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Before paying for law school, make sure ethics test isn't a barrier

What makes law a profession and not a business? One difference that snuck up on me after I had finished law school was the background check — also known as the character and fitness review. Maybe I was told about this at some point during law school, but if so, I didn't remember (I passed, by the way).

Yes, in addition to graduating from law school and passing the bar exam, before being allowed to practice law, lawyers must prove they are of good moral character and general fitness for the practice of law. And this requirement has become more boldly publicized and transparent over the years.

These days, it is wise for anyone considering law as a career, prior to investing those tuition dollars, to acquaint themselves with the character and fitness requirements of the state in which they anticipate practicing. In Illinois, that means Supreme Court Rule 708.

That policy explains that the Illinois Committee on Character and Fitness is made up of lawyers drawn from each of the five judicial districts in the state and appointed by the Supreme Court. The committee reviews an applicant's record to determine whether he or she meets the essential eligibility requirements and justifies the trust of clients, adversaries, courts and others and then (if all goes well) gives a positive recommendation to the Board of Bar Admissions.

Relevant to the committee's determination will be evidence of a candidate's dishonesty, unlawful conduct, academic misconduct, neglect of financial responsibilities, misconduct in employment, violations of court orders or drug/alcohol issues. Given the tremendous financial and emotional investment at stake for students contemplating law school, it is imperative that candidates be

aware of these rules prior to entering the legal academy.

Accordingly, American Bar Association Accreditation Standard 504 provides that law schools "advise each applicant that there are character, fitness and other qualifications for admission to the bar and encourage the applicant, prior to matriculation, to determine what those requirements are in the states in which the applicant intends to practice."

A recent Consultant's Memo 3 to Standard 504 clarifies the notification process for all concerned, so it shouldn't come as an unwelcome surprise after a candidate has invested years and tuition in law school.

According to the memo, ABA Accreditation Standard 504 requires law schools to follow five key components to comply with the mandated character and fitness notice requirements.

The first clarifies whom the schools need to notify. It's the applicant, as well as new students, as soon after matriculation as possible. Second, the timing of the initial notification must be before the applicant matriculates. Third, the content of the notice must give the applicant a distinct understanding as to what is required in order to merit a truthful, accurate and complete disclosure of conduct that may be relevant to one's fitness to practice law.

Applicants should be referred to the intended state's character and fitness rules and should be advised that a failure to truthfully respond to this portion of the notification process may result in a penalty far worse than a penalty warranted by the actual offense had it been disclosed at the beginning of the process.

The fourth component clarifies that the notification should be prominently displayed on the law school's website or in whatever manner the law school uses for transmitting important communications. Finally, the law school

PROFESSIONALISM ON SHUFFLE

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As Executive Director of the Illinois Supreme Court Commission on Professionalism, Jayne Rizzo Reardon promotes professionalism among lawyers and judges as a guiding principle for living the justice we are called to serve.

must make it clear to the applicant that it is the applicant's obligation to research the character and fitness requirements of the jurisdiction in which they intend to practice.

Importantly, the memo identifies "safe harbor" notice language that law schools may use to communicate to applicants — and new matriculants — with

certainty that the school has met the character and fitness notice obligations of Standard 504.

The ABA safe harbor language (i) impresses on applicants the extent and subject areas of personal disclosures that will be required, (ii) gives assurance that in many instances reporting of relevant past conduct has not resulted in denial or delay of bar admission in various states (which is not to predict that it won't in a particular instance going forward); and (iii) cautions applicants that a failure to report responsive conduct in itself may be deemed a violation that may be more detrimental to bar admission prospects than the undisclosed or incorrectly disclosed conduct.

A quick view of Illinois law school websites discloses that all of the sites direct the applicant to familiarize themselves with the applicable fitness and character rules of the jurisdiction in which they intend to practice as part of the application process.

Noteworthy is the website of the Loyola University Chicago School of Law which, in addition, advises the applicant that before a student can register for the bar, the candidate is required to submit "an affidavit of good character and fitness" to the law school dean.

It further advises the applicant of the types of questions that they will be asked by the Character and Fitness Committee and that any serious discrepancies between the law school application and the character and fitness questionnaire "may result in potentially serious consequences both at the law school and at the bar application stage." Kudos to Loyola for clarity of messaging.

As a self-policing profession dedicated to upholding the law, it is imperative that we attract only those individuals deserving of the privilege to practice law. Having character and fitness requirements in place can only help.

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