

LECTURE PRESENTED AT
ST. THOMAS UNIVERSITY SCHOOL OF LAW
MIAMI, FLORIDA
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**THE FLORIDA BOARD OF BAR EXAMINERS' CHARACTER AND FITNESS
INVESTIGATION; YOU ARE ABOUT TO ENTER THE NO SPIN ZONE**

By Richard B. Marx¹

You are in law school now and you are beginning to fill out your Bar application, but you are stuck on some embarrassing questions concerning your past. How do you answer these questions? Part of the admission process requires you to demonstrate "proof of good moral character."² You may have side stepped these issues on your law school application or maybe even your college application because you may have been afraid that if you disclosed them you would not be admitted. Perhaps you have a misdemeanor conviction or you are in arrears on several credit cards and loans. Perhaps you have more traffic violations than you can count or remember, and your driver license has been suspended several times. You might be thinking that nobody will find out and the best course of action is not to disclose it because you would be opening up Pandora's box. Do not fool yourself! The Board's investigations into character and fitness is extremely thorough. In conducting its investigation, the Board uses an extensive program of contacting primary and secondary sources. An average of thirty-five to forty written inquiries are mailed out for each application. References, former employers, and secondary sources listed by the first two sources are among the

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² Fla. Bar Admiss. R. 2-12.

individuals contacted. Follow-up contacts by letter or phone are routinely done for sources who fail to respond or who express a reluctance to respond fully. An absolute privilege is extended to communications from individuals solicited by the Board regarding the character and fitness of a Bar applicant.³

You must advise the Florida Board of Bar Examiners of your past transgressions and you have to be completely candid. You must err on the side of over disclosure.⁴ The slightest hint on your application that you are not being truthful or that an answer lacks candor will only further delay the Board's investigative process and could set you up for a rude awakening when you are called in for an investigative hearing and possibly the filing of specifications.⁵

Once you have made full disclosure of your past transgressions, the Board will send you a series of letters requesting further clarification. Being evasive in these responses will only generate more questions and assure you an invitation to an investigative hearing. In determining whether to pursue further inquiry the Board will determine whether your conduct can be considered disqualifying. Fla. Bar Admiss. R., 3-11 provides that,

Disqualifying Conduct. A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be treated as cause for further inquiry before the Board

³ Thomas A. Pobjecky, THE FLORIDA BOARD OF BAR EXAMINERS: THE CONSTITUTIONAL SAFEGUARD, 18 Nova L. Rev. 1313, 1322 (Winter 1994)

⁴ The Supreme Court has repeatedly stated that in determining good moral character, "no moral character qualification for Bar membership is more important than truthfulness and candor...." Florida Board of Bar Examiners re L.M.S., 647 So. 2d 838, 839 (Fla. 1994)(citations omitted).

⁵ Specifications are a formal charging document filed in those cases where the Board has cause to believe that the applicant or registrant is not qualified for Admission to The Florida Bar. See Bar Admissions Rule 3-23.

recommends whether the applicant or registrant possesses the character and fitness to practice law:

- (a) unlawful conduct;
- (b) academic misconduct;
- (c) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the Board;
- (d) misconduct in employment;
- (e) acts involving dishonesty, fraud, deceit or misrepresentation;
- (f) abuse of legal process;
- (g) financial irresponsibility;
- (h) neglect of professional obligations;
- (i) violation of an order of a court;
- (j) evidence of mental or emotional instability;
- (k) evidence of drug or alcohol dependency;
- (l) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (n) any other conduct which reflects adversely upon the character or fitness of the applicant.

In determining whether the applicant has proven good moral character the Board and the court are guided by Fla. Bar Admiss. R. 3-12, which provides,

Determination of Present Character. The Board shall determine whether the applicant or registrant has provided satisfactory evidence of good moral character. In addition to other factors in making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

- (a) age at the time of the conduct;
- (b) recency of the conduct;
- (c) reliability of the information concerning the conduct;
- (d) seriousness of the conduct;
- (e) factors underlying the conduct;
- (f) cumulative effect of the conduct or information;
- (g) evidence of rehabilitation;
- (h) positive social contributions since the conduct;
- (i) candor in the admissions process;
- (j) materiality of any omissions or misrepresentations.

The investigative hearing is a serious matter, which should not be treated lightly.

It will not be a pleasant experience. You should not attend the investigative hearing

unrepresented, and if you do you should at least consult an attorney who has experience in licensing work, particularly with the Florida Board of Bar Examiners.

The following case illustrates the pitfalls of not being totally candid. Steve⁶ enjoyed a wild party life while he was in college and as a result he accumulated two DUI convictions and a DUI arrest that was reduced to a violation of the open container law. Steve never disclosed the DUI convictions on his law school application because he thought that if he mentioned them he would not be admitted. The gravity of this omission began to sink in when he started to fill out the Florida Bar Application. He came to us for advice on completing the Bar Application. The first thing we told him to do was to amend his law school application to disclose the DUI convictions.⁷ Since it was obvious that Steve had a problem with alcohol, we also referred him to Florida Lawyers Assistance, Inc.⁸, and he entered into a rehabilitation contract. We also got him into a program of recovery through the twelve steps of Alcoholic Anonymous. By getting Steve into a program of recovery we were able to demonstrate rehabilitation pursuant to Fla. Bar Admiss. R. 3-13.

Steve always put a positive "spin" on his past misconduct even if it meant manipulating the truth and not being forthright even with his own attorneys. Steve told us that he had two DUI convictions and a conviction for open container. During the investigative hearing the panel asked him what the reason was for the police stopping him for the incident involving the open container. He replied that he was stopped because the

⁶ This was a case handled by the Law Offices of Richard B. Marx & Associates. Steve is a fictitious name to protect the client's privacy.

⁷ The law school application can be amended at any time, even after graduation.

⁸ Florida Lawyers Assistance, Inc. (FLA) is an arm of the Supreme Court which provides referrals and monitoring for law students, lawyers, and judges who suffer from alcohol abuse, substance abuse and depression. Through its rehabilitation contract FLA is able to document recovery.

factors including unimpeachable character and moral standing in the community, good reputation for professional ability, where applicable; lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding; restitution of funds or property, where applicable; and "positive action" such as a person's occupation, religion, or community or civic service. The rehabilitation rule is clear: "Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society." See Fla. Bar Admiss. R. 3-13 (a)-(g). Evidence of rehabilitation must be clear and convincing. Florida provides Bar applicants with specific guidance on what is required to establish rehabilitation. *Id.* Such requirements include positive contributions to society. "The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar."

If the evidence of rehabilitation is convincing, then admission to the Bar is appropriate regardless of the seriousness of the past misconduct.¹² Thus, a convicted drug dealer who has demonstrated full rehabilitation "should not be denied the privilege of practicing law solely because of a past mistake which is no longer relevant to the issue of his admission to the Bar."¹³

¹² See, e.g., *In re Diez-Arguelles*, 401 So. 2d 1347, 1350 (Fla. 1981)

¹³ *Id.*

CONCLUSION

You have invested a tremendous amount of time, money and energy into your legal education. You should approach the Board's character and fitness investigation with the same passion that you pursued your legal education. Thoroughly review your Florida Bar Application and make sure you do not hold anything back. Err on the side of disclosure. Review your law school application and your college application to make sure that all your answers are consistent and that nothing has been omitted. If something has been omitted, amend them immediately. Pull a credit report and review your finances. If you have transgressions in your past that rise to the level of disqualifying conduct pursuant to Rule 3-11 make sure you address them and start your rehabilitation process early.