound by technical rules of evidence at a formal hearing. A judgment of guilt to either a felony or misdemeanor will constitute conclu-

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sive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged felony will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged misdemeanor will be admissible evidence of the criminal offense(s) charged. The admissibility of results of a polygraph examination will be in accordance with Florida law.

3-23.3 Formal Hearing Cost. Any applicant or registrant who receives Specifications that require the scheduling of a formal hearing must pay the administrative cost of \$300.

3-23.4 Selection of a Preferred Formal Hearing Date. The applicant or registrant and the board must agree on a date and location for the formal hearing. If the applicant or registrant fails to agree on 1 of the dates and locations proposed, the board will set the date and location of the hearing. If the applicant or registrant, without good cause, fails to attend the formal hearing, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar or that the registrant has not established his or her qualifications as to character and fitness.

3-23.5 Formal Hearing Postponement. Postponement of a previously scheduled formal hearing is permitted by written request and for good cause when accompanied by the following fee:

- (a) \$100 if request is received between 45 and 31 days before the hearing date;
- (b) \$200 if request is received between 30 and 15 days before the hearing date; or
- (c) \$300 if the request is received less than 15 days before the hearing date.

3-23.6 Board Action Following Formal Hearing. Following the conclusion of a formal hearing, the board will promptly notify the applicant or registrant of its decision. The board may make any of the following recommendations:

- (a) The applicant or registrant has established his or her qualifications as to character and fitness.
- (b) The applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol, or psychological problems on the terms and conditions specified by the board.
- (c) The applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed 2 years. At the end of the specified period of time, the board will recommend the applicant's admission if the applicant has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law.
- (d) The applicant or registrant has not established his or her qualifications as to character and fitness. In cases of denial, a 2-year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In cases involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In cases involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years, but not more than 5 years.

3-23.7 Findings of Fact and Conclusions of Law. In cases involving a recommendation other than under rule 3-23.6(a), the board will expeditiously issue its written Findings of Fact and Conclusions of Law. The Findings must

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be supported by competent, substantial evidence in the formal hearing record. The Findings, conclusions, and recommendation are subject to review by the Supreme Court of Florida as specified under rule 3-40. The Findings, conclusions, and recommendation are final, if not appealed, except in cases involving a favorable recommendation for applicants seeking readmission to the practice of law after having been disbarred or having resigned pending disciplinary proceedings. In those cases, the board will file a report containing its recommendation with the Supreme Court of Florida for final action by the court. Admission to The Florida Bar for those applicants will occur only by public order of the court. All reports, pleadings, correspondence, and papers received by the court in those cases are public information and exempt from the confidentiality provision of rule 1-60.

3-23.8 Formal Hearing Transcript Cost. The cost of a transcript reasonably required in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-23.9 Negotiated Consent Judgments. Counsel for the board and an applicant or registrant may waive a formal hearing and enter into a proposed consent judgment. The consent judgment must contain a proposed resolution of the case under 1 of the board action recommendations specified above. If the consent judgment is approved by the full board, then the case will be resolved in accordance with the consent judgment without further proceedings.

3-30 Petition for Board Reconsideration. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may, within 60 days from the date of the Findings of Fact and Conclusions of Law, file with the board a petition for reconsideration with a fee of \$125. The petition must contain new and material evidence that by due diligence could not have been produced at the formal hearing. Evidence of rehabilitation as provided by rule 3-13 is not permitted in a petition for reconsideration. Only 1 petition for reconsideration may be filed.

3-40 Petition for Court Review.

3-40.1 Dissatisfied with Board's Recommendation. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may petition the Supreme Court of Florida for review within 60 days from receipt of the Findings of Fact and Conclusions of Law or within 60 days of receipt of notice of the board's action on a petition filed under rule 3-30. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief. At the time of the filing of the answer brief, the executive director will transmit the record of the formal hearing to the court.

3-40.2 Dissatisfied with Length of Board's Investigation. Any applicant or registrant whose character and fitness investigation is not finished within 9 months from the date of submission of a completed Bar Application or Registrant Bar Application may petition the Supreme Court of Florida for an order directing the board to conclude its investigation. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The board will have 30 days after the service of the petition to serve a response. The applicant may serve a reply within 30 days after the service of the board's response.

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WEST'S FLORIDA STATUTES ANNOTATED
RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR
→ Rule 4. Bar examination

4-10 General Information.

4-11 Florida Bar Examination. The Florida Bar Examination will consist of a General Bar Examination and the Multistate Professional Responsibility Examination (MPRE).

4-12 Requirement to Submit. All individuals who seek the privilege of practicing law in the State of Florida must take the Florida Bar Examination.

4-13 Technical Competence. All applicants seeking admission to The Florida Bar must produce satisfactory evidence of technical competence by passing all parts of the Florida Bar Examination.

4-13.1 Educational Qualifications.

(a) *Eligibility.* An applicant may take the MPRE prior to graduation from law school; however, the requirements of rule 4-18.1 are applicable. To be eligible to take any portion of the General Bar Examination, an applicant must either:

(1) complete the requirements for graduation, or receive the degree of bachelor of laws or doctor of jurisprudence, from an accredited law school or within 12 months of accreditation; or,

(2) be found educationally qualified under the alternative method of educational qualification provided in rule 4-13.4.

(b) *Proscribed Substitutions.* Except as provided in rule 4-13.4, none of the following may be substituted for the required degree from an accredited law school:

(1) private study, correspondence school, or law office training;

(2) age or experience; or,

(3) waived or lowered standards of legal training for particular persons or groups.

4-13.2 Definition of Accredited. An "accredited" law school is any law school approved or provisionally approved by the American Bar Association at the time of the applicant's graduation or within 12 months of the applicant's graduation.

4-13.3 Definition of Degree Requirements. The term "complete the requirements for graduation" refers to the time when completion of the requirements for graduation is recorded in the office of the law school dean or administrator.

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4-13.4 Alternative Method of Educational Qualification.

(a) *Applicants Not Meeting Educational Qualifications.* An applicant who does not meet the educational qualifications in rule 4-13.1, must meet the following requirements:

(1) evidence as the board may require that the applicant was engaged in the practice of law for at least 10 years in the District of Columbia, in other states of the United States of America, or in federal courts of the United States or its territories, possessions, or protectorates, and was in good standing at the bar of the jurisdictions in which the applicant practiced; and

(2) a representative compilation of the work product in the field of law showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, including pleadings, briefs, legal memoranda, contracts, or other working papers that the applicant considers illustrative of his or her expertise and academic and legal training. The representative compilation of the work product must be confined to the applicant's most recent 10 years of practice and must be complete and include all supplemental documents requested.

(b) *Deadline for Filing Work Product.* To be considered timely filed, the work product must be complete with all required supplemental documentation and filed by the filing deadline of the General Bar Examination as required by rule 4-2. Work product initially filed incomplete and perfected after the deadline will not be considered timely filed. Late or incomplete work product will be given consideration for admission into the next administration of the bar examination for which the deadline has not passed.

(c) *Acceptance of Work Product.* If a thorough review of the representative compilation of the work product and other materials submitted by the applicant shows that the applicant is a lawyer of high ability whose reputation for professional competence is above reproach, the board may admit the applicant to the General Bar Examination and accept score reports from the National Conference of Bar Examiners or its designee.

(d) *Board Discretion.* In evaluating academic and legal scholarship under subdivision (a), the board is clothed with broad discretion.

4-14 Dates of Administration. The General Bar Examination will be administered on the last Tuesday and Wednesday of February and July of each calendar year. The Multistate Professional Responsibility Examination is administered in March, August, and November of each year.

4-15 Location of Administration. The General Bar Examination will be held in locations in the State of Florida as the board may from time to time direct. The Multistate Professional Responsibility Examination (MPRE) is administered 3 times each year throughout the country at various locations selected by the National Conference of Bar Examiners or its designee.

4-16 Publication of Examination Topics and Study Materials. The board will publish the topics included on the bar examination and also make suggestions for the information and guidance of students to promote their studies.

4-16.1 Part A Examination Study Guide. The board will provide a bar examination study guide that includes essay questions from 2 previously administered General Bar Examinations, sample answers to the essay questions, and sample multiple-choice questions from Part A of the General Bar Examination. The study guide is available on the board's website.

4-16.2 Copies of Essay Answers. The board will provide, on request from an applicant, a copy of his or her answers to essay questions from a single General Bar Examination for the period of time from the release of the ex-

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amination results until the administration of the next examination. The answers will not reflect any grading marks and will be forwarded on written request accompanied by a fee of \$50.

4-17 Test Accommodations.

4-17.1 Accommodations. In accordance with the Americans with Disabilities Act, test accommodations are provided by the board at no additional cost to applicants.

4-17.2 Requests for Test Accommodations. Applicants seeking test accommodations because of disability must file a written petition for accommodations accompanied by supporting documentation or additional information as reasonably may be required on the forms available on the board's website. Receipt of requests for test accommodations and supporting documentation are subject to the deadline and late filing fees applicable to all examinees as set forth in rules 4-42.3 and 4-42.4.

4-18 Time Limitation on Passing Examination.

4-18.1 Twenty-Five Months. An applicant must successfully complete the General Bar Examination and the Multistate Professional Responsibility Examination (MPRE) within 25 months of the date of the administration of any part of the examination that is passed. If an applicant fails to pass all parts within 25 months of first passing any part, passing score(s) of individual parts older than 25 months are deleted.

4-18.2 Five Years. An applicant's passing scores on the Florida Bar Examination will be valid for a period of 5 years from the date of the administration of the last part of the Florida Bar Examination that he or she passed. If the 5-year period expires without admission, an applicant, except for good cause shown, will be required to retake the Florida Bar Examination and again pass all parts of the examination.

4-20 General Bar Examination. A portion of the General Bar Examination will consist of questions in the form of hypothetical fact problems requiring essay answers. Essay questions may not be labeled as to subject matter. Questions may be designed to require answers based on Florida case or statutory law of substantial importance. The General Bar Examination will consist of 2 parts (A and B). Part A will be a combination of essay and multiple-choice questions and Part B will be the Multistate Bar Examination (MBE).

4-21 Purpose. The General Bar Examination will test the applicant's ability to reason logically, to analyze accurately the problem presented, and to demonstrate a thorough knowledge of the fundamental principles of law and their application.

4-22 Part A. Part A will consist of 6 one-hour segments. One segment will include the subject of Florida Rules of Civil and Criminal Procedure and the Florida Rules of Judicial Administration 2.051, 2.060, and 2.160. The remaining 5 segments, each of which will include no more than 2 subjects, will be selected from the following subjects including their equitable aspects:

- (a) Florida constitutional law;
- (b) federal constitutional law;
- (c) business entities including corporations and partnerships;
- (d) wills and administration of estates;

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- (e) trusts;
- (f) real property;
- (g) evidence;
- (h) torts;
- (i) criminal law;
- (j) contracts;
- (k) family law;
- (l) Chapter 4, Rules of Professional Conduct of the Rules Regulating The Florida Bar; and
- (m) Chapter 5, Rules Regulating Trust Accounts of the Rules Regulating The Florida Bar.

4-23 Part B. Part B will be the Multistate Bar Examination (MBE) offered to each jurisdiction by the National Conference of Bar Examiners.

4-23.1 Transfer of Score. A score achieved by an applicant on the Multistate Bar Examination administered in a jurisdiction other than the State of Florida will not be transferred to or recognized by the board.

4-24 General Bar Examination Preparation and Grading. The board may use the services of expert drafters to prepare bar examination questions, either by arranging for the drafting services of qualified persons, including out-of-state law teachers, or by using the services of the National Conference of Bar Examiners or another national agency. The board may use the services of trained expert readers. Readers will be selected solely upon the qualifications of the individuals.

4-24.1 Essay Questions. Every essay question, whether drafted by the examiners or by expert drafters, will be thoroughly briefed on every point of law in the question and the question analyzed and approved by the board preceding inclusion of the question on the General Bar Examination.

4-24.2 Machine-Scored Questions. Every machine-scored item of Part A must specify authority for the best response, and every item and authority should be analyzed and approved by the board preceding inclusion of the item on the General Bar Examination.

4-25 Submission Methods. Applicants who take the General Bar Examination must do so for the sole purpose of fulfilling the admission requirements for The Florida Bar. An applicant may elect to take the General Bar Examination by either of the following methods:

(a) *Overall Method.* Overall method is used only if the applicant takes Parts A and B during the same administration of the General Bar Examination.

(b) *Individual Method.* Individual method is used if the applicant takes only 1 part of the General Bar Examination. Applicants who elect to take only 1 part of the General Bar Examination under the individual method may not combine a score attained on 1 part from 1 administration with a score on the other part from a different administration. Applicants may not take Part A only using this method unless they have previously taken the Multi-

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state Bar Examination (MBE) in Florida.

4-25.1 Retention of Passing Status. If an applicant attains a passing scaled score on only 1 part and elects to take the overall method of the General Bar Examination as described above, the previous passing status will not be replaced by a failing status if the applicant fails to achieve a passing score on a subsequent submission effort.

4-26 Scoring Method. Each examination paper produced by an applicant on the General Bar Examination will be separately graded. Papers will be graded and reported by number and not by applicant's name. The name of the writer of the examination paper will not be revealed by the staff to the members of the board or readers or any source other than the Supreme Court of Florida. To ensure maximum uniformity in all grading of essay questions, the board will use the services of multiple calibrated readers.

4-26.1 Examination Scaling. The scores of each section of Part A will be converted to a common scale by a recognized statistical procedure so that each section is equally weighted. The sum of the converted section scores is the total score for Part A. All total scores attained by the applicants on Part A are converted to the same distribution as their Multistate Bar Examination (MBE) scaled scores. MBE scores (Part B) are the scaled scores on the MBE provided by the National Conference of Bar Examiners. Scaled scores are used in order to ensure that the standard of measurement of competence from examination to examination is not affected by the difficulty of the particular test or the ability of that particular group as distinguished from the general population of applicants.

4-26.2 Pass/Fail Line. Effective July 1, 2004, each applicant must attain a scaled score of 136 or better on Part A and on Part B under the individual method and an average of 136 or better under the overall method, or such scaled score as may be fixed by the court.

4-30 Multistate Professional Responsibility Examination. The Multistate Professional Responsibility Examination (MPRE) is the examination offered to jurisdictions by the National Conference of Bar Examiners.

4-31 Purpose. The purpose of the MPRE is to measure the applicant's knowledge of the ethical standards of the legal profession.

4-32 Applications and Filing Deadlines. Applications for admission into the Multistate Professional Responsibility Examination (MPRE) are distributed by and must be filed with the designee of the National Conference of Bar Examiners that administers the MPRE within the time limitations set by that authority.

4-33 Scoring Method. Each examination paper produced by an applicant on the MPRE will be separately graded. The raw score attained by each applicant will be converted to a scaled score by the National Conference of Bar Examiners or its designee in order to ensure that the standard of measurement of competence from examination to examination is not affected by the difficulty of the particular test or the ability of that particular group as distinguished from the general population of applicants.

4-33.1 Transfer of Score. The applicant must direct requests to transfer the score attained on the MPRE to the agency that administers the MPRE. Scores are transferred on a certificate supplied by the agency and must be forwarded directly by that agency to the board.

4-33.2 Pass/Fail Line. On the MPRE, each applicant must attain a scaled score of 80 or better, or such scaled score as may be fixed by the court.

4-40 Application for the General Bar Examination.

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4-41 Application Requirements. By the applicable filing deadline prescribed in rule 4-42 or the late filing deadline prescribed in rule 4-43, each applicant desiring to take the General Bar Examination for the first time must submit to the board either the complete Bar Application or, in the case of law student registrants, the Supplement to Registrant Bar Application, the appropriate applicant filing fee, a current 2" x 2" photograph of the applicant, and fingerprints taken on a card provided by the board and certified by an authorized law enforcement officer. By the same date, each applicant seeking reexamination must submit to the board a Reexamination Application as prescribed in rule 4-48. If the photograph furnished by the applicant with the Bar Application or the Supplement to Registrant Bar Application no longer is current, by such date the applicant also must submit to the board a current 2" x 2" photograph of the applicant.

4-42 Examination Filing Deadlines.

4-42.1 February Filing Deadline. Timely applications for admission to the February administration of the General Bar Examination must be postmarked or received not later than November 15 prior to the examination.

4-42.2 July Filing Deadline. Timely applications for admission to the July administration of the General Bar Examination must be postmarked or received not later than May 1 prior to the examination.

4-42.3 Deadline for Test Accommodations. Petitions for accommodations and supporting documentation are subject to the examination filing deadline. Applicants seeking test accommodations must file the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, petition, and supporting documents by the examination filing deadline to avoid examination late filing fees.

4-42.4 Cutoff for Test Accommodations. To avoid an undue burden on the board while it is making final preparations for the administration of the bar examination, a minimum amount of time is required for the orderly processing of a request for accommodations. Except for emergency petitions as designated by the board, no request for test accommodations will be processed if postmarked or received after January 15 for the February examination or after June 15 for the July examination.

4-43 Filing After the Deadline. Applicants seeking late filing for a General Bar Examination will be permitted to do so on payment of an additional fee as set out below, completion of the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, and receipt of all supporting documents.

4-43.1 \$275. If the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, as applicable, is postmarked or received on or before December 15 for the February examination or June 1 for the July examination, the fee is \$275.

4-43.2 \$525. If the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, as applicable, is postmarked or received after December 15 but on or before January 15 for the February examination, or after June 1 but on or before June 15 for the July examination, the fee is \$525. No Bar Application, Supplement to Registrant Bar Application, Reexamination Application, appropriate applicant filing fee, 2" x 2" photograph, or fingerprint card will be deemed to have met the late filing deadline if postmarked after January 15 for the February examination, or after June 15 for the July examination.

4-44 Filing Deadline on Weekend or Holiday. If the examination filing deadline falls on a Saturday, Sunday, or holiday, then the deadline will be extended until the end of the next business day.

4-45 Word Processing Accommodations. Applicants are permitted the use of a laptop computer with software designated by the board to complete answers to the essay portion of the General Bar Examination. Applicants seeking to use a laptop computer must complete a form available on the board's website and pay a fee of \$100.

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4-46 Examination Postponement. Postponement of taking an individual part or the entire General Bar Examination will be accommodated on receipt of written notice in advance of the General Bar Examination. The date of receipt of notice will define the applicable postponement fee due when refile for a future examination. Any applicant who files an untimely postponement received after commencement of the General Bar Examination, and any applicant who has been issued a ticket to the examination and who fails to show for that bar examination must reapply under rule 4-48 and pay the \$375 reapplication fee.

4-47 Reapplication after Postponement. Applicants seeking to reapply after postponing as indicated above will be permitted admission into another General Bar Examination on filing with the board the Reexamination Application on the form available on the board's website and receipt of the applicable postponement fee. In order to be timely filed, the completed application and appropriate fee must be postmarked or received by the examination filing deadline. If the Reexamination Application is not postmarked or received on or before the filing deadline or if filed incomplete, the appropriate examination late filing fee must be included. The fee payable with the Reexamination Application will be as follows.

4-47.1 \$75. If the applicant's written notice of postponement under rule 4-46 is received by the board at least 7 days before the commencement of the administration of the postponed examination, the fee is \$75.

4-47.2 \$150. If the applicant's written notice of postponement under rule 4-46 is received by the board prior to but less than 7 days before the commencement of the administration of the postponed examination, the fee is \$150.

4-48 Examination Reapplication. Applicants seeking to repeat all or part of the General Bar Examination, or to take a second administration of the General Bar Examination, or those who untimely postponed or failed to show for a previous administration of the General Bar Examination, will be permitted admission on filing a Reexamination Application on the form available on the board's website and payment of the reapplication fee of \$375. In order to be timely filed, the completed Reexamination Application and fee must be postmarked or received by the examination filing deadline. If the Reexamination Application is not postmarked or received on or before the filing deadline or if filed incomplete, the appropriate examination late filing fee must be included.

4-50 Examination Administration.

4-51 Rules of Conduct. Applicants must abide by all rules governing the administration of the General Bar Examination as set out below.

4-51.1 Possession or Use of Unauthorized Materials or Equipment. Applicants must not possess or use any book bags, backpacks, purses, hats or baseball caps, notes, books, study materials, food or liquids, cellular telephones, beepers, watches or clocks with audible alarms, calculators, computers, or other electronic devices in the examination room without the prior written approval of the board.

4-51.2 Receipt of Unauthorized Aid. Applicants must not use answers or information from other applicants while taking the examination.

4-51.3 Observance of Examination Start/Stop Announcements. Applicants must not read questions on the examination prior to the announcement to begin the examination and must not continue to answer any questions after the announcement to stop because the session has ended.

4-51.4 Observance of Confidentiality of Machine-Scored Questions. Applicants must not remove any multiple-choice, machine-scored examination questions from the examination room or otherwise communicate the substance of any of those questions to persons who are employed by or associated with bar review courses.

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4-52 Examination Proctors. The board may seek the assistance of other members of The Florida Bar in proctoring the bar examination.

4-60 Release of Examination Results.

4-61 Confidentiality. No information regarding applicants' scores will be released except as authorized by the rules or as directed by the Supreme Court of Florida.

4-62 General Bar Examination. The board will notify each person submitting to any part of the General Bar Examination whether the person has passed or failed any or all parts of the examination except any person whose grades have been impounded by the Supreme Court of Florida.

4-62.1 Impoundment of Examination Results. Results of the General Bar Examination will be impounded by the court if the applicant fails to pay the full balance of any application or examination late filing fee, or if the applicant is suspected of a violation of the examination administration rules of conduct.

4-62.2 Release of Impounded Examination Results. On submission of documentation that establishes that the applicant has paid all application and late fees, is determined not to have violated examination administration rules of conduct, and on payment of a \$100 impoundment fee, the board will request the court to release the impounded grades.

4-62.3 Date of Release. The date for release of the results from the General Bar Examination will be set by the court. At that time, all applicants who have passed all parts of the examination, but who have not been recommended to the court for admission to The Florida Bar will be advised of the status of their Bar Application.

4-63 Multistate Professional Responsibility Examination. Applicants will be notified by letter whether their Multistate Professional Responsibility Examination (MPRE) scores transferred to Florida are accepted.

4-64 Investigation of Examination-Related Conduct. If the board has cause to believe that an applicant has violated any of the eligibility or conduct rules relating to the General Bar Examination, the board may conduct an investigation, hold hearings, and make Findings under rule 3-20.

4-65 Invalidation of Examination Scores. If an applicant is found by the board after an investigation under rule 3-20 to be in violation of rule 4-13.1, to have made a material misstatement or omission under rule 4-13.4, or to have violated the examination administration rules of conduct in rule 4-51, the results of the Florida Bar Examination will be invalidated. The applicant will not be eligible to submit another work product (if in violation of rule 4-13.4) or submit to another examination for a period of 5 years from the date that the board delivered its adverse Findings or the period of time as may be set in the Findings.

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West's F.S.A. Admission to Bar, Rule 5

WEST'S FLORIDA STATUTES ANNOTATED
RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR

→ Rule 5. Recommendations and jurisdiction

5-10 Recommendations and Admission. Every applicant who has complied with the requirements of the applicable rules for admission into the Florida Bar Examination, attained passing scores on the examination, met the requirements as to character and fitness, complied with the requirements of the applicable rules for admission into The Florida Bar, and who is 18 years of age or older will be recommended by the Florida Board of Bar Examiners to the Supreme Court of Florida for admission to The Florida Bar.

5-11 Supreme Court Action. If the court is satisfied with the qualifications of each applicant recommended, an order of admission will be made and entered in the minutes of the court. The court will designate the manner that applicants will take the oath.

5-12 Induction Ceremonies. Formal induction ceremonies will be scheduled after each release of grades from the previous administration of the bar examination. The ceremonies will be held at the Supreme Court of Florida or the First District Court of Appeal and at each of the other district courts of appeal. Attendance at an induction ceremony is voluntary.

5-13 Oath of Attorney. Any applicant who chooses not to attend an induction ceremony may take the oath before any resident Circuit Judge or other official authorized to administer oaths, such as a notary public. All applicants must present themselves for administration of the oath not later than 90 days from the date of notification of eligibility for admission by the Clerk of the Supreme Court of Florida.

5-13.1 Filing of the Oath. An executed copy of the Oath of Attorney must be filed with the board. Upon receipt of the oath, the board will certify the applicant and the date of admission to the Supreme Court of Florida and The Florida Bar. The Clerk will maintain a permanent register of all admitted persons.

5-13.2 Certificate of Admission. The Certificate of Admission and a printed reproduction of the Oath of Attorney will be issued when the duly executed oath and the \$22 fee for preparation of the certificate and printed reproduction are received.

5-14 Board Jurisdiction after Admission. If, within 12 months of admission of an applicant to The Florida Bar, the board determines that a material misstatement or material omission in the application process of the applicant may have occurred, the board may conduct an investigation and hold hearings. After investigation and hearings, the board may make Findings and recommendations as to revocation of any license issued to the applicant and will file any Findings with the Supreme Court of Florida for final determination by the court.

5-15 Bar Jurisdiction after Admission. If an applicant is granted admission by the court under a Consent Agreement, then the terms and conditions of his or her admission will be administered by The Florida Bar. The board must provide The Florida Bar access to all information gathered by the board on a conditionally-admitted applicant, except information received by the board under a specific agreement of confidentiality or otherwise restricted by law. If the applicant fails to abide by the terms and conditions of admission, The Florida Bar is authorized to institute proceedings consistent with the Rules Regulating The Florida Bar as to revocation of the license issued to the

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applicant under the Consent Agreement. The board must be notified of any disciplinary proceedings and have access to all information relating to the administration of a conditional admission, except information received by The Florida Bar under a specific agreement of confidentiality or otherwise restricted by law.

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Appendix 3

**FLORIDA BOARD OF BAR EXAMINERS
PUBLISHED OPINIONS – APPLICANT CASES**

1. *Coleman v. Watts*, 81 So.2d 650 (Fla. 1955)

"The questions directed to the petitioner at the hearings were very general in nature; all derogatory allusions or accusations were flatly denied by petitioner; and the Board members did not at any time specify, either generally or specifically, what acts of malfeasance, if any, had been reported to it of which the petitioner might be guilty." at 651.

HELD: ". . . where a court is asked to review the merits of a board's rejection of an application for admission to the bar, it is incumbent upon the board the sustain its ruling by *record* evidence and not by mere assertions that it is possessed of confidential information which shows the applicant to be unfit; and if the record consists only of evidence supplied by the applicant, then such evidence must demonstrate that the board's dissatisfaction with his application rests on valid grounds and not upon mere suspicion." at 655, citations omitted, emphasis in original.

2. *In re Florida Board of Bar Examiners. In re Robert Francis Eimers*, 358 So.2d 7 (Fla. 1978)

Sexual Orientation Case - Advisory Opinion

HELD: The fact that the applicant had an admitted homosexual orientation was not sufficient to prevent his admission to the Bar for a lack of good moral character. The Court specifically limited their ruling to homosexual orientation. ("This opinion, then, does not address itself to the circumstance where evidence establishes that an individual has actually engaged in homosexual acts." at 8.)

BOYD, dissent: Would remand to the Board for determination of whether the applicant had committed homosexual acts which were criminally outlawed by the Florida Statutes. ("There should not be admitted to The Florida Bar anyone whose sexual life style contemplates routine violation of a criminal statute." at 10).

**FLORIDA BOARD OF BAR EXAMINERS
PUBLISHED OPINIONS – APPLICANT CASES**

3. *Florida Board of Bar Examiners Re: G. W. L.,
364 So.2d 454 (Fla. 1978)*

Bankruptcy Case

FACTS: Applicant received his J.D. May, 1976: had financial obligations totaling \$9,893.

"No exceptional financial problems or identified misfortunes, and the obligations appeared normal for any student attending undergraduate and graduate educational programs on student loans." at 456

Applicant filed bankruptcy petition 3 days before graduation from law school - only \$8.01 of debt was due at the time of filing.

"In our view, a finding of a lack of 'good moral character' should not be restricted to those acts that reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." at 458

"The record before us reflects that the petitioner suffered no unusual misfortune or financial catastrophe prior to his filing the bankruptcy petition. . . . The filing of the bankruptcy petition was not illegal, but in our view it was done in such a morally reprehensible fashion that it directly affects his fitness to practice law." at 459

HOLDING: "We find the conduct of the petitioner in the instant case, although not illegal at the time, morally reprehensible." at 460

**FLORIDA BOARD OF BAR EXAMINERS
PUBLISHED OPINIONS – APPLICANT CASES**

4. *Florida Board of Bar Examiners re Lonnie Neil Groot,*
365 So.2d 164 (Fla. 1978)

Bankruptcy Case

June 1976 Applicant graduated from law school - debt totaled approximately \$8,530

November 1976 Applicant terminated part-time \$14,000 annual salary, moved to Montana

December 1976 Applicant had 2 jobs \$4,800 + \$13,000 = \$17,800

May 1977 Applicant left Montana, moved to North Carolina & incurred gas credit bill & birth of child medical bills totaling \$900

August 18, 1977 filed petition for bankruptcy

1 week later obtained \$18,000/year job

HELD: Bankruptcy, in this case, was not morally reprehensible. Distinguish *G.W.L.* - Groot was a single father of 2 and had suffered unusual misfortune at the time he finally secured employment (marriage broke up). Groot had a valid present need to devote entire employment income to current, not past financial responsibilities

5. *In re Florida Board of Bar Examiners. In re H. H. S.,*
373 So.2d 890 (Fla. 1979)

Failure to file income tax returns for 3 years

Addresses two key issues - Burden of proof

Standard different from Bar
discipline cases

"In the Bar admission process the burden is upon the applicant to demonstrate his or her good moral character. Although the burden of coming forward with evidence may shift, the burden of proof never does." at 891 (citation omitted).

"Secondly, the same standard of fitness and character, or of conduct establishing the lack thereof, does not apply in proceedings wherein one seeks admission to the Bar as applies in disciplinary proceedings." at 892.

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6. *Florida Board of Bar Examiners Re: L. K. D.,
397 So.2d 673 (Fla. 1981)*

- 9/77 Applicant allegedly shoplifted - no charges brought
1/78 Applicant allegedly shoplifted same store - prosecuted,
acquitted
3/78 Applicant received J.D.
Board found 9/77 & 1/78 incidents proven + applicant lied at trial,
informal & formal hearing when denied shoplifting

HELD:

- Standard of proof for Bar Admission proceedings is less than beyond a reasonable doubt
- De novo fact finding by the Court is allowed in Bar Admission cases
- Criminal acquittal justifies protestation of innocence at subsequent Board proceedings.

➤

"Petitioner's jury acquittal, while not binding on the Board or on this Court in reaching conclusions regarding the alleged incident of theft itself, has special significance with regard to the Board's conclusion that petitioner lied three times in asserting her innocence. That is, the jury's conclusion vindicated petitioner's declaration of innocence of the crime charged before and at the jury trial. Her acquittal would continue to justify her protestation of innocence at her subsequent Board hearing, even though the Board might have thought it advantageous to make a showing of repentance." at 676.

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7. *In re Petition of Jose Augustine Diez-Arguelles,*
401 So.2d 1347 (Fla. 1981)

1972 convicted of two counts of selling cocaine
1976 Received B.A. degree
1978 Received J.D. degree
1980 Received L.L.M. degree

HELD: Applicant showed sufficient rehabilitation to be admitted.

Factors Court found compelling in reaching decision:

- Petitioner's accomplishments since time of arrest (last "misconduct")
- Character letters and testimony from professionals (Also, "No act, incident, or omission reflecting ill on petitioner was shown." at 1349)
- Petitioner strived for 8 years to rehabilitate himself (contrasting with the rule that an applicant can reapply in 2 years; therefore, an applicant can be rehabilitated in two years).

8. *Florida Board of Bar Examiners Re N. R. S.,*
403 So.2d 1315 (Fla. 1981)

"Petitioner admitted a continuing sexual preference for men but refused to answer questions about his past sexual conduct and indicated that he had no present intention regarding future homosexual acts. He did state that he would obey all the laws of Florida." at 1316.

HELD: "Private noncommercial sex acts between consenting adults are not relevant to prove fitness to practice law. This might not be true of commercial or nonconsensual sex or sex involving minors.

In the instant case the board may ask the petitioner to respond to further questioning if, in good faith, it finds a need to assure itself that the petitioner's sexual conduct is other than noncommercial, private, and between consenting adults. Otherwise, the board shall certify his admission."

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9. *Florida Board of Bar Examiners Re: VMF for Admission to The Florida Bar, 491 So.2d 1104 (Fla. 1986)*

1975 Arrested/charged with possession and delivery of marijuana (records eventually "non-public")
 - Also arrested on separate, but somewhat related marijuana charge

September 1980 J.D. DEGREE
October 1983 admitted to Michigan Bar
February 1984 applied to Florida Bar
On advice of lawyer/father, did not disclose arrests
At Board's request, filed 2 Amendments to Application explaining arrests with less than complete candor.
Board recommended denial of admission

HELD: Admitted

"After the Michigan drug incident, there is no evidence of further transgressions; it appears the petitioner has since led an exemplary life. The sole basis for the Board's recommendation against admission is the petitioner's apparent reluctance to reveal every aspect of the 1975 incident. If petitioner had willingly revealed all the circumstances surrounding the Michigan arrests there is no doubt that the Board should have recommended his admission." at 1107.

"We emphasize the propriety of the Board's actions in thoroughly investigating the 1975 arrests and seeking total disclosure from the petitioner. **We also wish to stress the fact that we expect no less than absolute candor from a Bar applicant in his dealings with the Board.** However, under the facts of this case, although there is adequate evidence in the record to support the Board's conclusion that the petitioner willfully withheld information, we feel that the delay in admission of over one and one-half years is an adequate price to pay for his reluctance to reveal every aspect of the 1975 incident." at 1107 (emphasis added).

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10. *Florida Board of Bar Examiners*

Re: Richard Elliot Kwasnik, 508 So.2d 338 (Fla. 1991)

Applicant was DUI and involved in accident which resulted in death

1974 \$200,000 judgment against applicant

1980 applicant declared bankruptcy - discharged judgment

1979 applied to The Florida Bar

Board recommended denial

February 19, 1981 Petition for review denied by Sup. Ct.

November 14, 1986 - Formal Rehabilitation Hearing

Board recommended denial again:

- Failed to accept moral responsibility to the family of the decedent ("willful and continuing disregard of a serious moral obligation.")
- Failed to satisfy burden of proof on Rehabilitation Factor #7 (community service, etc.)

HELD: "The question here is whether following bankruptcy he should be refused admission for not having made any effort to provide assistance to the family of the decedent, even though he was not legally obligated to do so. Given the fact that our bankruptcy laws are designed to provide a fresh start for those who are overburdened with debt, we cannot say that the subsequent failure to make payments on the discharged debts may be considered as a basis to deny admission to the practice of law. We recognize that Kwasnik may have continuing moral obligations to the family of the man he negligently killed, but to permit such considerations in a petition for admission to the Bar would require the making of such subtle distinctions that no satisfactory rule could be devised." at 339.

The Court also found that the additional work performed by the applicant at the New York Legal Aid Society satisfied Factor # 7.

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**11. *Florida Board of Bar Examiners Re: R.D.I.,
581 So.2d 27 (Fla. 1991)***

1971 applicant arrested and fined for possession of marijuana

1980 arrested in Logan Airport, Boston - no prosecution, but Board concludes that the applicant was involved in drug sales

Also, 3 lack of candor Specifications from testimony at Investigative Hearing.

Obtained false Florida drivers license (false name)

False response on law school application

False statement on income tax return

Lack of Candor - Assistant State Attorney application

HELD: Denied

"We agree with the Board that the evidence was sufficient to support the Board's findings and to deny the petitioner admission to The Florida Bar. **The Board did not have to believe the petitioner's version of events.** From the circumstantial and direct evidence surrounding the petitioner's business activities, his business associates, his extensive use of a false identity, the 1980 arrest and subsequent deception, the Board could infer that the petitioner was involved in 'prior, substantial criminal activity.' The evidence supports the findings of continuing misrepresentation and lack of candor by the petitioner." at 30-31 (emphasis added).

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**12. *Florida Board of Bar Examiners re: J.H.K.,*
581 So.2d 37 (Fla. 1991)**

2/27/85 Student Registration Application - "N/A" to a number
 of Items (specifically Item 21(a))
5/27/87 Converted to Application for Admission
 Under Item 21(a) disclosed 8 juvenile offenses
Inv. Hg. Registration done in a hurry, wanted to provide detailed
 information
For. Hg. "N/A" meant "not available at the time" for Items 20 & 21

HELD: Board recommendation to deny amply supported by the
 evidence

Court quoted Board Findings: "As noted in the findings above, the Board observed additional untruthfulness and a continuing lack of candor during the applicant's formal hearing testimony. The applicant's misconduct as established by the proven Specifications and as observed by the Board during the formal hearing convinces the Board of the applicant's present inability to be truthful and candid in his dealings with others." at 39.

"The Board was not required to believe his incredible explanation that the notation 'N/A' meant 'not applicable' in some circumstances but 'not available at the time' in others." at 39.

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**13. *Florida Board of Bar Examiners re: D.M.J.,
586 So.2d 1049 (Fla. 1991)***

1979 Charged & acquitted of conspiracy to import cocaine
Inv Hg Admitted underlying involvement, denied criminal knowledge
(Board asked Court to overrule or recede from *L.K.D.* - Court declined to do
so)

Board found applicant "guilty" of drug conspiracy charge

HELD: Board's determination that applicant knowingly participated in drug conspiracy supported by the evidence, but there was sufficient rehabilitation shown to admit.

Court cited the numerous highly favorable uncontroverted character witnesses and the fact that the offense was over 12 years old.

