

Beyond the Bar Exam: Counseling Students about Bar Admissions

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As the expense of a law school education continues to spiral, the stakes for passing the bar exam and obtaining a smooth and expeditious entry into the legal profession continue to mount—with law school career services professionals frequently on the front lines counseling students about bar exam applications.

This article provides an overview of some of the hot topics in bar exam applications, a look at the law school's role in bar exam applications, and ideas for bar exam programming at your law school.

Moral Character and Fitness Review

In general, admission to state bars is premised on two requirements: (1) establishing competence, and (2) a character and fitness review of the applicant for a law license. The competence prong is generally met through the completion of an undergraduate degree, a JD from an accredited law school, and a passing score on the bar exam and professional responsibility exam (typically, the MPRE). Not surprisingly, it is the more subjective character and fitness review that has been, and continues to be, a hot topic in the legal profession. Delays or denials of bar admission due to character and fitness issues can have devastating psychological and financial effects, including job termination, loss of time and income to obtain counsel and attend hearings or litigation, and the loss of privacy.

Students need to be aware that bar exam applications can be very time-intensive, often involving detailed personal questionnaires requiring such items as driving histories from all states where the

applicant has lived, lists of residences for the past ten years, and reference forms from virtually all past employers. Career counselors must also stress the importance of meeting all bar exam application deadlines because a missed application deadline typically means having to wait until the next bar exam administration—a consequence that can have a significant impact on a career. Moreover, since lack of disclosure on a bar application can also be the basis for a denial of admission, career services professionals need to counsel students to include all relevant information.

Because law students take bar exams in different states and/or in multiple jurisdictions, it is imperative that career services professionals remain current on the various bar exam authorities' rules and standards. Also, to the extent that any inquiries arise or result in a hearing, career counselors need to be aware of the bar exam authorities' processes for conditional admissions and hearings and appeals.

The following are some examples of relevant character and fitness conduct bar exam authorities regularly inquire about:

Unlawful conduct—A prior felony conviction is an automatic bar to admission in many states and a rebuttable presumption of lack of good moral character in others. It is in part for this reason that law school admission applications inquire about past convictions. Beyond a felony conviction, however, bar exam authorities also ask about other conduct such as motor vehicle violations, arrests, deferred adjudications, probation, and whether the applicant has been bonded.

Academic misconduct—Academic misconduct generally includes plagiarism, being placed on

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any form of suspension or probation, or being subject to any disciplinary proceeding at any post-secondary educational institution. Some states seek explanation if an applicant has had any extended absences from their enrolled schools (sometimes including all absences of more than ten consecutive days). Generally, a certificate from the dean of the law school that attests to the applicant's academic conduct is requested with bar applications.

Neglect of financial responsibilities — Many bar exam authorities are specifically concerned about whether students are in arrears in payments on student loans or have defaulted on loans. For example, some states will table a bar application until an applicant who has defaulted on student loans has made six months of consecutive and uninterrupted payments pursuant to an agreement with the lender. Many other states also require applicants to be current with any child support obligations.

Evidence of mental or emotional instability — According to University of Connecticut School of Law Professor Jon Bauer, who has researched bar exam authorities' mental health screenings, it was not until the 1970s and 1980s that mental health became a distinct subject of inquiry in bar applications. In our home state of Connecticut, the bar examining committee has reintroduced depression as one of the conditions listed on the mental health section of the bar application. That is, applicants are asked if, in the past ten years, they have been treated for, among other conditions, major depressive mood disorders. Many argue that this will be a disincentive for people to seek treatment.

Evidence of drug or alcohol dependency — Questions regarding substance abuse may include inquiries about any past treatments or counseling for drug or alcohol dependency. These questions can be broadly phrased and go back many years. Some hearing processes may require that applicants submit to substance abuse evaluation by a professional selected by the bar exam authority.

Relevant Examples

As one would imagine, character and fitness questions have led to disputes both in the court systems and at the bar exam authority hearing level. Here are some examples of how these issues have been addressed:

How You Say It — One bar exam authority found that an applicant lacked good moral character, and denied his bar application, not on the basis of failure to disclose psychological counseling (he had done so) but because he had additionally commented on his application that "this stuff is really none of your business as it does not affect my ability to practice law." *Texas State Bd. of Law Examiners v. Malloy*, 793 S.W.2d 753 (1990). The courts overturned the bar exam authority's decision, finding that what the examiners considered as flippant language in the applicant's answers is not substantial evidence of a lack of good moral character.

