

## **CHARACTER AND FITNESS GUIDELINES**

Every applicant shall have the burden of proving that the applicant possesses the qualifications of character and general fitness requisite for an attorney and counselor-at-law, and is possessed of good moral character and is entitled to the high regard and confidence of the public.

The term "good moral character", includes but is not limited to the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary and personal responsibility and of the laws of North Carolina and of the United States and a respect for the rights and property of other persons. The term "fitness" includes but is not limited to, the mental or emotional stability of the applicant to practice law in North Carolina.

In satisfying the requirements of good moral character and fitness, applicants should be persons whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them and whose record demonstrates the qualities of honesty, trustworthiness, diligence, responsibility and reliability.

The revelation or discovery of any of the following may be treated as cause for further inquiry before the Board decides whether the applicant possesses the requisite character and fitness to practice law. The foregoing is inclusive of but not limited to:

1. Unlawful conduct
2. Academic misconduct.
3. Making or procuring any false or misleading statement or omission of relevant information including any false or misleading statement or omission on the application for admission to a college or university, a law school, or to the North Carolina Bar or any amendment or in any testimony or any sworn statement submitted to the Board.
4. Misconduct in employment.
5. Acts involving dishonesty, fraud, deceit or misrepresentation.
6. Abuse of legal process.
7. Neglect of financial responsibilities.
8. Neglect of professional obligations.
9. Violation of an order of a Court, including failure to pay child support.

10. Military Misconduct. A discharge other than honorable.
11. Evidence of current mental or emotional impairment.
12. Evidence of drug or alcohol misuse, abuse or dependency.
13. Denial of admission to the Bar in any other jurisdiction on character and fitness grounds.
14. Disciplinary action by a lawyer, disciplinary agency, or other professional disciplinary agency of any jurisdiction.
15. Any other conduct which reflects adversely upon the character or fitness of the applicant.

The Board has developed policies and procedures regarding several of the above-cited examples of questionable conduct. These include but are not limited to:

**A. Unlawful conduct:**

North Carolina allows an applicant to omit reference to any arrest, charge or conviction that has been expunged by a duly entered order of expunction pursuant to Article 5 of Chapter 15A of the General Statutes of North Carolina. For any offenses that have not been expunged as outlined above, the Board may inquire into arrests even if no conviction resulted. There are many reasons why arrests do not result in convictions, and many of them have no bearing on guilt or innocence.

Other than offenses that have been expunged as outlined above, the Board is authorized to inquire into all areas of possibly relevant applicant misconduct. The applicant is required to report such incidents, and to provide evidence of rehabilitation, if relevant, and evidence of current good character. The occurrence of an acquittal or dismissal is relevant but is not dispositive of the issue. This is not to suggest that the Board will assume that any arrest was due to guilty conduct on the part of an applicant. The applicant's obligation is to be completely forthright regarding all matters about which the Board inquires.

If, at the time of the application, criminal charges are pending against the applicant, the Board will table the application until these charges are resolved. If a conviction results in probation, restitution or some other sentence, the Board will not consider the application until the sentence has been served and probation completed. The Board will then proceed to investigate the facts and circumstances that led to the criminal charges.

## **B. Making a false statement:**

Dishonesty in dealings with employers, schools (including applications for admission) and authorities, including the Board of Law Examiners, is grounds for denial of bar applications. Giving false information on the application or failing to be entirely forthcoming and completely candid in the application process is a serious error which will have negative consequences for an applicant. With respect to non-disclosure on the law school application the Board will require at a minimum evidence that the applicant has made full disclosure of the erroneous or omitted information to the law school administration together with the action if any taken by the law school.

## **C. Neglect of financial responsibilities:**

The Board recognizes that mishandling of client funds is a frequent and serious cause for professional discipline. While admission to the bar does not require a perfect credit record, the Board is interested in whether applicants have dealt honestly and responsibly with their creditors, and whether they are doing so at the time of application.

