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The Moral Character Evaluation: Proving That Your Past Does Not Define Your Future

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“Education (<https://unprison.com/2013/09/17/on-finishing-law-school-for-the-education-not-the-law-license/>) is an amazing equalizer. It is a combination of knowledge, opportunity, and connections that instills confidence and energy.” Most students entering into law school have a similar goal in mind: to practice law. However, despite receiving the same education, some students may have trouble proving to the bar that they meet the moral character requirements. Some past indiscretion, error in judgment, or ongoing personal battle has deemed them presumptively unfit (<https://nclawyersweekly.com/2018/06/13/a-crap-game-law-school-bar-admissions-a-gamble-for-applicants-with-records/>), in the eyes of the Bar Examiners.

Consider the plight of well-known civil rights activist Bruce Reilly. Reilly graduated (<https://www.nytimes.com/2019/02/02/business/bruce-reilly-murder-conviction-lawyer.html>) from Tulane law school in 2014. Yet, Reilly is not a licensed attorney. As he has acknowledged (<https://unprison.com/2013/09/17/on-finishing-law-school-for-the-education-not-the-law-license/>), one piece of the admissions process may be just out of reach: a positive character and fitness determination. Reilly’s 1993 murder conviction is likely to give any Bar Examiner pause when considering his moral character.

In September 1992 (<https://www.nytimes.com/2019/02/02/business/bruce-reilly-murder-conviction-lawyer.html>), when he was 19, Reilly accepted a ride from Rhode Island Professor Charles Russell, who brought him to his home. After a sexual encounter, Reilly became enraged and began stabbing Russell in the neck. The two men fought, and Reilly ultimately bludgeoned Russell to death. Reilly then stole (https://www.nola.com/crime/2011/09/convicted_murderer_in_tulane_1.html) Russell's car, wallet and credit cards. After evading police for a year, Reilly was convicted of second-degree murder and robbery, and served twelve years in prison.

Since his 1993 conviction, Bruce Reilly has "turned his life around (<https://abovethelaw.com/2011/09/new-tulane-11-is-an-advocate-a-writer-and-a-murderer/?rf=1>)." He was a jailhouse lawyer while in prison, and has become a powerful advocate for the formerly incarcerated through a New Orleans organization called Voice of the Experienced (VOTE (<https://www.vote-nola.org/what-we-do.html>)). He has also been an important activist for the recent Florida campaign (<https://www.nytimes.com/2018/11/07/us/florida-felon-voting-rights.html?module=inline>) that restored voting rights to convicted felons.

Despite his apparent rehabilitation and his outstanding service to the community, Reilly has indicated (<https://www.laprogressive.com/from-prison-to-law-school/>) that he has no plans to take the Bar Exam, at least while he is still on felony probation. Based on his own research and experience, he doubts that he would even "be given [the] privilege (<https://unprison.com/2013/09/17/on-finishing-law-school-for-the-education-not-the-law-license/>)" to prove his trustworthiness and fitness to practice law.



The Moral Character Evaluation

Every United States jurisdiction requires a favorable moral character determination (<http://nationaljurist.com/national-jurist-magazine/bar-application-character-and-fitness-background-check-part-1>) in order to be admitted to the state's bar. Most law students have nothing to worry about when it comes to the character and fitness application. The State Bar of California

(<http://www.calbar.ca.gov/Admissions/Moral-Character/Moral-Character-Statement>), at least, approves a “vast majority” of its applicants. However, for those students whose life before or during law school was a ‘bit more colorful than others,’ the moral character evaluation process can be absolutely terrifying.

The asserted purpose (<http://www.ncbex.org/pubs/bar-admissions-guide/2018/mobile/index.html#p=9>) of the moral character evaluation is to “protect[. . .] the public and the system of justice.” An applicant of “good moral character (https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div1-Adm-Prac-Law.pdf)” is one who is honest, fair, and trustworthy. Additionally, the ideal applicant is one who obeys the law and respects the rights of others. The character and fitness assessment is intended (<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2935&context=lawreview>) to serve as a prediction of an attorney’s future integrity within the profession—a premise that, for some students, may bring truth to the adage that “you can’t outrun your past.”

Historically, the moral character assessment was considered necessary to weed out those whom society had deemed suspect based on “majoritarian, mainstream preferences (http://www.abajournal.com/magazine/article/honesty_is_the_best_policy_for_character_and_fitness_screenings).” Concerns regarding race, class, or even affiliation with the Communist party (<https://caselaw.findlaw.com/us-supreme-court/353/232.html>), were once factors in the character and fitness determination. Modernly, Bar Examiners limit their evaluation to conduct, and specifically consider evidence (<http://www.calbar.ca.gov/Admissions/Moral-Character>) of criminal convictions, drug and alcohol abuse, financial irresponsibility, and violation of schools’ honor codes. An applicant with one or more of these issues may be able to overcome their presumptive lack of good moral character with honest disclosure, evidence of rehabilitation and community service.

“Red Flags” Likely to Require Further Investigation

Bar applicants who have been involved in acts of misconduct or moral turpitude may find that their application requires further inquiry. (http://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div1-Adm-Prac-Law.pdf). Conduct (<http://www.ncbex.org/pubs/bar-admissions-guide/2018/mobile/index.html#p=10>) that may prompt further investigation includes unlawful conduct, conduct involving fraud or deceit, untreated mental or emotional instability, and ongoing alcohol or drug dependency. For example, while alcohol dependency is not necessarily morally repugnant behavior per se, an applicant (<https://www.leagle.com/decision/19911083408se2d67511041>) who fails to acknowledge an alcohol problem or seek appropriate treatment may be found to lack good moral character.