**14. *In re: Florida Board of Bar Examiners Re: J.A.F.,
587 So.2d 1309 (Fla. 1991)***

7 Specifications proven

- Failure to timely pay federal income tax in 1969, 70 & 71
- Misrepresentation in sale of property
- Financial Irresponsibility
- Two false statements to the Board
- False, misleading statements relating to filmmaking in California
- Inconsistent, contradictory sworn statements re: involvement in production of films in California (applicant referred to this as "puffing")

HELD: "While J.A.F. did present several witnesses who testified to his good character and excellent work habits and strongly recommended his admission to the Bar, we further agree with the Board that this evidence is insufficient to demonstrate rehabilitation in light of J.A.F.'s ongoing financial irresponsibility and lack of candor." at 1311.

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15. *Florida Board of Bar Examiners re: R.B.R.,
609 So.2d 1302 (Fla. 1992)*

1979 Applicant pled guilty to using a telephone to facilitate the commission of a felony (originally charged with conspiracy to distribute cocaine)

Board also found the following Specs proven:

- false explanation of this criminal conduct on Bar application
- failed to disclose undergraduate discipline on law school application
- improper behavior, irresponsible conduct, & lack of respect for the law (3 worthless checks, 8 traffic violations, operating vehicle while impaired)
- failed to disclose 4 traffic violations on Bar application
- sworn statements re: sobriety test lacked candor
- failed to amend law school application to disclose worthless checks
- financial irresponsibility (while undergraduate, accumulated > \$250,000 in debt which was discharged in bankruptcy)

Board found overall lack of candor at formal hearing

HELD: Board's findings supported by competent and substantial evidence.

"This Court will not tolerate a lack of candor from Bar applicants." at 1304.

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**16. *Florida Board of Bar Examiners re: S.M.D.,
609 So.2d 1309 (Fla. 1992)***

- 4/14/90 Applicant & attorney husband file for Chap. 7 Bankruptcy
 Total debt = \$109,235.74
 \$25,000 credit cards, the remainder student & family loans
- 5/20/90 Applicant graduated from law school

HELD: "Upon consideration, we cannot agree that the evidence sufficiently demonstrates the financial irresponsibility necessary to preclude S.M.D. from admission to the bar (specification 1). The vast majority of her debts were incurred in order to sustain herself and to go to school. With respect to the declaration of bankruptcy, we believe the case is closer to *Groot* than to *G.W.L.* Many of S.M.D.'s debts were overdue, and her creditors were contacting her on a daily basis. She had been unsuccessful in her job search. We do not believe that her decision to declare bankruptcy was morally reprehensible (specification 2). at 1312.

**17. *In re Florida Board of Bar Examiners Re: C.W.G.,
617 So.2d 303 (Fla. 1993)***

- ⇒ Four malpractice suits in California
- ⇒ Eight attorney grievances (1 admonishment, 1 warning)
- ⇒ Failed to disclose 2 lawsuits, lack of knowledge unworthy of belief
- ⇒ Unprofessional conduct as a lawyer

HELD: "Despite C.W.G.'s contrary assertions, the Board's findings are fully supported by the record. As in the case of any trier of fact, the Board may rely upon circumstantial evidence. Additionally, C.W.G. offered only weak excuses for his past legal mistakes.

* * *

"It should be noted that a rejection of admission to the Bar is not the equivalent to disbarment. Upon a showing of rehabilitation, C.W.G. may reapply for admission after two years from the date of the Board's adverse recommendation." at 305.

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**18. *Florida Board of Bar Examiners RE: M.R.I.,*
623 So.2d 1178 (Fla. 1993)**

5 Specifications:

- 1) 1977 application to college, falsely claimed prior attendance at the University of Havana
- 2) Held herself out to the public as an attorney licensed to practice on Florida
- 3) False testimony regarding holding herself out as a Florida attorney
- 4) 1985 Bar application - failed to reveal previous marriage, list other names she had used, & to inform Board her name had been legally changed
- 5) False testimony at investigative hearings

Board also noted that the applicant was not candid at her formal hearing.

HELD: Board's findings supported by competent and substantial evidence. "M.R.I.'s past misconduct and continuing lack of candor establish that she fails to meet the standards of conduct and fitness required of Bar applicants." at 1180.

M.R.I.'s argument that she did not engage in UPL "irrelevant": Specification alleged that she held herself out as an attorney.

"In considering this argument, we must note that M.R.I.'s lies do not seem to be isolated instances. In her testimony at the various hearings M.R.I. was extremely defensive and made numerous contradictory statements. Viewed individually M.R.I.'s "misstatements" could be excused, but when considered in the aggregate it becomes apparent that the omissions and contradictions were not innocent mistakes but rather reflect a basic lack of honesty." at 1180.

"This Court has made in abundantly clear that candor is essential to be admitted to the Bar." at 1180.

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**19. *Florida Board of Bar Examiners RE B.H.A.,
626 So.2d 683 (Fla. 1993)***

Proven Specifications:

- ⇒ Written explanation of a 1980 arrest (applicant 17 yrs. old) in sworn Bar application lacked candor
- ⇒ Falsified responses in application for a certified legal intern position in the Dade County State Attorney's Office (B.H.A. was denied internship because of lack of candor)
- ⇒ 1988 application to law school answered "No" to question re: arrest/taken into custody
- ⇒ other specifications evidenced a pattern of untruthfulness

HELD: "[W]e agree with the Board that this evidence [character letters, affidavits, testimony] was insufficient to overcome the seriousness of B.H.A.'s lack of veracity and candor especially in light of the fact that B.H.A. falsified his Bar application as late as 1991." at 684.
(Because of character evidence, allowed to reapply w/i one year of decision).

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**20. *Florida Board of Bar Examiners RE: E.R.M.,
630 So.2d 1046 (Fla. 1994)***

Proven Specifications:

- ⇒ False testimony at investigative hearing (later admitted by the applicant)
- ⇒ Lack of candor on Bar application re: disclosure of judgment in favor of a creditor
- ⇒ Explanation in Amendment to Bar application lacked candor
- ⇒ Judgment entered against applicant in favor of receiver of a nursing home for > \$15,000
- ⇒ Letter of Admonition by New York State Bar, later reduced to letter of caution
- ⇒ Failed to pay large portion of child support between 1986 & 1989 - judgments for \$36,112 in 1988 & \$52,942 in 1989. (Exhibited a disregard for moral & legal obligations to his children, lack of financial responsibility, & lack of respect for court & legal system).

Board observation in Conclusions: "Of particular significance to the Board is the applicant's admission, both in his Answer and in his testimony at the formal hearing, to having completely fabricated his testimony concerning the deed to the Grand Cayman house at the investigative hearing. The applicant's fabrication of this testimony at the investigative hearing convinces the Board of the applicant's lack of appreciation for the standards and ideals of the legal profession." at 1047.

HELD: Competent and substantial evidence to support all of the Board's findings. "The fact that he knowingly lied under oath at the investigatory hearing about having sent a signed deed to his wife is particularly serious." at 1048.

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**21. *Florida Board of Bar Examiners re C.A.M.,
639 So.2d 612 (Fla. 1994)***

Proven Specifications:

- ⇒ Irresponsibility & lack of respect for the law (numerous traffic violations since 1986 leading to suspension of license in 1990, having license suspended several time for failure to pay fines, DUI)
- ⇒ Lacked candor on law school application with description of aggravated assault arrest
- ⇒ Fraudulently obtained a South Carolina drivers license in 1990 when anticipated Florida license would be suspended.
- ⇒ Used South Carolina license in Florida from 4/90 to 10/91 at same time Florida license suspended
- ⇒ 10/91 application for Florida license, used married name instead of maiden name & failed to disclose license had previously been suspended.
- ⇒ Submitted insufficient fund check for \$576 with application for General Bar Exam (Board found not disqualifying)

HELD: Record supports Board' conclusion.

"C.A.M. violated a Florida statute and falsified two applications for driver's licenses in two different states at the age of thirty-three while she was well into her law school education. This behavior not only shows a lack of maturity but also, more importantly, a severe lack of candor for a person embarking on the practice of law. A lack of candor on the part of an applicant is intolerable and disqualifying for membership in the Bar." at 613.

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**22. *Florida Board of Bar Examiners Re: F.O.L.,*
646 So.2d 185 (Fla. 1994)**

Specifications involved 2 arrests of applicant:

1986 arrested for disorderly conduct as a result of traffic stop. Applicant had been traveling at a high rate of speed and changing lanes causing other vehicles to slow or stop. Upon exiting his vehicle, the applicant yelled and screamed and shouted obscenities at the officers.

1991 arrested for DUI and possession of marijuana as a result of traffic stop. Applicant's vehicle was weaving, he smelled of alcohol, he was yelling and creaking at the scene of the arrest, he threatened one of the officers stating the officer was a "deadman", he failed to satisfactorily perform the roadside sobriety test, and refused to perform sobriety test on video.

Specifications alleged the underlying misconduct, that the applicant's conduct at the time of the arrests exhibited a lack of respect for law enforcement and/or the legal system, and a lack of candor in that the applicant's accounts to the Board of the arrests left out significant details.

HELD: "We conclude that the Board's findings are supported by competent and substantial evidence and that these findings are sufficient to justify nonadmission to the Bar." at 186.

"Because the evidence presented by F.O.L.'s character witnesses and affidavits indicate that F.O.L. is making an earnest effort towards rehabilitation, we direct that he may reapply for admission after one year from the Board's adverse finding." at 186-187.

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**23. *Florida Board of Bar Examiners RE: L.M.S.,
647 So. 2d 838 (Fla. 1994)***

During final semester of law school (fall 1991), applicant was required to complete a paper for one course.

Applicant did not complete her paper until February 1992 and had not received a grade when she sat for the July 1992 General Bar Examination.

The Board impounded her scores because the applicant could not show completion of graduation requirements.

The Board found 7 Specifications proven, and 5 of them disqualifying:

- ⇒ False application for Admission to the July 1992 Exam;
- ⇒ Statement on her application that she would not sit for the exam if graduation requirements were not met;
- ⇒ Response to Board's letter seeking proof that she had completed graduation requirements;
- ⇒ Testimony at Investigative Hearing concerning whether she had been told she had not completed graduation requirements; and
- ⇒ Testimony about what she had been told by law school dean.

HELD: "We find competent, substantial evidence in the record to support the Board's factual findings." at 839.

* * *

"We disagree with the Board's conclusion that L.M.S. should be denied admission to the Bar. The circumstances surrounding her erroneous sitting for the July 1992 Bar exam seem to be isolated." at 839.

* * *

"Accordingly, while we do not condone any of L.M.S.'s statements that were false, misleading, or lacking in candor, we find that she should be admitted to the Bar once she passes both parts of the General Bar Examination." (Applicant has taken Bar exam twice since degree conferred, but has not passed both parts.) at 839-840.

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**24. *Florida Board of Bar Examiners Re: M.C.A.,
650 So.2d 34 (Fla. 1995)***

While in law school, the applicant was accused of cheating on an exam.

- ⇒ Investigation by associate dean of law school concluded she had cheated.
- ⇒ faculty Probation and Grievance Committee upheld the dean's findings.

Eventually, a settlement agreement was reached: the applicant received an F for the course, she was suspended for two semesters, she sought psychiatric treatment during the suspension, and she could seek readmission to law school.

New Jersey Bar Committee on Character accepted dean's findings as to guilt of cheating, and unanimously recommended the applicant for admission to the New Jersey Bar. She was subsequently admitted.

Board found following Specifications proven and disqualifying:

- 1) The applicant cheated on the exam;
- 2) The applicant gave false responses on Bar Application when she denied cheating; and
- 3) The applicant gave false testimony at Investigative Hearing when she denied the findings of the dean that she had cheated.

HELD: "While we find competent, substantial evidence in the record to support the Board's first specification against M.C.A., we do not find that specifications two and three have been proven. . . . The Board is recommending denial of admission because she steadfastly maintains that she did not cheat on the exam. However, M.C.A.'s protestations of innocence explain both her answers on the bar application and her testimony to the Board. **Thus, the Board has presented M.C.A. with the ultimate Catch-22: by maintaining her innocence, M.C.A. can never meet the Board's standard of candor.**"

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**25. *Florida Board of Bar Examiners Re: W.H.V.D.,
653 So.2d 386 (Fla. 1995)***

Applicant denied admission to The Florida Bar in 1990 because of his conduct while he served as a trustee for a church and school stewardship fund during the mid-1970's. Misconduct included:

- making unauthorized loans
- engaging in unethical behavior
- conflict of interest
- breach of fiduciary duty

1990 hearing also included allegations of a lack of candor.

Board found that factors (4), (5), and (7) from Article III, Section 4.e. of the Rules had not been established by clear and convincing evidence.

HELD: Insufficient rehabilitation, agreeing with the Board.

Factors:

- (4) Applicant testified that he took a CLE course on ethics because he was "aghast that they [the Board] had questioned my ethics, I really was." at S159.
 - Evidences an ill feeling toward the Board.
- (5) Court cited the "aghast" comment above and the applicant's conduct during a lawsuit he brought against a local business, where the applicant abruptly terminated a deposition and behaved contentiously.
 - Court concluded that the applicant had not established that he would conduct himself in an exemplary fashion in the future.
 - The Court also cites the differing standard for Bar Admission v. Bar Discipline.
- (7) Positive action showing rehabilitation:
 - Applicant opened his home to needy migrants twice, but that was before the applicant's first formal hearing.

"Article III, section 4.e.(7) requires an applicant such as W.H.V.D. to show rehabilitation beyond 'living as and doing those things he or she should have done throughout life.' **In evaluating an applicant's showing of rehabilitation, we cannot disregard the nature of past misconduct.** We also note that W.H.V.D. now works for the state and is a paid pastor. He says he wants to work for the state as a lawyer and has no desire to establish a private law practice. Holding a job, but failing to take extra steps to show rehabilitation since he was denied admission to the Bar in 1990, does not

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satisfy (7)." at 388. (emphasis added).

**26. *Florida Board of Bar Examiners Re: J.C.B.,
655 So.2d 79 (Fla. 1995)***

Applicant disbarred in 1986 for personal use of a client's legal funds and neglect of a legal matter.

Also included Specification on financial irresponsibility: outstanding judgments from the mid-80's to accountants, a foundation, a bank, and a doctor; IRS tax liens levied on bank accounts, one in excess of \$27,000.

- Court cites the following Board findings:
 - Applicant had no income from 1985 to 1986
 - Applicant bought a new Mustang convertible even though less expensive cars were available
 - Applicant paid more recent obligations, but left above judgments unsatisfied
 - Applicant testified that he worked as a law clerk for \$150 a week, but testified that he could earn \$40,000 a year as a law clerk

Another Specification alleging that the applicant's explanation of his disbarment on his Application and at the Investigative Hearing were unworthy of belief (negligently took the money, but did not intend to steal)

5 character witnesses who recommended the applicant's readmission did not know why he was disbarred.

HELD: Insufficient rehabilitation, denied.

- Court distinguishes *L.K.D.*, where the applicant was acquitted of shoplifting charges.
- Court references the applicant's financial irresponsibility.

On issue of insufficient rehabilitation:

"Before his disbarment, J.C.B. served in the military, performed pro bono legal work, coached Little League sports, and was involved in Cub Scouts. Our focus, however, is on his activities since his disbarment. Although J.C.B. has held a job and attended church, he has not demonstrated the community involvement that article III, section 4.e.(7) requires. J.C.B.

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testified that he is too old for some of community activities, apparently referring to the military, Little League sports, and Cub Scouts. Even if that is true, there are other types of community activities in which J.C.B. could become involved. J.C.B.'s promise to perform pro bono work if readmitted is not enough to show rehabilitation now. In addition, we share the Board's concern that most of J.C.B.'s character witnesses did not know why he was disbarred." at 82.

**27. Florida Board of Bar Examiners RE: G.M.C.,
658 So.2d 76 (Fla. 1995)**

Proven Specifications:

- Financial irresponsibility - 12 delinquent creditors > \$32,000, defaulted student loans = \$50,000, 3 unsatisfied judgments for failure to make timely payments on outstanding debts.
- Pattern of irresponsible conduct or faulty judgment which reflects adversely on her ability to accept the responsibilities of an attorney
 - Refusal to accept correspondence from the Board
 - discharge from IRS
 - refusal to accept demand letters relating to delinquent student loans
 - "the conduct alleged in Specifications 2(A) through 2(I) evidences an unwillingness or inability to abide by reasonable rules which . . . are essential for the orderly processing of matters especially within the legal system."

HELD: The Board's findings supported by competent and substantial evidence.

"In fact, the record contains *overwhelming* evidence of both G.M.C.'s financial irresponsibility and irresponsible conduct or faulty judgment. We agree with the Board that G.M.C. failed to produce sufficient evidence to demonstrate rehabilitation or to overcome the seriousness of the proven allegations. To the contrary, much of the documentary evidence that G.M.C. admitted into the record of the formal hearing actually provides further proof of her inability to understand and comply with rules and procedures and to take appropriate actions." at 77. (emphasis in original).

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**28. *Florida Board of Bar Examiners RE: J.A.S.,
658 So.2d 515 (Fla. 1995)***

Proven Specifications

- Continuing pattern of criminal, illegal or improper conduct
 - ⇒ conviction for disorderly conduct (1976)
 - ⇒ arrest for simple assault (1980)
 - ⇒ conviction for resisting arrest (1983)
 - ⇒ conviction for loitering w/ intent to use a controlled substance (heroin)
- J.A.S. was dismissed from police force following heroin conviction
- J.A.S. falsely stated to Board that he did not have an alcohol problem
- Lacked candor on various documents & applications, including job application w/ police department, New Jersey driver's license application, application to purchase a handgun & application to law school
- Financial irresponsibility by defaulting on student loan (subsequently repaid).

Evidence of rehab:

- Active in Narcotics Anonymous
- Guardian ad litem program
- Volunteered as carpenter after Hurricane Andrew
- Replaced former anger w/ acceptance

Board found insufficient rehabilitation

HELD: Sufficient rehab, conditional admission for 3 years.

Court cited the fact that none of the misconduct was recent, signed contract w/ FLA, Inc. 8/6/92, & that Board could only cite one inconsistency in applicant's testimony at investigative and formal hearings.

CONCUR: (Harding, J.) Board did not base recommendation of nonadmission on breach of public trust.

DISSENT: (Grimes, C.J. & Wells, J.) Cited breach of public trust as police officer & Board did not abuse its discretion in recommending against admission.

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**29. *Florida Board of Bar Examiners Re: L.H.H.,*
660 So.2d 1046 (Fla. 1995)**

Proven Specifications:

- ⇒ Pled guilty to one count of conspiracy to traffic in stolen jewelry and two counts of grand theft (accepted a ring as security for fee in criminal appeal, knowing it was stolen - eventually bought stolen jewelry from client)
- ⇒ Disbarred in Fla. 1984
- ⇒ Other discipline in Florida
 - 1979 private reprimand - refused to stop work on case at client's request until received attorney's fees
 - publicly reprimanded for refusing to refund \$2134 in unearned fees.
 - publicly reprimanded for improperly receipting client's property or money into trust account
- ⇒ Failed to note on 1992 Bar Application that petition for reinstatement to Ala. Bar had been denied.
- ⇒ 1986 arrest for DUI - didn't start recovery program until 1994, six months before formal hearing
- ⇒ Intent to mislead about 1984 convictions when L.H.H. applied for a real estate broker's license in Ala. in 1987

Board found disbarment individually, disqualifying, other proven Specifications collectively disqualifying.

HELD: L.H.H. has not shown rehabilitation sufficient to warrant his admission.

L.H.H. argued that the Board had erected a permanent barrier to readmission. The Court disagreed.

"L.H.H.'s disbarment alone is disqualifying unless he can show clear and convincing evidence of rehabilitation." at 1048.

"Second, the rehabilitation requirement is stringent. . . . Although L.H.H. has taken steps toward rehabilitation, he does not present this Court with evidence of the extra effort applicants must make to demonstrate sufficient rehabilitation." at 1049.

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**30. *Florida Board of Bar Examiners Re: R.L.B.,
660 So.2d 1049 (Fla. 1995)***

Proven Specifications:

- ⇒ 9/92, applicant reported on credit application that he was self-employed and earned \$65,000. Shortly before that, applicant had applied for unemployment compensation
 - Applicant testified that a car salesman told him it was okay to put this income down based on his 1991 income and anticipated case settlements (the applicant had received no income from case settlements that year).
 - Board found this proven specification individually disqualifying
- ⇒ The applicant's law firm had maintained one account that commingled client funds (no allegations that the applicant took any client money)
 - ⇒ Board found this proven Specification collectively disqualifying
- ⇒ 9 complaints filed against the applicant by former clients in another state
 - ⇒ Board found this proven Specification collectively disqualifying
- ⇒ Pattern of financial irresponsibility based on deferments, defaults, & delinquencies in repayment of student loans.
 - ⇒ Board found this proven Specification collectively disqualifying

HELD: R.L.B. does not show the fitness and moral character required for membership in the Bar.

"Although R.L.B. disputes some of the facts and findings in the specifications, the record supports the Board's findings and conclusions. On reviewing the proven specifications, we agree that R.L.B. has not shown the character and fitness required for admission to The Florida Bar. Instead, he has demonstrated a course of questionable behavior." at 1051.

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**31. *Florida Board of Bar Examiners Re: P.T.R.,
662 So.2d 334 (Fla. 1995)***

- 1980 Filed papers in probate action identifying an heir knowing papers to be false
- Removed \$7,082.71 from the estate account & split money with another attorney who suggested using a fictitious heir.
- 1985 Charged with 3rd degree grand theft
- Plea of nolo, w/held adjudication, 5 yrs probation
- 1988 Disbarred retroactive to 1986

Board recommended that admission be denied for failure to establish rehabilitation by clear and convincing evidence

Evidence of rehab:

- volunteer work for a homeowner's association in N. Carolina where applicant owns lot;
- donating blood (rare blood type);
- participating as treasurer, coach, or umpire in son's Little League;
- traveling w/ daughter to swim meets when she was younger; and (court rejects this as a "positive action")
- teaching martial arts to children for free.

HELD: Rehab sufficient to admit

"The fact that a particular type of service benefits both the community and the applicant does not necessarily lessen the value of the service. The rehabilitation requirement is broad in scope: we are directed to look to "such things as a person's occupation, religion, [and] community or civic service" to make our determination. Fla. Bar Admiss. R., art. III, _ 4.e(7). Here, we find that the activities P.T.R. selected positively impacted these areas of his life."

- Court also observes that misconduct was a single incident and the applicant had not engaged in any misconduct in the 15 years since.

DISSENT (Wells, J., Grimes, C.J. concurs):

Majority erroneously substitutes its judgment for that of the Board. In light of the seriousness of the applicant's misconduct, cannot disagree with the Board that he had not met his burden.

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32. *Florida Board of Bar Examiners Re: N.W.R.,
674 So.2d 729 (Fla. 1996)*

4 Specifications:

- 1(A) Criminal conduct involving theft from a post office box
- 1(B) Civil suit resulting from thefts
- 2(A) Did not provide detailed response on Bar Application of criminal incident
- 2(B) Lack of Candor on Bar Application re: description of encounter with police involving suspended license
- 3 Lack of Candor at Investigative Hearing re: same subject as 2(B)
- 4 Since 8/85, 165 traffic citations, 3 license suspensions

HELD: Agreed should be denied, but only on basis of Spec 1(A)

1(B) not disqualifying since recovery less than amount sued for
2(B) & 3 do not rise to level of rendering unfit for admission
4 - Implications of driving record are tangential to fitness to practice law -
Court noted driving record completely clear for 2.5 years.

Because of seriousness of misconduct, rehab (Guardian Ad Litem program) not enough, but will allow to reapply in one year.

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**33. *Florida Board of Bar Examiners Re: J.J.J.,*
682 So.2d 544 (Fla. 1996)**

Specifications found proven by the Board:

- ⇒ Convicted of 7 counts involving:
 - ⇒ conspiracy to defraud the govt.
 - ⇒ aiding & abetting the evasion of federal income taxes & filing false income tax returns
 - ⇒ attempting to evade own income taxes
 - ⇒ filing false income tax returns for 2 yrs.
 - ⇒ Sentenced to 3 yrs in federal prison/fined \$10,000
- ⇒ Federal tax deficiency of _ \$120,000
- ⇒ Suspended from another state bar for 3 yrs. because of felony convictions
- ⇒ During practice of law in that state, a number of requests for investigation were filed against him.

Last 2 were not disqualifying, first 2 individually disqualifying.

- Board also found insufficient rehabilitation

HELD: Record supports Board's findings.

"On reviewing the record and the Board's report, we find that J.J.J. has failed to sufficiently document his positive action for purposes of proving rehabilitation. Several of the character witnesses referred to J.J.J.'s 'community involvement' in general terms, but could not detail the nature of his activities. J.J.J. admitted that his participation in a local service organization was 'sporadic.' While we agree with J.J.J. that his active participation in his local bar association and his pro bono legal service constitute positive action as required by article III, section 4.e.(7), we do not agree that these activities prove sufficient rehabilitation from his previous egregious misconduct." at 545.

- Court cited the fact that J.J.J. knowingly engaged in the misconduct, had been a practicing attorney for a number of years, and had served as a special agent for the F.B.I. and as chief trial prosecutor in his county.

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**34. *Florida Board of Bar Examiners Re G.J.G.,*
709 So.2d 1377 (Fla. 1998)**

Proven Specs:

- 1 Cheated in 7/88 MBE
- 2 False Statements on claim for unemployment while in law school
- 3(A) Falsely denied cheating on Bar Exam
- 3(B) Lied about visual acuity
- 5 1991 - Assaulted individual w/ gun & damaged individual's truck
 - Arrested & charged w. aggravated assault
 - asked victim to drop charges & paid him \$500 (\$400 found proven)
- 6 False statements re: alleged assault
- 7 False statements at 2nd inv. hearing re: reasons for not pursuing 1st application after first set of Specifications
- 8 False statements on Fla. Residential Property & Casualty Joint Underwriting Assoc. Homeowners Appl.

Board found:

- ⇒ 1, 3(A), 5, & 6 - individually disqualifying
- ⇒ 3(B) - coll. disqualifying
- ⇒ 2, 7, & 8 - not disqualifying

HELD: Uphold Board's recommendation

Clarification of the Court's holding in *M.C.A.*

- "The Board is certainly justified in requiring absolute candor from applicants for admission and in considering a lack of candor when making its recommendation. However, a charge and findings that an applicant falsely denied an act which, at the time of the charge, had not yet been proven, puts the applicant between the proverbial "rock and a hard place," with a choice either to maintain innocence and fail to meet the Board's standard of candor or admit the charge, though it may not be true, and relieve the Board of its burden of proof in the bar admission proceedings. Accordingly, we hold that this particular finding cannot serve as an individually sufficient basis for disqualification and write to explain the inappropriateness of this kind of charge for the benefit of the Board and future applicants." at 1380.

Distinguish from *J.C.B.*

- There, the charge against *J.C.B.* had been established at Bar

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disciplinary proceeding.

- "Thus, 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 the act in subsequent proceedings does not serve the applicant well and is unacceptable." at 1381.

Certain factual determinations - defer to Board's finding because based on credibility of witnesses. at 1380.

**35. *Florida Board of Bar Examiners Re J.E.G.R.,
725 So.2d 358 (Fla. 1998)***

1 Specification proven & disqualifying

- While in military, willfully deserted his unit and was convicted in military of desertion and missing movement

Due to seriousness of desertion conviction & length of sentence imposed, Board viewed applicant in the same manner as a convicted felon.

Board found evidence of rehabilitation insufficient.

- Board found applicant "neither recognizes his past misconduct nor shows any sincere remorse for his desertion from the military obligation for which he had volunteered. Rather than accepting responsibility for his serious misconduct, [J.E.G.R] portrays himself as a victim of both the military and the military justice system."

Board also noted that applicant admitted at formal hearing that his desertion conviction renders him ineligible of U.S. citizenship.

HELD: Denial upheld, applicant may reapply in one year.

- Board was justified in viewing the applicant the same as a convicted felon
- Agree that the applicant did not show sufficient rehabilitation
 - "Although he has made a significant effort toward rehabilitation and has probably done all he can do to satisfy the 'positive action' element of rehabilitation, he committed a very serious offense. AS noted by the Board, J.E.G.R.'s desertion was 'aggravated by the fact that it occurred after his unit was activated to serve the national interest following the Iraqi

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invasion of Kuwait' and by the fact that 'it occurred after the applicant had voluntarily joined the Marine Reserves and had received the benefits of being a reservist for more than five years." [footnote omitted]. at 360.

- "Finally, we approve the Board's requirement that before J.E.G.R. may be admitted, he must establish or restore his eligibility for United States citizenship. The Rules of the Supreme Court Relating to Admissions to the Bar require applicants who have been convicted of a felony to have their civil rights restored before gaining admission to The Florida Bar. See Fla.Bar Admiss. R. 2-13.3. WE feel that it would be unfair not to require J.E.G.R. to take similar steps in this case to establish his qualification for admission." at 360.

**36. Florida Board of Bar Examiners Re P.K.B.,
753 So.2d 1285 (Fla. 2000)**

Proven Specifications:

- ⇒ January 1989, P.K.B. damaged a door in his fiancé's father's home after the father's dog tried to attack the fiancé's pet chinchilla, charged w/ criminal trespass, charges dropped.
- ⇒ A few days later, P.K.B. shot and killed the dog, arrested, charged with cruelty to animals and obstruction of an officer
- ⇒ Law School Application:
 - ⇒ Failed to disclose obstruction arrest and charge
 - ⇒ Reported cruelty to animals and criminal trespass charges were dropped, but failed to disclose that was conditioned on his making restitution.
- ⇒ 1985 - DUI, BAC .16 or .17
- ⇒ 1987 - Arrested for DUI, falsely informed police officer had 2 beers approximately 1 hour before being stopped
 - ⇒ Acquitted at trial
- ⇒ 1991 - Open container as passenger
- ⇒ 3/15/98 (while Specs pending) arrested for DUI, careless driving, leaving scene of accident
- ⇒ Eventually nolle prossed.
- ⇒ Appl's witness at formal hearing said applicant

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⇒ had consumed more alcohol that night than was appropriate

Board found a pattern of serious lapses in judgment, concluded proven Specifications were collectively disqualifying

Board also noted "particular concern" regarding "the evidence in the record which suggests that [P.K.B.] may have a substance abuse problem."

HELD: Proven Specification, in the aggregate, justify nonadmission at this time.

Killing the dog and damaging property raise "very serious doubts" about P.K.B.'s respect for the rights of others and for the law (citing *G.W.L.*), as does driving while intoxicated.

"Finally, P.K.B.'s actions in driving after drinking and admittedly driving while impaired by alcohol also raise substantial doubts about his respect for the law and for the rights of others." at 1287.

"The record here shows a long history of disregard for the regulations governing our society and indicates an approach to like that the rules are only for others to follow. Such an approach is contrary to the character and fitness required to practice law in this state." at 1287.

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**37. *Florida Board of Bar Examiners Re D.A.R.,*
753 So.2d 1288 (Fla. 2000)**

Proven Specifications:

- ⇒ Domestic Violence during marriage from 6/78 to 6/83
- ⇒ Domestic Violence in subsequent marriage on then-pregnant wife on at least 2 occasions
- ⇒ As law student in divorce proceeding w/ 2nd wife, represented self & sought custody of child, judge described his position as "absurd" b/c: never seen child, could not support himself, & had no living accommodations for child
- ⇒ In 1986, during 3rd marriage, violated restraining order
- ⇒ 7/86 - Committed battery against 3rd wife, again violating restraining order
- ⇒ 1992 - 4th wife petitioned for injunction against domestic violence describing various instances of domestic violence
- ⇒ 1993-1996 - Engaged in UPL, resolved by execution of cease and desist affidavit
- ⇒ 4/18/97 - Struck 4th wife in the face & was arrested & charged with domestic battery
- ⇒ False statement on 1st Bar Application re: description of auto accident
- ⇒ Misrepresentation of various discussions w/ Board employee
- ⇒ False testimony at 1997 investigative hearing regarding physical altercations w/ current wife
- ⇒ Failed to timely amend Application re: 1997 arrest for battery

Last Specification individually disqualifying, rest collectively disqualifying.

"The remaining proven specifications show a long history of unacceptable behavior which is indicative of serious character shortcomings and which is completely inconsistent with fitness to practice law in Florida. Further, D.A.R. has shown no rehabilitation from his past misdeeds and, as the Board found, he shows extreme malice and ill will towards members of the Board's staff. While the thrust of some of D.A.R.'s arguments seems to be that he has been unfairly treated by the Board, he does not explain how the perceived mistreatment affects the validity of the Board's findings of fact as to the unchallenged specifications and its conclusion that the proven, and for the most part admitted, specifications are disqualifying." at 1290.

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**38. *Florida Board of Bar Examiners Re M.A.R.,
755 So.2d 89 (Fla. 2000)***

Proven Specifications:

- ⇒ Violated a court order regarding child support
 - Amount in arrears at least \$17,000
 - Fact that children did not suffer as a result of nonpayment did not mitigate seriousness
 - Agreement w/ ex-wife re: non-payment did not establish an affirmative defense
- ⇒ Failed to timely file federal income tax returns & timely pay taxes in '87, '88, '89, & '90.
- ⇒ Since 1995, written > 40 bad checks, most recent only one week prior to formal hearing
- ⇒ False oath on Bar Application Amendments by notarizing prior to filling out the forms
 - ⇒ Claimed did not appreciate the inappropriateness of actions at the time
 - ⇒ Board found unpersuasive: testified at inv. hearing that he was motivated by desire not to reveal unfavorable information to notaries
- ⇒ Lack of Candor - Law School application re: prior arrest & probation for DUI
- ⇒ Falsely represented himself as an attorney in letter to creditor

Violation of child support order individually disqualifying, remaining misconduct collectively disqualifying

HELD: Affirmed the Board's recommendation

Test to be applied in determining character and fitness: "First, are the facts in this case such that a reasonable [person] should have substantial doubts about the petitioner's honesty, fairness, and respect for the rights of others and for the laws of the state and nation? Second, is the conduct involved in this case rationally connected to the petitioner's fitness to practice law?' *Florida Bd. of Bar Exam'rs*, 364 So.2d 454, 459 (Fla. 1978)." at 91

"The record is certainly subject to a reasonable interpretation that M.A.R.

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made a personal decision, and his ex-wife was simply forced to accept the consequences of that decision." at 89.

"Similarly here, M.A.R.'s failure to pay child support shows a lack of respect for the rights of his children and his ex-wife and a lack of respect for the law and for the court order itself." at 91.

"Further, regardless of any alleged agreement with his wife, which is far less than clear, and regardless of his alleged ability to pay the amounts required, he still clearly violated and disregarded a court order. This conduct was based upon a personal decision which forced others to accept the consequences. Such conduct is rationally connected to M.A.R.'s fitness to practice law. 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 to present when conduct is in violation of a court order, but the citizens of Florida are entitled to more than excuses when we certify the character and fitness of our lawyers.: at 92.

"While M.A.R. attempts to minimize the significance of each of these instances with explanations and excuses for his conduct, when considered together and along with the other proven instances of misconduct, they simply tend to show a lack of candor. **We must appreciate the rational distinction between valid and justified reasons for unacceptable conduct and excuses that are simply a facade, and we must be vigilant to make certain that our certification process not descend to the level of approving less than acceptable prior conduct by merely attaching a string of excuses and explanations.**" at 92 (emphasis added).

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**39. *Florida Board of Bar Examiners Re J.J.T.*,
761 So.2d 1094 (Fla. 2000)**

Disbarred attorney

- ⇒ 1992 pled guilty to unlawful compensation & perjury in an official proceeding.
- ⇒ Requested and accepted \$2500 from a client represented by J.J.T. as a special public defender & his subsequent denial of wrongdoing when questioned under oath by law enforcement officials.

Specifications based solely on his prior discipline & disbarment

Appl. admitted Specifications, so only analysis required is of rehabilitation.

HELD: Failed to establish qualified for readmission.

Reaffirmed statement in *L.H.H.* that "disbarment alone is disqualifying unless [the applicant] can show clear and convincing evidence of rehabilitation." at 1096.

"Additionally, in evaluating an applicant's showing of rehabilitation, the nature of the past misconduct cannot be disregarded. *See Florida Bd. of Bar Exam'rs re W.H.V.D.*, 653 So.2d 386, 388 (Fla. 1995). The more serious the misconduct, the greater the showing of rehabilitation that will be required." at 1096.

Court describes the applicant's conduct as "akin to bribery." at 1096.

"Positive Action" Element:

- Volunteer work for nonprofit organization, A Child Is Missing
 - J.J.T.'s involvement increased from several times a week to several hours each weekday in the 6-8 months preceding formal hearing
 - J.J.T. admitted that possibility of employment by the corporation was part of his motivation for volunteering
- Did volunteer work for church on 3 or 4 occasions during the last 3 years
- Volunteered on 3 occasions to counsel victims of AIDS.

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"J.J.T. was disbarred in 1992. In the six years prior to his rehabilitation hearing, aside from his work with A Child Is Missing, he can show only a handful of instances of volunteer community service. Further, while J.J.T.'s work for A Child Is Missing is commendable and appears to be the type of activity encouraged in *M.L.B.*, his most active participation did not occur until shortly before the rehabilitation hearing, and its value as evidence of rehabilitation is diminished by the fact that his admitted ultimate goal is paid full-time employment for himself." at 1097.

Desire & Intent to Conduct Himself in Exemplary Fashion in the Future:

- Many of his character letters and affidavits were submitted by people who did not know why he was disbarred.
- "Further, while the signatories presumably read and agreed with the content, the fact that J.J.T. prepared and managed the content of many of the letters and affidavits himself also diminishes their value as corroborating evidence." at 1097.

