

## **Bar Admission Process Holds Value**

By [David B. Saxe](#) and [Danielle Lesser](#)

*This article appeared in the New York Law Journal on June 15, 2017.*

In "[The Need for Bar Admission Reform](#)" (NYLJ, May 9), the authors reflect on the necessity for reform in the bar admission process. They make some worthwhile points but ignore the important work that the various Character and Fitness Committees perform in New York State, as part of the attorney admission process. In particular, they seek to marginalize the interview requirement for all applicants. This short piece shall serve as a response.

The authors, focusing on practices involving the Character and Fitness Committee of the Appellate Division, Second Department, believe that the admission process is far too slow, causing unnecessary delay for financially overburdened young lawyers eager to begin the practice of law. They believe that the requirement of an interview for each applicant is a relic of times long past when admission to the bar was controlled by an all-boys club. It is their view that such interviews need only be conducted in the most unusual situation when it is appropriate to "flag" an applicant's application in advance on account of some past significant problem. The authors also argue for the abolition of the traditional admissions ceremony to be replaced instead by a sort of mass induction, without frills, to be held as soon as possible.

The authors note that "It is not unusual, especially in the Appellate Division, Second Department, for young lawyers to be admitted a full year after graduation from law school or later." While we are not privy to the statistics that the authors rely on, we believe that once a completed application is submitted to a Departmental Character and Fitness Committee, unless circumstances call for an extended examination, the candidate should be scheduled to appear at a swearing in ceremony within three months from that date. We believe that this period of time is more than reasonable to process an application and conduct the necessary due diligence of the applicant.

The expedition of this process is certainly important and valuable to young lawyers who are embarking on a career where admission to practice is vital. In this regard, special vigilance needs to be paid to various public offices such as district attorney offices where young lawyers need to be admitted promptly in order to take care of their core responsibilities.

We also believe that basic academic achievement, demonstrated in part by passing the bar examination, is not enough by itself to gain admission to the bar. We believe that good moral character is a fundamental component to practice law. We also recognize that the current process of screening for good character is often inadequate and could be improved upon by increasing the resources to assist in the ability to conduct a thorough character investigation.

Nevertheless, it is not asking too much for all applicants to be interviewed by an experienced member of a Departmental Character and Fitness Committee. The interviews may be

uneventful and pro-forma, but occasionally something arises, even if not initially flagged on the application that informs the interviewer that a deeper or more nuanced look at the applicant is called for. Early inquiry may forestall the need for later lawyer disciplinary intervention.

The concept of good moral character has often been criticized as ambiguous, reflecting the attitude, experiences and prejudices of the definer (*Baird v. State Bar of Arizona*, 401 U.S. 13 (1971))

Yet, all bar admission processes in the United States require that applicants demonstrate compliance with this elusive precondition to the practice of law. Despite this essentially subjective element, its embodiment in the process seems to be a time-honored tradition because the right to practice law is simply not an inalienable right; it is a privilege granted only to those who demonstrate a certain fitness in intellectual achievement and moral character.

Generally, the rationale advanced for the good character requirement is the protection of the public and the legal system.

Attorneys play a vital role in society through their representation in both criminal and civil matters where personal liberty or rights involving money, as well as other important interests are protected (Ratcliffe, Marc, "The Good Character Requirement: A Proposal for a National Standard," *Tulsa Law Review*, Volume 36, Issue 2, Article 11 at p. 487, (Winter 2000)).

The United States Supreme Court has repeatedly recognized the importance of the role of lawyers in our society:

The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character (Baird; Ritter, Matthew, "The Ethics of Moral Character Determination: An Indeterminate Ethical Reflection Upon Bar Admission," 39 *Cal. W.L. Rev* 1 (Feb. 2002)).

The importance of good moral character, given the vital role which lawyers play in our society is also important in order to promote trust in the profession by the public. Our society expects lawyers to conduct themselves with professionalism, integrity and a strong sense of ethics.

Lawyers have a fiduciary duty to their clients, may be entrusted with protecting their client's freedom when facing criminal prosecution or may protect their financial interests, such as holding their property in escrow. Honesty is vital to a client's reliance upon the expertise and judgment of a lawyer. Doing away with the requirement of proof of strong moral character or watering it down by eliminating in many cases, the requirement of an in-person interview, would mean that new lawyers with histories that involve criminal infractions or other lapses of morality, might join our ranks with no scrutiny. Given the potential for wrongdoing and the intense vulnerability of clients who rely upon their counsel, some level of scrutiny is required to maintain public confidence in our profession. As lawyers, we regulate ourselves. We should

take responsibility to ensure that those who join our ranks have earned the right to act as fiduciaries to their clients.

Despite the problem evident in trying to properly define good moral character, it yet remains something that we expect to find in each new young applicant for bar admission. And that is why we believe that requiring an applicant to sit for a 20 to 30 minute probing by an experienced member of the Character and Fitness Committee is not too onerous. To the extent that such probing may be helpful in discerning what we understand to be moral character, the profession is benefitted. To the extent that the interview results in nothing more than uneventful responses, that inconvenience also is a necessary step that the applicant must undergo in our view.

Finally, the en masse, digitalized admission ceremony envisioned by the authors, is not to be encouraged. The magisterial setting of the Appellate Division, First Department for example, where admission ceremonies are held lend a fitting formality to this important milestone.

The young lawyers may quickly forget the names of the five judges on the panel on the day of admission but that experience in that historic courtroom, hopefully, will highlight for them the important and demanding role that they are embarking on.

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