Moreover, violent felonies, acts of moral turpitude and breach of fiduciary duty are presumed to indicate lack of good moral character. To rebut this presumption the applicant will need to prove that he or she “is no longer the same person who behaved poorly in the past (<https://www.leagle.com/decision/200022999calrptr2d1301226>).” Bruce Reilly, for example, was a teenager at the time of his crime and has since used his education and experience to help others. His extensive service to the community certainly demonstrates moral integrity. Whether a state or federal bar will agree that his rehabilitation is enough to overcome a murder conviction is yet to be seen.

Not Fit to Practice Law

There are no bright line distinctions regarding what type of conduct will exclude a person from admission to the bar. An applicant who has misbehaved in his or her past life may nonetheless face an uphill battle, as they often approach the character and fitness evaluation “already swathed by a

rebuttable presumption of unfitness (<https://nclawyersweekly.com/2018/06/13/a-crap-game-law-school-bar-admissions-a-gamble-for-applicants-with-records/>).” The more troublesome the past conduct in terms of moral character, the stronger (<https://law.justia.com/cases/california/supreme-court/4th/23/1080.html>) the candidate’s evidence of rehabilitation must be. Bar applications are commonly denied because the applicant did not complete the application honestly (<https://www.leagle.com/decision/inadvmdco161222000628>), continues to exhibit a pattern of fraudulent or misleading behavior (<https://caselaw.findlaw.com/md-court-of-appeals/1687643.html>), or has not demonstrated (<https://www.leagle.com/decision/incaco20140127043>) that he has learned from his past mistakes.

For example, an applicant to the Maryland Bar was denied (<https://www.leagle.com/decision/inadvmdco161222000628>) admission not because she had previously been charged with felony theft, but because she failed to disclose this information on her bar application. She also misrepresented her grade point average on her law school resume.

Maryland also denied bar admission to an applicant (<https://caselaw.findlaw.com/md-court-of-appeals/1687643.html>) who, despite admitting financial irresponsibility in a Chapter 7 Bankruptcy during law school, continued to accumulate debt, which he had no ability or apparent intention to repay. The applicant falsified information on a car loan application, and then deliberately stopped making payments. This conduct in particular, the court reasoned, “demonstrate[ed] an intentional disregard of a known legal and financial obligation.”

These examples suggest that candor is absolutely essential at all stages of the process. Continued dishonest or unethical behavior will not convince the Committee that an applicant is capable of upholding the dignity of the legal profession.



“Youthful Indiscretions” Forgiven

Not all past misdeeds will seal a candidate's fate, however. "[E]very intentional violation of the law is not, ipso facto, grounds for excluding an individual from membership in the legal profession (<https://www.leagle.com/decision/196651265cal2d4471473>)."

In Minnesota, for example, the Supreme Court found (<https://www.leagle.com/decision/19841104352nw2d75211019>) that an applicant's multiple convictions for driving under the influence did not necessarily involve moral turpitude, and that the applicant should be permitted to introduce evidence of his current pattern of behavior or rehabilitation.

A Washington State applicant had multiple criminal convictions for such crimes as assault, theft, and possession of controlled substances. Additionally, she had a long history of substance abuse and had filed for bankruptcy twice. The Supreme Court of Washington found (<https://caselaw.findlaw.com/wa-supreme-court/1893322.html>) that the applicant had demonstrated significant rehabilitation, sobriety, and sufficient present good moral character. As such, the court deemed the candidate morally fit to qualify for the Washington State Bar.

The District of Columbia Bar even admitted (<https://www.leagle.com/decision/19941238649a2d58911224>) a bar candidate despite multiple felony convictions, including conspiracy to manufacture a controlled substance, accomplice to interstate prostitution and racketeering. The court found that the applicant's age at the time of the conduct, the lapse of time between the conduct and his application, and the applicant's candidness and remorsefulness were relevant factors to his character and fitness.

Future of the Moral Character Evaluation?

To the extent that the character and fitness evaluation continues to exclude those candidates who have not shown remorse or rehabilitation, it remains essential to ensuring the integrity of the legal profession. However, it is unfair to presume that a blemish on an applicant's record suggests a lack of good moral character, until proven otherwise. Past mistakes and errors in judgment do not automatically indicate that an individual is unfit to practice law. Nor does the lack of "sanctionable conduct (<https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1155&context=cwlr>)" in one's past conclusively prove that the individual will uphold the integrity of the profession.

Some argue (<https://yaledailynews.com/blog/2017/08/25/olapade-neither-good-nor-moral/>) that the character and fitness evaluation should be abolished – that "good moral character" "is vague and reflects the definer's prejudices, leading to discrimination and the wrongful rejection of bar applicants." Too much emphasis is placed on an applicant's past, rather than her present moral character. If one of the goals of prison is rehabilitation, shouldn't the formerly incarcerated applicant's character be evaluated on with the same presumption of fitness as the applicant without a criminal record? The applicant who has committed a crime in her youth, and who has repaid her debt to society, should not automatically be deemed untrustworthy in the eyes of the Bar Examiners.

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