**40. *Florida Board of Bar Examiners Re J.A.B.*,
762 So.2d 518 (Fla. 2000)**

Proven Specifications:

- ⇒ J.A.B. failed to timely & fully pay court-ordered child support for his daughter [Specific amount of arrearages not established]
- ⇒ Failed to maintain health insurance for his daughter & life insurance for her benefit as required by court order [J.A.B. still not in compliance w/ life insurance provision at the time of the formal hearing]
- ⇒ Financial Irresponsibility since bankruptcy in 9/90
 - ⇒ Unsatisfied default judgment
 - ⇒ Issued worthless check in 5/94 - attended diversion program to avoid prosecution
 - ⇒ Defaulted on student loan 1/95, satisfied the debt on 1/31/96
 - ⇒ Incurred unnecessary & inordinate expense by voluntarily participating in foreign student program in summer of 1995
 - ⇒ Delinquent in account for health club membership begun in 10/95, owed _ \$850
 - ⇒ 1995-1997 did not maintain checking account due to past

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problems with writing worthless checks, & proper records for current checking account not maintained as evidenced by negative balance in 10/97

- ⇒ Incurred extravagant expense for transportation by currently leasing a Maxda Miata for \$340/month
- ⇒ Lack of Candor - Law School Application - Failed to disclose 1989 simple assault charge & 1994 charge of passing a worthless check [Found proven but not disqualifying]

Board also found J.A.B.'s misrepresentations and lack of candor in his answer to Specifications & during formal hearing testimony further grounds for disqualification.

HELD: Board's recommendation affirmed.

J.A.B. contended Board erroneously relied on testimony of ex-wife to find he owed back child support payments

- Board "painstakingly recounted" testimony on this issue & explained evaluation of credibility of witnesses

"Clearly J.A.B.'s challenge to the Board's findings is simply a question of credibility, which is a question the Board was in the best position to answer and did very thoughtfully answer." at 520.

"J.A.B.'s violation of the child support order, not only by failing to fully pay the child support owed but also by failing to obtain the required insurance coverage, shows a lack of respect for the rights of his daughter, the rights of his ex-wife, and a further lack of respect for the law and for the court order itself. *Cf. Florida Bd. of Bar Examiners re M.A.R.*, 755 So.2d 89 (Fla. 2000); *Florida Bd. of Bar Examiners re E.R.M.*, 630 So.2d 1046 (Fla. 1994). we refuse to overturn the findings supported by substantial evidence and order that this individual be granted the privilege of a position which demands respect for the law and judicial institutions when by conduct he has rejected such responsibility." at 520.

Referencing the various instances of financial irresponsibility:

"Each of these instances of financial irresponsibility standing alone may have been subject to reasonable explanation; however, we find that when considered together and with his violation of the court-ordered child support

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obligations, these events show a total lack of respect for the rights of others and a total lack of respect for the rights of others and a total lack of respect for the legal system, which is absolutely inconsistent with the character and fitness qualities required of those seeking to be afforded the highest position of trust and confidence recognized by our system of law." at 520.

**41. *Florida Board of Bar Examiners Re M.L.B.,*
766 So.2d 994 (Fla. 2000)**

Initially denied admission in 1997 based on finding:

- ⇒ M.L.B. assisted another person in stealing a large number of compact discs from M.L.B.'s employer & ultimately pled no contest to 3rd degree grand theft;
- ⇒ M.L.B.'s explanation of this incident on Bar Application was lacking in candor in denying he did anything illegal
- ⇒ Testimony at investigative hearing was false in again denying he did anything illegal

4/15/99 - Board again recommended denial of admission for failing to establish rehabilitation by clear and convincing evidence of the following rehab elements:

- (1) "unimpeachable character and moral standing in the community"
- (2) "personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future"; and
- (3) "positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service."

HELD: Affirmed Board's finding that rehabilitation not established.

"Here, the Board previously found M.L.B. guilty of serious misconduct. Whether M.L.B. ever acknowledges the record facts within which we must evaluate the propriety of his admission to the bar, he stands convicted of conduct amounting to a violation of trust placed with him by his employer. The theft from his employer occurred just days before he embarked upon his legal education, and the video tape of the actual event was reviewed by the Board." at 996.

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"It is important for those attesting to an applicant's moral character to be aware of his or her past misconduct, and recommendations from those who are unaware of it may be given less weight. *See Florida Bd. of Bar Exam'rs re J.C.B.*, 655 So.2d 79, 82 (Fla. 1995)(noting concern that 'most of [the applicant's] character witnesses did not know why he was disbarred'). When one makes recommendations for an individual's admission into a profession that demands the highest levels of trust and confidence, it is exceedingly important that the recommendation be viewed only through the scope of knowledge of facts upon which it has been based. Mere knowledge that one has been previously refused admission is far different than knowledge that past criminal conduct was the reason for the denial. Accordingly, the Board correctly discounted the weight given to many of M.L.B.'s letters of recommendation." at 997.

"We find that *G.J.G.* is not controlling. At the time of the first formal hearing in this case, the two original 'lack of candor' specifications involved and considered by the Board were similar to the charges involved in *G.J.G.* However, at this stage of the proceedings, the conduct which M.L.B. still denies has already been established. It is this posture within which we must review the record. Accordingly, we find that the Board's consideration of the charges and finding a pattern of untruthfulness was not inappropriate, and we agree with the Board that M.L.B. did not meet his burden of proof on this element." at 998.

"Further, while we have recognized that activities which benefit the applicant as well as the community are not necessarily unacceptable for purposes of rehabilitation, *see Florida Bd. of Bar Exam'rs re P.T.R.*, 662 So.2d 334, 337-338 (Fla. 1995), such activities are certainly not the type of broad-based community or charitable activities which this Court views as strong evidence of positive action showing rehabilitation. The rules contemplate and we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission, and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens." at 998-999 (footnote omitted).

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**42. Florida Board of Bar Examiners re John Doe
770 So.2d 670 (Fla. 2000)**

Proven Specifications:

- 1 Lack of Candor – 3/90 law school reapplication
 - Failed to disclose pending battery charge
- 2 Lack of Candor – Florida Bar Application
 - (A) Failed to disclose academic exclusion from law school fall 1989
 - (B) Failed to disclose 1993 accusation of violating law school Honor Code
 - (C) Falsely claimed in 1998 amendment that he withdrew from law school for health reasons, when had been academically excluded
- 3 Lack of Candor – Investigative Hearing
 - Falsely claimed that officials at law school only suggested he withdraw, when had been academically excluded

Board

- Relied on circumstantial evidence for Specs 1, 2(A), 2(C) & 3
- Withheld recommendation for 2 years to allow applicant to show rehabilitation, including:
 - Attendance at TFB ethics school
 - Submission of essay on candor
 - Sworn report detailing rehabilitation

HELD: Board’s action affirmed.

“The Court usually defers to the Board’s findings on a witness’s credibility because the Board has had the opportunity to observe the witness during testimony.” at 674 [citation omitted].

“Further, the Board may find that facts are proven by circumstantial evidence where ‘the inference of the fact preponderates over other inferences.’” at 674. [citing *R.D.I.*]

“This Court has held that the mere statement of positive acts without supporting documentation is not sufficient to demonstrate clear and convincing evidence of rehabilitation.” at 675.

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“it must be noted, however, that the requirement of proof of rehabilitation is firm and fixed. This is not a mere pro forma requirement, but one requiring meaningful substance. The board was, in our view, somewhat lenient in its recommendation and the petitioner must clearly and convincingly satisfy the rehabilitation requirements. at 675-676.

**43. *Florida Board of Bar Examiners re T.J.F.*
770 So.2d 676 (Fla. 2000)**

Proven Specifications:

- 1 5/22/94 – Unlawfully obtained a refund = \$92.28 for a purse she had not purchased and stole a \$155.00 wallet
 - Entered deferred prosecution program, charge was nolle prossed
- 2(A) Failed to timely file tax returns 1989-91
- 2(B) Federal Tax Lien for unpaid taxes
- 3 1997 Amendment falsely stated left store w/ wallet w/o realizing she had it

Board relied on circumstantial evidence to conclude applicant did form an intent to steal the wallet prior to leaving the store.

HELD: Board affirmed, but applicant to be allowed to reapply in 1 year

“Further, T.J.F.’s lack of candor in her communications with the Board is an especially serious violation because under current case law, the making of false statements to the Board merits disqualification from the Bar.” at 678.

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**44. *Florida Board of Bar Examiners re: R.L.W.*
793 So.2d 918 (Fla. 2001)**

Proven Specifications:

- 1(A) Failed to disclose on Bar Application attendance at western State University College of Law during spring 1994
- 1(B) Failed to disclose outstanding account w/ Western State = \$1,700.50
- 2 1998 – Converted application & continued to fail to disclose above
 - Board noted collection agency was handling the account during the 9 months prior to converting application, and R.L.W. settled delinquent account 2 months prior to converting.
- 3 Falsely claimed at investigative hearing he did not recall attending Western State
- 4 Lack of Candor – 1995 application to St. Louis law school
 - (A) Falsely stated had not attended any other colleges
 - (B) Falsely stated had not attended any other law schools
 - (C) 1999 letter of explanation to law school
 - Claimed he quickly decided to leave Western State, when in fact had been 6 weeks into classes
 - Claimed to have failed to recall his attendance at Western State
 - Board noted application to St. Louis signed only 13 months after w/drawing from Western State
- 5 Lack of Candor – Alabama Bar Application
 - (A) Falsely stated on student registration w/ Board that he was single when he was married
 - (B) Left blank space for spouse’s name & date of marriage
- 6 Failed to disclose attendance at Western State on California bar application
- 7 Lack of Candor – Georgia Bar Application
 - (A) Falsely stated had never been divorced
 - (B) Failed to disclose Florida Bar application
 - (C) Failed to disclose had attended Western State
 - (D) Falsely stated had never had account turned over to a collection agency
 - (E) Avoided disclosing divorce by stating had never been a party in litigation
 - (F) Falsely claimed had never been charged w/ traffic violation

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- (G) Claimed he failed to disclose attendance at Western State b/c he attempted to cancel enrollment w/I the first few days
- 8 Failed to disclose attendance at Western State on 1998 graduate school application for MBA program
- Board recommended denial of admission for 5 years

HELD: Board affirmed.

The Court noted that in the past, justices have cautioned against rejection of the Board's recommendations whether to admit an applicant or not. "We conclude that this Court needs to be equally cautious when rejecting the Board's recommendation as to an enhanced period of disqualification when presented with the facts established here." at 926.

"Our words requiring integrity, honesty, fairness, respect, and professionalism would ring hollow if we were to close our eyes to the submission of false and altered documents during a formal hearing after an applicant has made multiple misrepresentations in multiple Bar applications" at 927.

ANSTEAD (concurring in part, dissenting in part) in which **PARIENTE** and **QUNICE** concur:

- Approve of the denial, but not for 5 years.

"Whether petitioner will be able to prove his rehabilitation in that time remains to be determined. My concern, and my disagreement with my colleagues in deviating from the standard two-year period before a new application may be filed, is that this decision, which in many instances involve much more egregious conduct but permit reapplication in two years." at 928.

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**45. Florida Board of Bar Examiners re: O.C.M.
850 So. 2d 497 (Fla. 2003)**

Proven Specifications:

- 1 Altered letters of recommendation to reflect employment as law clerk v. runner
 - Letters were submitted to various law schools
- 2 Falsely claimed on law school application at Southern Illinois to have been employed as law clerk for 6 months
- 3 Failed to disclose prior attendance at 2 schools & 5 prior jobs on University of Orlando law school application
 - Also sent letter w/ inaccuracies to dean of law school, claiming he had only changed one word on letters of recommendation
- 4 Lack of Candor – Florida Bar Application re: letters of recommendation
- 5 Lack of Candor at investigative hearing
 - Falsely claimed reason for omissions from employment history was that he had copied it from a previously submitted application for employment w/ the State of Florida.
 - List on employment application did not match list on law school application
- 6 Failed to disclose attendance at 2 colleges and 4 prior jobs on State of Florida employment application.

O.C.M. did not dispute factual findings, but challenged the Board's recommendation that he be disqualified from reapplying for 3 years.

HELD: Board affirmed.

“Any material omission or misrepresentation made in the application process for admission to The Florida Bar is a serious matter. Here, O.C.M. engaged in a pattern of dishonesty and half-truths in attempting to explain a very serious instance of misconduct on his part – the falsification of letters of recommendation for admission to various law schools. Such a lack of candor by an applicant seeking admission to The Florida Bar is intolerable. O.C.M.'s conduct clearly falls within rule 3-23.6(d), and the Board was justified in recommending an extended disqualification period.” at 499

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**46. *Florida Board of Bar Examiners Re: S.P.M.*
851 So. 2d 694 (Fla. 2003)**

Proven Specifications:

- 1 Illegal/Improper Conduct
 - ⇒ 1995 - Sold 14 grams of marijuana to an undercover officer
 - ⇒ 1993 – Involved in a car accident, marijuana pipe found in car
 - ⇒ 1991 Charged w/ possession of cocaine, possession of marijuana
 - ⇒ Pled guilty to possession of drug paraphernalia & possession of < 20 grams of cannabis
 - ⇒ 1991 charged w/ aggravated battery when S.P.M. struck a person w/. his car
 - ⇒ 1999-2000 – Illegally possessed and used marijuana, continuing to use marijuana while a law student
2. Lack of Candor – Florida Bar Application
 - ⇒ Failed to disclose 1991 charge of aggravated battery
 - ⇒ Explanation of 1995 marijuana charge was false, misleading or lacking in candor
 - ⇒ Explanation of 1991 charge of possession of cocaine & marijuana was false, misleading or lacking in candor
 - ⇒ Failed to timely amend Bar application to disclose employment termination as a substitute teacher
 - ⇒ Did so knowingly, hoping would be admitted before having to disclose
- 3 3 letters to law school officials w/ false, misleading descriptions of 1995 marijuana charge
- 4 Lack of Candor – LLM application re: 1995 marijuana charge
- 5 Lack of Candor – Pinellas County Schools application re 1993 and 1995 arrests
 - Employment terminated as a result of the lack of candor

S.P.M. did not dispute any Board factual findings except Spec 3 (avoided amending Bar application re: employment termination in hopes would get admitted before having to disclose).

Board recommended S.P.M. be disqualified from reapplying for 3 years.

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HELD: Board affirmed.

“Based on this circumstantial evidence, the Board was entitled to infer that S.P.M. was intentionally failing to disclose his termination in hopes that the board would recommend his admission without him having to reveal the termination.” at 697 [citation omitted]

“S.P.M. argues that his lack of candor in the admissions process is not serious enough to warrant a three-year disqualification. We disagree. Any material omission or misrepresentation made in the application process for admission to The Florida Bar is a serious matter. On his bar application, S.P.M. intentionally failed to disclose required information and provided false and misleading information regarding his past criminal conduct. He continued this pattern of dishonesty in his investigative and final hearing testimony. Such a lack of candor by an applicant seeking admission to The Florida Bar is intolerable. S.P.M.’s conduct clearly falls within rule 3-23.6(d), and the board was justified in recommending an enhanced disqualification period.” at 697.

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**47. *Florida Board of Bar Examiners Re: Chavez,*
894 So. 2d 1 (Fla. 2004)**

Credit String/Allegations of Misstatement Case

Credit string required the following:

- 1) Plans for repayment of the child support arrearages and a promise to continue paying the court-ordered child support;
- 2) a commitment to meet the obligations as set out in his repayment plan,; and
- 3) a written acknowledgement that failure to adhere to the repayment plan could result in revocation of Chavez’s license to practice law.

Allegations were that applicant:

- ⇒ Failed to make any payments toward child support arrearage
- ⇒ appl had continued to be delinquent in paying his ongoing child support obligation, so that the arrearage actually increased during the time he was a member of the Bar.

Appl’s response was that the statements in the credit string agreement were a “plan” rather than an obligation.

Board found:

- ⇒ no payments toward arrearages were made at all; and
- ⇒ Applicant failed to meet his continuing obligation to pay the underlying child support during several months, including the first 2 months following his admission to the Bar

Board recommended Chavez’s license be revoked.

HELD: Board’s findings and recommendation were approved, and “Chavez’s conditional license to practice law is hereby revoked.” at 5.

“Under the circumstances present in this case, the Board was most lenient in even recommending Chavez for conditional admission in the first place. at 3.

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“The absence of this promise [to pay ongoing child support and make payments toward arrearages] should have resulted in an absolute *denial* of admission to the Bar.” at 3 [emphasis in original]

“In fact, if Chavez had initially been denied admission, this denial would have been consistent with decisions from this Court because debts associated with failure to pay child support are distinguishable from other types of debt. *See Gibson v. Bennett*, 561 So. 2d 565, 570 (Fla. 1990 (explaining that support obligations are not debt, but ‘a personal duty, not only to a former spouse or child, but to society generally’). Indeed, this Court has denied admission to Bar applicant in cases where the applicants have had child support arrearages because such arrearages can often reflect an applicant’s lack of financial responsibility, a disregard for the applicant’s moral and legal obligation to his or her children, and, because child support is court-ordered, a lack of respect for the law in general. *See Fla. Bd. of Bar Exam’rs re J.A.B.*, 762 So. 2d 518, 520 (Fla. 2000) (Stating applicant’s ‘failure to pay child support shows a lack of respect for the rights of his daughter, the rights of his ex-wife and a lack of respect for the law and for the court order itself.’); *Fla. Bd. of Bar Exam’rs re M.A.R.*, 755 So. 2d 89, 91 (Fla. 2000) (same); *Fla. Bd. of Bar Exam’rs re E.R.M.*, 630 So. 2d 1046, 1047-1048 (Fla. 1994) (holding that there was competent and substantial evidence supporting Board’s findings, where the Board found, in part, that applicant’s failure to pay child support ‘exhibited a disregard for his moral and legal obligations to his children, lack of financial responsibility, and a lack of respect for the court and legal system’). at 4.

Court reiterates “our previous admonition that these “credit string” admissions should be sparingly used.” at 4.

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**48. *Florida Board of Bar Examiners Re: Papy,*
901 So. 2d 870 (Fla. 2005)**

January 1998 - Disciplinary Resignation

Proven Specifications:

- ⇒ Circumstances surrounding disciplinary resignation
 - ⇒ Pattern of Irresponsibility
 - ⇒ Failed to timely file federal income tax returns 1994 - 1998
 - ⇒ Failed to timely pay federal income taxes 1994-1996, 1998-2000
 - ⇒ Notice of Federal Tax Lien = \$69,822.49 for tax years 1990 & 1991
 - ⇒ Notice of Federal Tax Lien = \$55,363.09 for tax year 1995
 - ⇒ Notice of Federal Tax Lien = \$161,787.64 for tax year 1996
- [Lien for 1990 & 1991 released, liens for 1995 & 1996 remained unsatisfied]

Board found rehabilitation not established

- ⇒ Seriousness of underlying conduct
 - ⇒ Egregiousness of conduct leading to resignation (loaned himself \$500,000 from client trust funds & disregard of federal tax laws dating aback to 1994)
 - ⇒ Disregard of law continued as Papy had unpaid taxes from 2002 = \$10,000 & had not made quarterly deposits for 2003 with income = \$10,000/month
- ⇒ Lack of rehabilitation
 - ⇒ Insurance company paid \$680,000 judgment to client
 - ⇒ Papy recognized moral & legal obligation to repay insurance company, but had not made any payments
 - ⇒ Papy did not feel client had been made whole, but did not give client any of proceeds from ≈ \$200,000 Papy received as a personal settlement in another matter

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HELD: “In the instant case, we need not even reach the issue of whether Papy has demonstrated rehabilitation because we conclude that the seriousness of his past misconduct and his continued failure to be financially responsible with regard to his own finances as well as in his dealings with others disqualify him from admission to the Bar.” at 871-872.

“While it is clearly a legal option to not repay money to an individual or an entity when a claim has been settled, Papy’s complete lack of any proactive attempt to correct his past wrongs with Rose and the insurance carrier belies his assertion that he possesses the character and fitness to resume the practice of law. Until and unless Papy makes a concerted effort to become personally financially responsible and accountable to those that he has harmed through his misconduct, he should not be successful in his attempts to be readmitted to The Florida Bar.” at 872.

**49. *Florida Board of Bar Examiners Re: W.F.H.,*
933 So. 2d 482 (Fla. 2006)**

HELD (these are the only specific facts in the decision): “This Court concludes that the total circumstances and underlying facts of the instant case, which involve misconduct so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendations of the Florida board of Bar examiners must be approved. We further conclude that under the totality of the circumstances, the grievous nature of the misconduct mandates that W.F.H. not be admitted to the Bar now or at any time in the future.” at 482.

All Justices concurred in the result.

Justice Wells, concurring in result only, stated the following: “However, I believe that the Board erred and we erred in not making this decision at the time of W.F.H.’s first petition, rather than allowing W.F.H. to reapply when a reapplication was futile. I regret this for reasons of fundamental fairness.”
Id.

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**50. *Florida Board of Bar Examiners re: McMahon,*
944 So. 2d 335 (Fla. 2006)**

1991 - Admitted to practice of law in Florida
1997 - Disciplinary resignation from The Florida Bar
2002 - Sought readmission

Proven Specifications (appl admitted all allegations):

1. Appl involvement in illegal drug operation which led to felony conviction
2. Subsequent disciplinary resignation after felony conviction

Board found appl had established rehabilitation by clear & convincing evidence, and recommended admission

HELD: Appl did not establish his rehabilitation, and the Board’s recommendation is disapproved.

Court specifically held that appl could reapply 2 years “from the date of this opinion.”

“McMahon engaged in extremely serious illegal conduct over a lengthy period of time. He knowingly assisted in the cultivation and distribution of illegal drugs. In short, McMahon was an illegal drug dealer. . . .” at 338.

“McMahon’s misconduct consisted of the very activities this Court has properly characterized as destructive to society. Further, McMahon knew from serving as a government attorney in the criminal justice system, “[m]uch of the resources of the judicial system are directed toward curbing the very [criminal] activities” in which McMahan was engaging. *Fla. bar v. Sheppard*, 518 So.2d 250, 250 (Fla. 1987) As this Court stated in *Florida Bar v. Hecker*, 475 So.2d 1240, 1243 (Fla. 1985), “[i]llegal drug activities are a major blight on our society -- nationally, statewide and locally.” This Court cannot emphasize enough that Bar members or applicant’s who participate in such activities will and must be accountable and dealt with severely. *Id.*” at 338.

“. . . Most of the evidence McMahan submitted as proof of rehabilitation relates to activites that are expected generally from any typically responsible

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citizen. For example, countless people maintain their financial affairs by holding more than one job. To suggest that this status is important and constitutes rehabilitation is misdirected. Numerous responsible citizens donate blood. People are expected to conduct themselves in an honest and trustworthy manner and to accept responsibility for their past misdeeds. Further, it is not a sign of rehabilitation that McMahan complied with the requirements of the Rules regulating the Florida Bar regarding disbarred attorneys who work as paralegals. He had no choice and would have been in further violation if he had not complied with the rules. Compliance with the rules is absolutely mandatory. . . .” at 338.

“ . . . McMahan has dedicated time to Teen Court and the Volusia County Literacy society. He estimated that he has volunteered 700 hours for these two organizations. Considering that he was disbarred effective 1997, he has volunteered less than two hours per week during his period of disbarment, again far less than a convincing demonstration. He simply is not providing service to his community at an exceptional level that demonstrates rehabilitation. . . .” at 339.

**51. Florida Board of Bar Examiners re: M.B.S.,
955 So. 2d 504 (Fla. 2007)**

Proven Specifications:

1. Illegal, irresponsible, improper behavior [Court says 9 instances from 1/90-3/02, but there are actually only 8]:
 - ⇒ 1/90 - Used a false driver’s license to enter nightclub
 - ⇒ 11/90 - Charged with possession of cannabis & possession of drug paraphernalia - no contest plea to marijuana charge, adjudication withheld
 - ⇒ 11/90 - Attempted to sell 2 tablets of Valium to an undercover police officer in a bar - pled guilty, adjudication withheld, placed on 2 years probation
 - ⇒ 1/92 - Misappropriated a briefcase and attempted to use credit card from briefcase to purchase gold - Charged with 2 counts of fraudulent use of credit card, 2 counts of forgery of a credit card receipt, and 3 counts of grand theft - pled to various charges, adjudication withheld, sentenced to 3 years probation & restitution (theft led to revocation of prior probation)

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- ⇒ 11/94 - Arrested for disorderly conduct, resisting/obstructing police officer, & obstruction by a disguised person - pled no contest, adjudication withheld
 - ⇒ 5/97 - Escorted from nightclub after causing a fight - refused to leave, arrested for trespassing - pled no contest, adjudication withheld
 - ⇒ 3/01 - Arrested for driving > 100 mph in a 55mph zone & swerving around other cars - charged with reckless driving - found guilty
 - ⇒ 3/02 - fight in a nightclub, police forced to use mace to subdue appl - arrested for disorderly conduct
2. False Information on law school application
- ⇒ Falsely claimed college attendance had not been interrupted, when had been interrupted at least twice
 - ⇒ Falsely stated was a campaign advisor & event organizer for “quite a few well-known Congressman [sic], Governors as well as local representatives” for Vermont Republican Party in the early 1990s
 - ⇒ Falsely claimed had performed volunteer work, helping “at-risk” youth & participating in a community-policing project [Court referred to this as “a blatant lie”]
 - ⇒ Provided false information about 6 of the 8 prior jobs listed, inventing some of the jobs
 - ⇒ Submitted false information concerning arrests, charges, & criminal convictions, including failing to update when there were new occurrences.
3. False information on application submitted to Supreme court to participate in law school practice program, checking blank in front of “There is nothing in my background which reflects adversely on my character.”
4. False information on Florida Bar Application
- ⇒ False description of 1/92 incident involving stolen briefcase and credit cards
 - ⇒ Falsely denied serving time in jail
 - ⇒ Failed to disclose was intoxicated when arrested in 1994

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Board found Specifications proven and disqualifying, but determined that appl had established rehabilitation, & recommended a 3-year conditional admission

HELD: Court disapproved the Board’s recommendation that appl be admitted, appl to be denied admission for standard period of two years.

“The egregiousness of the disqualifying conduct at issue here, including M.B.S.’s deplorable lack of truthfulness, the minimal rehabilitation in scope and depth, and the lack of any logical relationship between the misconduct and the evidence of rehabilitation compelled the Court to review the factual underpinnings of the Board’s recommendation in this case. . . .” at 509.

“The Court is not persuaded that M.B.S.’s alcoholism adequately excuses, explains, or really addresses M.B.S.’s lack of candor and honesty or that there is even a nexus between alcohol and the most significant aspects of his egregious conduct. It is one thing to deny that one has a problem with alcohol or to try to hide one’s consumption. It is another to fabricate jobs, employers, and volunteer activities to improve one’s chances of admission to law school or to blatantly lie to this Court and on the Bar application.” at 509-510.

“ . . . Here, as in *Doe*, we find the proof of rehabilitation presented by the respondent lacks meaningful substance. The conditional admission process is intended to apply to persons who have an established history of conduct related to conditions clearly subject to rehabilitation who can enter a plan for some period of time after admission. Such a course of action can only be considered after rehabilitation has been established; the plan is to continue the process. Further, there must be a clear nexus between the disqualifying conduct and the condition subject to rehabilitation and the future plan. Conditional admission is not intended to replace the need for a clear and convincing record of rehabilitation.” at 510.

“When the nature and quantity of M.B.S.’s egregious behavior over thirteen years is weighed against the two-year period of sobriety and recovery activities and volunteer work shown here, the misconduct still vastly overwhelms and outweighs the rehabilitation. M.B.S.’s rehabilitation evidence will need to be of the highest order over a longer period than has been shown to overcome his past misdeeds.” at 511.

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M.B.S.'s testimony convinces the Court that he has failed to accept full responsibility for his actions, especially his lack of candor, by attempting to transfer some of the blame to his alcoholism, his parents (for enabling him over the years), and the wording of one of the forms upon which he lied. M.B.S. attributed much of his misconduct to what he referred to as 'character defects' and testified that some of these defects disappeared when he stopped drinking. Yet, there was nothing to suggest that M.B.S. was intoxicated when he made the false statements under oath or that he was unaware of the truth. Such quibbling is inconsistent with a firm conviction that M.B.S. fully comprehends and intends to correct the error of his ways. Yet, he believes he is fit to assume the significant responsibility of serving the people of this state as an attorney. at 511.

DISSENT: (Justice Anstead) Would defer to the Board's recommendation because of precedent that Court will usually defer to Board for findings based on a witness's credibility.

**52. *Florida Board of Bar Examiners re: Marks,*
 959 So. 2d 228 (Fla. 2007)**

1974 - Admitted to The Florida Bar

1991 - Disciplinary resignation from the Bar

1995 - First application to be readmitted

1999 - Board's Findings recommending denial of admission

January 2001 - Second application to be readmitted

November 2004 - Public formal hearing

Proven Specifications:

1. Reasons for Board's decision to deny admission in 1999
2. Failed to pay federal income taxes for tax years 1996, 1997, 1998, 1999 - Proven, not disqualifying

Board withheld recommendation for 12 months requiring applicant to submit proof of additional rehabilitation efforts, including working with the IRS to pay overdue taxes

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November 2, 2005 - Applicant submitted sworn Report of Rehabilitation

In Public Report and Recommendation, Board recommended applicant be readmitted to the Bar

HELD: Disapprove Board's finding that Specification 2 not disqualifying, find such Specification both individually & collectively disqualifying, and disapprove Board's recommendation of admission, admission denied.

“Thus, the conduct which prompted Marks's resignation presents a significant obstacle to his readmission. The resignation itself heightens this obstacle. A disciplinary resignation is tantamount to disbarment. *Fla. Bar v. Hale*, 762 So.2d 515 (Fla.2000). Disbarment alone is disqualifying for admission to the Bar unless an applicant can show clear and convincing evidence of rehabilitation. *Fla. Bd. of Bar Exam'rs re Papy*, 901 So.2d 870, 872 (Fla.2005). The denial of Marks's application for readmission in 1999 also heightens the obstacle.” at 232.

“Because the misconduct by Marks prior to his disciplinary resignation was extremely serious, he would have needed to present substantial rehabilitation evidence to gain readmission, even if he had not engaged in further serious misconduct after his resignation. **However, after he resigned, when he was required to be living a life beyond reproach to establish his rehabilitation and prove himself worthy of readmission, Marks willfully refused to pay his federal income taxes for several years despite significant income.** He offered the feeble excuse that he thought paying for his children's college educations was more important than complying with the law. Contrary to the Board's finding, choosing to benefit one's children above compliance with the law does not constitute ‘extenuating circumstances.’ We disapprove the Board's finding that Specification 2 was not disqualifying and find instead that it is disqualifying, both individually and collectively. **He not only failed to show rehabilitation, but actually demonstrated a failure to correct past misconduct and a continuing course of misconduct.**” at 232. [emphasis added]

“The essence of true rehabilitation is to first atone for the harm caused by the past misconduct. The victims of that misconduct must be made whole to the extent humanly possible.” at 232.

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“Under these circumstances, the testimony of the applicant, without any supporting documentation as to the repayment of debts, does not constitute clear and convincing evidence of restitution showing rehabilitation.” at 232.

“The Court is especially troubled by Marks's conduct toward the secondary victims of his theft. The \$90,000 he owes to a family trust which was established to care for the needs of his handicapped cousin is still unpaid and will, apparently, remain unpaid unless and until Marks is readmitted to the Bar. This is an unconscionable attempt by Marks to exert pressure on the Court to ignore the clear duty to the public of this State to protect it from attorneys lacking the requisite character and fitness of our noble profession. We will not be pressured or coerced into ignoring our duty in this regard based upon conditions a former attorney seeks to place on his or her obligations with regard to repayments for the benefit of a disabled person. This actually exacerbates the misconduct we review.” at 232-233.

“We give no credence to the rationalization that Marks has limited ability to repay this and other debts because he is not a member of the Bar. Marks has a good education and must be reasonably intelligent, having graduated from law school and taken and passed the Florida Bar examination. Numerous individuals with these or lesser qualifications earn comfortable livings and pay their debts without being members of The Florida Bar. Further, Marks is solely responsible for his situation, as he is the one who engaged in the misconduct that led to his resignation.” at 233.

“It is fundamental that an attorney who resigns in the face of disciplinary proceedings must correct the misdeeds of his past before attempting to prove his rehabilitation. Marks has not done that. First, he stole from clients to support his extravagant lifestyle. Then he stole from citizens by failing to pay his taxes. Finally, he basically absconded with money from family members and friends by borrowing from them to pay back the money he stole from his clients and then discharged these debts in bankruptcy. He has not resolved the tax issue or the discharged debts issue, but makes only promises of future conduct. ‘Words of promise ring hollow where there is no recognition of the wrongfulness of the conduct established by the legal record.’ *M.L.B.*, 766 So.2d at 997.” at 233.

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**53. *Florida Board of Bar Examiners re: Barnett,*
959 So. 2d 234 (Fla. 2007)**

1988 - Admitted to The Florida Bar

1997 - Disciplinary resignation from the Bar

July 2004 - Applied for readmission to the Bar

Proven Specifications:

1. Conduct that led to resignation from the Bar (individually disqualifying)
 - ⇒ Misappropriated client funds
 - ⇒ Failed to hold client funds in a separate trust
 - ⇒ Also had a 10 count complaint filed by the Bar pending at the time of resignation
 - ⇒ Applicant agreed to represent clients in 2 separate cases after his emergency suspension
2. Nov. 1997 - 4 day heroin binge, charged w/ DUI, battery on LE officer, possession of cocaine, & resisting arrest w/ violence (individually disqualifying)
3. Failed to timely file federal income tax returns 1993-1995 & 1998-2003 (individually disqualifying)
4. Unsatisfied judgment from Dec. 1997 = \$3,754, remained unsatisfied. (collectively disqualifying)
5. May 2000 default judgment = \$5,296.59 for auto accident (collectively disqualifying)

Board found applicant had established rehabilitation, w/ established 9-year period of sobriety

Board recommended conditional admission for 3 years

HELD: Approved Board's recommendation

“We agree with the Board that Barnett's rehabilitation evidence was sufficient to overcome his past misconduct. His actions in making restitution to those he injured and in satisfying his financial obligations

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demonstrate he has done what could be done to atone for his misconduct. That he has established a solid program of recovery for close to a decade, is continuing to actively participate in a recovery program, and is helping others in their recoveries are also important factors in our decision.” at 239.

DISSENT: (Chief Justice Lewis, Justice Wells, Justice Bell)

Chief Justice Lewis (Justice Wells concurs):

“I am of the view that the availability of conditional admission should be restricted to the case in which a first-time applicant for admission to the Bar, who has suffered in the past from drug or alcohol addiction or a psychological problem, is now clean and sober or functioning normally with medication.” at 239.

“The same policy considerations do not exist for applicants who have previously been members of the Bar, but who have resigned or been disbarred because of serious misconduct as an attorney. These applicants have already been given a chance and have failed to honor and satisfy their obligations. Barnett falls into this category. He was previously admitted to The Florida Bar. While a practicing attorney he engaged in extensive unethical and egregious conduct and resigned in lieu of disciplinary proceedings. He should be required to prove his rehabilitation such that the recommendation for admission is unconditional. The conduct preceding the resignation was moving rapidly to disbarment. at 239-240.

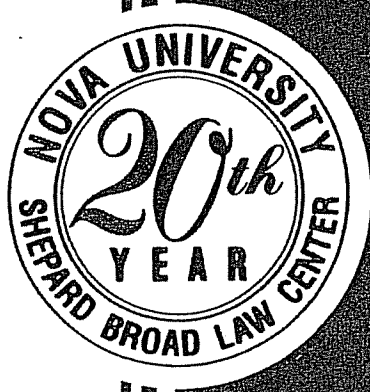
“That Barnett forced his mother to mortgage and encumber her home to satisfy his debts to the IRS demonstrates, in my view, that he has failed to accept full responsibility for his past misconduct. The rescuing of a child by a parent may be laudable for his mother, but it does not speak highly of Barnett.” at 241.

Justice Bell:

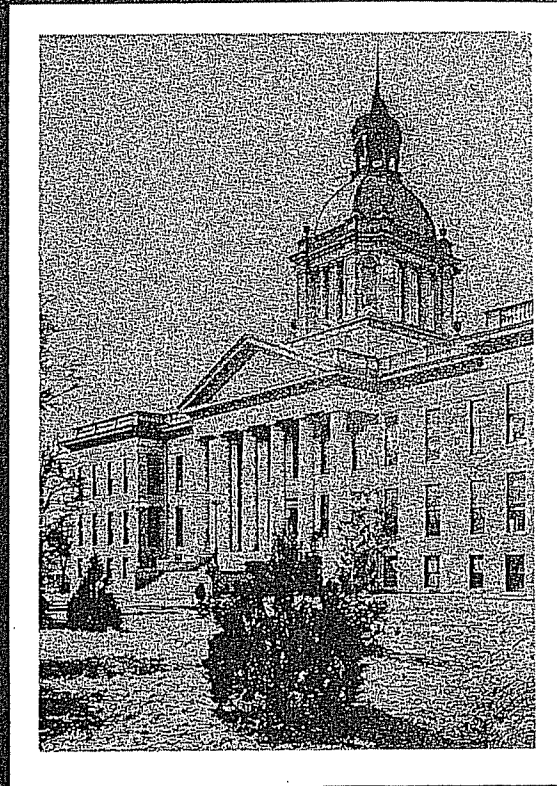
“I agree with Chief Justice Lewis that the conditional admission process should be reserved for first-time applicants to the Bar. I also agree that Barnett does not qualify for unconditional admission.” at 241

Appendix 4

NOVA LAW REVIEW



**Twenty-Five Years and Counting:
A Symposium on The Florida
Constitution of 1968**



The Florida Board of Bar Examiners: The Constitutional Safeguard Between Attorney Aspirants and the Public

Thomas A. Pobjecky*

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I. INTRODUCTION

The court, under its constitutional authority to 'regulate the admission of persons to the practice of law,' has the authority to require profi-

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ciency in the law and good moral character before it admits an applicant to practice before the courts of this state. The sole purpose of these requirements is to protect the public.¹

Article V, section 15 of the Florida Constitution vests the Supreme Court of Florida with "exclusive jurisdiction to regulate the admission of persons to the practice of law" ² The authority of the Florida Supreme Court to regulate Bar membership is derived from the historical practices of the English courts. Such practices predate the adoption of the Florida Constitution by over six centuries.³

In 1955,⁴ the Supreme Court of Florida established the Florida Board of Bar Examiners ("FBOBE") pursuant to general statutory and constitutional authority.⁵ As presently constituted, the FBOBE has fifteen members;⁶

1. Florida Bd. of Bar Examiners *re* G.W.L., 364 So. 2d 454, 458 (Fla. 1978) [hereinafter *G.W.L.*].

2. FLA. CONST. art. V, §15.

3. In *In re* Fla. Bd. of Bar Examiners, 353 So. 2d 98 (Fla. 1977), the court stated:

For more than six centuries prior to the adoption of our Constitution, the English courts exercised the right to determine who should be admitted to the practice of law. This authority was grounded upon the rationale that if the courts and the judicial power were to be regarded as an entity, the power to determine who should be admitted to practice law was a constituent element of that entity. This was so because the quality of justice dispensed by the courts depended in no small degree upon the integrity and competence of its Bar. An unfaithful or incapable Bar could visit reproach upon the administration of justice and upon the courts themselves.

