

The American Bar Association, the National Conference of Bar Examiners and the Association of American Law Schools make the following recommendations to the duly constituted authorities in the several states who are vested with responsibilities and duties in respect to the admission to the bar, and to lawyers and the law schools generally.

The Code of Recommended Standards for Bar Examiners has been adopted by the policy-making bodies of the ABA, NCBE and AALS. An initial Code was adopted in 1959. A revised Code was adopted in 1980. Amendments adding the present moral character and fitness standards were adopted in February 1987; additional amendments bringing the Code to its present form were adopted in August 1987, with ABA adoption by the House of Delegates on August 11, 1987. The recommended standards represent the results of accumulated study and experience of a number of lawyers, examiners, and teachers of high standing. They are offered solely in the hope that they will afford guidance and assistance and will lead toward uniformity of objectives and practices in bar admissions throughout the United States.

I. BAR EXAMINERS

- 1. Qualifications.** A bar examiner should be a person with scholarly attainments and an affirmative interest in legal education and requirements for admission to the bar. A bar examiner should be willing and able to devote whatever time is necessary to perform the duties of the office. A bar examiner should be conscientious, studious, thorough and diligent in learning the methods, problems and progress of legal education, in preparing bar examinations, and in seeking to improve the examination, its administration and requirements for admission to the bar. A bar examiner should be just and impartial in recommending the admission of applicants. A bar examiner should exhibit courage, judgment and moral stamina in refusing to recommend applicants who lack adequate general and professional preparation or who lack moral character and fitness.
- 2. Tenure.** A bar examiner should be appointed by and be responsible to the judicial branch of government, and should be appointed for a fixed term, but should be eligible for reappointment if performing work of high quality. Members of bar examining authorities should be appointed for staggered terms to ensure continuity of policy, but there should be sufficient rotation in the personnel of each authority to bring new views to the authority and to ensure continuing interest in its work.
- 3. Conflicts of Interest.** A bar examiner should not have adverse interests, conflicting duties or inconsistent obligations that will in any way interfere or appear to interfere with the proper administration of the examiner's functions. A bar examiner should not participate directly or indirectly in courses for the preparation of applicants for bar admission. The conduct of a bar examiner should be such that there may be no suspicion that the examiner's judgment may be swayed by improper considerations.

II. ELIGIBILITY OF APPLICANTS

- 4. Burden of Proof.** The burden of establishing eligibility to take the bar examination should be on the applicant.
- 5. College Education.** Each applicant should be required to have successfully completed at least three-fourths of the work acceptable for a baccalaureate degree at an accredited college or university before beginning the study of law.
- 6. Law School Education.** Each applicant should be required to have completed all requirements for graduation with a J.D. or LL.B. degree from a law school approved by the American Bar Association before being eligible to take a bar examination, and to have graduated therefrom before being eligible for admission to practice. Neither private study, correspondence study or law office training, nor age or experience should be substituted for law school education.

III. MORAL CHARACTER AND FITNESS

- 7. Purpose.** The primary purpose of character and fitness screening before admission to the bar is the protection of the public and the system of justice. The lawyer licensing process is incomplete if only testing for minimal competence is undertaken. The public is inadequately protected by a system that fails to evaluate character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their lawyers.
- 8. Organization and Funding.** A body appointed by and responsible to the judicial branch of government (which may be separate from the bar examining authority but which will be referred to hereinafter as the bar examining authority) should administer character and fitness screening. It should perform its duties in a manner that assures the protection of the

public by recommending or admitting only those who qualify. Sufficient funding and staffing should be provided to permit appropriate investigation of all information pertaining to applicants' character and fitness.

9. **Development and Publication of Standards.**

Character and fitness standards should be articulated and published by each bar examining authority. Some variation in rules and interpretations among the bar examining authorities may be appropriate, as character and fitness screening is the responsibility of each individual bar examining authority. Standards should be applied in a consistent manner and interpretative material should be developed in furtherance of this objective.

10. **The Investigative Process.** The bar examining authority may appropriately place on the applicant the burden of producing information. Each investigation should be initiated by requiring the applicant to execute under oath a thorough application and to sign an authorization and release form that extends to the bar examining authority and to any persons or institutions supplying information thereto. The applicant should be informed of the consequences of failing to produce information requested by the application and of making material omissions or misrepresentations. The bar examining authority should frame each question on the application in a manner that renders the scope of inquiry clear and unambiguous. The bar examining authority should have the power to cause witnesses and documents or other records to be subpoenaed and to administer oaths or affirmations.

