

UNRAVELING THE MYSTERY OF THE CHARACTER AND FITNESS PROCESS

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In addition to completing law school and passing the Michigan bar examination, those who wish to practice law in this state must prove to the satisfaction of the State Board of Law Examiners that she or he possesses “good moral character” and otherwise possesses the requisite character and fitness to practice law.ⁱ Under the Supreme Court Rules Concerning State Bar of Michiganⁱⁱ, investigation of character and fitness is initially the responsibility of the State Bar of Michigan Standing Committee on Character and Fitness, which forwards its recommendation to the State Board of Law Examiners after investigation. This “character and fitness” process, although a mystery to some, is not difficult to understand.

The character and fitness process begins when an applicant files an Affidavit of Personal History with the State Bar, together with the required attachments and fees. The Affidavit of Personal History (APH) is a comprehensive questionnaire, submitted under oath, which is designed to assist the State Bar in promptly and fully investigating an applicant’s character and fitness to practice law. Although some of its 58 questions pertain to identification and background (name, addresses, education, employment history, etc.), other questions on the APH request information about the applicant’s business involvement, school discipline, employment terminations, participation in civil litigation, financial history, criminal history, and general fitness.

An applicant's candor when filling out the APH, and during the entire character and fitness process, may be the most telling indicator of the applicant's *current* character and fitness. If an applicant is not truthful concerning a past incident, that lack of candor may say more about the applicant's true character than any incident that may have previously occurred. Because required disclosures may be sensitive in nature, and because the process requires applicants to be candid, the Character and Fitness process is confidential. Information obtained in the course of processing an application for admission to the bar may not be used for any other purpose or otherwise disclosed without the consent of the applicant or by order of the Supreme Court.ⁱⁱⁱ Because of that confidentiality, applicants should not hesitate to answer honestly and completely.

Additional items that must be provided to the State Bar along with the Affidavit of Personal History include:

- Application to Sit for the Michigan Bar Examination
- Completed fingerprint card, or receipt for fingerprint scanning
- Criminal history reports
- Certified driving records
- Reference letters
- Law School Certification
- Litigation Records

Applications submitted timely^{iv} must be accompanied by two separate fees: an examination fee and an investigation fee. Additionally, a fingerprint processing fee must be submitted with a completed fingerprint card from out-of-state bar applicants. In-state applicants are required by the Michigan State Police to submit to fingerprint scanning at designated locations, and must include a receipt indicating the applicant

has paid to be scanned with their APH. Incomplete or incorrectly executed applications, or those with incorrect fees, are rejected and returned to the applicant for correction.

Once the application is accepted, State Bar staff undertakes an investigation of each applicant. Various methods are used to follow up on applicant responses. Letters are sent, phone calls are made, and – when needed – field investigation is done to collect information and interview witnesses. As information is received, it is compared with the applicant's disclosures. The applicant may be asked to explain a discrepancy between the applicant's disclosure and official records, or to explain a nondisclosure when information is discovered during the course of the investigation. Once all information is collected for each file, the file is viewed as a whole. The Supreme Court Rules for the State Bar of Michigan Rule 15 Sec.1, (5)(a) state:

"An applicant shall be recommended favorably by State Bar staff without referral to committee when investigation of all past conduct discloses no significant adverse factual information."

No single action or incident will *per se* result in an applicant being denied admission to practice in Michigan. Every applicant is considered individually, based upon the applicant's personal history and record. Although all issues that concern an applicant's *current* requisite character and fitness to practice law are examined, the following issues are among those treated as cause for further inquiry and considered when making a recommendation:

- unlawful activities

- academic misconduct
- making of false statements, including omissions, on the APH or other documents
- misconduct in employment
- acts involving dishonesty, fraud, deceit or misrepresentation
- abuse of legal process
- neglect of financial responsibilities
- neglect of professional obligations
- violation of a court order
- evidence of mental or emotional instability
- evidence of drug or alcohol dependency
- denial of admission to the bar in another jurisdiction on character and fitness grounds
- activities that constitute practicing law without the benefit of licensure
- disciplinary actions by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

Applicant files that are not approved by staff go to a District Character and Fitness Committee for interview. A Notice of Referral that identifies specific issues that need to be explored is prepared and forwarded to a district committee, along with a copy of the applicant's file. District Character and Fitness Committees are composed of lawyers and judges in each of the State Bar Commissioner districts. The size of the district committee is determined by the number of files typically referred within a given district for interview. Each member of the district committee is appointed for a renewable two-year term by the Board of Commissioners upon nomination by the Commissioner for the area served by that committee. In making appointments, the Board seeks to obtain ethnic and gender diversity, to appoint members willing to make a commitment to their participation, and to pinpoint members with the requisite knowledge and experience as lawyers to make sound decisions. The Board also appoints a chairperson for each district committee.