The drafters of the Florida Constitution recognized this inherent right of the courts to regulate the admission of persons to the practice of law, imbuing the Supreme Court with exclusive jurisdiction to direct such admissions.

Id. at 100 (citation omitted).

4. Prior to 1955, regulation of Bar membership was "governed by Chapter 10175, Laws of Florida (1925)." This statute created the Florida Board of Law Examiners. *LaBossiere v. Florida Bd. of Bar Examiners*, 279 So. 2d 288, 289 (Fla. 1973). The statute granted a diploma privilege to graduates of Florida law schools entitling them to a waiver of the Bar examination. *Id.*

5. *Id.* (citing to FLA. CONST. of 1885, art. V, § 23; Ch. 29796, § 1, Laws of Fla. (1955); FLA. STAT. § 454.021(1)). Florida Statutes section 454.021 recognizes the court's exclusive jurisdiction and states:

(1) Admissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function.

(2) The Supreme Court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state.

FLA. STAT. § 454.021 (1991).

twelve members of The Florida Bar,⁷ and three nonlawyer members of the general public,⁸ who are appointed by the court.⁹

Attorney members of the FBOBE serve for five years and public members serve for three years.¹⁰ Members of the FBOBE serve without compensation¹¹ and "devote whatever time is necessary to perform the duties of examiner."¹²

The FBOBE has its own staff¹³ and maintains its administrative offices in Tallahassee.¹⁴ The FBOBE is granted authority to "compel by subpoena the attendance of witnesses and the production of books, papers, and documents."¹⁵

The FBOBE's activities are governed by the Rules of the Florida Supreme Court Relating to Admissions to the Bar.¹⁶ The Florida Supreme Court declared invalid a legislative enactment which attempted to direct the Board to undertake particular responsibilities.¹⁷ The court reasoned: "As

6. FLA. SUP. CT. BAR ADMISS. RULE, art. I, § 2.

7. *Id.* Article I, section 3.a. of the Rules of the Florida Supreme Court Relating to Admissions to the Bar, states: "Attorney members shall be practicing attorneys with scholarly attainments and an affirmative interest in legal education and requirements for admission to the Bar." *Id.* § 3.a.

8. *Id.* § 2.a. Article I, section 3.a. of the Rules of the Florida Supreme Court Relating to Admissions to the Bar, states: "Public members shall be nonlawyers and shall have an academic Bachelor's Degree. It is desirable that public members possess educational or work-related experience of value to the Board such as educational testing, accounting, statistical analysis, medical or psychologically related sciences." *Id.* § 3.a. During the 1992-93 term, the public members consisted of a psychiatrist, a certified public accountant and a medical doctor.

9. FLA. SUP. CT. BAR ADMISS. RULE, art. I, § 3.

10. *Id.* § 2.

11. *Id.* § 5.

12. *Id.* § 3.c. With a minimum of nine monthly meetings each year along with special hearing panels and the twice yearly administration of the Bar examination, Board members volunteer well in excess of 200 hours each year in the performance of their duties.

13. *Id.* § 9. The Board "is a state agency under the judicial branch of the government and its employees are state employees . . ." *In re Fla. Bd. of Bar Examiners*, 268 So. 2d 371, 372 (Fla. 1972).

14. FLA. SUP. CT. BAR ADMISS. RULE, art. I, § 6.

15. *Id.* art. III, § 3.a.

16. Amendments to the rules are regularly proposed by the Board to the court. On one occasion, a petition to amend a rule provision from an interested third party was considered by the court. *Florida Bd. of Bar Examiners re Amendment to Rules of the Sup. Ct. of Fla. Relating to Admissions to the Bar*, 603 So. 2d 1160 (Fla. 1992).

17. *In re Fla. Bd. of Bar Examiners*, 353 So. 2d at 100. In that case, the Legislature attempted to include the Board in a statute requiring modification of examinations by state agencies to accommodate blind or deaf persons. *Id.* at 99. Although the court declared the

an arm of this [c]ourt, the Board is answerable solely to this tribunal."¹⁸

II. REQUIREMENTS OF EDUCATION AND EXAMINATION

Commencing in 1955, the Supreme Court of Florida, "in an effort to provide uniform and measurable standards by which to assess the qualifications of applicants, adopted a two-pronged system for the determination of educational fitness"¹⁹ This system required all Bar applicants to graduate from an approved law school and to submit to the Bar examination.²⁰

A. Law Degree

A Bar applicant must possess the degree of Bachelor of Laws or Doctor of Jurisprudence from a law school approved by the American Bar Association ("ABA").²¹ This has been the sole educational requirement since 1992 when the Florida Supreme Court eliminated the undergraduate degree requirement.²²

In *LaBossiere v. Florida Board of Bar Examiners*,²³ the Supreme Court of Florida affirmed its continuing reliance upon the accreditation of law schools by the ABA as "an objective method of determining the quality of the educational environment of prospective attorneys."²⁴ The court acknowledged that it was unable to evaluate the many law schools due to "financial limitations and the press of judicial business."²⁵

statute invalid as it applied to the Board, the court agreed with the commendable purpose of the statute. *Id.* at 100. The court also pointed out "that the Board has for some time given special consideration to the physically handicapped in administering the Bar examination." *Id.* at 101.

18. *Id.* at 100.

19. *LaBossiere*, 279 So. 2d at 289.

20. *Id.*

21. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 1.a.

22. Florida Bd. of Bar Examiners *re* Amendment to Rules of the Sup. Ct. of Fla. Relating to Admissions to the Bar, 603 So. 2d 1160 (Fla. 1992). The court reasoned: "We note that the majority of other states do not have such a [undergraduate degree] requirement, and we conclude that the disputes over credentials evaluations are expensive, time-consuming, and unnecessary." *Id.*

23. 279 So. 2d at 288.

24. *Id.* at 289.

25. *Id.* Other states have reached a similar conclusion. The Minnesota Supreme Court has stated: "[w]e have neither the time nor the expertise to investigate individually the special training of an applicant or the program offered by specified law schools, and any

In the landmark decision of *In re Hale*,²⁶ the Florida Supreme Court confronted the issue of the court's prior practice of granting waivers of the accredited law degree requirement.²⁷ After acknowledging that it had only granted nine of the last fifty-five petitions for a waiver, the *Hale* court concluded "that a seeming ad-hoc approach in the granting of waivers bears within it the appearance of discrimination"²⁸ The court then ruled that it "will no longer favorably consider petitions for waiver of section 1.b. [now 1.a.] of the Rule."²⁹

The only exception to the accredited law degree requirement is the submission of a documented abstract of practice by an individual who has actively practiced law in another state or in the federal courts for at least ten years.³⁰ The compilation of work product consists of "samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, corporate charters or other working papers which the applicant considers illustrative of such applicant's expertise and academic and legal training"³¹ The FBOBE is granted "broad discretion" in deciding if a submission is sufficient.³²

B. *The Bar Examination*

The Supreme Court of Florida has mandated that "[a]ll individuals who seek the privilege of practicing law in the State of Florida shall submit to the Florida Bar Examination."³³ Florida has no provision for interstate

attempt by us to do so would be inefficient and chaotic." *In re Application of Hansen*, 275 N.W.2d 790, 796 (Minn. 1978), *appeal dismissed sub nom. Hansen v. Minnesota State Bd. of Bar Examiners*, 441 U.S. 938 (1979). The Alaska Supreme Court stated: "The ABA system of accreditation is sophisticated and time-consuming. We can think of no effective substitute which could be developed at the state level without diverting impractical amounts of manpower and money into such an inquiry." *Application of Urie*, 617 P.2d 505, 508 (Alaska 1980) (Footnote omitted).

26. 433 So. 2d 969 (Fla. 1983).

27. *Id.*

28. *Id.* at 971.

29. *Id.* at 972. The court observed that its nonwaiver policy "while conceivably a hardship to some, is in the best interest of the legal profession in our state." *Id.*

30. FLA. SUP. CT. BAR ADMISSIONS RULE, art. III, § 1.b.

31. *Id.*

32. *Id.*

33. *Id.* art. I, § 1. An exception to such requirement appears in *In re Fla. Bd. of Bar Examiners*, 339 So. 2d 637 (Fla. 1976). In that case, the petitioner, Virgil Hawkins, had previously been denied admission to the University of Florida law school during the 1950's because of his race. *Id.* at 638. Based upon consideration of "the totality of circumstances,"

reciprocity as to Bar admissions.

In *In re Russell*,³⁴ petitioner, a member of the Massachusetts Bar and a resident of Florida, attacked Florida's lack of reciprocity as unconstitutional.³⁵ The petitioner was offended by Florida's policy requiring her to submit to an examination testing her knowledge of law even though she was a licensed lawyer in Massachusetts.³⁶

The Supreme Court of Florida in *Russell* found petitioner's argument "utterly devoid of merit."³⁷ The court observed that "the right to practice law in State courts is not a privilege granted under the Federal Constitution."³⁸ The court further held that its Bar examination policy did not violate federal guarantees of due process and equal protection.³⁹

The *Russell* court reaffirmed the intimate connection between the practice of law and the administration of justice. The court thus concluded: "We see it clearly as our duty to admit to this special position of obligation and trust only those applicants, whether from Florida schools or elsewhere, who can satisfactorily demonstrate their credentials through a test of competence given under our supervision and control."⁴⁰

The General Bar Examination is administered by the FBOBE during the last Tuesday and Wednesday of February and July of each year.⁴¹ Part A of the examination is developed by the FBOBE and consists of a combination of essay and multiple choice questions.⁴² Part B is the Multistate Bar Examination ("MBE") and is developed by the National Conference of Bar Examiners.⁴³

Part A is divided into six segments which must always include one segment on the Florida Rules of Civil and Criminal Procedure.⁴⁴ The

the court waived the requirements for law school graduation and submission to the Bar examination. *Id.* The court did impose conditions for the protection of the public should Mr. Hawkins decide to engage in the active practice of law. *Id.* at 639. Mr. Hawkins was later disciplined by the court for incompetence and misconduct and was ultimately allowed to resign from The Florida Bar in response to a misappropriation disciplinary action pending against him. *The Fla. Bar v. Hawkins*, 467 So. 2d 998 (Fla. 1985).

34. 236 So. 2d 767 (Fla. 1970).

35. *Id.* at 767-68.

36. *Id.* at 768.

37. *Id.*

38. *Id.*

39. *In re Russell*, 236 So. 2d at 768-69.

40. *Id.* at 769.

41. FLA. SUP. CT. BAR ADMISS. RULE, art. VI, § 4.

42. *Id.* § 1.a.

43. *Id.* §§ 1.a., 3.c.

remaining segments come from the following subjects: Florida Constitutional Law, Federal Constitutional Law, Business Entities, Wills and Administration of Estates, Trusts, Real Property, Evidence, Torts, Criminal Law, Contracts, Family Law and Chapters 4 and 5 of the Rules Regulating The Florida Bar.⁴⁵

The MBE consists of 200 multiple choice questions. It tests the following areas: Constitutional Law, Contracts, Criminal Law, Evidence, Real Property and Torts.⁴⁶

Currently, the court requires a scaled score of 131 or better on the Bar examination under the compensatory model or under the individual parts from different administrations.⁴⁷ Both parts of the General Bar Examination along with the Multistate Professional Responsibility Examination must be successfully completed within a period of twenty-five months or the older scores are deleted.⁴⁸ If not previously done, a Bar applicant must file an Application for Admission to The Florida Bar (which initiates the character and fitness background investigation) within 180 days of successfully completing the Bar examination.⁴⁹

Multiple calibrated readers are used to grade the essay answers "[t]o assure maximum uniformity in all grading."⁵⁰ Calibration is achieved during a conference for the readers held the weekend following the Bar examination. Calibration is the method for aligning multiple readers to enable them to grade answers from the same essay question utilizing the

45. *Id.* Prior to 1988, Florida constitutional law had to be tested on each examination. In accepting the Board's recommendation to move the subject of Florida constitutional law from the mandatory list to the discretionary list, the Florida Supreme Court stated:

The single comment filed in response to the publication criticized the removal of the mandatory requirement for testing Florida constitutional law separately on each Bar examination. We agree that it is important for Florida lawyers to have a knowledge of Florida constitutional law. However, we accept the representation of the Board that the proposed amendment would allow the Board greater flexibility in testing Florida constitutional law by permitting it to be included with another area on the same essay question, thereby producing higher quality questions on the subject.

In re Fla. Bd. of Bar Examiners re Amendment to Rules of Sup. Ct. of Fla. Relating to Admissions to the Bar, 524 So.2d 643, 644 (Fla. 1988).

46. NATIONAL CONFERENCE OF BAR EXAMINERS, 1993 MBE INFORMATION BOOKLET (1992). The MBE is "designed to be answered by applying fundamental legal principles rather than local case or statutory law." *Id.* at 2.

47. FLA. SUP. CT. BAR ADMISS. RULE, art. VI, § 7.

48. *Id.* § 9.a.

49. *Id.* § 9.b.

50. *Id.* § 7.b.

same grading criteria.

In Florida, unsuccessful examinees do not have the right to full review of their examination papers. This rule complies with controlling law in that Florida grants unsuccessful examinees the unlimited right to retake the examination.⁵¹ "The courts have held that if a state provides the unqualified opportunity to retake the Bar examination, no other type of hearing or review procedure is necessary to comply with due process."⁵²

III. REQUIREMENTS OF CHARACTER AND FITNESS

No person shall be recommended by the Florida Board of Bar Examiners to the Supreme Court of Florida for admission to The Florida Bar unless such person first produces satisfactory evidence to the Board of good moral character and an adequate knowledge of the standards and ideals of the profession and that such person is otherwise fit to take the oath and perform the obligations and responsibilities of an attorney.⁵³

In *Florida Board of Bar Examiners re G.W.L.*,⁵⁴ the Supreme Court of Florida confronted the issue of defining the phrase "good moral character."⁵⁵ The court concluded that good moral character should not be restricted to acts involving moral turpitude. Such a restricted definition "would not sufficiently protect the public interest."⁵⁶ After observing that "the unscrupulous attorney . . . [has] frequent opportunities to defraud the client or obstruct the judicial process," the Florida Supreme Court held that the appropriate standard of inquiry into good moral character should

51. See *Jones v. Board of Comm'rs of the Ala. State Bar*, 737 F.2d 996, 1005 n.1 (11th Cir. 1984) (Hatchett, J., dissenting); cf. *Tyler v. Vickery*, 517 F.2d 1089, 1103 (5th Cir. 1975), cert. denied, 426 U.S. 940 (1976) (discussing Georgia Bar Examination).

52. *Bailey v. Board of Law Examiners*, 508 F. Supp. 106, 110 (W.D. Tex. 1980). As observed by one court: "Even making the generous assumption that one out of every hundred applicants who take the examination fail when they should have passed due to arbitrary grading, the probability that the same individual would be the victim of error after two reexaminations is literally one in a million." *Tyler*, 517 F.2d at 1104.

53. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 2.a.

54. 364 So. 2d 454 (Fla. 1978).

55. *Id.* The historical understanding of moral turpitude was expressed in *State ex rel. Tullidge v. Hollingsworth*, 146 So. 660, 661 (Fla. 1933) as that which "involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society."

emphasize "honesty, fairness, and respect for the rights of others."⁵⁷ The court has recognized "that the standard of conduct required of an applicant for admission to the Bar must have a rational connection to the applicant's fitness to practice law."⁵⁸

A. *Ineligibility*

The Supreme Court of Florida has imposed a judicial disability for a convicted felon who desires to practice law in Florida.⁵⁹ A convicted felon's civil rights must be restored as "a necessary prerequisite to obtaining the privilege of practicing law."⁶⁰ As the court has reasoned: "If one is ineligible to vote or hold public office in Florida, then he should not be eligible for admission to The Florida Bar and thereby become an officer of the courts of this State."⁶¹

Additionally, disbarred attorneys from a foreign jurisdiction are ineligible for a minimum period of five years from the date of their disbarment.⁶² Suspended attorneys are also ineligible to seek admission until

57. *Id.* Justice Frankfurter expressed the legal profession's demand for moral character among its members in the following language:

Certainly since the time of Edward I, through all the vicissitudes of seven centuries of Anglo-American history, the legal profession has played a role all its own. The Bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. One does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth—speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as "moral character."

Schwartz v. Board of Bar Examiners, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring).

58. *G.W.L.*, 364 So. 2d at 458.

59. See *The Fla. Bar v. Clark*, 359 So. 2d 863 (Fla. 1978); *In re Fla. Bd. of Bar Examiners*, 183 So. 2d 688 (Fla. 1966).

60. *Clark*, 359 So. 2d at 864.

61. *In re Fla. Bd. of Bar Examiners*, 350 So. 2d 1072, 1073 (Fla. 1977).

62. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 2.f. The minimum five-year period of disqualification was selected to coincide with the disqualification period for disbarred Florida attorneys. Florida Bd. of Bar Examiners *re*: Amendment to Rules of the Sup. Ct. of Fla. Relating to Admissions to the Bar, 578 So. 2d 704, 707 (Fla. 1991). If a foreign jurisdiction indefinitely disbars an attorney, then such attorney will be prohibited from practicing law in Florida as long as the disbarment continues. Florida Bd. of Bar Examiners

the expiration of their period of suspension.⁶³ A person must be at least eighteen years of age to be recommended for admission to The Florida Bar.⁶⁴

B. *Background Investigation*

Without exception, the FBOBE "shall conduct an investigation and otherwise inquire into and determine the character, fitness and general qualifications of every applicant."⁶⁵ The FBOBE is authorized to obtain by subpoena such information as necessary to conduct a thorough investigation.⁶⁶

In conducting its investigation, the FBOBE uses an extensive program of contacting primary and secondary sources. An average of thirty-five to forty written inquiries are mailed out on each application. References, former employers, and secondary sources listed by the first two sources are among the individuals contacted. Follow-up contacts by letter or phone are routinely done for sources who fail to respond or who express a reluctance to respond fully. An absolute privilege is extended to communications from individuals solicited by the FBOBE regarding the character and fitness of a Bar applicant.⁶⁷

re R.L.V.H., 587 So. 2d 462 (Fla. 1991).

63. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 2.g.

64. *Id.* § 2.c. On the one occasion for the requirement to be applicable, the Bar applicant had graduated from law school at age sixteen, had passed the Bar examination, and was qualified for admission at age seventeen. Upon the entry of a court order removing the applicant's disability of non-age, the FBOBE recommended, and the Florida Supreme Court granted, his admission.

65. *Id.* § 3.a.

66. *Id.*

67. *Dugas v. City of Harahan, La.*, 978 F.2d 193, 199 (5th Cir. 1992), *cert. denied sub nom. Bougere v. Ferrara*, 114 S. Ct. 60 (1993). In that case, Gary Bougere (a former Bar applicant) brought suit for defamation in federal district court in Louisiana against an individual who had responded to the Board's inquiries regarding Bougere's fitness to be a Florida attorney. Bougere eventually obtained a jury verdict awarding him \$75,000 in actual damages and \$25,000 in punitive damages. In reversing the judgment and holding that the communications to the Board were absolutely privileged, the United States Fifth Circuit Court of Appeals reasoned that if individuals responding to the Board's inquiry "were not absolutely immune from defamation liability for statements bearing upon a Bar applicant's character and fitness, they would shrink from the Board's request for such information. In that event, Florida's vitally important interest in ensuring an applicant's character and fitness would be thwarted." *Id.* at 198.

1. The Bar Application

The filing of the Application for Admission to The Florida Bar initiates the background investigation.⁶⁸ The application is currently thirteen pages and contains thirty-three inquiries, including questions regarding such matters as past residences, employment history, financial obligations, litigation, criminal arrests, and traffic violations.⁶⁹

The Bar application also elicits information concerning whether an applicant has ever been dependent upon drugs or alcohol or has ever obtained mental health treatment.⁷⁰ The constitutionality of the Board's inquiries into the area of an applicant's mental health survived a legal challenge based upon an applicant's claim of right of privacy.⁷¹

In upholding the use of mental health related questions, the Supreme Court of Florida reasoned:

It is imperative for the protection of the public that applicants to the Bar be thoroughly screened by the Board. Necessarily, the Board must ask questions in this screening process which are of a personal nature and which would not otherwise be asked of persons not applying for a position of public trust and responsibility. Because of a lawyer's constant interaction with the public, a wide range of factors must be considered which would not customarily be considered in the licensing of tradesmen and businessmen. The inquiry into the applicant's past history of regular treatment for emotional disturbance or nervous or mental disorder . . . furthers the legitimate state interest since mental fitness and emotional stability are essential to the ability to practice law in a manner not injurious to the public. The pressures placed on an attorney are enormous and his mental and emotional stability should be at such a level that he is able to handle his responsibilities.⁷²

The court further found that the use of such inquiry was the least intrusive

68. FLA. SUP. CT. BAR ADMISS. RULE, art. IV, § 6.

69. See Application for Admission to The Fla. Bar. Applicants who are admitted to practice in another jurisdiction are required to respond to several additional inquiries. *Id.*

70. See *id.* Regarding an applicant's mental and emotional fitness to practice law, the FBOBE recognizes the beneficial aspects of mental health treatment. A prelude to the mental health inquiries on the Bar application states in part: "The Board assures each applicant that the Supreme Court, consequent upon the Board's recommendation, regularly admits applicants with a history of both mental ill-health and utilization of the services of mental health professions The Board encourages applicants to seek the assistance of mental health professionals, if needed." *Id.*

71. Florida Bd. of Bar Examiners *re: Applicant*, 443 So. 2d 71 (Fla. 1983).

72. *Id.* at 75.

method to achieve Florida's compelling state interest of licensing only fit individuals in the practice of law.⁷³

2. Confidentiality

It is undisputed that the FBOBE gains access to highly sensitive information from disclosures by Bar applicants and from third parties. Information maintained by the FBOBE is actually the property of the Supreme Court of Florida.⁷⁴ The court has declared such information to be confidential except as otherwise authorized.⁷⁵

The desire to keep confidential the personal information supplied by a Bar applicant to the FBOBE is apparent. Such confidentiality hopefully encourages applicants to make full and fair disclosures of all information requested by the Bar application.

The need for confidentiality of information received from third party sources is essential if the FBOBE is to continue to conduct a thorough background investigation of Bar applicants. The Supreme Court of Florida recognized such need in its unanimous decision in *Florida Board of Bar Examiners re: Interpretation of Article I, Section 14d of the Rules of the Supreme Court Relating to Admissions to the Bar*.⁷⁶

In that case, an interpretation was sought by the FBOBE in response to an order by the United States District Court for the Northern District of Florida requiring production by the FBOBE of confidential information and documents to a former Bar applicant.⁷⁷ The federal district court had interpreted a provision of the Florida Supreme Court's rule on confidentiality to authorize disclosure to a Bar applicant "any documents or exhibits which are before the Board and which are used by the Board at, or as a basis for, an investigative hearing."⁷⁸

In its decision, the Supreme Court of Florida expressly rejected the federal court's interpretation.⁷⁹ The court held that the FBOBE's raw investigative materials and staff prepared reports are not disclosable to a Bar

73. *Id.*

74. FLA. SUP. CT. BAR ADMISS. RULE, art I, § 14. The Board serves as the custodian of all the records on behalf of the Court. *Id.*

75. *Id.*

76. 581 So. 2d 895 (Fla. 1991).

77. *Id.* The underlying federal suit was brought by former Bar applicant Gary Bougere. See *supra* note 67.

78. *Florida Bd. of Bar Examiners re: Interpretation of Article I, Section 14d of the Rules of the Supreme Court Relating to Admissions to the Bar*, 581 So. 2d at 896.

79. *Id.* at 897.

applicant. The court reasoned "that unless the board's investigative files are held in confidence, many of those from whom the board seeks information concerning applicants would be unwilling to candidly respond."⁸⁰

3. Truthfulness and Absolute Candor

Courts have recognized that honesty, truthfulness, and candor are essential qualities for individuals wishing to practice law. The Court of Appeals of Maryland observed that "no moral character qualification for Bar membership is more important than truthfulness and candor."⁸¹ The Supreme Court of Delaware acknowledged that although "[g]ood moral character has many attributes, . . . none are more important than honesty and candor."⁸² The Supreme Court of New Jersey enumerated the character traits required of each Bar applicant including "honesty and truthfulness, trustworthiness and reliability."⁸³

Beginning in 1991, the Supreme Court of Florida has issued several published opinions which have emphasized the importance of an applicant's duty to be truthful and candid with the Board.⁸⁴ As the court emphatically stated in one decision: "This Court will not tolerate a lack of candor from Bar applicants."⁸⁵ A Bar applicant's lack of veracity or candor is sufficient grounds to warrant denial of admission to The Florida Bar.⁸⁶

In addition to reflecting negatively upon a Bar applicant's character and truthfulness, a lack of candor also adversely impacts the Board's screening process. As observed by the Supreme Court of New Jersey in *In re Application of Jenkins*:⁸⁷

We believe that Jenkins' pattern of nondisclosure evidences a serious lack of fitness to practice law. Jenkins' actions go to the integrity of the admission system. If a candidate conceals the truth or misleads the

80. *Id.*

81. Application of Allan S., 387 A.2d 271, 275 (Md. 1978).

82. *In re Green*, 464 A.2d 881, 885 (Del. 1983) (emphasis added).

83. *In re Application of Matthews*, 462 A.2d 165, 174 (N.J. 1983).

84. See, e.g., Florida Bd. of Bar Examiners *re R.B.R.*, 609 So. 2d 1302 (Fla. 1992) [hereinafter *R.B.R.*]; *In re Florida Bd. of Bar Examiners re: J.A.F.*, 587 So. 2d 1309 (Fla. 1991) [hereinafter *J.A.F.*]; Florida Bd. of Bar Examiners *re J.H.K.*, 581 So. 2d 37 (Fla. 1991) [hereinafter *J.H.K.*]; Florida Bd. of Bar Examiners *re R.D.I.*, 581 So. 2d 27 (Fla. 1991) [hereinafter *R.D.I.*].

85. *R.B.R.*, 609 So. 2d at 1304.

86. *J.H.K.*, 581 So. 2d at 39 ("We further agree that the evidence of good character and rehabilitation presented by petitioner did not sufficiently offset his lack of veracity.")

87. 467 A.2d 1084 (N.J. 1983).

Committee concerning events in his past that adversely affect his character, the process for reviewing candidates will collapse and no purpose will be served. The purpose of withholding certifications is not to punish the candidate but to protect the public and preserve the integrity of the Courts.⁸⁸

C. Formal Proceedings

After completing its investigation of a Bar applicant, which may include the applicant's appearance at an investigative hearing,⁸⁹ the Florida Board of Bar Examiners can either determine that the applicant has established the necessary qualifications for admission to The Florida Bar; that further investigation is necessary; or file specifications charging the applicant with matters that would preclude the applicant from admission to The Florida Bar.⁹⁰ "Specifications" is the term for the document which contains formal allegations of misconduct which, if proven, could result in an unfavorable recommendation by the Board.⁹¹

1. Formal Hearings

Applicants who have had specifications served upon them are entitled to a formal hearing before a panel of no less than five members of the FBOBE. Except with the applicant's consent, the hearing panel cannot include any member who previously participated in an investigative hearing for such applicant.⁹²

Formal hearings are adversary proceedings. Applicants appearing for a formal hearing are entitled to the following rights: representation by legal counsel, timely release of witness and exhibit lists by the FBOBE's attorney, access to the FBOBE's subpoena powers, cross-examination of witnesses called by the FBOBE's attorney, and presentation of witnesses and exhibits on the applicant's behalf.⁹³ The technical rules of evidence are not

88. *Id.* at 1090.

89. Investigative hearings are held before at least three members of the Board. Following an investigative hearing, the panel makes its recommendation to the full Board as to what action should be taken. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 3.a.

90. *Id.* §§ 3.b.(1), (2), (3). See also *infra* notes 121-124 and accompanying text regarding conditional admissions.

91. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 3.b.(3).

92. *Id.* § 3.f.

93. See *Florida Bd. of Bar Examiners re: Interpretation of Article I, Section 14d of the Rules of the Supreme Court Relating to Admissions to the Bar*, 581 So. 2d at 897.

standard of proof for the Board often articulated by the Florida Supreme Court is one of "competent and substantial evidence."¹⁰² As any other trier of fact, the Board may rely upon circumstantial evidence,¹⁰³ and may accept or reject the testimony of a witness or applicant.¹⁰⁴

3. Review by the Supreme Court of Florida

A Bar applicant who receives an unfavorable recommendation has a right of review by the Florida Supreme Court.¹⁰⁵ In conducting such review, the court is not precluded "from reviewing the factual underpinnings of [the FBOBE's] recommendation, based on an independent review of the record developed at the hearings."¹⁰⁶

The Court has also recognized differing standards applicable to Bar admission proceedings and disciplinary proceedings.¹⁰⁷ Thus, a Bar applicant is held to a higher standard of character and fitness than a practicing attorney.¹⁰⁸ Furthermore, denial of admission to The Florida Bar is not the same as disbarment.¹⁰⁹ After two years from the issuance of the Board's recommendation, an applicant may reseek admission upon a showing of rehabilitation.¹¹⁰

4. Rehabilitation

In response to specifications, or when seeking readmission after having been previously denied, a Bar applicant is permitted to present evidence of rehabilitation.¹¹¹ Rehabilitative evidence is permissible to address the

102. See, e.g., *R.B.R.*, 609 So. 2d at 1304; *J.A.F.*, 587 So. 2d at 1311; Florida Bd. of Bar Examiners *re H.H.S.*, 373 So. 2d 890, 892 (Fla. 1979) [hereinafter *H.H.S.*].

103. See, e.g., Florida Bd. of Bar Examiners *re C.W.G.*, 617 So. 2d 303, 305 (Fla. 1993) [hereinafter *C.W.G.*]; *R.D.I.*, 581 So. 2d at 29.

104. See *R.D.I.*, 581 So. 2d at 30 (The court stated, "[T]he Board did not have to believe the petitioner's version of events.>").

105. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 4.b.

106. *L.K.D.*, 397 So. 2d at 675 (citations omitted).

107. *H.H.S.*, 373 So. 2d at 892.

108. *Id.*; Florida Bd. of Bar Examiners *re Eimers*, 358 So. 2d 7, 9 n.1 (Fla. 1978). For a discussion of the rationale for a higher standard for Bar applicants, see *Frasher v. West Virginia Board of Law Examiners*, 408 S.E.2d 675, 680 (W. Va. 1991).

109. *H.H.S.*, 373 So. 2d at 892.

110. See *C.W.G.*, 617 So. 2d at 305; *H.H.S.*, 373 So. 2d at 892; FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 4.d.

111. FLA. SUP. CT. BAR ADMISS. RULE art. III § 4.e.

applicable to a formal hearing before the FBOBE.⁹⁴

Following the receipt of evidence and argument by the parties, the formal hearing panel enters its findings of fact and conclusions of law. The panel's decision must be based upon the evidence introduced into the record. In addition to recommendations for or against the applicant's admission, the panel may withhold its final decision for further evidence of rehabilitation⁹⁵ or petition the Supreme Court of Florida for additional time to conduct further investigation.⁹⁶

2. Burden of Proof

The controlling principles regarding the burden of proof in Bar admission proceedings were discussed by the court in *Coleman v. Watts*.⁹⁷ In that case, the FBOBE notified the applicant of its decision that "he did not meet the requirements for admission to The Florida Bar."⁹⁸ The Board's notice failed to specify any grounds for its unfavorable decision.

The *Coleman* court recognized the burden of Bar applicants to produce satisfactory evidence of their character and fitness. Once an applicant makes a prima facie showing, however, the burden of coming forward with evidence shifts to the FBOBE.⁹⁹

In holding that the procedure used by the FBOBE failed to provide due process, the *Coleman* Court held:

[I]t is incumbent upon the board to sustain its ruling by *record* evidence and not by mere assertions that it is possessed of confidential information which shows the applicant to be unfit; and if the record consists only of evidence supplied by the applicant, then such evidence must demonstrate that the board's dissatisfaction with his application rests on valid grounds and not upon mere suspicion.¹⁰⁰

Although its decision must be supported by record evidence, the FBOBE's findings need not be proven beyond a reasonable doubt.¹⁰¹ The

94. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 3.f.

95. *Id.* § 3.f.(4).

96. *Id.* § 3.g.

97. 81 So. 2d 650 (Fla. 1955).

98. *Id.* at 651.

99. *Id.* at 655.

100. *Id.*

101. Florida Bd. of Bar Examiners *re: L.K.D.*, 397 So. 2d 673, 675 (Fla. 1981) [hereinafter *L.K.D.*].

issue of "an applicant's present fitness to practice law."¹¹² Evidence of rehabilitation must be clear and convincing.¹¹³ As observed by the Supreme Court of Oregon:

[T]his court's primary responsibility is to the public, to see that those who are admitted to the Bar have the sense of ethical responsibility and the maturity of character to withstand the many temptations which they will confront in the practice of law. If we are not convinced that an applicant can withstand these temptations, we would be remiss to admit the applicant. Doubt of consequence must be resolved in favor of the protection of the public.¹¹⁴

Florida provides Bar applicants with specific guidance on what is required to establish rehabilitation.¹¹⁵ Such requirements include positive contributions to society.¹¹⁶ "The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar."¹¹⁷

If the evidence of rehabilitation is convincing, then admission to the Bar is appropriate regardless of the seriousness of the past misconduct.¹¹⁸ Thus, a convicted drug dealer who has demonstrated full rehabilitation "should not be denied the privilege of practicing law solely because of a past mistake which is no longer relevant to the issue of his admission to the Bar."¹¹⁹ However, as one court recognized: "[I]n the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make."¹²⁰

5. Conditional Admission

Alarmed by the growing number of applicants with psychiatric, drug and alcohol problems, the FBOBE undertook an in-depth study of this area during the spring and summer of 1985. The FBOBE sought and received professional advice from experts in the area of substance abuse. The

112. *Matthews*, 462 A.2d at 176.

113. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 4.e.

114. *In re Taylor*, 647 P.2d 462, 467 (Or. 1982).

115. FLA. SUP. CT. BAR ADMISS. RULE, art. III, § 4.e.

116. *See id.* § 4.e.(7).

117. *Id.*

118. *See, e.g., In re Diez-Arguelles*, 401 So. 2d 1347, 1350 (Fla. 1981).

119. *Id.*

120. *Matthews*, 462 A.2d at 176.

FBOBE's efforts culminated in February, 1986 with the submission of a proposed rule change for the court's consideration.

The FBOBE's proposal sought approval from the court to establish a program of conditional admission to the Bar for applicants with a history of alcohol or drug abuse, or a history of a serious psychological disorder. In support of its proposal, the Board reasoned in part:

In dealing with applicants who have experienced drug or alcohol-related problems or serious psychological disorders, the Board must be conscious of both the rights of the individual applicant and the protection of the public interest. Unrestricted admission of such an applicant can have catastrophic consequences. A client's legal affairs, funds and even personal liberty are all jeopardized by the actions of an impaired attorney. However, the wholesale denial of applicants with these problems is not an acceptable solution.¹²¹

After requesting and subsequently receiving a mutually agreeable proposal from the FBOBE and The Florida Bar, the Supreme Court of Florida approved the conditional program on December 4, 1986.¹²² Since 1985, after recommendations by FBOBE, the court has approved over 135 confidential conditional admissions.¹²³

Florida has led the country with its progressive program of conditional admission. As observed by the Chair of the National Conference of Bar Examiners: "It is time that appropriate Bar admission authorities in other states recognize the need for conditional licensing."¹²⁴

IV. CONCLUSION

The Bar admissions process in Florida is not static. Members of the FBOBE are appointed for terms of limited duration to insure that "new views" will be presented to and considered by the full membership on a continuing basis.¹²⁵ The inclusion of public members on the FBOBE has

121. Pet. of FBOBE for Amend. of the R., Exhibit "A" at 4, February 13, 1986, Sup. Ct. of Fla. Case No. 68,307.

122. *In re Florida Bd. of Bar Examiner for Amendment of the Rules of the Sup. Ct. of Fla. Relating to Admission to the Bar*, 498 So. 2d 914 (Fla. 1986).

