

## **SUMMARY OF CHARACTER AND FITNESS PROCESS IN OHIO**

### **Authority over Bar Admissions**

The Ohio Constitution grants the Supreme Court of Ohio exclusive jurisdiction to regulate admission to the practice of law in Ohio. Pursuant to this grant of authority, the Court has promulgated Rule I of the Rules for the Government of the Bar, “Admission to the Practice of Law.” This rule outlines the requirements for admission and the procedure for seeking admission.

### **General Admission Requirements**

To be admitted to the practice of law in Ohio, an applicant must:

- 1) be at least 21 years old;
- 2) have a bachelor’s degree from an accredited college or university;
- 3) have a law degree from an ABA approved law school;
- 4) be approved as to character, fitness, and moral qualifications;
- 5) pass the Ohio bar examination;
- 6) pass the Multistate Professional Responsibility Examination; and
- 7) take an oath of office.

### **Importance of Character and Fitness Approval**

Approval of an applicant’s character and fitness is one of the most important components of the admissions process. No one may take the Ohio bar examination without **first** receiving character and fitness approval. The Supreme Court does not waive this requirement.

### **Application Process**

Applying for admission in Ohio is a two-step process. First, in the second year of law school, an applicant must file an Application to Register as a Candidate for Admission (Application to Register). This is a preliminary application that includes a character questionnaire providing background information regarding the applicant. An Application to Register triggers an investigation of the applicant’s character, fitness, and moral qualifications to practice.

Second, in the third year of law school, the applicant must file an Application to Take the Bar Examination (Exam Application). The Exam Application signals the applicant’s intent to sit for a particular bar exam. It also provides updated character and fitness information covering the period of time following the filing of an Application to Register.

## **Character and Fitness Review Process**

Upon its receipt in the Admissions Office, a completed Application to Register is sent to the National Conference of Bar Examiners (NCBE) in Madison, Wisconsin. The NCBE verifies background information provided in the application, contacts the applicant's references, conducts police checks, provides additional background investigation, and issues a report.

The Application to Register and the NCBE report are then sent to and reviewed by the Admissions Committee of a local bar association. At least two members of the Admissions Committee conduct a personal interview of the applicant. The Admissions Committee may conduct additional investigation before making a recommendation regarding the applicant's character and fitness.

If an Admissions Committee recommends that an applicant **not** be approved or be approved **with qualifications**, the applicant may appeal to the Board of Commissioners on Character and Fitness (Board), which consists of 12 attorneys appointed by the Court—one from each appellate district—to oversee character and fitness matters. If the applicant decides not to appeal an adverse Admissions Committee recommendation, the application is considered withdrawn. If the applicant files an appeal with the Board, a three-member panel is appointed to hold a non-adversarial, *de novo* hearing. The applicant, the applicant's attorney, if any, and the Admissions Committee participate as parties to the hearing.

After a hearing, the full Board votes on whether to approve the applicant. The Board may either approve the applicant or recommend disapproval with or without an opportunity to reapply. If the Board recommends that the applicant not be approved, the applicant is entitled to an automatic review on the record before the Supreme Court. The Court makes the ultimate decision regarding whether an applicant will be disapproved on character and fitness grounds.

## ***Sua Sponte* Investigations**

The Board has authority to conduct character and fitness investigations *sua sponte*. Under this authority, the Board sometimes determines that a hearing should be held even though an Admissions Committee has recommended approval of an applicant. This might happen, for example, when it appears that the Admissions Committee did not thoroughly investigate adverse information regarding an applicant, due to a lack of Admissions Committee resources, unavailability of information to the Admissions Committee, or failure of the applicant to report the information in a timely manner.

## **Standard for Determining Character and Fitness**

An applicant may be approved for admission if the applicant's record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them **and** demonstrates that the applicant satisfies the essential eligibility requirements for the practice of law as defined by the Board. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for disapproval of the applicant.

## **Factors Considered in Making Character and Fitness Determinations**

Before making a recommendation about an applicant's character, fitness, and moral qualifications, an Admissions Committee or the Board considers the following factors:

- 1) commission or conviction of a crime;
- 2) evidence of an existing and untreated chemical (drug or alcohol) dependency;
- 3) commission of an act constituting the unauthorized practice of law;
- 4) violation of the honor code of the applicant's law school or any other academic misconduct;
- 5) evidence of a mental or psychological disorder that in any affects or, if untreated, could affect the applicant's ability to practice law in a competent and professional manner;
- 6) a pattern of disregard of the laws of Ohio, another state, or the United States;
- 7) failure to provide complete and accurate information concerning the applicant's past;
- 8) false statements, including omissions;
- 9) acts involving dishonesty, fraud, deceit, or misrepresentation;
- 10) abuse of legal process;
- 11) neglect of financial responsibilities;
- 12) neglect of professional obligations;
- 13) violation of an order of a court;
- 14) denial of admission to the bar in another jurisdiction on character and fitness grounds; and
- 15) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

## **Weight and Significance Given to Prior Conduct**

The review of an applicant focuses on the applicant's **present** character, fitness, and moral qualifications. The following factors are considered in assigning weight and significance to an applicant's prior conduct:

- 1) age of the applicant at the time of the conduct;
- 2) recency of the conduct;
- 3) reliability of the information concerning the conduct;
- 4) seriousness of the conduct;
- 5) factors underlying the conduct;
- 6) cumulative effect of the conduct;
- 7) evidence of rehabilitation;
- 8) positive social contributions of the applicant since the conduct;
- 9) candor of the applicant in the admissions process; and
- 10) materiality of any omissions or misrepresentations.