Responsible dealings generally include but are not limited to keeping in contact with the creditor, making payment arrangements, and meeting the terms of those arrangements. If the applicant currently has unpaid collections, judgments, liens, or charged off accounts, in the absence of unusual mitigating circumstances, the Board considers it important that the applicant demonstrate several months payments as agreed to show a good faith effort to clear the debts.

If an applicant has defaulted student loans, the Board may in its discretion hold the application in abeyance until the applicant has made arrangements with the lender(s) for repayment of the loan(s) and has made several months of consecutive and uninterrupted monthly payments pursuant to the plan agreed to by the lender(s). Any arrearage in child support must be paid before an applicant will be certified by the Board.

## **D. Evidence of current mental impairment:**

Evidence of current mental impairment, including evidence of impairment due to psychiatric conditions, is one of the factors about which the Board must inquire in determining the applicant's fitness to practice law. Board members recognize that the stresses of law school, as well as other life factors, frequently result in applicants seeking psychiatric or psychological counseling. The Board encourages any applicant to obtain such counseling or treatment if needed. The applicant should not allow the bar application process to deter them from obtaining treatment or counseling. Applicants should be aware that the Board looks favorably on applicants' self-recognition of their need for treatment and appropriate utilization of professional services.

#### **E. Drug or alcohol dependency:**

Evidence of impairment due to drug or alcohol dependence or abuse is a factor that must be considered by the Board in determining the applicant's fitness to practice law. The applicant should be prepared to provide treatment records as well as other records of incidents which were associated with any impairment. The Board may require applicants to obtain a drug or alcohol evaluation from a licensed professional recommended by the Board.

An applicant who has a problem with drugs or alcohol is strongly encouraged to get the counseling or treatment needed as soon as possible. If the applicant has been impaired due to chemical dependency or abuse, the applicant's recognition of the problem and the treatment record will be important positive evidence of rehabilitation, regardless of the seriousness of any misconduct which may have arisen from the chemical dependency.

#### **F. Evidence of Rehabilitation:**

The Board shall determine whether the character and fitness of an applicant qualify the applicant to take the North Carolina Bar Examination or to be admitted by comity. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

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

Evidence of rehabilitation is one of the main factors the Board uses to determine whether past problems should lead to denial of an application. Under Rule .0601 of the Board's Rules, every applicant has the burden of proving that the applicant possesses the qualifications of character and general fitness requisite for an attorney and counselor-at-law and is possessed of such good moral character as to be entitled to the high regard and confidence of the public.

An applicant who asserts rehabilitation from prior misconduct which bears adversely upon the applicant's character and fitness shall be required to produce clear and convincing evidence of such rehabilitation, which may include but are not limited to the following elements:

1. Absence of recent misconduct
2. Strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable
3. Impeccable character and moral standing in the community
4. Good reputation for professional ability, where applicable
5. Sufficiency of the punishment including payment of fines and restitution made; including the restitution of funds or property, where applicable
6. Applicant's current attitude about prior offenses (acceptance of responsibility and renunciation of past wrongdoing and remorse)
7. Lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative or other proceeding
8. Personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future
9. Applicant's constructive activities and accomplishments subsequent to the criminal conviction
10. Applicant's candor, sincerity and full disclosure in character and fitness proceedings
11. Positive actions beyond those one would do for self-benefit including but not limited to working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence or maintaining substantial involvement in other charitable, community or educational organizations whose value system, overall mission and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens

12. Demonstration of the applicant's understanding of the responsibility to the administration of justice and the practice of law

Merely showing that an individual is now living as and doing those things that this person 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. The requirement of a positive action is appropriate for applicants for admission to the bar because service to one's community is an implied obligation to members of the Bar.

The Board will not consider witness testimony or evidence offered by a witness in support of the applicant on any issue listed above unless the witness has been fully informed of the misconduct before offering the evidence.