123. For a discussion of the appropriate sanction for an attorney who violates the terms of her conditional admission, see *The Florida Bar v. Roberts*, 626 So. 2d 658 (Fla. 1993).

124. Stuart Duhl, *Letter from the Chair*, B. EXAMINER, Feb. 1992, at 3.

125. FLA. SUP. CT. BAR ADMISS. RULE, art. I, § 3.b.

expanded such views to include the perspective of the nonlawyer. The new views of the Supreme Court of Florida and the FBOBE are reflected in the investigative and adjudicatory functions pertaining to a Bar applicant's character and fitness. Thus, the past issue of an applicant's sexual orientation has been relegated to an institutional memory.¹²⁶

Other issues such as alcoholism, drug addiction, and mental illness are no longer overlooked or minimized, but are "directly confronted" through reasonable inquiries, professional evaluations, and conditional admissions.¹²⁷ While the old issues of honesty, truthfulness, and candor have been clarified and re-emphasized,¹²⁸ the relatively new issue of financial responsibility continues to evolve.¹²⁹

On the horizon, new issues await consideration by the Florida Supreme Court and the FBOBE. Due to advances in technology, computer testing for professional licensure is quickly becoming a reality. It appears the question is no longer *if*, but *when*, as to the development of a computer adaptive version of the Bar examination. A proposal has also been made by the former president of the American Bar Association which would permit law students to sit for the Bar examination.¹³⁰

Throughout these changing times, the Florida Supreme Court and the FBOBE will continue to fulfill their "constitutional responsibility to protect the public by taking necessary action to ensure that the individuals who are admitted to practice law will be honest and fair and will not thwart the

126. Florida Bd. of Bar Examiners *re* N.R.S., 403 So. 2d 1315, 1317 (Fla. 1981) (The court stated "[P]rivate noncommercial sex acts between consenting adults are not relevant to prove fitness to practice law."). See also *Eimers*, 358 So. 2d at 9.

127. See *supra* notes 121-126 and accompanying text. In *The Fla. Bar v. Larkin*, 420 So. 2d 1080, 1081 (Fla. 1982), the Florida Supreme Court "directly confronted" the issue of alcoholism among the Bar's membership:

Too often, attorneys will recognize that a colleague suffers from alcohol abuse, but will ignore the problem because they do not want to hurt the individual or his or her family. This attitude can have disastrous results both for the public and for the individual attorney. If alcoholism is dealt with properly, not only will an attorney's clients and the public be protected, but the attorney may be able to be restored as a fully contributing member of the legal profession. This court has responsibility to assure that the public is fully protected from attorney misconduct.

Id.

128. See *R.B.R.*, 609 So. 2d at 1302; *J.A.F.*, 587 So. 2d at 1309; *J.H.K.*, 581 So. 2d at 37; *R.D.I.*, 581 So. 2d at 27; see also *supra* text accompanying notes 81-88.

129. See, e.g., Florida Bd. of Bar Examiners *re* S.M.D., 609 So. 2d 1309 (Fla. 1992).

130. *Florida Bar Association v. Board of Bar Examiners*, Aug. 1992 at 28.

administration of justice."¹³¹ As stated on the seal of the FBOBE:
"*Clemens iustitiae custodia.*"¹³²

131. *G.W.L.*, 364 So. 2d at 458.

132. Closely translated, the Latin phrase means: "Compassionate and vigilant protection of justice."

Appendix 5

CHARACTER & FITNESS PROCESS

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

Most lawyers licensed to the Bar in Florida today have been touched, if only lightly, by the Board of Bar Examiners. The purpose of this article is to introduce lawyers and Bar applicants to the board's processes in determining character and fitness requirements for admission to The Florida Bar.

Since its beginning, the Supreme Court of Florida has had certain inherent powers. Some of these powers, including the court's exclusive jurisdiction over the admission and discipline of lawyers, was formalized in the Constitution of the State of Florida.¹ The Florida Supreme Court created The Florida Bar for discipline of lawyers and a Florida Board of Bar Examiners for admission.

The Board of Bar Examiners is composed of 15 people — 12 lawyers and three nonlawyers. Lawyers serve terms of five years and nonlawyer, terms of three years. Each member may serve more than one term. Lawyer members are selected by the Supreme Court of Florida from a list of three names for each vacancy submitted by the Board of Governors of The Florida Bar. The list of nonlawyer nominees is sent by a joint committee of the Board of Governors and the

by Richard C. McFarlain

Board of Bar Examiners, again three names for each vacancy.² The Board of Bar Examiners is supported by a staff of 30 located in Tallahassee.³

The board is not a force unto itself. As the agent of the Supreme Court of Florida, it is subject to the court's direction and control. The board does not admit persons to practice. It screens them and makes recommendations to the court.

The board administers the bar examination twice a year and investigates the character and fitness of all applicants. This work is done in secret, and most applicants pass through the process with little or no problem. However, when the board puts the full force of its investigatory power on an applicant's past activities, the applicant may be in for a new experience in which he must defend his past in a procedure in which he has no leverage.

Applicants

Applicants with problems before the board come in two general classes. The first consists of younger people with little or no

work experience who are recent law school graduates. The second is composed of out-of-state lawyers or others who have had extensive experience in the world.

The first group may have problems stemming from the abuse or sale of drugs, student honor code violations, the failure to pay student loans or other financial obligations in a timely fashion, arrests or convictions or concealing arrests or convictions on their applications.⁴ This concealment offense can lead to additional problems particularly if the applicant failed to disclose necessary information on his law school application.

If the law school has been deceived, a suggestion will be made by the board that the applicant fully inform the dean of the false application and the circumstances surrounding it, in writing, with a copy to the executive director of the board. When the applicant complies, a variety of actions can follow depending on the attitude of the dean and the policy of the school. In at least two law schools in Florida, such disclosure can lead to litigation by the school to revoke the applicant's law degree.

Such cases may sometimes be resolved by agreeing to allow the school to put an overlay on the applicant's transcript saying

applicant did graduate, but will not be permitted to return to the university. Other schools, depending on the facts of the case, may accept the applicant's explanation and apology without further proceedings.

The second classification of applicants are the older, more experienced lawyers from out-of-state or applicants who attend law school later in life. They may encounter problems revolving around disciplinary problems with other state bars, criminal activity, personal and business difficulties, the sale and abuse of illegal drugs or the abuse of alcohol.

Out-of-state lawyers who have concealed or misrepresented facts on their application will be asked to produce a copy of all other bar applications filed. If this applicant has also falsified the application in a state where admitted, counsel will need to learn that state's disciplinary and admission rules, as the board may ask the out-of-state lawyer to disclose the prior falsification to his home state authorities. The fact the board uses this technique to help applicants risk losing their license in their home state and violate their own confidential privilege can be a very painful thing for applicants.

Ordinarily, applicants who have a problem obtaining the board's recommendation for approval usually have past or present troubles which they chose to conceal. This concealment inevitably leads to their filing a false application either by falsehood or omission.

Filling out the application for admission is serious business, since it is filed under oath. Too often applicants give it only passing attention. Applications are continuing and it is the duty of applicants to keep them timely by filing amendments. When the board's investigators uncover concealed or incomplete matters, the board sends a letter requesting further information. Applicants then must file amendments, under oath, with explanatory statements. Lying on the application is taken as serious misconduct, as illustrated by the statement of one justice's thinking in this regard: "It is axiomatic that an applicant for admission to The Florida Bar who lies or omits the truth on the Bar application is presumed unfit for admission to the legal profession in this state."³

Even if applicants should, somehow, succeed in lying their way into the Bar, the court will not hesitate to approve the board's revocation of its recommendation of admission upon discovery of the falsification.⁶

Some applicants may think juvenile misconduct sealed or expunged by a court order is not the business of the board.

However, F.S. §943.058(6)(b)4, (1987) makes clear that the board has a right to look at all such material.

Investigative Hearing

When the application and amendments do not satisfy the board, the investigative hearing process starts. Applicants will receive a letter from the executive director saying the board wishes them to appear at an investigative hearing at a set date and location. The letter will also describe in general terms the matters about which the board wishes to inquire and will have attached to it a notice of rights and responsibilities. The board's inquiry may not necessarily be limited to specific matters set forth in the letter. The letter will also state that any matters bearing on character and fitness may

Even if applicants should succeed in lying their way into the Bar, the court will revoke the board's recommendation of admission when falsification is discovered

be examined and failure to respond within 60 days will terminate the application.

As counsel begins representation of an applicant at any point, the person under investigation should send a letter to the executive director of the board confirming counsel's retention. This notifies the board that it can work with counsel and not violate confidentiality. Counsel should send a retainer letter to the applicant saying exactly how the case will proceed, what it will cost and the time schedule. This is good general practice which gives a necessary professional status to what can be a very emotional and stressful time for the applicant.

It is critical for counsel to convince the applicant that the truth, no matter how embarrassing, will do more good than a lie under oath. Counsel should meet with applicant and take sufficient time to work on the facts and a chronology of events. All documents bearing on the applicant's character and fitness should be gathered, such as transcripts of former testimony, law school applications, criminal and financial

records. When the applicant gets to the uncomfortable part, counsel should work through it, minute by minute if necessary, hour by hour, certainly, so that the applicant will be in a position to tell the whole story in an organized way and not leave out what the board probably already knows but wants to hear from the lips of the applicant.

Once counsel has the applicant mentally ready to work with the board, the major part of counsel's job at the investigative hearing level is done. Nevertheless, it is good practice to attend the hearing with the applicant. This hearing is neither the time nor place to interpose learned objections or make dramatic opening and closing statements. It is certainly not the place to be abrasive or abusive to the members of the board. Remember this: The applicant wants to get into the Bar; counsel is already in. Applicants have no leverage at an investigative hearing. For better or for worse they are applicants. Do not make it worse for them.

Character and fitness proceedings tend to be personal and highly charged. Applicants feel totally exposed to strangers whom they feel are not trying to help them but, instead, are intent on dwelling on the most embarrassing moments in their lives and in so doing, blocking their life-long ambition. They feel the pressure.

The investigative hearing will usually be held in a hotel. They are closed, confidential hearings. Applicant will report to a holding area in the lobby where a discrete sign with the board's name on it will be placed. As the board often divides into panels, others appearing before it will also be in the waiting area. When the time comes, counsel and applicant will be courteously escorted into a hearing room by a staff member. Three or more board members, staff and a court reporter will be seated on three sides of tables assembled in a hollow square. The board counsel will not always be present, but at times assist in more complicated matters. Customarily, applicant and counsel are seated side by side on the fourth side, making it somewhat awkward for applicant's counsel to observe the applicant during the process. Counsel may stand, but no item is provided for the resting of notes.

The proceeding opens with identification of the applicant and counsel. The presiding officer will state the nature of the proceeding, identify the board members present and ask the applicant to be sworn in by the court reporter. The applicant will be asked to state his or her name. Then the applicant will be handed a copy of the notice of rights

and responsibilities and asked if he received the original copy sent earlier, if he has read it and if he has any questions regarding it. After being asked if he understands his rights and responsibilities, the document becomes Exhibit I in the record.

In the interrogation that follows, the technical rules of evidence need not be observed,⁷ and are not. If counsel has done a good job, the applicant maintains composure, and the truth is not shaded in any way, admission may be recommended without further proceedings.

Each board member asks questions. All are uniformly well informed about the case.

Applicant's counsel may be asked if he would like a few private minutes with applicant. Counsel will also be asked if he or the applicant would like to offer anything else and, if not, to make a closing statement. Whether to make such a statement is a judgment call which should be decided at the time and under the circumstances.

Counsel and the applicant are then excused. The result, determined by the full board on the panel's recommendation, can take several weeks, depending on the board's workload.

Sometimes the applicant will be told he has established the qualifications as to character and fitness and will be recommended for admission. Sometimes he will be told further investigation is needed. Sometimes specifications will be filed charging the applicant with matters which, if proven, would preclude the board's favorable finding and recommendation to the Supreme Court. This leads to a formal hearing.

In exceptional cases, after the investigative hearing, instead of filing specifications pertaining to drug, alcohol or psychological problems, the board will enter into a consent order with the applicant. The board is authorized to recommend an applicant for admission if he has agreed to abide by specified terms and conditions upon admission to the Bar. If the Supreme Court accepts the board's recommendation and the applicant is admitted pursuant to a consent order, the terms and conditions of admission shall be administered by The Florida Bar.⁸

Formal Hearing

Although the board is not bound during a formal hearing by "technical" rules of evidence⁹ nor the Rules of Civil Procedure, there is a certain air of formality surrounding these proceedings that one does not easily forget. These hearings, too, are closed and confidential and the board is represented by counsel.

The process begins with the filing of specifications on the applicant, who must file an answer within 20 days of receipt. If the answer is not timely filed, the specifications shall be deemed admitted. Extensions of time may be allowed by the board. If the answer is not filed, the board will enter findings of fact, find the specifications proven and make appropriate conclusions of law which may include a recommendation that applicant not be admitted to The Florida Bar.¹⁰

When a timely answer is filed, the board will notify the applicant of the dates and locations available for the formal hearing and have the applicant agree to the date and location. If the applicant does not cooperate, the board will set the hearing. Should the applicant fail to attend without good cause, the specifications will be deemed admitted and the board will enter findings of fact, finding the specifications proven, and make appropriate conclusions of law, which may include a recommendation that the applicant not be admitted.

With the filing of specifications, the board's counsel may begin to take depositions. Counsel should now request copies of exhibits the board intends to use. An exchange of witness lists allows the applicant's counsel to set up depositions. The board allows supplementation of the witness list up to 20 days prior to the formal hearing. The use of stipulations can be helpful at this juncture.

The depositions taken by the board at the formal hearing are admissible into evidence and, when admitted, go with the record to the Supreme Court. Since the board uses these depositions instead of live witnesses in many cases, counsel should be present to cross examine and possibly impeach. Since the board is not bound to the "technical" rules of evidence, on occasion it has taken and admitted to the record the sworn deposition of its own investigators, who state what sworn witnesses told them.

Sufficient time needs to be taken with the applicant prior to the formal hearing even if counsel has taken the applicant through an investigative hearing and particularly if the applicant is a new client.

Often an applicant who was without counsel at the investigative hearing was not completely candid on examination and tried to deny or evade facts which, although not important enough to disqualify, seemed important to conceal but were well known to the board. As a result of this duplicity, specifications were filed charging the applicant with not being candid under oath.

If counsel comes in at this point, he now has the task of admitting that the applicant was not completely candid, or lied, but has seen the error of his ways, is now rehabilitated and understands the necessity of a lawyer telling the truth. A line of questions may now take place beginning, "Inasmuch as the investigative hearing, wherein you perjured yourself, was only four months ago, tell me how it is that you are so suddenly rehabilitated?" This line of questions, with unsatisfactory answers, may lead the board not to move the admission of the applicant, bringing on a subsequent, much later, hearing to show rehabilitation.

It is imperative the full story be brought out with all extenuating circumstances. If the applicant is not willing to do this, counsel should consider resigning from the case on grounds he cannot be of effective assistance.

The transcript from the investigative hearing, available upon request, at cost, from the board, should be reviewed with the applicant. Counsel should let the applicant know what he plans to cover on direct examination and take him through his previous testimony so he knows what he said under oath. This is imperative, because the

applicant may get rattled (or overcome by emotion) under the pressure of the formal hearing and sink into disorganized confusion.

Before the formal hearing is a good time to develop affidavits from persons you will not call as substantive or character witnesses. These are generally admitted by the board, for whatever probative value they may have. Since they are not subject to cross examination, their weight may be marginal, but from a psychological point of view, it is better to offer them than to go in empty handed. The writer of the affidavit should be aware of all the facts in the case and should say so, otherwise the affidavit is of little use.

When the formal hearing date arrives, counsel and the applicant are in another Florida hotel lobby with witnesses and several other applicants and their lawyers and witnesses. Though the board does its best to be on time, hearings run over, and there may be a wait. If the hearing goes too long, it may be adjourned and recommenced at the next board meeting, generally in two months.

As in the investigative hearing, a staff member escorts applicant and counsel into the hearing room. Seven or more board mem-

bers are present, with staff, a court reporter and the board's counsel around three sides of a large square of assembled tables. Identifications are made, the witnesses are sworn and, usually, the trailer is invoked. No lecture is provided. Counsel is seated next to applicant and may stay seated throughout the proceeding.

The proceeding is commenced with the board's counsel making an opening statement. Applicant's counsel may follow or wait until he has put on his case or waive opening altogether. Board counsel then outlines the specifications and offers documentary evidence including depositions, criminal records, credit reports and the transcript of the investigative hearing. The building of this paper case is done smoothly, efficiently and can be devastating.

The applicant is asked to look at each exhibit, and if there are any objections they should be made at this time. Witnesses for the board are then brought forth for direct examination by counsel, the board members, and cross examination by applicant's counsel. The board then rests.

If counsel has not already done so, he may make an opening statement. As a general rule, keep this short and put the applicant on the stand immediately. It is the applicant's character and fitness to practice law that the board is interested in, not counsel's technique as an orator.

Once the applicant is on the stand, through the process of direct examination, counsel should proceed through the whole story bringing out the worst about the applicant, warts and all.

If the applicant has lied to the board somewhere along the way, counsel should tell why he lied, and how sorry he is, if that is the case. The purpose of the board is to examine the character and fitness of a human being who wants to be a lawyer. Put it in human terms. If there is remorse show remorse. If counsel is relying on applicant's rehabilitation, it should be proved under the proper rule.

After direct examination, the applicant is cross-examined by the board's counsel and each member of the board. This is a thorough procedure. Applicant's counsel then has an opportunity to re-direct and more questions may come from the board.

Exercising the board's questions may seem to the applicant, they are generally well thought out and on point. When the board has exhausted its questions to the applicant, applicant's witnesses, if any, may be called for direct examination, where the same procedure is followed. If there is a character witness, and as a general rule there

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should be one, counsel should be sure the character witness knows exactly what has transpired to bring on this formal hearing. It is important that the witness has read the application, the specifications, the answer, the transcript of the investigative hearing and is aware of other documentary evidence offered by the board or in the applicant's behalf. Nothing is worse than to have a character witness say, "He did what? Why that's horrible! I didn't know that."

If a sitting judge is used as a character witness, he should appear under subpoena. Canon II of the Code of Judicial Conduct indicates that the testimony of a judge as a character witness injects the prestige of his office into the proceeding and may be misunderstood to be an official testimonial. Sanctions could be imposed on the judge. The canon, however, does not afford the judge a privilege against testifying in response to an official subpoena.

Having put on the applicant and witnesses, counsel should rest. The board may bring forth a mystery piece in the form of a rebuttal witness without notice. If applicant told counsel everything, there should be no problem. If information has been held back, counsel and the court reporter are the only people in the hearing room who have no idea of what is about to happen. The applicant knows, the staff and the board members know and the witness knows. The urge to bolt the room should be controlled, though requesting a short recess may be in order.

If, however, counsel will be prepared even if the witness is out to do the applicant some personal harm (and this happens). It is counsel's opportunity to neutralize the witness, because otherwise the board is going to believe its own witness.

When the evidence is in, counsel for the board will close. His job is to make the applicant look bad and claim the charges in the specifications were proven. Often, he is correct. Counsel for the applicant follows and contends the specifications either were not proven and why, or, even though they were proven, that they are not of the magnitude to exclude the applicant. Here counsel for the applicant will set out the relative innocuousness of the events, the length of time that has elapsed since their occurrence, the applicant's remorse and honesty as shown in the testimony, and whatever else good he can show that proves the applicant is of fit character to be a lawyer. The burden is to show fitness, not to disprove the specifications. The applicant does not have to prove the falsity of the charges made against him.¹²

If the applicant is recommended for admission, notification usually arrives within two or three weeks. If he is denied, the board's counsel will prepare a statement, which sometimes takes a while because of the board's backlog.

If counsel believes that the applicant did everything charged but has been rehabilitated, he states that in the answer or in an affirmative defense, to prove the seven requirements found in the rule.¹³ In serious drug or alcohol cases, special care must be taken by counsel to prove that the applicant is recovering and is in the hands of competent support people. The board has the power to recommend admission for such applicants on a conditional basis,¹⁴ but the applicant must evince that confidence in him will be rewarded. The Supreme Court, of course, makes the ultimate decision.

Post Formal Hearing Practice

If the board's recommendation is unsatisfactory to the applicant, a petition for reconsideration, together with a fee of \$70, may be filed within 60 days after notice. This petition must contain new material which the board has not previously considered. The applicant may proceed directly to the Supreme Court by filing a petition with the clerk within 60 days after receipt of the board's recommendation, serving a copy on the executive director of the board.¹⁵

When the executive director receives the petition, he places the record of the formal hearing with the Supreme Court and the court decides whether the applicant meets the character and fitness requirements. In some cases the court grants oral argument, *in camera*. It is not bad form to file a motion to maintain confidentiality with the clerk of the Supreme Court. It is also wise to review the record personally as submit-

ted by the executive director to ensure that no oversight has been made.

The court may sustain the board, admit the applicant or send the matter back to the board for further proceedings.

An applicant who has been through the entire process and has been denied may re-apply two years after the date of the adverse finding by filing a petition with the Supreme Court.¹⁶ Payment of a \$1000 cost deposit may be required. In the past, this two-year period did not begin running until after the court ruled, which had a stalling effect upon appeal. Now the two years run from the date of the board's recommendation, and filing a petition with the Supreme Court does not affect it.

Applicants in this position should not believe they are eligible for admission in two years. The rule means the process may begin again in two years and take up where it left off, including an investigative hearing as well as a formal hearing. Applicants are well advised to think why they are being held out and concentrate on rehabilitation in the two-year period. This is their opportunity to get into position to be a lawyer. Here again, the rules on rehabilitation come into play and should be followed closely.

One of the problems counsel must deal with is the nonavailability of the complete case law on the subject of character and fitness in Florida. There are published opinions and there are confidential unpublished opinions. But only persons with access to the unpublished confidential opinions are members of the court and the parties to the unpublished opinions. Since one of those parties is always the board, it follows the examiners know the full body of the law and applicable counsel do not.

Further, the board's use of unsworn statements, the absence of the "technical" rules

Admissions to the Bar

The Supreme Court of Florida has authorized the release of the following information relative to admission of applicants to The Florida Bar for the period from October 1986 to September 1987.

Applications Received	2,655
Investigative Hearings Held	195
Formal Hearings Held	21
Unfavorable Recommendations by Board	11
Petitions filed with Supreme Court for Review of Adverse Board Recommendation for Admission	4
Applicants Admitted after filing of Petition with Supreme Court for Review of Adverse Board Recommendation for Admission	1
Applicants Recommended by the Board for Admission to the Bar	2,360
Applicants Admitted Pursuant to an Order of Probationary Admission	11

of evidence, and the occasional withholding by the board of the Rules of Civil Procedure regarding discovery are just some of the elements that give a tilt to the playing field.

Some of the published cases indicate that serious misconduct may be forgiven by the court. Persons charged with petty larceny,¹⁷ conviction of sale of cocaine,¹⁸ shoplifting,¹⁹ filing for bankruptcy,²⁰ homosexual acts between consenting adults,²¹ unauthorized practice of law and filing false application,²² have been admitted to the Bar in Florida. However, these cases are not reason for assuring applicants with similar problems. The board will investigate. Each case stands on its own. The acts mentioned above will be looked at as well as any other variant of human behavior the board thinks may affect applicant's ability to practice law upon the public of Florida.

In the 1950's and early 1960's bar examiners looked for communists and fornicators. In the late 1960's and early 1970's they looked for hippies and pot smokers. Then came the era of cocaine, homosexuals, bankrupts and unpaid student loans. Today alcoholism and other drug abuse is on the ascendency. But always, the issue is good moral character. Counsel should review the major United States Supreme Court cases for legal guidance in regard to moral character.²³

Conclusion

The Board of Bar Examiners performs a public service in examining the fitness of highly trained people who wish to practice their skills on behalf of the people of Florida. The board establishes high standards. Such standards necessarily create a reaction which demonstrates itself through groups who would eliminate all inquiry into character and fitness and if given their way, would eliminate the entire Bar admissions process. This reaction, though possibly well intentioned, does not give proper regard for the interest of the state in protecting the people from unqualified lawyers.

The methods the board employs in its character and fitness investigations are thorough but as unintrusive as possible given the circumstances and the subject matter.

As a general rule, if the truth is told and sufficient time has passed since the offending conduct, the applicant's chance of admission is good. The board and the court understand no one is perfect, even lawyers. If they were, The Florida Bar would not be spending \$3.7 million this year on grievance cases. The lawyers who are disciplined have changed for the worse since admission. Applicants who seek admission after some untoward event have changed too, hopefully for the better. When they demonstrate that change to the satisfaction of the Florida Board of Bar Examiners they will be recommended to the Supreme Court for admission to The Florida Bar. □

convincing evidence, of such rehabilitation including, but not limited to, the following elements:

(1) Strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable.

(2) Unimpeachable character and moral standing in the community.

(3) Good reputation for professional ability, where applicable.

(4) Lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding.

(5) Personal assurance, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future.

(6) Restitution of funds or property, where applicable.

(7) Positive action showing rehabilitation by such things as a person's occupation, religion, community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar.

¹⁷ Coleman v. Watts, 81 So.2d 650, 655 (Fla. 1955) (quoting Board of Bar Exam. v. Poyntz, 152 Or. 592, 595, 52 P.2d 1141, 1143 (1935), reh'g denied, 54 P.2d 1212 (Or. 1936)).

¹⁸ Fla. Sup. Ct. BAR ADMISSION RULE, art. III B § 4.c.

¹⁹ Fla. Sup. Ct. BAR ADMISSION RULE, art. III B § 3.c.

²⁰ Fla. Sup. Ct. BAR ADMISSION RULE, art. III B § 4.a, b.

²¹ Fla. Sup. Ct. BAR ADMISSION RULE, art. III B § 4.d.

²² In re Question of Law Certified to the Supreme Court of Florida by the Fla. Bd. of Bar Exam., 183 So.2d 688 (Fla. 1966).

²³ In re Diaz-Arguelles, 401 So.2d 1347 (Fla. 1981).

¹⁷ Fla. Bd. of Bar Exam. Re: L.K.D., 397 So.2d 673 (Fla. 1981).

²⁰ Fla. Bd. of Bar Exam. Re: Lonnie Neil, 397 So.2d 164 (Fla. 1981).

²¹ Fla. Bd. of Bar Exam. Re: G.W.L., 304 So.2d 454 (Fla. 1978). See also Fla. Bd. of Bar Exam. Re: Richard Elliot Kwassnik, 508 So.2d 338 (Fla. 1987).

²² Fla. Bd. of Bar Exam. Re: N.R.S., 403 So.2d 1315 (Fla. 1981). In re Fla. Bd. of Bar Exam., In re Robert Francis Emery, 358 So.2d 7 (Fla. 1978).

²³ Lopez v. Fla. Bd. of Bar Exam., 231 So.2d 819 (Fla. 1969). In re Application of V.M.F. for Admission to The Florida Bar, 691 So.2d 1104 (Fla. 1986).

²⁴ See Königsberg v. State Bar, 353 U.S. 252 (1957); Schwart v. Bd. of Bar Exam., 353 U.S. 232 (1957).

AUTHOR



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¹ FLA. CONST. art. V, § 15.

² FLA. SUP. CT. BAR ADMISSION RULE, art. I.

³ The Board of Bar Examiners is located at 1300 East Park Avenue, Tallahassee, Florida 32399-1750.

⁴ FLA. SUP. CT. BAR ADMISSION RULE, art. IV § 9.b.

⁵ The Florida Bar v. Alex P. Lancaster, 448 So.2d 1019, 1024 (Fla. 1984) (Enright J., concurring).

⁶ Fla. Bd. of Bar Exam. v. Lerner, 250 So.2d 852, 853 (Fla. 1971). See also FLA. SUP. CT. BAR ADMISSION RULE, art. VII § 2.

⁷ FLA. SUP. CT. BAR ADMISSION RULE, art. III B § 3.a.

⁸ FLA. SUP. CT. BAR ADMISSION RULE, art. III B § 3.c.

⁹ FLA. SUP. CT. BAR ADMISSION RULE, art. III B § 3.f.

¹⁰ FLA. SUP. CT. BAR ADMISSION RULE, art. III B § 3.d.

¹¹ FLA. SUP. CT. BAR ADMISSION RULE, art. III B § 4.c. provides:

c. Any applicant or student registrant who, in any formal hearing held in response to Specifications pursuant to Article III, Section 3, or in any proceeding held before the Board pursuant to Article II, Section 5 or Article III, Section 4.d, affirmatively asserts rehabilitation from prior conduct which bears adversely upon such person's character and fitness for admission to

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Appendix 6

BEYOND REHABILITATION: PERMANENT EXCLUSION FROM THE PRACTICE OF LAW

by Thomas Arthur Pobjecky

—“[The legal profession] is neither a place of refuge nor a reformatory for those who have stumbled in other fields.”¹

Should rehabilitation always be available to bar applicants who engaged in past misconduct but now wish to practice law? Should some misconduct, due to its severity, forever disqualify bar applicants from being lawyers regardless of any showing of rehabilitation? Is the public best protected by the permanent exclusion of certain individuals from the legal profession? To explore these issues, a beginning point is a review of the role that rehabilitation has historically played in bar admissions proceedings.

THE CONCEPT OF REHABILITATION

For bar examiners, rehabilitation is a well-recognized legal principle:

A fundamental rule in bar admission cases is that evidence of reform and rehabilitation is relevant to the assessment of an applicant's moral character. Rehabilitation is pertinent because the Court is interested in an applicant's present fitness to practice law. Where evidence convincingly demonstrates reform and rehabilitation, it can overcome the adverse inference of unfitness arising from past mis-

conduct and, if persuasive, present fitness may be found.²

The Supreme Court of Massachusetts recognized the historical significance of rehabilitation: “The concept that human redemption is possible and valuable is both well established in law and premised upon longstanding, even ancient traditions.”³ The Supreme Court of Oregon also observed that an unfavorable ruling on a bar applicant's claim of rehabilitation does not mean that the court will “forever remain unconvinced of reformation,” noting that “[e]xperience teaches that true reformation does occur.”⁴

Courts have articulated various guiding principles to assist bar examiners in evaluating a bar applicant's evidence of rehabilitation. First, the severity of the past misconduct must be considered when evaluating the sufficiency of evidence of rehabilitation by a bar applicant. As stated by the Florida Supreme Court:

[I]n evaluating an applicant's showing of rehabilitation, the nature of the past misconduct cannot be disregarded. The more serious the misconduct, the greater the showing of rehabilitation that will be required.⁵

Thus, the adjudication of the sufficiency of rehabilitation necessarily involves the balancing of such

evidence against the seriousness of the past misconduct. The New Jersey Supreme Court, however, cautioned:

[I]t must be recognized that in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make. In all cases, the need to ensure the legitimacy of the judicial process remains paramount.⁶

The District of Columbia Court of Appeals enumerated eleven factors when assessing the moral character of bar applicants with criminal convictions. These factors include consideration of the severity of the criminal activity and individual characteristics of the applicant both at the time of the misconduct (such as age and maturity) and at the time of the bar application (such as candor and remorse).⁷ Florida has a specific rule on rehabilitation that sets forth the applicant's burden of proof (clear and convincing evidence) and seven elements of rehabilitation (including positive action in one's community).⁸

In deciding whether a bar applicant has satisfied the burden of establishing rehabilitation, courts have held that there must be no doubt about admitting the applicant. The Supreme Court of Washington reasoned:

Having previously engaged in serious misconduct, petitioner must "clearly demonstrate" that he is now worthy of the public trust that is placed in attorneys; if doubt remains, fairness to the public and the bar requires that admission be denied.⁹

As stated by the Supreme Court of Georgia:

In determining whether the burden of proving rehabilitation by clear and convincing evidence was met, the Board was authorized to

resolve any doubt against [the applicant's] certification and in favor of the public's protection.¹⁰

PERMANENT DISBARMENT OF ADMITTED ATTORNEYS

In considering if particular bar applicants should be permanently excluded from the practice of law, it is helpful to consider how courts have addressed the related issue of permanent disbarment of attorneys. Over the years, courts in reinstatement cases involving disbarred attorneys have adhered to the principle that "[a]lthough courts are slow to disbar, they are slower to reinstate."¹¹ Some courts have gone a step further and have held that disbarred attorneys will never be allowed to practice law again.

A 2001 report provides the following summary of the status of permanent disbarment in America:

According to the American Bar Association, only ten states have some form of permanent disbarment. In New Jersey, Ohio, Oregon, Kentucky, Iowa, and Indiana disbarment is truly permanent. In California and Florida, rules permit permanent disbarment where circumstances so warrant. Otherwise, reinstatement in those two states is permitted after five years. In Alabama, a second disbarment will result in permanent disbarment. In Illinois, reinstatement generally is permitted after disbarment, but there is also case law permitting permanent disbarment. In the remaining forty states, reinstatement is permitted after a lawyer has been "disbarred," usually for a period of five years.¹²

In New Jersey, the rule on disbarment provides: "An attorney who is disbarred shall have his or her name permanently stricken from the roll of

attorneys.”¹³ As of 2005 in New Jersey, there was no procedure for a disbarred attorney to seek reinstatement.”¹⁴ Similarly, Ohio provides that “[a] person who is disbarred or who voluntarily has surrendered his or her license to practice shall not be readmitted to the practice of law in Ohio.”¹⁵

In its Model Rules for Lawyer Disciplinary Enforcement, the American Bar Association recommends a minimum disqualification period of five years from the date of disbarment.¹⁶ The commentary to this provision states:

Readmission occurs when a disbarred lawyer is returned to practice. Since the purpose of lawyer discipline is not to punish, readmission may be appropriate; the presumption, though, should be against readmission. In no event should a lawyer be considered for readmission until at least five years after the effective date of disbarment.¹⁷

Florida implemented features of the ABA model rule by requiring a period of disqualification of five years from the date of disbarment or a longer period (including permanent disbarment) if the supreme court deems the longer period appropriate.¹⁸

Courts have imposed permanent disbarment for various wrongdoings including the following:

- The Mississippi Supreme Court permanently disbarred an attorney for misappropriation of trust funds. The court reasoned: “There can be no more damaging evidence . . . as to a lawyer’s fitness to practice law than mishandling a trust account. . . . It is the capital crime of a lawyer to his profession.”¹⁹
- The Indiana Supreme Court imposed permanent disbarment for an attorney based on

his “repeated criminal acts, coupled with the abandonment of his law practice without regard for the interests of his clients”²⁰

- The Kentucky Supreme Court had before it an attorney who had padded his claim for compensation to the state for representation of a criminal defendant. While representing the victim of a crime in another matter, the attorney solicited \$300,000 from the criminal defendant to prevent the victim from testifying. The attorney also neglected his representation of legal clients and kept fees that he had not earned. In affirming the attorney’s permanent disbarment, the court stated: “We agree with the [Kentucky Bar Association] that permanent disbarment is the only acceptable discipline for Respondent’s numerous and egregious violations of the Kentucky Rules of Professional Conduct.”²¹
- The Louisiana Supreme Court permanently disbarred an attorney who “intentionally corrupted the judicial process when he repeatedly urged his legal assistant to testify falsely before a federal grand jury [and who] also ran a widespread runner-based personal injury law practice.”²²
- The Florida Supreme Court permanently disbarred a former attorney who continued to practice law after his initial disbarment.²³
- The Ohio Supreme Court permanently disbarred an attorney based on the following facts:

“While serving as a prosecutor, respondent communicated with criminal defendants about the merits of their cases, knowing that they were represented by

defense counsel. He accepted a bribe from a criminal defendant, knowing that it was offered because he held a position of public trust and influence, and he tried to cause another defendant to believe that the payment of money could affect the outcome of a pending case. This abuse of public office is not diminished by respondent's drug addiction or by any other mitigating factor. His misconduct has been too harmful to the public and to the administration of justice for him to remain a member of the legal profession in Ohio."²⁴

In Louisiana, the supreme court has nonbinding guidelines to assist it in determining whether permanent disbarment is appropriate in a particular case. These guidelines include a list of crimes (such as corruption of the judicial process, homicide, and sexual misconduct) that might warrant permanent disbarment.²⁵

Some courts, however, have rejected the concept of permanent disbarment. For example, the Supreme Court of Montana addressed the issue of whether an attorney's felony conviction should result in permanent disbarment. In deciding that it should not, the court observed:

[W]e decline in principle to adopt a position that permanent disbarment is just retribution for a felony conviction. In the deepest well-

springs of our beings, expressed in nearly every religious persuasion, is the precept that man, though weak in nature, can nonetheless reform. To deny that humans, even lawyers, are capable of reform is to scant the qualities of memory, understanding, and will which distinguish us from other vertebrates.²⁶

The Massachusetts Supreme Court reached the same conclusion with the following rationale:

[T]he serious nature of the crime and the conclusive evidence of past unfitness to serve as an attorney do not necessarily disqualify [the petitioner] at the present time. We cannot subscribe to the arguments advanced by the chief Bar Counsel . . . that, because the offenses committed . . . are so serious, they forever bar reinstatement irrespective of good conduct or reform. Though in previous cases we intimated by way of dicta that there

may be "offenses so serious that the attorney committing them can never again satisfy the court that he has become trustworthy," we cannot now say that any offense is so grave that a disbarred attorney is automatically precluded from attempting to demonstrate through ample and adequate proofs, drawn from conduct and social interactions, that he has achieved a "present fitness" to serve as an attorney and has led a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions.²⁷

"[W]E DECLINE IN PRINCIPLE TO ADOPT A POSITION THAT PERMANENT DISBARMENT IS JUST RETRIBUTION FOR A FELONY CONVICTION. IN THE DEEPEST WELLSPRINGS OF OUR BEINGS, EXPRESSED IN NEARLY EVERY RELIGIOUS PERSUASION, IS THE PRECEPT THAT MAN, THOUGH WEAK IN NATURE, CAN NONETHELESS REFORM."