## **Factors that May Not Be Considered**

In making a character and fitness determination, the Admissions Committee or the Board may not consider factors that do not directly bear a reasonable relationship to the practice of law. These impermissible factors include, but are not limited to, the following:

- 1) age;
- 2) sex;
- 3) race;
- 4) color;
- 5) national origin;
- 6) religion;
- 7) disability, provided that the applicant, though disabled, is able to satisfy the essential eligibility requirements for the practice of law.

## **Burden of Proof**

The applicant has the burden to prove by clear and convincing evidence that the applicant possesses the requisite character, fitness, and moral qualifications for admission. An applicant's failure to provide requested information, including information regarding expungements and juvenile court proceedings [see *In re Application of Watson (1987)*, 31 Ohio St. 3d 220, at 221], or otherwise to cooperate in the proceedings before an Admissions Committee or the Board may be grounds for a recommendation of disapproval.

## **Special Provisions for Applicants with Felony Records**

There is no *per se* bar to admission for applicants with felony records. However, an applicant who has a felony record must prove full and complete rehabilitation and satisfy special temporal and substantive conditions. The applicant is also subject to additional scrutiny, including a mandatory review by the Board, even if a local Admissions Committee has recommended an unqualified approval of the applicant. Applicants who have been convicted of the most serious kinds of felonies—aggravated murder, murder, or any first or second degree felony under Ohio law—must undergo yet another review by, and receive approval from, the Supreme Court itself.

## **Most Common Reasons for Denial**

The initial reasons that an Admissions Committee disapproves, or conducts an additional character and fitness investigation of, an applicant might relate to any of a number of issues regarding the applicant's background. These could include, for example, a criminal record, a record of financial irresponsibility, or an untreated alcohol problem. However, the most common reason the Court has disapproved applicants on character and fitness grounds has related to the applicants' behavior **during** the character and fitness review process. The vast majority of disapprovals are based upon applicants' failure to disclose relevant information, either on applications or during character and fitness investigations; giving false information or misrepresenting the facts; or other dishonesty or lack of candor during the character and fitness

review process. It is essential that all applicants be completely honest and forthright during the bar admissions process.

## **Confidentiality**

Under the admissions rule, all information, proceedings, and documents relating to the character and fitness investigation of an applicant are considered confidential, with limited exceptions. Disclosure of character and fitness information is permitted:

- 1) to further any character and fitness investigation of the applicant;
- 2) in connection with post-admission investigations of the applicant under the Court's attorney disciplinary rule;
- 3) pursuant to a written release of the applicant in connection with the applicant's application for admission in another jurisdiction;
- 4) to report to the appropriate authority any violations of law that are discovered during the character and fitness investigation of an applicant.

An applicant's character and fitness information generally becomes **public** information for those few applicants whose applications reach the Supreme Court level for a character and fitness determination. When the Board votes to disapprove an applicant on character and fitness grounds, it prepares a report to the Court, with findings of fact and its recommendation of disapproval. This report is filed with the Clerk of the Court and is considered public. The Board's record of the proceedings is also filed with the Clerk, but it is filed under seal and remains under seal for a period of 60 days. At the end of this time frame, the record generally becomes public as well. However, in certain cases there may be circumstances that weigh against releasing all of the character and fitness information in the applicant's record (e.g., if the case includes sensitive medical information about the applicant or private matters involving a non-applicant). Therefore, during the 60-day time frame, the Court, either on motion of the applicant or *sua sponte*, may order that the entire record or a portion of the record remain confidential and under seal.

## **Importance of Early Registration**

A thoughtful and complete character and fitness review takes a significant amount of time. For all applicants, this time generally involves four to eight months to cover administrative work, the NCBE's investigation and report, an Admissions Committee review, and a personal interview of the applicant. The timeframe is even longer—sometimes well over a year or two—for those applicants whose registrations involve complicated issues, *sua sponte* investigations, or hearings by the Board or the Court. Given the substantial time requirements, and because applicants must receive character and fitness approval before they may sit for the bar exam, it is important that applicants comply with the Court's registration deadline in the second year of law school. In most instances, registering by this deadline will allow sufficient time for a thorough investigation (and, if necessary, appeal of adverse decisions), reducing the applicant's risk of not receiving character and fitness approval in time to take the bar exam of the applicant's choosing.

Although most registrations occur in the second year of law school, an applicant may register **before** the second year of law school, as long as the applicant has actually begun law school. Applicants with serious character and fitness concerns (e.g., felony convictions, untreated drug and alcohol problems) should consider registering in their first year of law school. An early registration builds in extra time for the character and fitness review process. It could also result in an earlier character and fitness determination for the applicant. An applicant who files early and is then disapproved on character and fitness grounds may take advantage of the early decision to begin or continue work on rehabilitation, improving the applicant's prospects for an eventual approval before law school graduation. An applicant who files early and is both disapproved and barred from ever reapplying will also benefit from an early decision, because that applicant will know his or her fate before investing in three years of law school.