Throughout the entire character and fitness process, the applicant bears the burden of proof (by clear and convincing evidence) of showing that she or he currently possesses

the requisite character and fitness to practice law.^v During the interview, which is informal, but does afford the applicant the right to be represented by counsel if the applicant chooses, the applicant is asked to explain his or her conduct surrounding each of the issues, and the panel members ask questions as well. The interview panel evaluates the applicant's responses and compares them to the information contained in the applicant's file. The panel also takes into account the applicant's demeanor, evidence of rehabilitation, remorse, and whether the applicant demonstrates an understanding of why the issues that brought the applicant before the committee are of concern to the Bar.

Following the conclusion of the district committee interview, which is recorded, the interview panel forwards a report and recommendation to the Standing Committee on Character and Fitness. The Standing Committee, consisting of 18 regular and 18 associate members, is appointed annually by the President of the Bar. The regular members review each recommendation of the district committees, and may endorse the recommendation, take the recommendation under advisement pending receipt of additional information deemed necessary, remand the recommendation to the district committee with instructions for further proceedings, or reject the recommendation and conduct a hearing *de novo*. An applicant who receives a recommendation of denial from the district committee is entitled to request a hearing before the Standing Committee.

Hearings before the Standing Committee are more formal than district committee interviews. Members of the Standing Committee^{vi} act as factfinders and ultimately make

a written recommendation to the Board of Law Examiners. Associate members of the Committee serve as State Bar Counsel to represent the interests of the Bar. A regular committee member serves as the Presiding Chairperson and conducts a prehearing conference, hears and rules on motions, and issues subpoenas when requested. The rulings of the presiding Chairperson regarding procedure, admissibility of evidence, and motions are final. The Michigan Rules of Evidence and the Michigan Rules of Civil Procedure may be used as guidelines but are not binding in character and fitness proceedings. The proceedings are transcribed and all witnesses are sworn. The applicant continues to bear the burden of proof by clear and convincing evidence.

Following the conclusion of the Standing Committee hearing, the hearing panel meets in executive session, or in follow-up telephone deliberations, to reach a determination. The standing committee considers all mitigating and aggravating circumstances when it deliberates, including:

- the applicant's age at the time of the conduct
- the time elapsed since the conduct
- the seriousness of the conduct
- the reliability of the information concerning the conduct
- the factors underlying the conduct
- the cumulative effect of conduct or information
- the evidence of rehabilitation
- the applicant's positive social contributions since the conduct
- the applicant's candor in the admissions process
- the materiality of any omissions or misrepresentations
- affirmative efforts to rectify or prevent a recurrence of the conduct
- timeliness of the applicant's cooperation with the application and investigation process

After a decision is reached, the committee prepares and forwards a written report and recommendation to the Board of Law Examiners. That report will conclude either that

the applicant has or has not met his or her burden of proof as to the applicant's current requisite character and fitness to practice law.

The Board of Law Examiners is composed of five members appointed by the governor on nomination by the Supreme Court.^{vii} In addition to writing and administering the bar examination, the Board ultimately decides whether an applicant possesses the requisite character and fitness to practice law in this state. The Board has the authority to adopt the recommendation of the State Bar's Standing Committee on Character and Fitness, reject the recommendation, or hold a *de novo* hearing. Also, applicants who have received an unfavorable recommendation from the Standing Committee are entitled to a *de novo* hearing before the Board of Law Examiners.

The final layer of due process for the character and fitness process is the Michigan Supreme Court. Although rarely invoked, if properly petitioned, the Court has supervisory control over the Board of Law Examiners and jurisdiction to review the Board's character and fitness decisions.

Under the procedures described above, individuals who are found to have "significant adverse information" in their background are given the opportunity to convince character and fitness authorities (by clear and convincing evidence) of their good character at four different levels: the District Committee, the Standing Committee, the Board of Law Examiners, and the Michigan Supreme Court. If an applicant is unable to sustain his or her burden of proof and the Board of Law Examiners' denial of character

and fitness clearance becomes final, an applicant may reapply after a two-year waiting period.^{viii}

Additional details of the character and fitness process, as well as the forms, rules and instructions necessary to initiate the process, may be found on the State Bar's website, www.michbar.org, under the Bar Admissions heading.

ⁱ MCL 600.934

ⁱⁱ RCSBM, Rule 15, Section 1(2)

ⁱⁱⁱ RCSBM, Rule 15, Section 1(7)

^{iv} Postmarked by November 1 for the February exam or by March 1 for the July exam. Late fees are imposed between November 2 and December 15, and between March 2 and May 15.

^v RCSBM, Rule 15, Section 1(15).

^{vi} Usually 5 members, unless the applicant consents to fewer members.

^{vii} MCL 600.922.

^{viii} Unless a longer waiting period is imposed under RCSBM 15, Section 1(17) or (18).