—*Supreme Court of Montana*

Additionally, the New Jersey State Bar Association filed a report with its supreme court recommending the adoption of rules permitting disbarred lawyers to apply for reinstatement to the Bar. In making this recommendation, the Bar asserted:

The premise behind permanent disbarment is to protect the public. Permanent disbarment, however, also discounts any possibility for character reform and rehabilitation that may emerge after a period of time away from the law following disbarment. The possibility of reinstatement gives a lawyer an incentive to change and again become someone in whom clients and colleagues can place their trust.²⁸

PERMANENT EXCLUSION OF BAR APPLICANTS

In the area of bar admissions, the supreme courts in Ohio and Florida have ruled that particular bar applicants should be permanently excluded from the legal profession. In the case of *In re Application of Cvammen*,²⁹ the Ohio Board of Commissioners on Character and Fitness recommended that the applicant's application be disapproved but with permission to reapply in the future. In its 2004 decision, the Ohio Supreme Court, however, held that because the applicant had "consistently exhibited duplicitous behavior . . . he must be permanently denied the privilege of applying for admission to the practice in this state."³⁰

In reaching its decision, the court in *Cvammen* reasoned:

Evidence of false statements, including material omissions, and lack of candor in the admissions process reflect poorly on an applicant's character, fitness, and moral qualifications. Where, as here, these ethical infractions so per-

meate the admissions process that the applicant's honesty and integrity are shown to be intrinsically suspect, our disposition must be to permanently deny his application to register as a candidate for admission to the Ohio bar.³¹

In the case of *Florida Board of Bar Examiners re: W.F.H.*,³² the Florida Supreme Court had before it a case involving a former police officer. In 1979, the applicant was involved in the events surrounding the beating death of an individual who was in police custody. The record before the court established the following facts.³³

The applicant used his nightstick to subdue a motorcyclist who had been stopped following a high speed chase with law enforcement officers. After handcuffing the individual, the applicant stepped back and watched as another officer repeatedly struck the head of the victim with a metal flashlight. While the individual was still alive, the applicant indicated to other officers where the victim's leg could be broken so that it would look like the victim had been in a traffic accident.

The applicant actively participated in efforts to cover up the beating. He drove a patrol car over the victim's motorcycle; he used his service revolver to shoot the victim's wristwatch; and he used a tire iron to gouge the street to make it appear as if the victim had been involved in an accident while riding his motorcycle. Within hours after the beating, the applicant broke into the impound lot and tampered with the victim's motorcycle. The applicant also lied about the events surrounding the victim's death during an internal affairs investigation. The applicant was later granted immunity and he testified against four fellow officers who were acquitted.

On two different occasions, the Florida Board of Bar Examiners recommended against the applicant's

admission. In its 2006 decision following review of the second unfavorable recommendation, the Florida Supreme Court held:

Upon consideration of W.F.H.'s Petition for Review filed in the above cause, based on the totality of the circumstances, the findings of fact and conclusions of law, the recommendation of the Florida Board of Bar Examiners that W.F.H. not be admitted to the Florida Bar is approved. This Court concludes that the total circumstances and underlying facts of the instant case, which involve misconduct by a sworn law enforcement officer, are so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendation of the Florida Board of Bar Examiners must be approved. We further conclude that under the totality of the circumstances, the grievous nature of the misconduct mandates that W.F.H. not be admitted to the Bar now or at any time in the future. Accordingly, W.F.H.'s petition is hereby denied.³⁴

One justice (with two justices concurring) concurred in the result only and filed the following opinion:

I concur only in this result. However, I believe that the Board erred and we erred in not making this decision at the time of W.F.H.'s first petition, rather than allowing W.F.H. to reapply when a reapplication was futile. I regret this for reasons of fundamental fairness.³⁵

In addition to permanent denials by the supreme courts in Ohio and Florida, some courts appear to reach the same result without describing their decisions as permanent denials. For example, in the case

of *In the Matter of Dortch*,³⁶ the West Virginia Supreme Court had before it an applicant who had entered guilty pleas to second degree murder (of a police officer), conspiracy, and attempted armed robbery. The applicant was sentenced to prison for a term of fifteen years to life. He was eventually released in 1990 after serving fifteen years.

In reaching its decision, the court in *Dortch* acknowledged the applicant's "commendable prison record, his present dedication to community service and his extensive rehabilitative efforts during the seven years since his release from prison."³⁷ The court also noted the applicant's "candor in admitting his guilt and responsibility in the death of [the police officer]."³⁸

In denying the applicant's admission, the *Dortch* court, however, reasoned:

Though Mr. Dortch may have demonstrated that he has been rehabilitated, we believe the horrendous crime of which he was the prime conspirator outweighs his present good deeds. Indeed, the magnitude of his crimes constitutes an "indelibly negative mark" on this applicant's record. We firmly believe that it would be detrimental to the public interest and the public's confidence in the integrity of the legal profession were we to admit Mr. Dortch to the practice of law in this State.³⁹

In the case of *In re Hale*,⁴⁰ the Supreme Court of Illinois had before it a bar applicant who was a public advocate of racism and anti-Semitism. In that case, the court denied the bar applicant's petition for full review of the unfavorable decision of the Illinois Character and Fitness Committee. By not hearing the case, the court left undisturbed the following decision of the committee:

The crux of the Committee's decision to deny petitioner's application to practice law is petitioner's open advocacy of racially obnoxious beliefs. The Hearing Panel found that petitioner's "publicly displayed views are diametrically opposed to the letter and spirit" of the Rules of Professional Conduct. The Inquiry Panel found that, in regulating the conduct of attorneys, certain "fundamental truths" of equality and nondiscrimination "must be preferred over the values found in the First Amendment."⁴¹

In the case of *Application of T.J.S.*,⁴² the New Hampshire Supreme Court had before it an applicant who was convicted of felonious sexual assault on two of his students while he was a junior high and high school teacher. The applicant served about four years in prison. In reaching its decision against the applicant's admission, the court observed that by law, the applicant's convictions permanently barred him from ever being certified to teach again in New Hampshire, from obtaining a liquor license, and from possessing a firearm.

In its opinion, the court stated that the applicant's misconduct "displayed the gravest abuse of the trust conferred upon him as a teacher."⁴³ The court concluded:

We are mindful that there are situations where meaningful rehabilitation will overcome the prior taint of serious misconduct; this is not such a case. The applicant here, we believe, has failed to demonstrate the required "good moral character" to warrant admission to a profession that demands "not only ability of a high order, but the strictest integrity."⁴⁴

Although the supreme courts in *Dortch*, *Hale*, and *T.J.S.* did not expressly state that the applicants were permanently excluded, it is reasonable to draw such conclusions. In *Dortch* and *T.J.S.*, the applicants' past misconduct disqualified them. In *Hale*, the applicant's past and ongoing conduct disqualified him. In these cases, it appears that neither the additional passage of time nor the presentation of future evidence of rehabilitation would ever alter the basis for the denials.

CONCLUSIONS

In the case of *In the Matter of Greenberg*,⁴⁵ the New Jersey Supreme Court permanently disbarred an attorney for stealing funds from his law firm. In a dissenting opinion, a justice of the court asserted:

The Court should exercise caution and restraint in considering the extent to which it should apply rigid, bright-line rules in attorney disciplinary proceedings. Disbarment is the most unforgiving discipline, and it condemns every lawyer on whom it is imposed to a life sentence of professional disgrace. In New Jersey, unlike most other states, disbarment is permanent and its stigma is ineradicable.⁴⁶

This argument could also be made about the use of permanent exclusion in bar admissions proceedings. Yet, a contrary argument appears in the concurring opinion filed in the Maryland *Dortch* case (involving the same applicant as in the West Virginia case discussed above⁴⁷).

In that case, the Maryland Court of Appeals⁴⁸ ruled that the applicant was ineligible for admission because he was still on parole. The court added: "We express absolutely no judgment, however, as to *Dortch's* admissibility after he is released from parole supervision."⁴⁹

In the concurring opinion, the judge characterized the applicant's misconduct as ranking "among the most serious and repugnant crimes" and cautioned:

[T]he Court's ruling gives insufficient weight to the integrity of the legal system. In the related area of attorney discipline, we have consistently noted that the purpose of disciplining attorneys is to protect the public. The public's interest is not served by the admission of a convicted murderer, a person who has demonstrated the most profound disregard for the law and for human life. Not only must we be concerned with protecting the public, but we must also consider the public's respect for and confidence in the judicial system.⁵⁰

The concurring judge then concluded:

If the Court's ruling even remotely suggests that Petitioner's application will be granted when his parole ends, then I cannot join the Court's opinion because Petitioner has not met, and indeed probably cannot meet, the heavy burden of proving good moral character after the commission of a crime so heinous as this one. If this Court's ruling means that we shall defer the decision on this petition with no intention of admitting Petitioner, then this ruling is unfair to Dortch as it holds out false hopes. Cf. *Manville I*, 494 A.2d at 1298 (Nebeker, J., dissenting) ("This court does the public, our bar, and our Admissions Committee an injustice when it hedges on these facts and orders further investigation."). This petition for admission to the Bar of Maryland should be denied, without any suggestion that Petitioner reapply when his parole is terminated.⁵¹

As pointed out in the dissenting opinion in the *Greenberg* case and in the concurring opinion in Maryland's *Dortch* case, reasonable arguments can be advanced both against and in favor of permanent exclusion from the bar.

In the case of *In the Matter of Hamm*,⁵² the Arizona Supreme Court had before it a bar applicant who had participated in two execution-style murders resulting in his conviction for first-degree murder and a prison sentence of life. The applicant was released from prison in 1992 after serving close to seventeen years. The court held that the applicant had failed to meet his burden of establishing good moral character.

In reaching its 2005 decision, the *Hamm* court did not rule out future admission for the applicant. The court explained:

When Hamm committed first-degree murder in 1974, he demonstrated his extreme lack of good moral character. Although this Court has not adopted a *per se* rule excluding an applicant whose past includes such serious criminal misconduct, we agree with those jurisdictions that have held that an applicant with such a background must make an extraordinary showing of rehabilitation and present good moral character to be admitted to the practice of law. Perhaps such a showing is, in practical terms, a near impossibility. We need not decide that question today, however, because . . . Hamm has not met the stringent standard that applies to an applicant in his position who seeks to show his present good moral character.⁵³

In a follow-up decision to its *Hamm* opinion, the Arizona Supreme Court considered the case of *In the Matter of King*.⁵⁴ There, the bar applicant entered a

plea of guilty to an attempted murder charge. In 1979, he served only a brief portion of his seven-year prison sentence before the trial court suspended the sentence and placed him on probation. The trial court eventually set aside the applicant's conviction. The applicant subsequently graduated from college and law school and he was admitted to the Texas Bar in 1994.

In its 2006 decision, the court in *King* rejected the Arizona Bar's plea to establish "a per se rule of disqualification for applicants who previously engaged in serious criminal misconduct."⁵⁵ As it did in the *Hamm* case, the court again found that the applicant's showing of rehabilitation fell short.

In reaching its decision, the *King* court reasoned:

By our decision today, we do not effectively exclude all applicants guilty of serious past misconduct from practicing law in Arizona, as the dissent suggests. Nor do we lightly view the choice of applicants such as King to live as good citizens after paying for past misdeeds, as the dissent implies. Indeed, it is out of respect for and belief in rehabilitation that this court has refrained from mimicking other professions by drawing a bright-line rule to disqualify convicted felons from practicing law in Arizona. Such applicants, however, must overcome the additional burden born

from their past misdeeds as reflected in our two-part inquiry. King has not done so.⁵⁶

The dissenting justice in *King* would have admitted the applicant. While the dissenting justice disfavored a bright-line rule, he acknowledged that such rules are used in other professions:

The State Bar of Arizona has repeatedly urged us to disqualify from the practice of law all applicants with records of serious past misconduct. Such a bright-line rule would hardly be

irrational. Felony convictions disqualify applicants from participation in a number of other professions, including law enforcement, certified public accounting, nursing, private investigation, and security.⁵⁷

The dissent also addressed the end result of the majority's decision:

The majority purports again to reject a per se rule today, stating that, notwithstanding serious past misconduct, an applicant can prove the current good moral character required by Arizona Supreme Court Rule 36 for

admission to the Bar. In practice, however, the Court has adopted the very bright-line rule it purports to abjure. If Mr. King has not demonstrated rehabilitation and current good moral character, it is difficult for me to conclude that any applicant previously convicted of a serious felony ever can.⁵⁸

"THE STATE BAR OF ARIZONA HAS REPEATEDLY URGED US TO DISQUALIFY FROM THE PRACTICE OF LAW ALL APPLICANTS WITH RECORDS OF SERIOUS PAST MISCONDUCT. SUCH A BRIGHT-LINE RULE WOULD HARDLY BE IRRATIONAL. FELONY CONVICTIONS DISQUALIFY APPLICANTS FROM PARTICIPATION IN A NUMBER OF OTHER PROFESSIONS, INCLUDING LAW ENFORCEMENT, CERTIFIED PUBLIC ACCOUNTING, NURSING, PRIVATE INVESTIGATION, AND SECURITY."

—*dissent in King*

The dissent "wonder[ed] whether the public and future applicants would be better served by adopting the per se approach the majority opinion purportedly rejects."⁵⁴

Jurisdictions that make no allowance for permanent disbarment of lawyers or permanent denial of bar applicants may wish to consider whether their policies in these areas should be changed. Jurisdictions that impose permanent disbarment but not permanent denial may also wish to reconsider their policies. As one court held, it "will not tolerate conduct by those applying for admission to the bar that would not be tolerated were that person already an attorney."⁵⁵ Further, jurisdictions that impose permanent denial of bar applicants on a case-by-case basis may wish to consider bright-line rules.

In considering these issues, jurisdictions will need to confront these decisive questions:

- Should the legal profession include individuals who can practice law and be an officer of the court while being statutorily barred from other professions involving the public trust such as law enforcement and teaching?
- Should bar examiners adopt per se rules that permanently exclude from the practice of law individuals who are convicted murderers such as Dortch and Hamm, self-avowed racists such as Hale, and violators of the public trust such as the police officer in *W.F.H.* and the teacher in *T.J.F.*?

- Should there be a bright-line rule that would preclude forever the admission of applicants who have engaged in omissions, lies, and deception, especially during the admission process such as the bar applicant in the *Coammen* case?

In responding to these questions, it is helpful to recall the words of Justice Frankfurter regarding the legal profession's demand for moral character among its members:

Certainly since the time of Edward I, through all the vicissitudes of seven centuries of Anglo-American history, the legal profession has played a role all its own.

The bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. One does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as "moral character."⁵⁶

"FROM A PROFESSION CHARGED WITH SUCH RESPONSIBILITIES THERE MUST BE EXACTED THOSE QUALITIES OF TRUTH-SPEAKING, OF A HIGH SENSE OF HONOR, OF GRANITE DISCRETION, OF THE STRICTEST OBSERVANCE OF FIDUCIARY RESPONSIBILITY, THAT HAVE, THROUGHOUT THE CENTURIES, BEEN COMPENDIOUSLY DESCRIBED AS 'MORAL CHARACTER.'"

—Justice Frankfurter

It appears that most, if not all, courts adhere to "a virtually impossible" standard for admission to the practice of law when there has been egregious misconduct by a bar applicant. This standard results from one of the fundamental principles of rehabilitation for evaluating an applicant's claim of reformation: "The more serious the misconduct, the greater the showing of rehabilitation that will be required."⁵⁷

Courts and bar examiners that struggle with the application of a balancing test between the evidence of rehabilitation and the seriousness of the misconduct may wish to consider the adoption of bright-line rules. Such rules can be applied objectively. Such rules give notice to law schools, law students, and prospective bar applicants of the types of behavior that will permanently exclude individuals from the legal profession.

Bright-line rules also ensure consistent treatment among similarly situated bar applicants. Thus, such rules will eliminate the appearance of unpredictability that often results when courts are forced to use a balancing test when adjudicating cases on an individual basis. The underlying facts in the cases discussed above under Permanent Exclusion of Bar Applicants along with the disbarment guidelines used by the Louisiana Supreme Court⁵⁸ provide good sources for jurisdictions that wish to consider the adoption of bright-line rules for permanent exclusion from the practice of law.

Perhaps most importantly, the adoption of a *per se* approach supports the notion that the general integrity of the judicial system is paramount to the individual claim of rehabilitation by a particular bar applicant. The Massachusetts Supreme Court embraced this notion in a reinstatement case of a disbarred attorney: "We agree that the effect of this decision upon [the petitioner] and his future is

important, but the effect upon the interests of the public and its confidence in the bar is of overriding importance."⁵⁹ This notion should apply equally to the bar admissions process. ■

ENDNOTES

1. *In re Farmer*, 131 S.E. 661, 663-664 (N.C. 1926).
2. *Application of Matthews*, 462 A.2d 165, 176 (N.J. 1983).
3. *In the Matter of Prager*, 661 N.E.2d 84, 89 (Mass. 1996) (quoting approvingly from the findings of the Massachusetts Board of Bar Examiners).
4. *Application of Taylor*, 647 P.2d 462, 467 (Ore. 1982).
5. *Florida Board of Bar Examiners re J.J.T.*, 761 So. 2d 1094, 1096 (Fla. 2000) (citation omitted).
6. *Matthews*, *supra* note 2, at 176.
7. *In re Manville*, 494 A.2d 1289, 1296-97 (D.C. Ct. App. 1985) (footnotes omitted). The eleven factors are:
 1. The nature and character of the offenses committed.
 2. The number and duration of offenses.
 3. The age and maturity of the applicant when the offenses were committed.
 4. The social and historical context in which the offenses were committed.
 5. The sufficiency of the punishment undergone and restitution made in connection with the offenses.
 6. The grant or denial of a pardon for offenses committed.
 7. The number of years that have elapsed since the last offense was committed, and the presence or absence of misconduct during that period.
 8. The applicant's current attitude about the prior offenses (e.g., acceptance of responsibility for and renunciation of past wrongdoing, and remorse).
 9. The applicant's candor, sincerity and full disclosure in the filings and proceedings on character and fitness.
 10. The applicant's constructive activities and accomplishments subsequent to the criminal convictions.
 11. The opinions of character witnesses about the applicant's moral fitness.
8. Rule 3-13 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar. The seven elements listed in Rule 3-13 are:
 - (a) strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable;
 - (b) unimpeachable character and moral standing in the community;
 - (c) good reputation for professional ability, where applicable;

- (d) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- (e) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's life in an exemplary fashion in the future;
- (f) restitution of funds or property, where applicable;
- (g) positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar.

As to the element of positive action in subsection (g) above, Florida adopted this provision from the Supreme Court of Georgia in its decision of *In re Application of Cason*, 294 S.E.2d 520, 522-523 (Ga. 1982). Community service must be more than "activities that are expected generally from any typically responsible citizen" such as donating blood. *Florida Board of Bar Examiners re McMahan*, 944 So. 2d 335, 338 (Fla. 2006).

9. *In re Belsher*, 689 P.2d 1078, 1083 (Wash. 1984) (citation omitted).
10. *In re K.S.L.*, 495 S.E.2d 276, 277 (Ga. 1998) (citation omitted).
11. *Elledge v. Alabama State Bar*, 572 So.2d 424, 426 (Ala. 1990). See also *In re Smith*, 19 N.W.2d 324, 326 (Minn. 1945) (citation omitted) ("While a court should be slow to disbar, it should be even more cautious in readmitting an attorney to a position of trust."); *Petition of Morrison*, 186 N.W. 556, 557 (S.D. 1922) ("A court should be slow to disbar, but it should be even slower to reinstate.").
12. *Recommendations - Reinstatement of Disbarred Lawyers*, Report of the New Jersey State Bar Association dated March 23, 2001 (available on the New Jersey Bar's website at www.njsba.com).
13. Rule 1:20-15A(a)(1) of the Rules Governing the Courts of the State of New Jersey.
14. *State of the Attorney Disciplinary System Report - 2005*, New Jersey Office of Attorney Ethics at 25 (available on the New Jersey courts' website at www.judiciary.state.nj.us/oe/index.htm).
15. Rule V, Section 6(C) of the Rules for the Government of the Bar of Ohio.
16. Rule 25(A) of the ABA Model Rules for Lawyer Disciplinary Enforcement.
17. *Id.* at Commentary.
18. Rule 3-5.1(f) of the Rules Regulating The Florida Bar. In 1998, the Florida Supreme Court amended these rules to

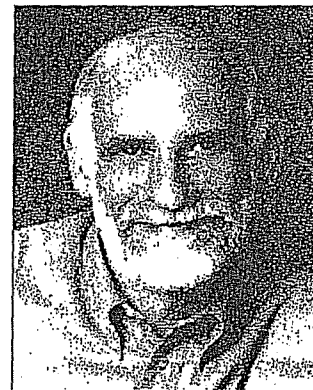
specifically provide for permanent disbarment. See *In re Amendments to Rules Regulating The Florida Bar*, 718 So. 2d 1179, 1181 (Fla.1998) (amending rule 3-5.1(f) "to authorize permanent disbarment as a disciplinary sanction").

19. *Reid v. Mississippi State Bar*, 586 So. 2d 786, 788 (Miss. 1991) (citations omitted).
20. *In the Matter of Davidson*, 761 N.E.2d 854 (Ind. 2002).
21. *Kentucky Bar Association v. Rylee*, 188 S.W.3d 433, 437 (Ky. 2006).
22. *In re Coney*, 891 So. 2d 658, 661 (La. 2005).
23. *The Florida Bar re Kandekore*, 932 So. 2d. 1005 (Fla. 2006).
24. *Disciplinary Counsel v. Phillips*, 843 N.E.2d 775, 778 (Ohio 2006).
25. Appendix E to Rule XIX of the Rules of the Supreme Court of Louisiana. The guidelines are:
 - Guideline 1. Repeated or multiple instances of intentional conversion of client funds with substantial harm.
 - Guideline 2. Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury.
 - Guideline 3. An intentional homicide conviction.
 - Guideline 4. Sexual misconduct which results in a felony criminal conviction, such as rape or child molestation.
 - Guideline 5. Conviction of a felony involving physical coercion or substantial damage to person or property, including but not limited to armed robbery, arson, or kidnapping.
 - Guideline 6. Insurance fraud, including but not limited to staged accidents or widespread runner-based solicitation.
 - Guideline 7. Malfeasance in office which results in a felony conviction and which involves fraud.
 - Guideline 8. Following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred.
 - Guideline 9. Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.
26. *In the Matter of McKeon*, 656 P.2d 179, 182 (Mont. 1982).
27. *In the Matter of Hiss*, 333 N.E.2d 429, 433 (Mass. 1975) (citations and footnotes omitted).
28. Report, *supra* note 12.
29. *In re Application of Cvammen*, 806 N.E.2d 498 (Ohio 2004).

30. *Id.* at 501 (citation omitted).
31. *Id.* at 503 (citation omitted). See also *In re Application of Aboyade*, 815 N.E.2d 383, 386 (Ohio 2004) (citation omitted) (In approving permanent denial, the court stated: "An applicant whose honesty and integrity are intrinsically suspect cannot be admitted to the Ohio Bar.")
32. *Florida Board of Bar Examiners re: W.F.H.*, 933 So. 2d 482 (Fla. 2006), *cert. denied*, ___ U.S. ___, 127 S. Ct. 561 (Mem) (Nov. 6, 2006).
33. The briefs and record on appeal were not made public in this case. The facts of the case, however, are in the public domain in that the case was orally argued in open court. A video of the oral argument held on October 4, 2004, is available for viewing via the Florida Supreme Court website. Additionally, there have been news accounts of the court's decision. See, e.g., *Jones, Ex-cop in McDuffie Case Can't Become Lawyer*, Daily Business Review, April 21, 2006.
- Lastly, W.F.H. filed a Petition for Writ of Certiorari in the United States Supreme Court wherein the facts of the case are reported along with attachments containing the Board's written findings and recommendations. *W.F.H. v. Florida Board of Bar Examiners*, No. 06-404 (U.S.) (Pet. for Writ of Cert. filed Sept. 18, 2006). The petition was denied on November 6, 2006.
34. *W.F.H.*, *supra* note 32.
35. *Id.*
36. *In the Matter of Dortch*, 486 S.E.2d 311 (W. Va. 1997).
37. *Id.* at 321.
38. *Id.*
39. *Id.* (citation and footnotes omitted).
40. *In re Hale*, 723 N.E.2d 206 (Ill. 1999) (Heiple, J., dissenting).
41. *Id.* See also *Hale v. Committee on Character and Fitness for the State of Illinois*, 335 F.3d 678 (7th Cir. 2003) (affirming the dismissal of the applicant's federal suit seeking review of his denial of admission to the Illinois Bar).
- In 2004, a federal jury found Hale guilty of soliciting a crime of violence and obstructing justice. The federal district court subsequently sentenced Hale to 40 years in prison. See *United States v. Hale*, 448 F.3d 971 (7th Cir. 2006) (affirming Hale's conviction and sentence).
42. *Application of T.J.S.*, 692 A.2d 498 (N.H. 1997).
43. *Id.* at 502.
44. *Id.*
45. *In the Matter of Greenberg*, 714 A.2d 243 (N.J. 1998).
46. *Id.* at 256 (N.J. 1998) (Stein, J., dissenting).
47. See text, *supra* notes 36-39.
48. *In the Matter of the Application of Dortch*, 687 A.2d 245 (Md. 1997). The Court of Appeals is the highest court in Maryland and is the equivalent of the supreme court in other states.
49. *Id.* at 251. Dortch also applied for admission to the Bar of the District of Columbia. See *In re Dortch*, 860 A.2d 346 (D.C. Ct. App. 2004). There, the court agreed with Maryland's position

and held that it would not accept an application from Dortch "unless and until he is pardoned or his sentences are commuted." *Id.* at 363. In reaching its decision, the court relied on the need to "[t]o preserve public confidence in the probity of the Bar and respect for the rule of law." *Id.*

50. *Id.* at 253 (Raker, J., concurring) (citation omitted).
51. *Id.* at 254 (footnote omitted).
52. *In re Hamm*, 123 P.3d 652 (Ariz. 2005).
53. *Id.* at 662.
54. *In the Matter of King*, 136 P.3d 878 (Ariz. 2006).
55. *Id.* at FN8.
56. *Id.* at 886 (references omitted).
57. *Id.* at 886-887 (citations omitted).
58. *Id.* at 887 (footnote and references omitted).
59. *Id.* at 891.
60. *In re Application of Converse*, 602 N.W.2d 500, 509 (Neb. 1999). See also *In re Jaffee*, 806 P.2d 685, 687 (Ore. 1991) ("We do not believe that an applicant for admission should be in a more favorable position than a similarly situated attorney applying for reinstatement.")
61. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring).
62. *J.J.T.*, *supra* note 5.
63. See Guidelines, *supra* note 25.
64. *In the Matter of Gordon*, 429 N.E.2d 1150, 1157 (Mass. 1982); and see the text at *supra* notes 39 and 50 for similar statements.



THOMAS ARTHUR POBJECKY has served as General Counsel for the Florida Board of Bar Examiners since 1985. He has prosecuted over 350 cases involving bar applicants and served as both the trial and appellate counsel in the *W.F.H.* case discussed in the article. Pobjecky received a B.A., magna cum laude, from the University of Southern Mississippi and a J.D. with honors from the University of Florida College of Law. The views expressed in this article are those of the author and are not necessarily shared by members of the Florida Board of Bar Examiners or by the justices of the Supreme Court of Florida.

Appendix 7

TO: Character & Fitness Commission
FROM: Thomas Arthur Pobjecky, General Counsel
DATE: August 19, 2008
RE: Minimum Employment Qualifications and Employment Disqualifiers

LAW ENFORCEMENT

Florida Statutes 943.13(4) sets forth the following disqualification for individuals seeking to be a state law enforcement officer: "Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States." A copy of this statute is attached at Tab A.

The website for the Florida Fish and Wildlife Conservation Commission (FWC) sets forth the following list of disqualifications for individuals seeking to be a FWC law enforcement officer:

FWC Training Center Disqualifier List

Criminal History

1. Any felony conviction
2. A misdemeanor conviction involving domestic violence
3. A misdemeanor conviction involving perjury or a false statement

Military History

4. A dishonorable discharge from any of the Armed Forces of the United States

Controlled Substance Abuse

5. Marijuana use in past two years
6. Controlled substances use, other than marijuana, in last five years

Driving History

7. No more than four moving violations within the past three years

8. DUI/OUI within past five years
9. Any traffic violation involving the refusal to submit to a breath/blood/urine test within five years

Prior Law Enforcement and Correctional Officers

10. Any sustained internal investigation for perjury of false statements.

The website for the Federal Bureau of Investigations sets forth the following list of disqualifications for individuals seeking employment with the FBI:

- Conviction of a felony
- Use of illegal drugs in violation of the FBI Employment Drug Policy (see the FBI Employment Drug Policy for more details)
- Default of a student loan (insured by the U.S. Government)
- Failure of an FBI-administered urinalysis drug test
- Failure to register with the Selective Service System (for males only)

Please note that if you are disqualified by any of the above tests, you are not eligible for employment with the FBI. All of these disqualifiers are extensively researched during the FBI Background Investigation Process. Please make sure you can meet FBI employment requirements and pass all disqualifiers before you apply for an FBI position.

EDUCATION

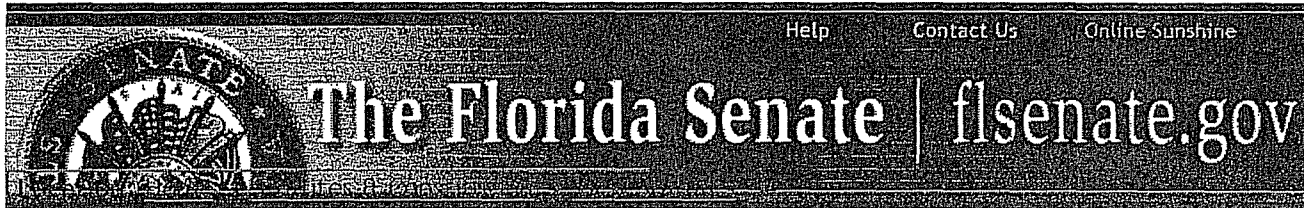
Florida Statutes 1012.315(1) sets forth the following disqualification for education-related positions of employment:

A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 220.187 or s. 1002.39, if the person, instructional personnel, or school administrator has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

The statute then lists 47 statutes. A copy of the statute is attached at Tab B.

The statute also prohibits employment for individuals convicted of misdemeanor offenses involving battery on a minor and luring or enticing a child and convicted of a delinquent act that qualifies an individual for inclusion on the Registered Juvenile Sex Offender List. *See* F.S. 1012.315(2) and (4).



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943.13 Officers' minimum qualifications for employment or appointment. --On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

- (1) Be at least 19 years of age.
- (2) Be a citizen of the United States, notwithstanding any law of the state to the contrary.
- (3) Be a high school graduate or its "equivalent" as the commission has defined the term by rule.
- (4) Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subsection, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.
- (5) Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training Commission. If administrative delays are caused by the department or the Federal Bureau of Investigation and the person has complied with subsections (1)-(4) and (6)-(9), he or she may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting noncompliance with subsections (1)-(4) or subsection (7), whichever occurs first. Beginning January 15, 2007, the department shall retain and enter into the statewide automated fingerprint identification system authorized by s. 943.05 all fingerprints submitted to the department as required by this section. Thereafter, the fingerprints shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification

system pursuant to s. 943.051. The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section and report to the employing agency any arrest records that are identified with the retained employee's fingerprints. By January 1, 2008, a person who must meet minimum qualifications as provided in this section and whose fingerprints are not retained by the department pursuant to this section must be refingerprinted. These fingerprints must be forwarded to the department for processing and retention.

(6) Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission. In order to be eligible for the presumption set forth in s. 112.18 while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

(7) Have a good moral character as determined by a background investigation under procedures established by the commission.

(8) Execute and submit to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with subsections (1)-(7). The affidavit shall be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit shall include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The affidavit shall be retained by the employing agency.

(9) Complete a commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection. An applicant who has:

(a) Completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and

(b) Served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section,

is exempt in accordance with s. 943.131(2) from completing the commission-approved basic recruit training program.

(10) Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.

(11) Comply with the continuing training or education requirements of s. 943.135.

History.--s. 7, ch. 74-386; s. 1, ch. 76-277; s. 4, ch. 78-323; s. 5, ch. 80-71; ss. 7, 24, 25, ch. 81-24; s. 1, ch. 82-46; s. 2, ch. 83-265; s. 6, ch. 84-258; ss. 7, 41, ch. 86-183; s. 7, ch. 86-187; ss. 1,

5, 6, ch. 87-186; s. 5, ch. 91-429; s. 2, ch. 92-131; s. 5, ch. 93-252; s. 1, ch. 95-408; s. 1629, ch. 97-102; s. 2, ch. 97-225; s. 2, ch. 2002-205; s. 2, ch. 2003-278; s. 1, ch. 2004-78; s. 4, ch. 2004-248; s. 12, ch. 2006-176; s. 1, ch. 2007-27.

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 K-20 EDUCATION CODE PERSONNEL

1012.315 Disqualification from employment.--A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. [1012.01](#), are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. [220.187](#) or s. [1002.39](#), if the person, instructional personnel, or school administrator has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(a) Section [393.135](#), relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section [394.4593](#), relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section [415.111](#), relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section [782.04](#), relating to murder.

(e) Section [782.07](#), relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(f) Section [784.021](#), relating to aggravated assault.

(g) Section [784.045](#), relating to aggravated battery.

(h) Section [784.075](#), relating to battery on a detention or commitment facility staff member or a juvenile probation officer.

(i) Section [787.01](#), relating to kidnapping.

(j) Section [787.02](#), relating to false imprisonment.

(k) Section [787.025](#), relating to luring or enticing a child.

(l) Section [787.04\(2\)](#), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

(m) Section [787.04\(3\)](#), relating to leading, taking, enticing, or removing a minor

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beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

(n) Section 790.115(1), relating to exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of a school.

(o) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.

(p) Section 794.011, relating to sexual battery.

(q) Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

(r) Section 794.05, relating to unlawful sexual activity with certain minors.

(s) Section 794.08, relating to female genital mutilation.

(t) Chapter 796, relating to prostitution.

(u) Chapter 800, relating to lewdness and indecent exposure.

(v) Section 806.01, relating to arson.

(w) Section 810.14, relating to voyeurism.

(x) Section 810.145, relating to video voyeurism.

(y) Section 812.014(6), relating to coordinating the commission of theft in excess of \$3,000.

(z) Section 812.0145, relating to theft from persons 65 years of age or older.

(aa) Section 812.019, relating to dealing in stolen property.

(bb) Section 812.13, relating to robbery.

(cc) Section 812.131, relating to robbery by sudden snatching.

(dd) Section 812.133, relating to carjacking.

(ee) Section 812.135, relating to home-invasion robbery.

(ff) Section 817.563, relating to fraudulent sale of controlled substances.

(gg) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

(hh) Section 825.103, relating to exploitation of an elderly person or disabled adult.

(ii) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

(jj) Section 826.04, relating to incest.

(kk) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(ll) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(mm) Section 827.071, relating to sexual performance by a child.

(nn) Section 843.01, relating to resisting arrest with violence.

(oo) Chapter 847, relating to obscenity.

(pp) Section 874.05, relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.

(qq) Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

(rr) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(ss) Section 944.47, relating to introduction, removal, or possession of contraband at a correctional facility.

(tt) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(uu) Section 985.711, relating to introduction, removal, or possession of contraband at a juvenile detention facility or commitment program.

(2) Any misdemeanor offense prohibited under any of the following statutes:

(a) Section 784.03, relating to battery, if the victim of the offense was a minor.

(b) Section 787.025, relating to luring or enticing a child.

(3) Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subsection (1) or subsection (2).

(4) Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the Registered Juvenile Sex Offender List under s. 943.0435(1)(a)1.d.

History.--s. 26, ch. 2008-108.

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Appendix 8

**Henry Latimer Center for Professionalism
of
The Florida Bar**

**Innovative planning for promoting
professionalism within law schools**

John Berry

New Approach

- Utilization of the Carnegie Report and other recent studies
- Florida Supreme Court Commission on Professionalism changing its priorities to emphasis on law schools
- Florida Bar Henry Latimer Center for Professionalism reorienting its approach to improving professionalism by focus upon organizational environments and behavior modification

1st Issue is Recognize the Need

- Professionalism at a low ebb
- The need for law schools and all segments of the profession to focus on values is almost universally accepted
- Law schools are where the most change can be made in the profession

Carnegie Study "Educating Lawyers"

□ Three essential skills for an attorney

■ Think like a lawyer

■ Application skills

■ Character and values

□ Law school focus primarily on the first

□ Some skills instruction

□ Very little on character and fitness

A Dramatic Shift in one State's approach

Fla Commission on Professionalism

- Changing to focus upon law schools and young lawyers
- Focusing upon the impact of environment on professionalism
- Working with law schools to ask for input
- Prioritizing inculcation of intrinsic values as #1 priority of law schools and profession - above knowledge or skills

Focus of Fla Bar Foundation Grant to Center for Professionalism

□ Reorganization of Center activities

with the help of consultants:

- Marketing and development of resources
- Information
 - Assembling resource materials
 - Preparing for active web presence
- Grant Writer / organizational relationships

1st New Step of Center for Professionalism

- Seeking Partners & Help: Innovative deans, law schools/profession as a whole /S.Ct./
ABA (accreditation & ABA Center) and US News
- Plan to change to environmental focus as best way to impact human behavior
- Developing resources to share with others on program design
- Focus on consulting with law schools
 - Work directly with students
 - Conduct research of effective programs and results
- Work for stronger (1) tracking (2) remedial action and (3) accountability of law students

There is No better Time than now

- How many times has it been said "They will never change"?
- ABA Accreditation review
 - Outcome measures study
- Discussions with US News on law school rankings
- Fla S.Ct. Commission on Professionalism emphasis
- Carnegie Report & "Best Practices"
- Fla S.Ct Commission on Admission Standards
- ABA Center and ABA Professionalism committee emphasis

A National Effort and Concentration is vital from both ABA Center and Section on Legal Education

Encouragement and Philosophical support
for Innovation

Exploring coordination of resources

\$

Technical (IT) support

"Think Tank" for outcome measures

- A fresh look at barriers to putting values first
- A serious look at accreditation standards which
will give this effort the best chance for success

Here to explore specifics

- Developing consensus on goals
- Developing new partnerships
- Exploring resources that might be available

Executive Summary

A thorough review of the history of the Henry Latimer Center for Professionalism and the Supreme Court Commission on Professionalism shows many fine efforts toward rallying the forces interested in seeing the professionalism of lawyers enhanced. Emphasis has been placed on seminars, presentations, awards and meetings with interested groups and individuals. This approach has allowed the sharing of ideas and expectations while giving encouragement to many who care deeply about the subject.

