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Assessing Fitness of Future Lawyers – and Judges

By Michael Downey

In a *St. Louis Lawyer* focused on who will be future Missouri judges, it seems appropriate the ethics column should consider the standards and processes used to assess the character and fitness of applicants to the Missouri Bar. This column also discusses lawyers' obligations to assist with this process.

The Board of Law Examiners. Under Missouri Supreme Court Rule 8.02, the six-lawyer Board of Law Examiners has the power and authority to “determine eligibility for admission to the bar” and “provide for and conduct the bar examinations.”

This includes determining an applicant's character and fitness for admission to the Bar under Rule 8.02(a)(3).

The Board identifies ten eligibility requirements essential for admission. Two relate to cognitive and communications capacities, while eight relate to ethics and character. These eight are the abilities to:

- Conduct oneself with a high degree of honesty, integrity, and trustworthiness;
 - Comply with and respect the law and the Code of Professional Responsibility;
 - Diligently and reliably in fulfilling obligations to clients, attorneys, courts, and others;
 - Comply with deadlines and time constraints;
 - Avoid acts that exhibit disregard for the rights or welfare of others;
 - Exercise good judgment in conducting one's professional affairs;

- Demonstrate honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
- Conduct oneself professionally and in a manner that engenders respect for the
- law and the legal profession.

The Board has also identified conduct that may indicate an applicant lacks essential eligibility requirements. That conduct includes:

- Unlawful conduct;
- Failure to provide complete and accurate information or lack of candor in the application or investigation;
- Academic or other misconduct at an educational institution;
- Misconduct in employment;
- Acts involving dishonesty, fraud, deceit or misrepresentation;
- Financial irresponsibility;
- Lack of respect for the legal system, including abuse of legal process;
- A condition or disorder (including, but not limited to alcohol abuse, substance abuse, or a mental, emotional, or nervous disorder or condition) that currently impairs behavior, judgment, understanding, capacity to recognize reality, ability to function in school, work, or other important life activities, or ability to practice law in a competent and professional manner;
- Denial of an application in another jurisdiction on character and fitness grounds;

- Disciplinary action by a lawyer disciplinary agency or other professional agency of any jurisdiction; and
- Neglect of professional obligations.

An applicant has the burden of proving the relevant character and fitness. Candor in the application process is crucial. The Board warns that dishonesty or lack of candor during the application process is “the factor that is most likely to result in denial.”

Procedures for assessing character and fitness. To determine whether an applicant’s prior conduct supports admission, all applicants complete a very lengthy and frankly quite invasive application. Applicants are required – and expected – to disclose information that might otherwise be protected from disclosure, such as criminal convictions that have been sealed or expunged.

Submitting a thorough, candid written application completes most applicants’ involvement in the character and fitness assessment. In some instances, however, the Board seeks additional written information from applicants. An applicant may even be asked to appear in person before the Board. These hearings are non-adversarial fact-finding proceedings, but are conducted under oath and on the record.

The applicant may have counsel present at a hearing. I have assisted dozens of applicants on character and fitness issues, but in most instances do not attend the hearing. Active participation of counsel, live testimony of witnesses, and introduction of lots of evidence may impede the

ability of the Board to assess the applicant’s character and fitness.

A character and fitness is subject to Supreme Court Review. Yet experience and anecdote suggest the Board receives considerable deference, such that the applicant would face a serious challenge in convincing the Court to overturn the Board’s decision. The availability of Supreme Court review contrast with absence of judicial review over certain other board actions, such as the grading of Bar examinations. *See Caranchini v. Missouri Board of Law Examiners*, WD77178 (Mo. App. W.D. Nov. 12, 2014).

Participation by Missouri Lawyers. Lawyers are expected collectively to assist the character and fitness process. Applicants to the Missouri Bar are asked to identify lawyers who can assess their fitness, and Missouri Supreme Court Rule 4-8.1 requires lawyers to provide candid assessments of Bar applicants. Under Rule 4-8.1, a lawyer shall not “knowingly make a false statement of material factor” or knowingly “fail to disclose a fact necessary to correct a misapprehension” to the Missouri Board of Law Examiners. Lawyers are also required to “respond to a lawful demand for information” related to a Bar application.

Finally, the Board emphasizes the investigations – which could take six months or longer – are initiated when an application is received. Therefore, I commonly advise applicants who believe some issue may cause them to receive additional scrutiny to submit their application as early as possible. This maximizes the chances the Board can fully vet the issue without delaying the applicant’s admission to the Bar.

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