Who You Live With — In another case, an applicant was found to lack good moral character merely because she and a man to whom she was not married lived together. *Cord v. Gibb*, 219 Va. 1019 (1979). Such an arrangement was found to "lower the public's opinion of the Bar as a whole." *Id.* at 1022. The Virginia Supreme Court had to intervene to overturn the decision, holding that "[w]hile [the applicant's] living arrangement may be unorthodox and unacceptable to some segments of society, this conduct bears no rational connection to her fitness to practice law." *Id.*

Counseling — Another applicant had her bar admission delayed for over a year due to questions and delays surrounding her responses to mental health inquiries on the bar application. The applicant had disclosed that she had been hospitalized after high school for two weeks for depression as a result of various deaths and trauma in her family. She had subsequently sought therapy in college after she had been raped and, later on, to, as she stated, "confront issues I was unable to deal with while I was younger." These disclosures led the bar exam authority to request and review the applicant's medical records from her hospital stay,

contact all her current and prior therapists for detailed information regarding diagnoses, duration of treatment, and prognosis, and to request a list of all medications the applicant had taken since her hospital stay after high school. Bauer, Jon. "The Character of the Questions and the Fitness of the Process," 49 UCLA L. Rev 93, 116-119 (2001).

The Law School Players Involved

Historically, the bar exam application has fallen within the purview of the registrar's office at law schools. The entire law school community has a significant role to play, however, and a vested interest in the accomplishment of the ultimate goal of bar admission. In addition to the registrar, admissions, deans of academic and student services, faculty, and career services need to be valued members of the team.

The admissions office staff is the first to meet prospective law students and review their applications for admission. Although law school applications contain questions about conviction of criminal offenses or other charges, they do not approach the level of scrutiny that is routinely part of the bar application. Occasionally, graduating law students will find themselves in the position of having to amend their application to law school in order to ensure its consistency with their bar application, due to the differing standards of disclosure for each.

Law school deans of academic and student affairs, as well as faculty, are frequently approached by graduating law students to complete a personal reference, which often includes questions requiring in-depth knowledge of the individual in conjunction with having known them for a minimum length of time. Additionally, some bar exam applications, such as in New York, require the reference to be an admitted attorney and member in good standing of a bar. It is essential that members of the law school community are aware of the important function they serve within the larger picture, and coordinate their efforts in support of the common goal of successful bar admission for graduates.

Career services professionals are well situated to play an integral role in the bar admissions application process. Counseling law students about their career strategies over the course of their law school experience affords career services professionals the unique opportunity to educate law students about bar application requirements at an early stage in their legal education. As rising 2L and 3L students narrow the fields of law that they would like to pursue, they also develop a short list of the geographical areas where they would like to practice. Career counselors can leverage this opportunity to initiate a discussion around planning for the bar admissions application process. Initiating counseling for the bar exam application early in a student's law school career, perhaps even in the 1L year, not only alerts students to the time-consuming nature of this process but also educates them about behavior that could potentially lead to difficulty with bar examiners, such as excessive or delinquent credit card debt during law school.

Programming

Many law schools invite the director of the state bar examining committee to address graduating students in their last semester about "everything they need to know about bar admission." At a minimum, this type of program would probably be more useful if it were conducted in the fall, before the flurry of activity that accompanies graduation. This would also accommodate December graduates, who may be left to their own devices currently.

A more optimal approach may be to initiate programming open to all law students commencing as early as second semester of the 1L year. A program could be conducted by the career services and registrar's offices, in collaboration with interested representatives from the rest of the law school community. This approach could encourage a valuable dialogue among law school administrators and reinforce the benefits of having interested parties disseminating consistent and current information. This program would not duplicate the fall "nuts and bolts" program featuring the di-

rector of the state bar examining committee but would focus on facilitating the bar admission application process by informing, educating, and influencing behavior around the bar admission application process. Program content would include: (1) a high-level overview of requirements and deadlines; (2) an emphasis on the importance of full disclosure and consistency; (3) trained subject matter experts on bar admission-related questions; (4) examples of problem areas (e.g., credit card debt); and (5) specific suggested action items (e.g., keeping a journal of employers in law school, identifying potential references and getting to know them early on, and meeting with a career counselor for a preliminary bar admission planning session).

Conclusion

A law school may have admitted talented and motivated law students and provided them with the best possible legal education, but the role of the school is not complete without assisting its graduating students to successfully secure admission to the bar. Career services should continue to collaborate with the entire law school community to facilitate the bar admission application process and effectively deliver valuable and necessary information and resources for navigating this complex area to its soon-to-be alumni.

Resources

Comprehensive Guide to Bar Admission Requirements

2006, National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admission to the Bar (2006). (This guide also includes the ABA's, NCBE's, and AALS's "Code of Recommended Standards for Bar Examiners.") Available free online at <http://www.abanet.org/legaled/baradmissions/bar.html/>.

Bauer, Jon, "The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act," 49 UCLA L. Rev. 93 (2001).

A Model for Dialogue: Bar Examiners and Law Schools, Bar Admissions Committee, ABA Section of Legal Education and Admissions to the Bar (1998, updated 2002). Available online at http://www.abanet.org/legaled/publications/onlinepubs/model_for_dialogue.html.

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