These efforts have not had the desired result of major changes in unprofessional behavior however, and it is appropriate now for a re-direction of the Center's efforts. This re-direction is suggested to include:

1. New Approach To Changing Unprofessional Behavior

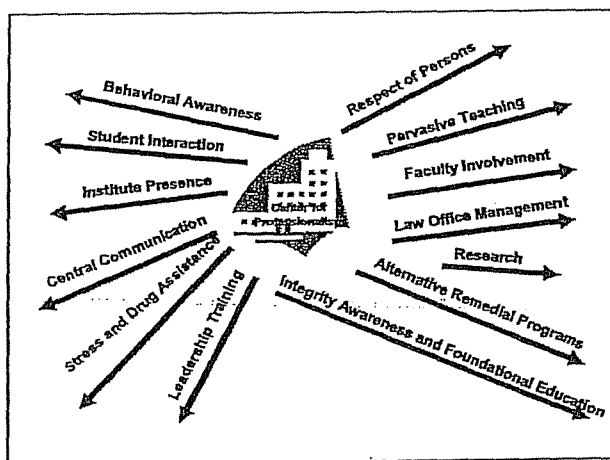
Unprofessional behavior should be dealt with in a new way beyond the more conventional educational approach. This method:

- a. Defines the problem behavior,
- b. Delineates the causes of the misbehavior,
- c. Designs mechanisms to correct the behavior, and
- d. Promotes new approaches to accountability.

2. Focus on Law Schools

As the most important early and lasting influence upon the attitudes of lawyers, law schools should include in their programs:

- a. Stronger accountability,
- b. New forms of accountability and confrontation,
- c. A pervasive coordinated and comprehensive approach to professionalism in legal education,
- d. A new environment of teaching with emphasis on moral foundations and an expectation of professionalism, and
- e. Aid in self-awareness and character development as responses to individual shortcomings.



Professionalism Review and Proposal

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Professionalism Review and Proposal

I. Introduction/Background of Past Professionalism Efforts

The history of the Henry Latimer Center for Professionalism and the Florida Supreme Court Commission on Professionalism shows an emphasis on seminars, presentations, awards, meetings, interested groups and individual proponents. While this approach has been valuable it has not been as productive as hoped. It is time for a more direct approach to the problem of unprofessional behavior and lack of civility in the profession. To assist in this the Bar must define exactly the behavior aimed for, symptoms of problems, and most importantly recognition of the causes of the behavior coupled with specific innovative ways to modify that behavior.

Inherent in this approach are preventative measures, awareness, emphasis on corrective approaches, and recognition of the need for accountability. Both as a pragmatic recognition of limited resources and as a desire to have the greatest impact for now and the future it is suggested that emphasis be placed at least for the next several years on helping law students and young lawyers in their formative years in the profession.

Recent important studies have emphasized the wisdom of this approach. The just released Carnegie Report¹ was issued outlining new innovative approaches to legal education as it relates to professionalism issues. "Best Practices for Legal Education - A Vision and Road Map," by Roy Stuckey² gives a nut and bolt approach to new ways to impact law students' approach to their careers.

Very importantly in two recent Commission retreats which focused on law schools and young lawyers, innovative action plans were approved mirroring a need for new approaches and new programs. The Center could provide facilitation and planning in many of the suggested reforms.

Listed below are those suggested action plans/findings:

Supreme Court Commission Retreat 2006

1. Curriculum. The pervasive approach to teaching about professionalism involves providing assistance to faculty and the law schools with practical curriculum suggestions incorporating professionalism content throughout the academic year.
2. Faculty and the Bar. This approach involves assisting the faculty of the law schools to be more involved in The Florida Bar's activities. This could involve ensuring that all faculty receive the Bar publications, to engaging the faculty in providing to the

¹ "Educating Lawyers – Preparation for the Profession of Law" (Summary), The Carnegie Foundation for the Advancement of Teaching, 2007. See Tab C (2).

² Stuckey, Roy: Best Practices for Legal Education - A Vision and a Road Map. Clinical Legal Education Association, University of South Carolina, 2007. See Tab C (3).

Bar for its consideration more of their expertise in their specific areas of study and in a constructive dialogue between the practicing bar and the academic community. See Tab K.

3. *Character and Interpersonal Skills.* Professionalism is rooted in good character, positive values and the possession of effective interpersonal skills. The Center, in concert with others, will assist law schools to develop a focus on intrinsic values, concern for others, and the interpersonal dynamics of healthy professional relationships.

Honesty, integrity and social consciousness are essential characteristics for the effective lawyer, and legal education should include instruction toward that end.

4. *Practice Management.* The Florida Bar and law firms have a special expertise in the area of practice management. The practical issues for keeping order in a law practice are extremely important to young lawyers since a large number of complaints about young lawyers result from simple errors which could be avoided by proper training and organization. The Bar is uniquely suited to help develop "Practice Management" curricula and help it be incorporated as a stand alone set of courses or blended into a series of courses on other topics (e.g. civil procedure, criminal procedure, family law, etc.). See Tabs D(2).
5. *Pro Bono.* The Florida Supreme Court and the Conference of Chief Justices have expressed a preference for law schools to promote law students becoming involved in pro bono legal work during law school. Achieving the desirable availability of pro bono opportunities is a stated difficulty of many larger law schools in smaller communities. The Bar and the practicing lawyers, as well as law schools in more urban communities, are uniquely situated to assist in providing opportunities for pro bono work for all law students in Florida. The issue of mandatory pro bono service was left as a decision for each law school, but all expressed support for encouraging law students to engage in this type of service.

Supreme Court Commission Retreat 2007

Action Item #1: Statewide Mentoring. That the Commission appoint a committee to explore potential establishment by the Florida Bar of a statewide mentoring program for beginning lawyers, with a report to be submitted to the Supreme Court by May 1, 2008. Preliminarily the Diversity & Bar Subcommittees of the Commission shall by July 7, 2007 recommend the structure and membership of the mentoring program committee. See Tab A(1).

Action Item #2: Transition Education in Final Year of Law School. The Law School Subcommittee shall meet with the YLD leadership to discuss opportunities for delivering PWP/ "Transition to Practice" /role of lawyer training to law students prior to graduation. This action item also requires the development of working partnerships between the Commission, the Henry Latimer Center for Professionalism and law school administrations to assist in the implementation of any agreed upon program.

Action Item #3: Human Dynamics Education. That the Judicial subcommittee of the Commission shall pursue engagement between the law schools, law firms and the Florida Bar to discuss the process by which law students and young lawyers can be better instructed and guided to a deeper understanding of the historical values, proper behavioral attitudes and interpersonal skills needed for the successful and honorable practice of law.

This instruction shall include the following topics:

- The collective values of the profession,
- Healthy interpersonal communication skills,
- Proper behavior styles for attorneys,
- The development of healthy intrinsic values, and
- The interaction of the values of the legal profession and how these might interact with personal values.

In the July 2007 edition of the ABA Journal,³ it is evident that the profession perceives the need for reform. Based upon a body of research confirming the negative psychological effects of law schools and practice upon many lawyers, coupled with a growing perception that this has negatively impacted the legal system as a whole, the need for a new emphasis on innovative approaches to legal education has been demonstrated.

This report will outline the Center's history, but most importantly will provide a blueprint for how with both grant money and a new set of objectives, the Center can effectively influence behavior where necessary within the profession while continuing to reinforce the positive practice habits of some substantial portion of the Bar membership. See Tab C(4).

II. Analysis of Current Programs

A. Observations on Effectiveness

As noted above the efforts of the Center as constituted have reached a point where an additional focus is necessary to fulfill the promise of its creation. Seminars, educational approaches and the administrative support for the Commission on Professionalism and the Standing Committee on Professionalism consume most of the resources of the Center.

The results from the last two Spring Retreats of the Commission on Professionalism indicated that the Commission, while supportive of the current educational efforts of the Center, intends to pursue an additional track of restructuring the preparation and tutelage of young lawyers to ensure that professionalism ideals become part of each lawyer's world view. Despite some

³ Schwartz, Arthur J., "It's Not Too Late to Teach College Students About Values," *Chronicle of Higher Education*, June 9, 2000. See Tab C (5).

skepticism this can and should be accomplished in law school and during the first years of a young lawyer's career.⁴ See Tab C(5).

B. Current Programs

- Practicing With Professionalism (PWP) is based upon an obvious need to transition young lawyers into the world of practice, but it is resented by many and thought to be more of a band-aid and therefore ineffective in training new lawyers about the things they need to know.
- Circuit Professionalism Committees have not flourished as desired. They are in need of a new initiative, some reconfiguration or perhaps even needing disbanding. (There are exceptions to this conclusion of inactivity -- such as the Circuit Committee on Professionalism in Dade County. But even where it is active, its impact on the profession in Dade County is not significant.)
- The Resource Center needs much new life in materials and methods of utilization. Under a revised plan for engagement with the law schools and modernization, this resource could become invaluable.
- eMentoring has had some success but the current new review of mentoring initiated by the Commission may result in a significant redirection of efforts and bring new life to the important need for young lawyers to have positive mentoring as they enter the profession.

Concerns expressed by many over a lack of demonstrated impact on the behavior of the profession as a whole appear to be well-founded. This lack of impact may be the result of many things:

- The original mission of the Center and its focus upon education and training.
- The enormity of the problem exacerbated by the burgeoning size of the legal profession in Florida.
- The difficulty for the Court and grievance committees to issue significant discipline for behavior which is disruptive of the effective administration of justice but not violative of a specific rule of discipline. New rules and efforts are needed.

At best it is difficult to measure a change in civility and professionalism, but the past approach has focused upon the symptoms, not the problem itself. As in most such efforts there have been some successes but this proposal advocates a shift to a process of:

1. Definition of problems around a lack of civility and professionalism,
2. Focus upon designing efforts to affect the causes of the behavior, and

3. Address the improper behavior at its source with specific approaches and catalysts for change.

A new approach follows:

III. Future Goals for the Center for Professionalism

The following lists the proposed future goals for action of the Center (These suggestions assume approval by the Supreme Court Commission on Professionalism):

Additional Proposed Center / Commission Activities

Presence - "Outreach" to all law schools See Tab A.

In order to begin the process for the implementation of innovative, new initiatives in law schools, the Director of the Center for Professionalism in conjunction with the Chair of the Commission on Professionalism and the Division Director of the Legal Division would conduct a series of visits to all Florida law schools to begin a dialogue about an educational framework which emphasizes professionalism and character development through the whole law school experience. See, Tab C(1-5) and Action Items from Commission retreats 2006 & 2007 (listed above in section "I" of this report).

The objective of these visits would be to:

- Explain how important an active connection is between the law schools, the Florida Bar and the Commission on Professionalism.
- Inform the law school community of the resources and services available to promote professionalism through the legal education system in Florida, and to implement the action items agreed to in the recent Commission retreats.
- To listen to the professionalism concerns of the law school faculty, administration and students, and how they perceive professionalism and character education may most effectively be incorporated into campus life.

Serve as an information hub and coordination center concerning professionalism research, professionalism programs and grant-funded replication efforts. See Tab B.

There exists at the Center a significant amount of research. Currently, there are around the nation small scale efforts to implement Bar professionalism programs and educational initiatives. The Center is also working toward integrating professionalism into the legal education process. The Center would serve as a hub of information about such programs and would become a clearinghouse for ideas and the sharing of information between law schools, the Bar and Commission. The Center's activities would include:

- Communication of current Center resources to all state bar associations, legal education professionals, state Supreme Courts and other interested individuals and retrieve ideas from all sources within and outside the state.
- Coordination between different entities interested in similar professionalism issues/programs resulting in a multiplication of effort beyond the capability of the individual entities.
- Evaluation and replication of grant-funded professionalism efforts allowing for refinement of the programs maximizing the return on grant funds expended. See *Gambrel* award winning programs at Tab E(1).

Pervasive Teaching

Collect, create and distribute pervasive education professionalism materials and programs initiatives to interested legal education entities and faculty.

The Center will be the mechanism for the development and distribution of law school curriculum which contains professionalism principles pervasively integrated into the whole of the law school experience. In order to implement this mandate the Center and Commission will:

- Develop materials for integration of professionalism principles in all law school curricula.
- Through grant-funded research create educational training institutes designed to assist faculty in the pervasive integration of character development issues into the whole educational experience.
- Create channels of communication to foster open information exchange with all law faculty and members of the Bar concerning the education and training of law students and practitioners on the importance of professionalism standards of behavior.
- Be the point of contact for transferring all the 'pervasive' education materials to each law school in the state and through the ABA Center for Professional Responsibility, nationwide.
- The Center, in partnership with the Commission on Professionalism and volunteer law schools, will develop a full curriculum based upon the premise that character/professionalism is a necessary trait for a successful and fulfilling legal career.

Law Office Management Training

Initiate a program integrating professionalism initiatives with the principles of law office management. The Center would team with other organizations, starting with our LOMAS programs, which specialize in training lawyers to manage the operational/management segments of their practice, and integrate professionalism elements into those programs.

- The Florida Bar. - Develop an integrated training program between the Center for Professionalism and the Law Office Management Assistance Service which recognizes the strong interconnection of ethics/professionalism violations and a failure to control the business aspects of a law practice. This initiative will begin in the law schools and follow lawyers into the world of work. It would serve as an active bridge between law school and practice for both law office management techniques and the professionalism principles
- Other State Bar Associations. - Initiate communication, and sharing of information and training initiatives with other state bar associations. This transfer of information across the country will serve to highlight those efforts which are more effective and create heuristic relationships between entities using the Center's services.
- The American Bar Association. - Initiate a close working relationship between office management trainers associated with the ABA, The Florida Bar and the professionalism movement in Florida. This association would seek to create a multiplier effect by coordination of research into the effectiveness of management training programs and techniques.
- Create a research environment by which law office management and professionalism issues can be studied. This will generate a new level of inquiry into the problem of questionable behavior by lawyers and its relationship to motivations which foster emotionally unsatisfying work environments.

Research Center and Clearinghouse

The Center would serve as a repository for and evaluator of outside research. It would also initiate original study programs emphasizing practical applications of the mandates of the Commission as enumerated by the Center's charter by the Supreme Court.

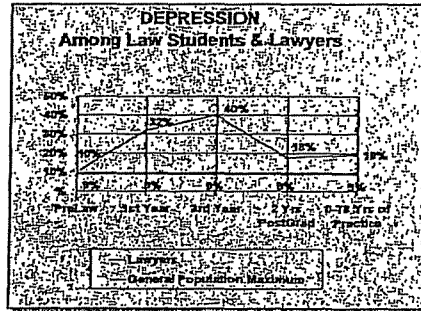
- Compile a collection of the current research being conducted, from the professionalism perspective, concerning the work/lives of lawyers. In doing so, a web of interconnections would be created between the Center and those actively involved in such research.

- Conduct thorough analysis of the studies being produced from the perspective of human relationships, and initiate programs to implement the useful findings of these studies. This would create opportunities for increased positive personal outcomes in the legal community.
- Find and utilize interdisciplinary expertise from other social sciences dealing with human behavior.

Behavioral Awareness

Current research shows that during law school students become more depressed than the population as a whole, and that law students' interpersonal skills atrophy under the traditional law school regimen. Other studies show that lawyers have an elevated level of substance abuse and mental illness. As a result, new lawyers are at a distinct disadvantage in the realm of interpersonal relationships and general mental health.

The Center and the Commission will work to counteract these trends by:



- Collecting data concerning the mental health of law students and the effect that current law school curricula have upon it. Develop programs and curricula for educators which will allow students to acquire the necessary legal skills and yet retain the ability to acquire and maintain healthy family and working relationships.
- Consulting with law schools to create interpersonal environments which serve to preserve the mental health of the students, enhance their abilities to effectively communicate on both a legal and emotional level, and help them develop emotional 'armor' to the sometimes emotionally stressful and/or ethically challenging situations lawyer inevitable encounter. See Tab F.

Leadership and the Law

Traditionally, lawyers held a position of leadership within their communities. The influential position lawyers hold within the legal system also encourages the perception of a leadership role, especially as it relates to the client. In this context the Center and the Commission would develop and study leadership training for lawyers and law students. The Center will:

- Research the extent of current leadership training in law schools and other venues.
- Study law schools which are willing to make leadership a significant part of their curricula and measure the effects this type of training has upon the practicing lawyer who has received the training.

- Provide leadership training for law students and law firms which would further the effectiveness of those currently practicing. Professionalism issues could be significantly reduced if the managers of many of the law firms could be trained in the art of leadership. True leadership cannot be exercised within the context of 'ethical confusion'. See Tab G, "Leadership in the Law" course outline.

Respect for All Persons

The Center would actively work to further the goal of the legal profession to teach respect for all persons to members of the Bar. The Center, with the support of the Commission would further this goal by:

- Increasing its role in promoting a diverse legal profession by working to expand the horizons for all grade school and high school students in Florida through outreach and engagement of Bar members as student tutors and mentors.
- By promoting the participation of lawyers across the state in the governance of school districts to mandate safe, inviting and challenging educational programs for all students.
- Expanding the cadre of lawyers certified to teach the "Successful Lawyering in a Diverse Society" program and expanding opportunities for the public and Bar members to take the course. See Tab H.

Accountability in Legal Education

Legal education as an entity, has the same obligation as the Bar to ensure that those entering the profession are individuals of *character and fitness*. The current educational process does not have an active component which fulfills this obligation resulting in educated individuals presented for the Bar examination whose character has not been evaluated adequately. Other parts of the legal system also have this same obligation, but the legal education component must fulfill its function within the system. To assist in developing an adequate screening mechanism the Center with the Commission will work with Law Schools to:

- Define the criteria for, and develop innovative responses to, inappropriate behavior and potential character flaws as a preventative intervention. The programs could involve special ethics schools, alternative discipline programs and other interventions appropriate to the individuals involved.
- With the endorsement of the Supreme Court, consult with legal educators to develop a character and fitness screening process which includes a component involving counseling, corrective action, education and ultimately increasing levels of accountability including suspension. Disturbing anecdotal evidence exists for lenient discipline for even egregious acts of plagiarism. Ways must be found with

the help of the schools themselves in conjunction with the strong support and the strong encouragement of the Supreme Court and Florida Bar to reverse this trend of lenient discipline. See Tab I, Rule 3. Background Investigation, Florida Board of Bar Examiners.

Substance Abuse and Inappropriate Behavior

There exists a clear relationship between inappropriate behavior by members of the Bar and stress-related substance abuse. In association with FLA Inc., the Center will work to raise the awareness of the Bar membership of the current levels of substance abuse by lawyers and lack of stress coping skills. To create this awareness the Center will:

- Integrate into its programs screening mechanisms to facilitate referrals to FLA Inc.
- Publicize the programs of FLA Inc. as widely as possible within proper bounds. See Tabs J(1) Florida Lawyers Assistance, Inc. pamphlet, and J(2) Data on lawyer substance abuse and psychological problems.

Increase the involvement of law school faculty with Bar functions and programs

A healthy fully functioning legal system in Florida mandates an active role by law school faculty within the functions of the Bar. The Center within the context of its other relationships with law schools is uniquely positioned to facilitate this interaction. In order to engage faculty participation in Bar functions the Center will:

- Promote the utilization of faculty expertise in the development of Bar-wide educational programs.
- Encourage the practicing bar to become more active in the educational process to strengthen the integration of legal education into the daily functioning of law practice and thus blur the line of separation between the practice of law and education.
- Facilitate greater interchange between the practicing bar and legal education through joint program development for CLE purposes as well as university education. See Tab K.

Development of an appreciation of intrinsic values as primary motivators in the practice of law

Currently published and ongoing research concerning career satisfaction of lawyers shows that the values which lawyers hold as primary in their practice are directly related to the personal satisfaction the individuals feel about their chosen career. The current process of legal education and the motivators which are prized by law schools for their graduates, fail to develop the proper focus on values which ensure that lawyers,

young and old, gain the type of positive job satisfaction which will sustain them in their careers over time. In order to facilitate the adoption of the proper primary motives for service as an attorney the Center will:

- Develop, in conjunction with law schools, curricula and other programs which encourage the development of a functioning moral compass as a guide to proper behavior.
- Provide educational programs which directly teach the operational mores of the legal profession, without flinching from the obligation of instructing others on how to behave, where necessary. This instruction would include:
 - The common and necessary belief in the rule of law,
 - The understanding that each lawyer has a duty to the court equal and in some circumstances greater than the duty he has to his client, and
 - That one's primary motives will determine one's career satisfaction. See Tab L(1-3), Research articles concerning lawyer job satisfaction and the importance of intrinsic values as motivation in the practice of law.
 - This emphasis is not only upon teaching the young lawyer a commitment to professionalism, but also a greater focus upon a practical regime of developing skills on how to deal with inevitable encounters with the unprofessional behavior of others. To have a certainty about how you should behave and the ability to hold to that standard despite the provocations of more seasoned lawyers requires an emotional maturity which law school should help provide.

IV. A New Emphasis

A. Focus upon causation and direct responses to unprofessional conduct.

As previously noted much good work has been done to encourage those who support professionalism standards and who were often buffeted by the marginal behavior of others around them. Even those who behave properly must receive support for their convictions as the Center and its programs have done.

However, it is perhaps more important that attention be paid to defining specific symptoms of unprofessional conduct, determining various causes from the conduct and designing effective methods of response to "cure" the underlying causes.

Because most believe that human behavior is volitional there must also be more forceful ways of holding recalcitrant members, responsible for the way they

practice law. For those who refuse to change their misbehavior they must be held to account for cumulative serious unprofessional conduct.⁵

Listed in the charts below are many of the recognizable symptoms, causes, and previously used 'cures' or preventives. Because no single treatment will change all the symptomatic behaviors that we recognize as 'unprofessional behavior' a more environmental type response to these disease symptoms must be tried; much like the public health responses to earlier epidemics caused by unhealthy human habits. It is hoped that proper responses to the 'epidemic' of unprofessional behavior, so destructive of our legal system, can be developed and result in the elimination of the environment where such behavior is learned and in some cases promoted.

⁵ Berry, John, "A Check-up on the Health of the Legal Profession," *The Cooley Journal of Ethics and Responsibility*, 2006. See Tab F.

Some Symptoms of Unprofessional Conduct

- Little regard for truth or fairness
- Willing to inappropriately distort, manipulate & conceal
- Arrogance, condescending, abusive
- Pompous and obnoxious
- Offensive personality
- Untimely
- Untrustworthiness
- Improper forms of communication
- Lack of respect for persons
- Lack of concern for public service
- Lack of reasonable tolerance for differences
- Incivility
- Disorganization
- Greediness
- Interpersonal skills deficiency (anger issues, etc.)

Some Disease Processes

- Lack of character/integrity
- Addictive behavior (drugs & alcohol)
- Misunderstanding, lack of knowledge or serious disagreements with professionalism norm
- Jerkiness (hard to deal with)
- Lack of moral compass (faith, life philosophy)
- Practical law office management deficiency
- Lack of stress coping skills
- Lack of self-awareness and an understanding of human behavior

Cures

- Counseling
- Law office management training
- Education
- Recovery programs
- Personal motivation
- Professional enhancement programs
- Diversity programs
- Inns of Court/Bench Bar efforts
- Accountability (discipline, diversion, probations)
- Training in behavioral studies for individuals and others
- Peer influences and help
- Professional influence and help
- Professionalism efforts at law schools as outlined in detail in this report (See

B. Special Focus on Law Schools

Why should there be a focus upon law schools and young lawyers and not law firms or other segments of the profession? The history of professionalism efforts in Florida has taught us that those lawyers who have practiced a number of years are more confirmed in their behavior patterns. Younger lawyers begin law school far more idealistic than when they graduate. Study after study confirms that. If that trend could be reversed then it is reasonable to believe that they will start their legal careers much more well-grounded and prepared to maintain a higher level of professionalism. Starting where change in behavior is most likely and where innovation will be more easily implemented and accepted is logical. These observations are not meant to ignore the great professionalism exhibited by many experienced attorneys, but rather is meant to emphasize the importance of a better start to legal careers for the new attorneys.

First, reform of the law school experience is already ongoing. The materials provided show a steady emphasis on law school reform based upon decades of study and analysis of data collected. See Tab C(2) Carnegie Report and Tab C(3) the Stuckey "Best Practices" book. Innovative instructional efforts are taking hold in a small number of law schools and others have perceived a need to make changes. See Tab C(4). As a pragmatic matter the limited resources of the Center and any grant funding available would have greater impact in this environment. As a result of recent Commission on Professionalism retreats and the endorsement by members of the Supreme Court several Florida law schools may be willing to provide a place to try innovative curricula.

Second, recent studies in Florida also support the notion that change is possible when professionalism principles are introduced at the earliest stages of a legal career. Clearly law school is the place to start. As in any behavioral training if it is delayed until after an individual has developed patterns of behavior change is more difficult to achieve except where strong sanctions are employed. See Tab L.

Third, changes are being asked for by students themselves. Current students are perhaps more aware of their needs for broader education opportunities and are asking for changes which will provide a new emphasis upon life skills and a different perspective upon the work/life balance. See Tab C (4).

Fourth, the law school is the birthplace of a lawyer. It is an intense period of indoctrination into what it means to be a lawyer, and is the time to teach about the true social obligations of the legal profession. The skills and attitudes necessary to withstand the commercial, psychological and philosophical onslaught upon values must be indoctrinated at law school lest the profession give up any hope of retaining its orientation of honored service and dedication to the rule of law. Law school should be the place where the mores, history, ideals and character of the profession can be imprinted upon the youth of the profession. It must be

recognized that attention to these foundational concepts are even more important than the absorption of legal knowledge and training.

Fifth and finally, what is learned in the study of training innovations in law schools may provide keys to the inevitable expansion of professionalism training to other segments of the profession. Once a clear pattern has been established in the law schools reinforcement of the proper patterns will be necessary and may then be transferred to the lawyer population as a whole.

Accountability, new sources of correction for behavioral issues, better ways to challenge lawyers in self reflection about a moral basis for behavior, focus upon proper life balance, understanding about a lower tolerance of unprofessional behavior, and more can all be framed for use in the general population of the profession once they become the standard for legal education.

C. Mentoring

The transition of law students into the practice of law is currently unmanaged by the Bar and this 'teaching moment' in the career of many young lawyers is often wasted. The Commission on Professionalism has recently investigated the idea of a mandatory mentoring program for all new lawyers and the President of the Bar and the Chair of the Commission on Professionalism, Justice Cantero, have named a special committee to review the possibility of such a mentoring program for the state of Florida. Once assembled, the Center will provide administrative support to the special committee.

V. Conclusion:

The current commitments of the Center will, by necessity, limit its ability to absorb the new directions listed above without redirecting its efforts totally to the new efforts. At the same time many of the efforts listed are a redesign or a modification of processes which are familiar to the Center staff. In order to reduce the long term staffing of this effort grant applications should be made and support elicited to bring a concentrated emphasis on more concrete ways to deal with the issue of unprofessional conduct by lawyers.

In making these efforts, members of other professions should be utilized to provide the freshest view of the problems we face especially those from social disciplines which deal with a deep knowledge of human behavior and how it can be modified.

No one thing is the total answer to the problems of the profession. A greater emphasis on accountability at all levels should be established to deal with the small minority of lawyers who cannot be helped or refuse to change their behavior. Along with the drive to modify the behavior of the profession it must be recognized that some individuals do not have the desire to behave properly or whose character is such that they do not possess the qualities that a member of the Bar must possess. Accordingly, a

stronger emphasis must be placed upon the fact that membership in this integrated bar is a privilege not a right, and earning that right carries with it the requirements of decency and civility.

Inherent in this potential shift of emphasis is a recognition the Center cannot be successful if stretched too thin and spread in too many directions. Its limited resources must be focused on specific limited areas with specific goals. This report hopefully will begin the process to better define those goals and utilize existing staff and resources in combination with a partnership with the Bar foundation.

To succeed, efforts must be directed maximizing existing or potential support of the law schools, but ultimately the Supreme Court and The Florida Bar must be united to help and encourage innovation. Most importantly it is the Supreme Court which will need to use its jurisdiction and leadership to ensure movement takes place.

**Henry Latimer Center for Professionalism
Professionalism Review and Proposal**

Tab	Sub-Tab	Comments
A		Presence – “Outreach” to all law schools
	A1	Excerpts from: Executive Summary of "A National Action Plan on Lawyer Conduct and Professionalism; A Report of the Working Group on Lawyer Conduct and Professionalism"; Adopted by the Conference of Chief Justices January 21, 1999.
B		Serves as an information hub and coordination center concerning professionalism research, professionalism programs and grant-funded replication efforts. Excerpt from: Implementation Plan for the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism, Adopted August 2, 2001 by The Conference of Chief Justices.
C		Pervasive Teaching
	C1	“Creating a Culture of Professionalism in Law School” The Thomas M. Cooley Law School Experience
	C2	"Educating Lawyers – Preparation for the Profession of Law" (Summary), The Carnegie Foundation for the Advancement of Teaching, 2007.
	C3	Stuckey, Roy: <u>Best Practices for Legal Education - A Vision and a Road Map</u> , Clinical Legal Education Association, University of South Carolina, 2007. Chapter 1.
	C4	Schachner Chanen, Jill, “Re-engineering the J.D.” ABA Journal, July 2007, The Lawyer’s Magazine (cited on July 19, 2007).
	C5	Schwartz, Arthur J., "It's Not Too Late to Teach College Students About Values," Chronicle of Higher Education, June 9, 2000.
D		Law Office Management Training
	D1	Excerpt from: Implementation Plan for the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism, Adopted August 2, 2001 by The Conference of Chief Justices.
	D2	Florida Bar Website, LOMAS information
E		"Report on a Survey of Law School Professionalism Programs," Standing Committee on Professionalism of the American Bar Association, March 2006.
	E1	Appendix A - Law School Professionalism Survey Report: E. Smythe Gambrell Professionalism Award Winners 1991 - 2005
	E2	Appendix B - Law School Professionalism Survey Report: National Innovation in Teaching Awards 2004 - 2005
	E3	Appendix C - Law School Professionalism Survey Report; Participating Law Schools
F		Behavioral Awareness Berry, John, “A Check-up on the Health of the Legal Profession,” The Cooley Journal of Ethics and Responsibility, 2006.
G		Leadership & the Law, Course Outline
H		Respect for All Persons
	H1	Diversity DVD Project Description
	H2	Diversity Training Provided by the Center, Course Objectives

**Henry Latimer Center for Professionalism
Professionalism Review and Proposal**

Tab	Sub Tab	Comments
I		Accountability in Legal Education
		Excerpt - Florida Board of Bar Examiners Rule 3. Background Investigations
J		Substance Abuse & Inappropriate Behavior
	J1	Florida Lawyers Assistance, Inc. pamphlet
	J2	Data on lawyer substance abuse and psychological problems
K		Increase the involvement of law school faculty with Bar functions and
		programs
L		Research articles concerning lawyer job satisfaction and the importance of
		intrinsic values as motivation in the practice of law
	L1	Sheldon, Kennon J. and Krieger, Lawrence S. J.D., "Does Legal Education
		have Undermining Effects on Law Students? Evaluating Changes in
		Motivation, Values, and Well-Being" Behavioral Sciences and the Law,
		2004.
	L2	Krieger, Lawrence S., "The Inseparability of Professionalism and Personal
		Satisfaction" Florida State College of Law
	L3	Krieger, Lawrence S., "What We're Not Telling Law Students – And What
		They Really Need To Know: Some Thoughts-In-Action Toward Revitalizing
		The Profession From Its Roots" Journal of Law and Health 1998-1999

Agreements by Moderator George Knox

1. The bar will continue to implement the mentoring program as described in Joint Committee report and as adopted by the "commission."
2. We perhaps by our conduct affirm the commission's decision to redirect the work of the Henry Latimer Center for Professionalism towards establishing seamless relationships between the bench, the bar, and the academy to ensure that legal education serves as the threshold to instill the ideals of character, competence, and commitment in all those persons serving in Florida's legal system.
3. The Carnegie report entitled "Educating Lawyers" will serve as a primary resource by creating a state of the art best practices plans to provide professionalism training in Florida's law schools, with a particular focus upon exploring ways and means by which professionalism will permeate the ethos of Florida's law schools.

Discussion:

Knox:

The choice of the word explore was really designed to ensure that the accomplishments occurs by any way or means which are appropriate or necessary.

To seek and obtain the necessary resources by which to implement the plan.

We have an understanding that the use of the word resources in our agreement includes the utilization of all of the support mechanisms in efforts to obtain the assistance necessary to carry out including the enlistment of people, money, the assistance of organizations and institutions.

To ensure that the bench the bar and the academy use their power and influence to remove barriers and obstacles to the implementation of the plans.

4. Engage the YLD of TFB to facilitate the transition to training to practice and to encourage and empower the YLD to provide peer services which allow the ideals to fecundate and growth within the bar.

Discussion:

1. State of the art best practices could connote a broad spectrum of ideas and options that are collected and discussed in the process of developing the plan.
2. We identified a primary resource (which means that there can be other primary sources to include models that exist elsewhere but all of them including whatever we do with Carnegie has to do with permeation, it has to do with the three aspects in order to achieve our objectives.

Re: Action items from the last two Commission on Professionalism

Commission Retreat 2006

The following are the action items from the 2006 retreat. The Commission subcommittees, and others were asked to design strategies to implement these items. Reports of the progress made were made during the 2007 retreat.

1. **Curriculum.** The pervasive approach to teaching about professionalism involves providing assistance to faculty and the law schools of practical curriculum incorporating professionalism content throughout the academic year.

2. **Faculty and the Bar.** This issue involves assisting the faculty of the law schools to be more involved in The Florida Bar's activities. This could involve as little and ensuring that all faculty receive the Bar publications, to engaging the faculty in providing more of their expertise in their specific areas of study in a constructive dialogue between the practicing bar and the academic community.

3. **Human Dynamics.** Research and assistance to law schools in the areas of leadership, human dynamics and interpersonal skills. This would involve an interaction between the law schools and other academic disciplines, but also with The Florida Bar and practicing lawyers. The issue of how to prepare students for the challenges of the interpersonal world, in which the vast majority of the practicing bar works, could inform the law school faculty, but also be a method of changing the attitudes of much of the practicing bar about the importance of a healthy lifestyle from a psychological perspective.

4. **Practice Management:** The Florida Bar and law firms have a special expertise in the area of practice management. The practical issues for keeping order in a law practice are an extremely important to young lawyers since a large number of complaints about young lawyers result from simple errors which could be avoided by proper training and organization. The Bar is uniquely suited to help develop "Practice Management" curriculum and help it be incorporated as a stand alone set of courses or blended into a series of courses on other topics. (e.g. civil procedure, criminal procedure, family law, etc.)

5. **Pro Bono.** The Supreme Court and the Conference of Chief Justices has expressed a preference for law schools to promote law students becoming involved in pro bono legal work during law school. Achieving the desirable availability of pro bono opportunities is a stated difficulty of many larger law schools in smaller communities. The Bar and the practicing lawyers, as well as law schools in more urban communities, are uniquely situated to assist in providing opportunities for pro bono work for all law

students in Florida. The issue of mandatory pro bono was left as a decision for each law school, but all expressed support for encouraging law student to engage in this type of service.

Commission Retreat 2007

In a slightly different format the three action items for the latest retreat are listed below - Some 'word-smithing' needs to be done to make the items reflect the exact sentiment expressed by the whole group at the last meeting of the retreat.

Action Item #1: That the Commission appoint a committee to explore potential establishment by the Florida Bar of a statewide mentoring program for beginning lawyers, with a report to be submitted to the Supreme Court by May 1, 2008. Preliminarily the Diversity & Bar Subcommittees of the Commission shall by July 7, 2007 recommend the structure and membership on the mentoring program committee.

Action Item #2: The Law School Subcommittee shall meet with the YLD leadership to discuss opportunities for delivering *PWP/ "Transition to Practice" /role of lawyer* training to law students prior to graduation. This action item also requires the development of working partnerships between the Commission, the Henry Latimer Center for Professionalism and law school administrations to assist in the implementation of any agreed upon program.

Action Item #3: That the Judicial subcommittee of the Commission shall pursue engagement between the law schools, law firms and the Florida Bar to discuss the process by which law students and young lawyers can better be instructed and guided to a deeper understanding of the historical values, proper behavioral attitudes and interpersonal skills needed for the successful and honorable practice of law.

This instruction shall include the following topics:

- The collective values of the profession,
- Healthy interpersonal communication skills,
- Proper behavior styles for attorneys,
- The development of healthy intrinsic values,
- The interaction of the values of legal profession and how these might interact with personal values.

The Judicial Subcommittee shall by May 2008 report to the Commission progress on this action item.

