

Professionalism
What does it take to satisfy Character &
Fitness requirements?
By Lori E. Shaw

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The bar exam—the final hurdle on the way to practice. Or maybe not. Each year more than a few law grads are devastated to learn that for reasons having nothing to do with the bar exam they will not be permitted to practice law. Character, not competence, is the issue.

The good news is that there are things these grads could have done, things that *you* can do while you are in law school, to overcome past mistakes. Every jurisdiction requires bar applicants to meet the burden of showing they are of good moral character and otherwise fit to practice law. Are you ready to meet that burden?

The first step toward satisfying the Character and Fitness requirement is understanding what is expected of you. Whether you are a first-year student just walking through your law school's front door or in your final year, about to head out that door, you need to be able to answer two questions:

1. Is there anything in my past (or my present) that might bring my character and fitness into question?
2. If my character is in question, what can I do now to begin to rehabilitate my reputation?

The top four areas of concern for most bar examiners are existence of a criminal record, untreated mental illness and substance abuse, lack of candor, and financial irresponsibility.

Criminal record. Grads with a criminal record are typically not terribly surprised when the bar takes a close look at their character. What is surprising is how many of these grads have failed to be proactive about rebuilding their reputations. In many cases, it's possible to overcome a criminal record, but you may face an uphill climb.

Actions speak so much louder than words. When you are standing before the Character and Fitness Committee, you will want evidence to support your claim that you are a good citizen. If you were building your case for admission today, what evidence would you point to?

If you've had a brush with the law, it's important that you do more than simply stick to the straight and narrow. You need to actively seek to make a difference in the world. Volunteer whenever you can, whether it's doing research for Legal Aid or serving in a soup kitchen. Not only will service make you feel better about yourself, but it may well provide you with positive references from respected members of the community.

Untreated mental illness and substance abuse. The most common mistake among grads suffering from mental and substance abuse issues is the failure to get help. In recent years bar examiners have come to accept mental illness as exactly that—illness. There's an excellent chance that your state will not even inquire about mild depression, anxiety, and so on.

But without treatment, mild illnesses can become severe, and if you do suffer from an illness that may impair your ability to practice, the first question you're likely to hear is, "Tell us about your treatment." Remember that treatment is viewed as a plus, not a minus. Taking responsibility for your life evidences strength of character.

And you're likely to hear exactly the same question if there's even a hint of a substance abuse problem in your record. Substance abuse is viewed by the bar as an extremely serious issue. Bar examiners will not respond to that DUI with a wink and a nod.

Make sure that you are assessed by a trained professional. If you're found to have a problem, seek treatment and counseling. Work with your state's Lawyer Assistance Program. Seeking help is the smartest thing you can do for yourself and your career.

Lack of candor. Many grads are caught by surprise when they are called out by the bar for lack of candor. Bar officials will double-check everything their investigators find against your law school and bar applications, and if something significant is missing from either, you'll find yourself in a world of trouble.

Do you have any doubts about the accuracy of your law school application? If you suspect that you omitted any required information, ask for a copy, and if you did omit something, notify your law school as soon as possible. If there are consequences—and there may or may not be—it's better to face them now.

Also, keep in mind that many law schools impose a continuing duty to report upon their students. That public intoxication conviction that you picked up last summer should be reported. This is one instance in which the truth really shall set you free.

Financial irresponsibility. The final area of concern, financial irresponsibility, seems shrouded in mystery to many law students. They don't know what can get them into trouble and what they can do to get out of trouble. To help solve the mystery, I queried bar examiners from across the nation about what matters to them when it comes to financial issues.

The first thing you need to understand is why bar examiners are so concerned about your financial history. In the words of one bar examiner, "I think the concern ultimately centers around the issue of protection of the public. Before admitting someone to the bar, I believe that the members of Character and Fitness Committees want to be sure that the financial pressures on a new lawyer will not be such that the lawyer will be tempted to take advantage of a client, for example. Also, a poor financial record can be indicative of a lack of financial responsibility."

Among the items that bar examiners will review are your credit reports, income tax returns, and records relating to any civil litigation or criminal prosecution you've been involved in. If an applicant has ever failed to live up to a financial obligation, it will likely be discovered.

One item you should have in hand before you even apply for the bar is your own credit history. Credit histories can be wrong. You do not want to find out after the bar has already red-flagged your file that you were the victim of an inaccurate credit report.

Past-due debts, bankruptcies, failure to file or pay taxes, failure to pay child support, and bad checks are among the items that may raise a red flag. If you want to learn more about this issue, two Florida cases, *Florida Board of Bar Examiners re: J.A.F.*, 587 So. 2d 1309 (Fla. 1991), and *Florida Board of Bar Examiners re: M.A.R.*, 755 So. 2d 89 (Fla. 2000), illustrate the type of financial irresponsibility that can result in denial of admission.

Several bar examiners stressed to me that the amount of debt is not the most important thing. "It is not the debt itself that causes an applicant to have problems but how the applicant incurred, dealt with, and resolved the debt," noted one. For example, bar examiners typically take a far dimmer view of someone whose bankruptcy resulted from massive credit card debts than from illness, divorce, or a failed business.

No matter how you acquired your debt, the worst thing that you can do is nothing. As one examiner explained, "In evaluating financial irresponsibility, we do not require applicants to be current with all creditors, and we do not serve as a collection agency, but we do require honesty in dealing with creditors and do not look favorably on attempts to deceive or hide from them."

If you owe someone money, you need to set up a payment plan. Work with a reputable credit counseling service to develop your plan. Every month, pay something, even if it is not as much as your creditor would like, and even if your creditor is not actively seeking payment at the moment. And don't forget to save copies of any cancelled checks or other receipts.

You can also provide evidence of responsibility by living frugally now. Your current lifestyle choices are fair game. Have you cut out everything from your budget that is not an absolute necessity?

One examiner shared the tale of an applicant who felt it unnecessary to attempt to pay a debt of several years because the creditor had seemingly given up trying to collect. What do you think the ruling on his application was? He could have changed so much by paying at least a few dollars a month while in law school.

Remember, rehabilitating your reputation takes time. The sooner you begin paying your debts, the sooner you are likely to be admitted to the bar.

Be proactive. Whatever issues you face, don't be afraid to get the help you need to make the right choices. Your law school is a great place to start. Share your concerns with the bar passage director or dean of students. They can help you find answers or direct you to those who can.

And make a point of working with your local bar examiners. They are not the enemy. If you are unclear as to a requirement, confused about a procedure, or simply worried about where you are likely to stand, contact them. Some states, like Indiana, even provide preliminary Character and Fitness reviews for anyone admitted into law school.

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