

The Character and Fitness Process

Exploring One of Our Core Missions

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The Strategic Plan of the Bar has appropriately refocused the Bar towards its more “core” functions. In fact, the very first goal identified in the plan is to “champion character and fitness.” It is appropriate that this particular goal is first on our list since there is no mission more important for the Bar than protecting the public from individuals who are not fit to practice law.

Although most lawyers are intimately familiar with the first two steps in securing a law license (a law degree and passing the bar examination), most know little about the rigorous character and fitness process. The Board of Law Examiners, in addition to writing and grading the bar examination, makes the final determination on whether or not an applicant currently possesses the requisite character and fitness to practice law in this state, and whether other admission requirements have been met. However, pursuant to Rule 15 of the Rules Concerning the State Bar of Michigan, the Bar, through its Standing Committee on Character and Fitness, makes a thoroughly researched recommendation to the Board of Law Examiners on all applicants for admission.

All individuals who seek to become members of the State Bar of Michigan by examination, and some who wish to be admitted on motion, must file with the State Bar an

Affidavit of Personal History. In filling out the affidavit, the applicant is required to disclose a detailed history of all relevant life events, including criminal history, litigation history, financial history, and general fitness. The applicant is also required to sign the affidavit under oath and, importantly, advise the Bar of any changes in the accuracy of the affidavit up until the date of admission. A fingerprint card (for checking criminal history) and the applicable investigation fees must accompany the affidavit. During the application process, the applicant must also provide copies of driving records, criminal clearances, law school character and fitness certification, and letters of recommendation.

In the past few years, approximately 30–40 percent of applicants are approved administratively simply on the review of the Affidavit of Personal History and comparison with official records. Many other applicants are approved administratively after an investigation by the Character and Fitness Department investigators.

Of the roughly 1,350 applications received each year, about 100 applicants are referred to District Committees for interviews following completion of the investigation. The District Committees are assembled and convened throughout the state, utilizing the contributions of approximately 130 volunteer lawyers. Members of the District Committees volunteer their time to interview applicants and to prepare written recommendations based upon those interviews.

The Standing Committee on Character and Fitness, a committee of 36 lawyers appointed by the president of the State Bar, reviews the recommendations of the District Committee. After review, the Standing Committee may agree with the District Committee recommendation, require additional investigation, or require a full hearing before

the Standing Committee. The final hearing may result in agreement or disagreement with the District Committee.

Each year, the Standing Committee holds between 30 and 40 evidentiary hearings (about three percent of the yearly applicants) to consider serious character and fitness issues that are discovered during the investigation. The hearing is trial-like: the Standing Committee acts as the fact-finding body, evidence is presented, sworn testimony is offered, a court reporter records testimony, and the applicant has a right to retain counsel. A volunteer lawyer (usually an associate member of the committee) is assigned the task of representing the interests of the State Bar at the hearing. The applicant has the burden of proof to show by clear and convincing evidence that he or she currently possesses the requisite character and fitness to practice law in this state. The State Bar does not approve or reject *any* applicant, but after investigation and hearing prepares a report and recommendation that is forwarded to the Board of Law Examiners for its consideration.

An applicant who receives an unfavorable recommendation from the Standing Committee may request a final hearing before the Board of Law Examiners. The Board of Law Examiners may also decide to conduct a review hearing on individuals that the Standing Committee has recommended for approval. The Board of Law Examiners’ determination on character and fitness is final.

What conduct triggers a character and fitness investigation? The Standing Committee on Character and Fitness has developed standards for conduct that lead to detailed investigation. Conduct meriting investigation includes:

- unlawful conduct (including criminal offenses)
- academic misconduct

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- making false statements, including omissions
- misconduct in employment
- acts involving dishonesty, fraud, deceit, or misrepresentation
- abuse of legal process
- neglect of financial responsibilities
- neglect of professional obligations
- violation of an order of a court
- 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 a license
- disciplinary actions by a lawyer (or other professional) disciplinary agency

There is no conduct that “automatically” disqualifies an applicant from obtaining character and fitness certification. Many people are surprised to learn that the most common reason for character and fitness denial is lack of candor to the committee, either by a false or misleading statement on the affidavit, or during the interview or hearing process, not some particular bad act. Indeed, the committee is particularly sensitive to the applicant’s ability to handle and resolve any past problems and candor relating to such problems. The types of conduct that most often result in ultimate denials are lack of candor, neglect of financial responsibilities, conduct during involvement in civil litigation, criminal convictions, and employment terminations.

Confidentiality is an essential element of the entire character and fitness process. Applicants are required to disclose information that by its very nature is adverse, embarrassing, and sometimes intimate. The only way to ensure that applicants will make a full and forthright disclosure of such information is to guarantee absolute confidentiality, both at the staff level and among the committees. Pursuant to Rule 15, the only way information can be disclosed regarding an applicant is with consent from the applicant or by order of the Supreme Court. Therefore, special care is taken not to discuss applicant information with persons not on the committee and to keep written materials containing

applicant information away from unauthorized persons.

The overwhelming majority of applicants who apply for admission to the State Bar of Michigan are approved for admission after the character and fitness process. However, the character and fitness process is designed to protect the public from individuals who do not possess the requisite character and fitness to practice law in this state. The system works well. Michigan is considered one of the leaders in the United States in its character and fitness process.

Michigan’s system works well for a number of reasons. First, and foremost, it works because lawyers from all over the state volunteer their time and efforts to serve on District Committees, the Standing Committee (chaired by Michael Leib of Southfield), and as State Bar counsel. The members of the District Committee and Standing Committee are comprised of practicing lawyers, law-

yers in administrative positions, and judges. They give hundreds of hours of their valuable time. Their law firm, employees, partners, and staff should be congratulated for allowing these members the ability to serve the Bar and the public. Lawyers who volunteer their time get little, if any, public recognition, but these contributions are the backbone of the character and fitness process. Second, the staff of the Character and Fitness Department at the State Bar, led by Diane Van Aken, work quietly and efficiently to process all applications in a highly professional and expedited manner. Finally, the system works because of the strong cooperation between the State Bar of Michigan and the Board of Law Examiners.

We take our responsibility to “champion character and fitness” very seriously. As always, I would love to hear from you any thoughts or observations about this important function. ◆