Center for Professionalism Florida Bar Grant Proposal

I. Proposal Summary

The Henry Latimer Center for Professionalism ('The Center') proposes to change from providing professionalism seminars and aspirational programs to focusing upon the environmental and psychological factors which have negatively effected the profession. The current legal environment fosters a lack of professionalism with a resultant host of negative consequences for individual lawyers and the legal community as a whole. The planning grant proposed herein will allow, for added resources to prepare for the transformation and time to implement the redesign of the Center's programs.

At the end of the planning grant the Center will have charted a direction toward a comprehensive educational and legal practice system which establishes, inculcates, and enforces professionalism and ethical values within the students of Florida Law schools and young lawyers — ultimately impacting the entire legal profession of Florida.

Additionally the Center along with the Supreme Court Commission on Professionalism ('Commission'), already recognized as one of the leading legal professionalism organizations in the U.S., will be armed with the knowledge and organizational structure to directly impact: the professionalism taught to the law school population, young lawyers, and eventually change for the better the entire legal profession in Florida.

II. Project Description and Implementation Strategy

A. Planning for change

Reorientation: The proposed project will constitute a period of planning to and design the most effective and appropriate methods of transforming the Henry Latimer Center for Professionalism into an entity focused upon the environmental and psychological factors which have fostered a lack of professionalism within the practicing bar. The Center's new direction would create new program, research and initiatives affecting all segments of the legal profession.

Addressing a problem: The lack of professionalism has created a pervasive negative perception of the legal profession throughout the body politic. This fact has not only tarnished the reputation of the profession but threatens to undermine the confidence of the general public in the legal system. Additional by-products of the unprofessional behavior include an increased cost of access to the courts, a perception of unequal justice and reduced respect for the legal system. Opinion studies of all sorts have enumerated the deteriorating standing of the legal profession with the American public.¹

The literature is also rife with studies which reveal the toll which the lack of common courtesy, cooperation and ill feeling has created for lawyers. Low career satisfaction, depression, high rates of suicide, substance abuse and other resultant miseries has been adequately chronicled.²

The Center must change to be effective: The programs concerning professionalism have failed to reverse any of the trends described above. This is because the professionalism movement has focused its efforts upon 'educational programs' which are designed to convince lawyers by logic, argument and exhortation to change the way they behave.

Human behavior is primarily affected by a mixture of environmental and social factors over the long term and this must become the focus of the Center's programs. The Center for Professionalism and

¹ Gallop polls

² The Falling-Down Professions, New York Times *SundayStyles* January 6, 2008

the professionalism movement in Florida must retool its approach and seek out the type of changes which will begin the gradual movement of the profession to a healthier orientation both psychologically and philosophically. General behavioral changes occur most easily in social/psychological environments which by their structure support and encourage cooperative and genial interactions. Such cooperative interactions are the heart of much of the rules of procedure, the professionalism creed and the oath taken by all members of the bar.

The planning grant requested in this proposal will provide the resources, time and expertise needed to design the methodology and focus for the transformation described above. Without the added support of this grant the Center will not have the specialized resources to convert itself into an organization designed to foster change in every segment of the legal profession.

B. Specific Goals

At the end of the planning grant period the Center for Professionalism will:

- Have charted a path toward an active and effective program designed to change the legal profession towards a service orientation.
- Understand how it can function with the other components of the legal community to maximize its own effectiveness.
- Have a plan for modernizing its resources so that they can be effectively utilized by all within Florida and the rest of the country.
- Have investigated and evaluated areas of research which will produce the most useful data related to the goals of the Center and Commission.
- Have thoroughly researched the literature concerning other professionalism efforts and have evaluated the effectiveness of each to help chart the most efficient avenues of research, and program development.

C. Specific Tasks

- Define and design the components for the transition of the Center from an educationally oriented entity to one engaged in designing and implementing environments which promote change in all components of the legal community.

- Conduct a thorough search for other programs similarly focused and collect information and data on effectiveness to assist the Center to create pilot programs for use in the Florida legal community.

- Plan for changes in the Center's mission and seek outside support from other funding sources such as the ABA, Florida Law Schools, various sections of the legal community, bar membership and other grant funding foundations. Develop plans for out-year funding.

- Develop a research model which can collect data for multiple purposes— from basic research into the psychology of the lawyer's life —to the effectiveness of the changes in the Center's orientation. This will provide for data collection to begin immediately after the planning grant is over and strengthen the ability of the Center to attract continuing funding as its research results and other efforts are published.

-Research and compile basic information unique to each segment of the legal profession. This data will provide insight into the differences in the various sub-groups within the profession and provide keys to immediate program variations.

- Utilize organizational consultants to guide the Center's transition design and develop action plans to engage the whole legal community in the process of transformation. The design must recognize the unique and yet interconnected needs of each segment of the legal community.

- Develop new ways of providing help, support and encouragement to law schools to emphasize professionalism throughout their curriculum. During the planning grant period, the Center along with participating law schools, will investigate how Professionalism can be implemented into the curriculum so that a full suite of "off the Shelf" curricula can be produced to fulfill the mandates of the Conference of Supreme Court Chief Justices.³

D. Time and staffing requirements

- The implementation period of the planning grant will be 9-12 months.

- Proposed staffing for the planning grant will include the personnel of the Center for Professionalism plus the following specialized individuals:

Center Staff:

Director Mr. Carl J. Zahner
Assistant Director Ms. Shannon Fleming
Program Coordinator Ms. Becky Blackburn
Project Coordinator Ms. Kelly Pitts
Staff Administrative Assistant TBA

Grant Funded Personnel:

- Planning consultant (Part time)
- Librarian/IT assistant (Part Time)
- Grant Writer (Part Time)

The added staff will be important to the effective planning of the eventual transition of the activities of the Center because the Center is a currently functioning organization and must continue some of its current functions until the transition is effectuated. However, a significant amount of the work necessary to fulfill the recommendations will be accomplished by the current bar staff - but the expertise of developing the plan as well as other specialized skill sets will be acquired through use of the grant funds.

E. List of other organizations working in the subject area

There are no organizations within the Florida Legal community working in this subject area. The Henry Latimer Center for Professionalism, the Supreme Court Commission on Professionalism, and The Florida Bar Standing Committee on Professionalism are unique. However volunteers have offered to assist in the transition. Other organizations which are involved in the research, writing and discussion of professionalism as well as the development of change in legal education and the professionalism movement include:

- The Carnige Foundation
- The Conference of Supreme Court Chief Justices
- The ABA Consortium on Professionalism

³ Action Plan on Lawyer Conduct and Professionalism.

- The National Institute for Training and Ethics and Professionalism (NIFTEP)

The organizations above have written about the need to foster changes in the education of lawyers (Carnige), mandated that professionalism become an important factor in the practice of the law (Counsel of Chief Justices) and have collected together various State bar efforts to promote professionalism within their states (ABA Consortium) and held annual seminars to share methods of teaching professionalism (NIFTEP).

None of these organizations however have the ability to actually design and implement that reorganization.

F. Statement of Mission and Purpose

The Henry Latimer Center for Professionalism is a joint project of the Florida Bar and the Supreme Court of Florida. It functions to promote professionalism within the Florida legal community through training, workshops and other forms of engagement with the members of the Bar. The Center acts as staff for the Commission on Professionalism which is appointed by the Supreme Court and the Standing Committee on Professionalism of the Florida Bar.

The Mission Statement of the Commission on Professionalism is:

To promote the fundamental ideals and values of the justice system within the legal system, and to instill those ideals of character, competence, and commitment in all those persons serving therein.

The purpose of this proposal for the planning grant is to put the Center, the Commission and Standing Committee into the best possible position to accomplish this mission.

G. The Center

The Henry Latimer Center for Professionalism is one of only several organizations across the United States which is focused upon issues concerning professionalism within the legal community. It has been awarded the Gambrel Award by the American Bar Association because of the excellence of its programs promoting professionalism. The Center and the Commission on Professionalism have been in existence since 1996.

III. Project Evaluation

A. Criteria to Measure Success. The evaluation of the project will be measured by the transition plan once completion. This will include a measure of whether the plan will, if implemented, provide the design needed make the Center ready to transition toward becoming an organization designed to promote the changes described above.

B. Materials/ reports to be generated. At the end of the planning period there will have been created a series of plans to transform the Center and the Professionalism movement in the State of Florida. We expect to have the following:

- A design of the *post transition* Center for Professionalism.

- An overhaul plan of the resources to be made available to other states and members of the Florida legal community directed toward organizational change.

- A plan to develop curricula for the law schools which would involve the Center in close coordination with each law school to bring professionalism materials available for the full curricula or in other ways integrate professionalism into the full law school experience.

- A plan for research will have been drafted to focus such efforts in areas likely to prove useful to the professionalism efforts.

C. Plans for Dissemination of Project Results. The nature of the program envisioned with the "Way Ahead" involves a full distribution of the program as it evolves. The Center has begun the dissemination of ideas relating to the activity of the Center and by association the Standing Committee of Professionalism and the Commission. The "Way Ahead" (see, attachment G.) document describes the activities approved by the Commission and the proposed methods of implementing them. The planning period funded by this proposed grant will establish the methods and resources necessary to accomplish the transformation as outlined in that document.

IV. Attachments

A. Estimated total project budget.

B. Project budget Narrative.

C. List of Sources of Income.

**The Florida Bar
The Florida Bar Foundation**

D. Qualifications of project Personnel

Carl J. Zahner II M.Ed U of Guam 1970, JD UF 1982, Ph.D. UF 1977

Carl J. Zahner has been Director of The Florida Bar Henry Latimer Center for Professionalism, a teaching, and research arm of the state bar association since August 2004. Before that he was an Advisor and Adjunct Instructor, within the School of Adult and Continuing Education with Barry University (2001 B 04). As an Assistant General Counsel, Department of Education, State of Florida (1987- 92, 1995-2001) he practiced general agency law and acted as the prosecutor for the Professional Practices Division of the Department of Education. Carl was the Director, Correctional Education School Authority, State of Florida (1992-1995) where he was responsible for the management of the statewide correctional school district. As an Assistant Attorney General he was Branch Chief, Civil Division, between 1985 and 1987 and also litigated civil rights cases relating to the conditions of confinement and the treatment of prisoners under s.1983 of the Civil Rights act. Before serving as Assistant Attorney General he was a Staff Attorney with the United State District Court, Middle District of Florida (1982-84). As Assistant Professor of Education, Barry University (1977-79), he taught graduate level counseling students in the Community Counseling Program. Mr. Zahner was commissioned in the United States Navy, May 1970, Ensign USN and retired after 30 years of commissioned service in 2000 with the Rank, Captain USNR. He is a Veteran of "Market Time" Patrols off the Coast of South Vietnam as well as Operation "Allied Force" in Kosovo.

Mr. Zahner received a B.A., Marquette University, Philosophy (1970); M.ED., University of Guam, Guidance and Counseling (1974); Ph.D., University of Florida, College of Education - Counselor Education (1977); and his J.D., from the University of Florida, College of Law, Gainesville, Florida with Honors, (December 1981); He was admitted to the Florida Bar, (May 1982).

John T. Berry serves as The Florida Bar's Legal Division Director supervising the lawyer regulation and professionalism efforts.

Prior to returning to The Florida Bar, he served as Executive Director of the State Bar of Michigan from 2000 - 2006. Before joining the State Bar of Michigan in November 2000, he served as Director of the Center of Professionalism at the University of Florida's Levin College of Law. He has held previous positions as Assistant Executive Director of the State Bar of Arizona (1998-2000), and as Staff Counsel and Legal Division Director of The Florida Bar (1983-1998). Staff Counsel duties included supervision of lawyer regulation, unauthorized practice of law, ethics, professionalism and the advertising departments. He served for seven years as Florida Assistant State Attorney for the Ninth Judicial Circuit Fraud Division, Orlando, Florida handling white collar and organized crime cases.

Mr. Berry was trained and approved by the Florida Supreme Court as an instructor for judicial education. He is a frequent lecturer throughout the nation and the world, on ethics and professionalism. In addition, Mr. Berry is responsible for the establishment of The Florida Bar's and the State Bar of Arizona's Professional Enhancement Program (ethics school) where he participated as a main lecturer. He also was a member of over 15 consulting teams to other states evaluating their ethics and professionalism efforts. He served as liaison for the State Bar of Arizona to the ABA Ethics 2000 Commission and ABA Multijurisdictional Practice Commission.

Mr. Berry for the past three years, served as chair of the ABA's Professionalism Committee and has served on the McKay Commission that evaluated lawyer regulation nationwide. He also has served on the ABA's Discipline Committee, Model Definition of Law Task Force and Bioethics Committee.

Mr. Berry has been a member of the ABA House of Delegates since 1990. He is an Officer of the National Organization of Bar Counsel and served as the organization's president in 1990.

Mr. Berry was the 2001 recipient of the American Bar Association's Michael Franck Award. This award is the highest award given nationally by the ABA for achievement in the field of lawyer ethics, professionalism and conduct.

In 2002 Mr. Berry was part of a two person Justice Department team sent to Nigeria to aid the country in dealing with corruption within its government, corporations and businesses.

Mr. Berry received his B.A., *magna cum laude*, in political science from the University of Florida in 1973 and his J.D. from Stetson University College of Law in 1976.

E. Names and Addresses of Officers and the Governing body of the Florida Bar

Carl J. Zahner, Director, Henry Latimer Center for Professionalism
651 E. Jefferson Street Tallahassee, FL 32399

John T. Berry, Director, Legal Division
651 E. Jefferson Street Tallahassee, FL 32399

John F. Harkness, Jr., Executive Director
651 E. Jefferson Street Tallahassee, FL 32399

Francisco R. Angones, President

44 W Flagler St Fl 8 Miami, FL 33130

F. Total Budget for the Henry Latimer Center for Professionalism

G. Additional info as needed.

- (a) The "Way Ahead" a policy document developed from the Action items of the Spring Retreats of the Commission 2006 & 2007

SUMMARY

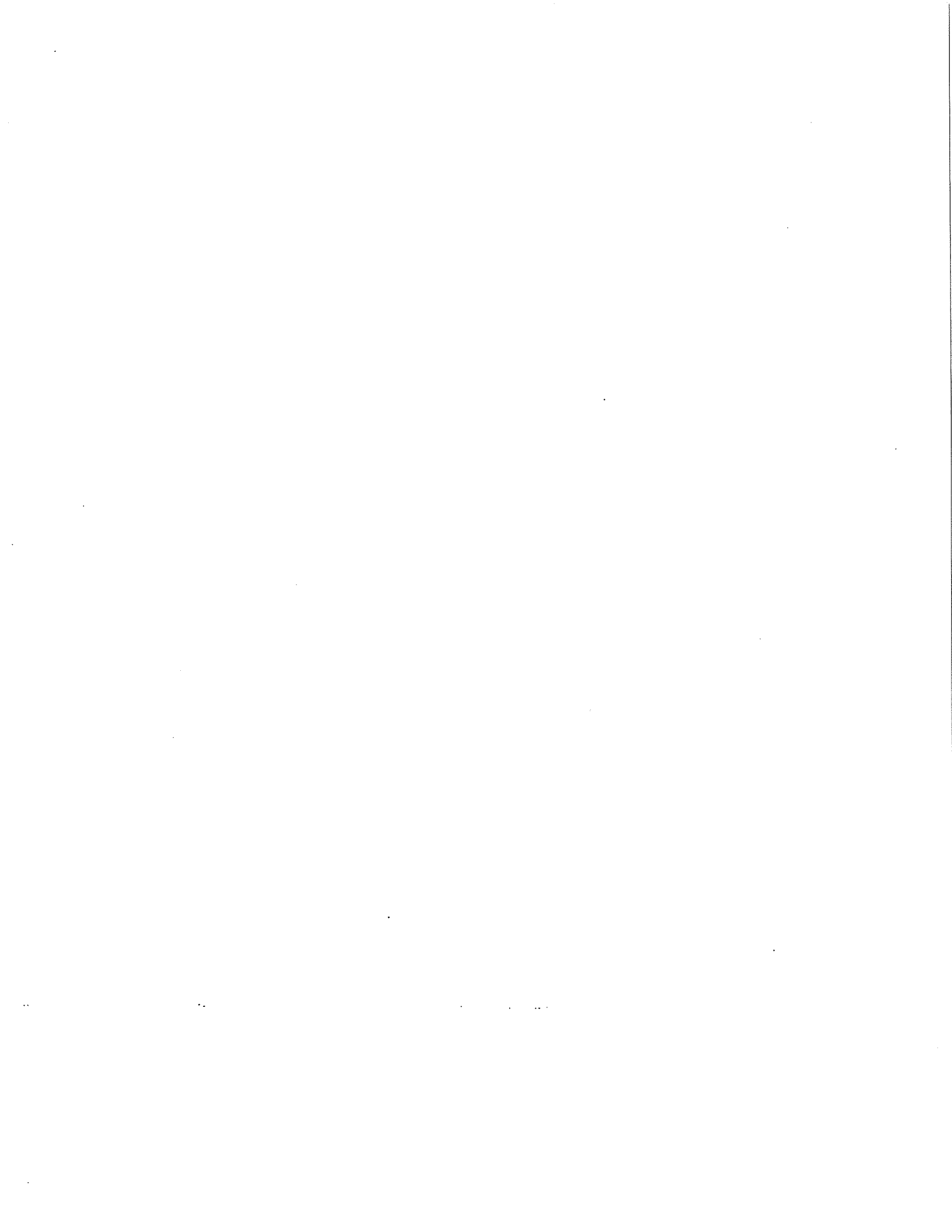
EDUCATING LAWYERS

PREPARATION FOR THE
PROFESSION OF LAW

William M. Sullivan
Anne Colby
Judith Welch Wegner
Lloyd Bond
Lee S. Shulman

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for the ADVANCEMENT *of* TEACHING



Introduction

The profession of law is fundamental to the flourishing of American democracy. Today, however, critics of the legal profession, both from within and without, have pointed to a great profession suffering from varying degrees of confusion and demoralization. A reawakening of professional élan must include revitalizing legal preparation. It is hard to imagine that taking place without the enthusiastic participation of the nation's law schools. Law school provides the single experience that virtually all legal professionals share. It is the place and time where expert knowledge and judgment are communicated from advanced practitioner to beginner. It is where the profession puts its defining values and exemplars on display, and future practitioners can begin both to assume and critically examine their future identities.

Educating Lawyers examines the dramatic way that law schools develop legal understanding and form professional identity. The study captures the special strengths of legal education, and its distinctive forms of teaching. It follows earlier studies of professional education conducted by The Carnegie Foundation for the Advancement of Teaching. Beginning with the landmark Flexner Report on medical education of 1910 and other pioneering studies of education in engineering, architecture, teaching and law, the Foundation has for nearly one hundred years influenced improvement of education for the professions.

As the Foundation enters its second century, *Educating Lawyers* becomes part of a series of reports on professional education issued by the Foundation through its Preparation for the Professions Program. *Educating Clergy* was the first in this series, which will include reports on the education of engineers, nurses and physicians.

Educating Lawyers is thus informed by the findings of the Foundation's concurrent studies of professional education. It is also, like the other studies, grounded in direct observation of education in process. Over the space of two academic semesters, a research team visited 16 law schools in the United States and Canada. The schools, both public and private, were chosen to be geographically diverse, ranging from coast to coast and north to south. Several are among the more selective schools. Several are freestanding schools, while others are less selective institutions within large state university systems. One school is historically black, while two (one in Canada, the other in the United States) are distinctive for their attention to Native American and First Nation peoples and their concerns. Several schools were chosen because they were judged by many to represent important strengths in legal education.

Overview of Legal Education

Education of professionals is a complex educational process, and its value depends in large part upon how well the several aspects of professional training are understood and woven into a whole. That is the challenge for legal education: linking the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve—in other words, fostering what can be called civic professionalism.

THAT IS THE CHALLENGE FOR LEGAL EDUCATION: LINKING THE INTERESTS OF LEGAL EDUCATORS WITH THE NEEDS OF LEGAL PRACTITIONERS AND WITH THE PUBLIC THE PROFESSION IS PLEDGED TO SERVE.

Like other professional schools, law schools are hybrid institutions. One parent is the historic community of practitioners, for centuries deeply immersed in the common law and carrying on traditions of craft, judgment and public responsibility. The other heritage is that of the modern research university. These two strands of inheritance were blended by the inventors of the modern American law school, starting at Harvard in the 1870s with President Charles William Eliot and his law dean, Christopher Columbus Langdell. The blend, however, was uneven. Factors beyond inheritance—the pressures and opportunities of the surrounding environment—have been very important in what might be called the epigenesis of legal education. But as American law schools have developed, their academic genes have become dominant.

The curriculum at most schools follows a fairly standard pattern. The juris doctor (JD) degree is the typical credential offered, requiring three years of full-time or four years of part-time study. Most states require the degree for admission to practice, along with a separate bar examination. Typically, in the first year and a half, students take a set of core courses: constitutional law, contracts, criminal law, property law, torts, civil procedure and legal writing. After that, they choose among courses in particular areas of the law, such as tax, labor or corporate law. The school-sponsored legal clinics, moot court competition, supervised practice trials and law journals give the students who participate opportunities to practice the legal skills of working with clients, conducting appellate arguments, and research and writing.

Law schools use the Socratic, case-dialogue instruction in the first phase of their students' legal education. During the second two years, most schools continue to teach, by the same method, a number of elective courses in legal doctrine. In addition, many also offer a variety of elective courses in seminar format, taught in ways that resemble graduate courses in the arts and sciences. What sets these courses apart from the arts and sciences experience is precisely their context—law school as apprenticeship to the profession of law. But there is room for improvement. The dramatic results of the first year of law school's emphasis on well-

THE DRAMATIC RESULTS OF THE FIRST YEAR OF LAW SCHOOL'S EMPHASIS ON WELL-HONED SKILLS OF LEGAL ANALYSIS SHOULD BE MATCHED BY SIMILARLY STRONG SKILL IN SERVING CLIENTS AND A SOLID ETHICAL GROUNDING.

honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. If legal education were serious about such a goal, it would require a bolder, more integrated approach that would build on its strengths and address its most serious limitations. In pursuing such a goal, law schools could also benefit from the approaches used in education of physicians, teachers, nurses, engineers and clergy, as well as from research on learning.

Five Key Observations

OBSERVATION 1 Law School Provides Rapid Socialization into the Standards of Legal Thinking.

Law schools are impressive educational institutions. In a relatively short period of time, they are able to impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals. Visiting schools of different types and geographical locations, the research team found unmistakable evidence of the pedagogical power of the first phase of legal education. Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning, in the parlance of legal education, to "think like a lawyer." This is an accomplishment of the first order that deserves serious consideration from educators of aspirants to other professional fields.

OBSERVATION 2 Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process.

The process of enabling students to "think like lawyers" takes place not only in a compressed period of time but primarily through the medium of a single form of teaching: the case-dialogue method. Compared to other professional fields, which often employ multiple forms of teaching through a more prolonged socialization process, legal pedagogy is remarkably uniform across variations in schools and student bodies. With the exception of a few schools, the first-year curriculum is similarly standardized, as is the system of competitive grading that accompanies the teaching and learning practices associated with case dialogue. The consequence is a striking conformity in outlook and habits of thought among legal graduates.

In particular, most law schools emphasize the priority of analytic thinking, in which students learn to categorize and discuss persons and events in highly generalized terms. This emphasis on analysis and system has profound effects in shaping a legal frame of mind. At a deep, largely uncritical level, the students come to understand the law as a formal and rational system, however much its doctrines and rules may diverge from the common sense understandings of the lay person. This emphasis on the procedural and systematic gives a common tone to legal discourse that students are quick to notice, even if reproducing it consistently is often a major learning challenge.

OBSERVATION 3 The Case-Dialogue Method of Teaching Has Valuable Strengths but Also Unintended Consequences.

The case-dialogue method challenges students to grasp the law as a subject characterized by a particular way of thinking, a distinctive stance toward the world. And, as do the particular methods of teaching for other professions, the case-dialogue method offers both an accurate representation of central aspects of legal competence and a deliberate simplification of them. The simplification consists in the abstraction of the legally relevant aspects of situations and persons from their everyday contexts. In the case-dialogue classroom, students learn to dissect every situation they meet from a legal point of view.

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By questioning and argumentative exchange with faculty, students are led to analyze situations by looking for points of dispute or conflict and considering as “facts” only those details that contribute to someone’s staking a legal claim on the basis of precedent. The case-dialogue method drills students, over and over, in first abstracting from natural contexts, then operating upon the “facts” so abstracted according to specified rules and procedures, and drawing conclusions based upon that reasoning. Students discover that to “think like a lawyer” means redefining messy situations of actual or potential conflict as opportunities for advancing a client’s cause through legal argument before a judge or through negotiation.

By contrast, the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case-dialogue method. Issues such as the social needs or matters of justice involved in cases do get attention in some case-dialogue classrooms, but these issues are almost always treated as addenda. Being told repeatedly that such matters fall, as they do, outside the precise and orderly “legal landscape,” students often conclude that they are secondary to what really counts for success in law school—and in legal practice. In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.

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This warning does help students escape the grip of misconceptions about how the law works as they hone their analytic skills. But when the misconceptions are not addressed directly, students have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track. Students often find this confusing and disillusioning. The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of the law that is rarely intended.

Two Major Limitations of Legal Education

1. Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school’s typically unbalanced emphasis on the one perspective can create problems as the students move into practice.¹
2. Law schools fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills. Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals. Despite progress in making legal ethics a part of the curriculum, law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice. To engage the moral imagination of students as they move toward professional practice, seminaries and medical, business and engineering schools employ well-elaborated case studies of professional work. Law schools, which pioneered the use of case teaching, only occasionally do so.

Both of these drawbacks—lack of attention to practice and inadequate concern with professional responsibility—are the unintended consequences of reliance upon a single, heavily academic pedagogy, the case-dialogue method, to provide the crucial initiation into legal education.

OBSERVATION 4 Assessment of Student Learning Remains Underdeveloped.

Assessment of what students have learned—what they know and are able to do—is important in all forms of professional education. In law schools, too, assessing students' competence performs several important educational functions. In its familiar summative form, assessment sorts and selects students. From the start, assessment is used as a filter; law schools typically admit only students who are likely to succeed in law school as judged by performance on the Law School Admissions Test; and high-stakes, summative assessment is critical at the end of each of the first two semesters of law school, when essay examinations in each doctrinal course will determine students' relative ranking, opening academic options for the remainder of some students' legal education and legal careers—and closing them for others. The bar examination is another high-stakes, summative assessment that directly affects law school teaching but is administered by an independent body.

Summative assessments are useful devices to protect the public, for they can ensure basic levels of competence. But there is another form of assessment, formative assessment, which focuses on supporting students in learning rather than ranking, sorting and filtering them. Although contemporary learning theory suggests that educational effort is significantly enhanced by the use of formative assessment, law schools make little use of it. Formative assessments directed toward improved learning ought to be a primary form of assessment in legal education.

OBSERVATION 5 Legal Education Approaches Improvement Incrementally, Not Comprehensively.

Compared to 50 years ago, law schools now provide students with more experience, more contextual experience, more choice and more connection with the larger university world and other disciplines. However, efforts to improve legal education have been more piecemeal than comprehensive. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these inadequacies on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned pleas of the national bar and its commissions antedates the study on which *Educating Lawyers* is based.

The relatively subordinate place of the practical legal skills, such as dealing with clients and ethical-social development in many law schools, is symptomatic of legal education's approach to addressing problems

and framing remedies. To a significant degree, both supporters and opponents of increased attention to "lawyering" and professionalism have treated the major components of legal education in an *additive* way, not an *integrative* way.

Providing additional classroom coverage of professionalism issues will not be an easy task. Law school curriculum reform is a tedious and often frustrating task and seems to work best when modest changes are made at the margin by adding one or two additional courses. If the proponents of the need for increased law school training in ethics and professionalism are right, however, an effort equivalent to that which led to the increase in clinical legal education in the 1970s and the increased emphasis on skills training in the 1990s is required. The aim of this effort should be to elevate the twin concepts of the practice of law as a public service calling and the development of the capacity for reflective moral judgment to the same level as legal knowledge and traditional legal skills. This is indeed an ambitious goal. (American Bar Association, 1996)

Moreover, efforts to add new requirements are almost universally resisted, not only in legal education, but in professional education generally, because there is always too much to accomplish in too little time. Sometimes this problem becomes so acute that the only solution is to extend the time allocated to training. In engineering, for example, current debate centers on the question of whether the master's rather than the bachelor's degree should be the entry-level credential for the field. Extending the duration of training is a radical solution, however, and certainly not one that would appeal to law school administrators, faculty or students.

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This additive strategy of educational change assumes that increasing emphasis on the practical and ethical-social skills of the profession will reduce time for and ultimately affect the extent to which students develop skills in legal analyses. Thus, practical skills are addressed only to a point. This is not only a logistical problem (too much to accomplish in a limited amount of time) but it is also a conceptual and pedagogical problem. In essence, the additive strategy assumes that the legal analysis so prominent in legal education is sufficient in its own terms, only requiring slight increase in attention to the practical and ethical-social skills of a beginning lawyer.

Toward a More Integrated Model: A Historic Opportunity to Advance Legal Education

Law school provides the beginning, not the full development, of students' professional competence and identity. At present, what most students get as a beginning is insufficient. Students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity. Appeals and demands for change, from both within academic law and without, pose a new challenge to legal education. At the same time, they open to legal education a historic opportunity to advance both legal knowledge—theoretical and practical—and the capacities of the profession.

Legal education needs to be responsive to both the needs of our time and recent knowledge about how learning takes place; it needs to combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgment guided by a sense of professional responsibility. Legal education should seek to unite the two sides of legal knowledge: formal knowledge and experience of practice.

In particular, legal education should use more effectively the second two years of law school and more fully complement the teaching and learning of legal doctrine with the teaching and learning of practice. Legal education should also give more focused attention to the actual and potential effects of the law school experience on the formation of future legal professionals.

Recommendations

RECOMMENDATION 1 Offer an Integrated Curriculum.

To build on their strengths and address their shortcomings, law schools should offer an integrated, three-part curriculum: (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth; (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work.

In order to produce such integrative results in students' learning, however, the faculty who teach in the several areas of the legal curriculum must first communicate with and learn from each other.

RECOMMENDATION 2 Join “Lawyering,” Professionalism and Legal Analysis from the Start.

The existing common core of legal education needs to be expanded to provide students substantial experience with practice as well as opportunities to wrestle with the issues of professionalism. Further, and building on the work already underway in several law schools, the teaching of legal analysis, while remaining central, should not stand alone as it does in so many schools. The teaching of legal doctrine needs to be fully integrated into the curriculum. It should extend beyond case-dialogue courses to become part of learning to “think like a lawyer” in practice settings.

Nor should doctrinal instruction be the exclusive content of the beginner’s curriculum. Rather, learning legal doctrine should be seen as prior to practice chiefly in the sense that it provides the essential background assumptions and habits of thought that students need as they find their way into the functions and identity of legal professionals.

RECOMMENDATION 3 Make Better Use of the Second and Third Years of Law School.

After the JD reports that graduates mostly see their experiences with law-related summer employment after the first and second years of law school as having the greatest influence on their selection of career paths.² Law schools could give new emphasis to the third year by designing it as a kind of “capstone” opportunity for students to develop specialized knowledge, engage in advanced clinical training, and work with faculty and peers in serious, comprehensive reflection on their educational experience and their strategies for career and future professional growth.

RECOMMENDATION 4 Support Faculty to Work Across the Curriculum.

Both doctrinal and practical courses are likely to be most effective if faculty who teach them have some significant experience with the other, complementary area. Since all law faculty have experienced the case-dialogue classroom from their own education, doctrinal faculty will probably make the more significant pedagogical discoveries as they observe or participate in the teaching of lawyering courses and clinics, and we predict that they will take these discoveries back into doctrinal teaching. Faculty development programs that consciously aim to increase the faculty’s mutual understanding of each other’s work are likely to improve students’ efforts to make integrated sense of their developing legal competence. However it is organized, it is the sustained dialogue among faculty with different strengths and interests united around common educational purpose that is likely to matter most.

RECOMMENDATION 5 Design the Program so that Students—and Faculty—Weave Together Disparate Kinds of Knowledge and Skill.

Although the ways of teaching appropriate to develop professional identity and purpose range from classroom didactics to reflective practice in clinical situations, the key challenge in supporting students’ ethical-social development is to keep each of these emphases in active communication with each other.

The demands of an integrative approach require both attention to how fully ethical-social issues pervade the doctrinal and lawyering curricula and the provision of educational experiences directly concerned with the values and situation of the law and the legal profession. As the example of medical education suggests, these

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concerns “come alive” most effectively when the ideas are introduced in relation to students’ experience of taking on the responsibilities incumbent upon the profession’s various roles. And, in teaching for legal analysis and lawyering skills, the most powerful effects on student learning are likely to be felt when faculty with different strengths work in a complementary relationship.

RECOMMENDATION 6 Recognize a Common Purpose.

Amid the useful varieties of mission and emphasis among American law schools, the formation of competent and committed professionals deserves and needs to be the common, unifying purpose. A focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America.

RECOMMENDATION 7 Work Together, Within and Across Institutions.

Legal education is complex, with its different emphases of legal analysis, training for practice and development of professional identity. The integration we advocate will depend upon rather than override the development of students’ expertise within each of the different emphases. But integration can flourish only if law schools can consciously organize their emphases through ongoing mutual discussion and learning.

Examples from the Field

Some law schools are already addressing the need for a more dynamic, integrated curriculum. The work of centers such as the Institute for Law School Teaching at the Gonzaga University School of Law and a far-flung network of legal educators that has resulted in the report “Best Practices for Legal Education” testify to substantial interest in aspects of the pedagogical project.³ Indeed, the idea for an integrated approach draws liberally on their inspiration.

The law schools of New York University (NYU) and the City University of New York (CUNY) each exemplify, in different ways, ongoing efforts to bring the three aspects of legal apprenticeship into active relation. CUNY cultivates close interrelations between doctrinal and lawyering courses, including a resource-intensive investment in small sections in both doctrinal and lawyering seminars in the first year and a heavy use of simulation throughout the curriculum. The school also provides extensive clinical experience linked to the lawyering sequence. At NYU, doctrinal, lawyering and clinical courses are linked in a variety of intentional ways. There, the lawyering curriculum also serves as a connecting point for faculty discussion and theoretical work, as well as a way to encourage students to consider their educational experience as a unified effort.

Other schools have embarked on different experiments. Yale Law School has restructured its first-year curriculum by reducing the number of required doctrinal courses and encouraging students to elect an introductory clinical course in their second semester. This is not full-scale integration of the sort necessary to legal education, but it and other efforts like it point toward an intermediate strategy: a course of study that encourages students to shift their focus between doctrine and practical experience not once but several times, so as to gradually develop more competence in each area while making more linkages between them.

Courses and other experiences that develop the practical skills of lawyering are most effective in small-group settings. Of all the obstacles to this reform, the relatively higher cost of the small classes is the most difficult to overcome, especially at institutions without large endowments. In this light, it is encouraging to note the

emergence of what may be another, less resource-intensive strategy. Southwestern Law School has instituted a new first-year curriculum, in which students take four doctrinal courses in their first semester rather than five, allowing for an intensified two-semester, integrated lawyering course plus an elective course in their second semester. The lawyering course expands a legal writing and research experience to include detailed work in legal methods and reasoning, as well as interviewing and advocacy. Professionalism explicitly grounds the course through the introduction of case studies of lawyer careers that have been drawn from empirical research, such as the studies done by the American Bar Foundation referred to earlier. In addition, the Southwestern plan also provides extensive academic support where needed to enhance student success.

The Rewards of Innovation

Developing an integrated curriculum and approach to teaching designed to meet a common mission of forming professionals will not be a simple or effortless process. On the part of faculty, it will require both drawing more fully on one's own experience and learning from each other. It will also require creativity.

Greater coherence and integration in the law school experience is not only a worthy project for the benefit of students; it can also incite faculty creativity and cohesion. Attention to issues of teaching and learning often results in improvements and even experiments in teaching. And when innovation is the focus of a group of

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colleagues in and across institutions, the practice of teaching can become the basis of community, where the substantive knowledge about teaching and learning can be built upon and shared publicly over time, in the fashion of traditional academic scholarship, rather than being gained and lost anew with each individual teacher.⁴ By making classroom

practice the subject of critical scrutiny, law professors would be applying to their teaching and their students' learning the kind of skill and intellectual attention they routinely bring to their legal scholarship. Curricular integration and collaborations could also open the opportunity for faculty, particularly new faculty, to develop their careers in novel ways, both directly through new methods of teaching and also through scholarship about teaching and learning.

As desirable—and necessary—as developing a more balanced and integrated legal education might be, change does not come without effort and cost. Forward-thinking faculty and schools will have to overcome significant obstacles. A trade-off between higher costs and greater educational effectiveness is one. Resistance to change in a largely successful and comfortable academic enterprise is another. However, in all movements for innovation, champions and leaders are essential factors in determining whether or not a possibility becomes realized. Here, the developing network of faculty and deans concerned with improving legal education is a key resource waiting to be developed further and put to good use.

It is well worth the effort. The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens' loyalty. That is, to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.

¹ Dinovitzer, R., and others, *After the JD: First Results of a National Study of Legal Careers*. Overland Park, KS: The National Association for Law Placement Foundation for Law Career Research and Education and the American Bar Foundation, 2004, pp. 77-82.

² Dinovitzer and others, *After the JD*, pp. 79, 82.

³ Stuckey, R. and others. "Best Practices for Legal Education." Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. [<http://professionalism.law.sc.edu/news.html#CLEA>].

⁴ Huber, M. T., and Hutchings, P. *The Advancement of Learning: Building the Teaching Commons*. San Francisco: Jossey-Bass, 2005.