11. **Confidentiality and Due Process.** Each jurisdiction should adopt a rule respecting confidentiality of records and sources that balances the need to protect the applicant, the sources, and the public. Minimally, this rule should provide confidentiality of records and sources for purposes other than cooperation with another bar examining authority. The bar examining authority should adopt a rule respecting due process that specifies procedures which include notice to applicants and an opportunity to appear, with right to counsel, before the committee before a final adverse determination is made. The bar examining authority should adopt a rule respecting a permissible reapplication date for applicants who, after being afforded due process, are denied admission on character and fitness grounds.

12. **Standard of Character and Fitness.** A lawyer should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of admission.

13. **Relevant Conduct.** The revelation or discovery of any of the following should be treated as cause for further inquiry before the bar examining authority decides whether the applicant possesses the character and fitness to practice law:

- unlawful conduct
- academic misconduct
- making of false statements, including omissions
- misconduct in employment
- acts involving dishonesty, fraud, deceit or misrepresentation
- abuse of legal process
- neglect of financial responsibilities
- neglect of professional obligations
- violation of an order of a court
- evidence of mental or emotional instability
- evidence of drug or alcohol dependency
- denial of admission to the bar in another jurisdiction on character and fitness grounds
- disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

14. **Access to Information.** Access to bar admission character and fitness information, bar disciplinary information and criminal justice information is particularly essential and should be facilitated by legislation, rule making, and inter-jurisdictional cooperation.

15. **Use of Information.** The bar examining authority should determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

- the applicant's age at the time of the conduct
- the recency of the conduct
- the reliability of the information concerning the conduct
- the seriousness of the conduct
- the cumulative effect of conduct or information
- the evidence of rehabilitation
- the applicant's positive social contributions since the conduct
- the applicant's candor in the admissions process
- the materiality of any omissions or misrepresentations.

The investigation conducted by the bar examining authority should be thorough in every aspect and should be concluded expeditiously. It should be recognized that information may be developed in the course of the investigation that is not germane to the question of licensure and should be disregarded. Conduct that is merely socially unacceptable or the physical disability of the applicant is not relevant to character and fitness for law practice and should not be considered.

IV. BAR EXAMINATIONS

16. **Necessity of Written Examination.** A person who is not a member of the bar of another jurisdiction of the United States should not be admitted to practice until the person has passed a written bar examination administered under terms and conditions equivalent to those applicable to all other applicants for admission to practice. An applicant may also be required to pass a separate examination on the subject of professional responsibility, such as the Multistate Professional Responsibility Examination.
17. **Opportunity for Examination.** Each examination should be held at such times as will assure sufficient opportunity to the applicants to prepare therefore without interfering with the completion of law school studies.
18. **Purpose of Examination.** The bar examination should test the ability of an applicant to identify legal issues in a statement of facts, such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues and to arrive at a logical solution by the application of fundamental legal principles, in a manner which demonstrates a thorough understanding of these principles. The examination should not be designed primarily to test for information, memory or experience. Its purpose is to protect the public, not to limit the number of lawyers admitted to practice.
19. **Subjects of Examination.** In selection of subjects for bar examination questions, the emphasis should be upon the basic and fundamental subjects that are regularly taught in law schools. However, subjects of substantial local importance may be included. Reasonable notice of the subject matter to be covered by the examination should be made available to the law schools and the applicants.
20. **Questions and Format.** The bar examination may include multiple-choice questions, such as those on the Multistate Bar Examination, and should include essay questions. Questions should not be based on unusual or unique local case or statutory law, except in subjects with respect to which local variations are highly significant and applicants are informed that

answers should be based upon local law. An essay question should not be repeated except after a substantial lapse of time. Questions should not be labeled as to subject matter and should not be so worded as to be deceptive or misleading. Sufficient time should be allowed to permit the applicant to make a careful analysis of the questions and to prepare well-reasoned answers to essay questions.

21. **Preparation of Questions.** The bar examining authority may use the services of its members or staff or other qualified persons, including out-of-state law teachers, to prepare bar examination questions and it may also use the services of the National Conference of Bar Examiners. Before an essay question is accepted for use, every point of law in the question should be thoroughly briefed and the question should be analyzed and approved by the members of the bar examining authority.
22. **Handicapped Applicants.** Without impairing the integrity of the examination process, the bar examining authority should adopt procedures allowing physically handicapped applicants to have assistance, equipment or additional time as it determines to be reasonably necessary under the circumstances to assure their fair and equal opportunity to perform on the examination.

V. GRADING BAR EXAMINATIONS

23. **Non-Identity Grading.** Each jurisdiction should establish procedures which assure that the identity of each applicant in the grading process is not known to any person having responsibility for grading or determining whether the applicant passes or fails until the grades of all applicants have been finally determined.
24. **Grading Process.** The bar examining authority may use the services of its members or staff or other qualified persons to grade answers to essay questions. If practical, all answers to a particular essay question should be graded by the same person. If multiple graders are used, the bar examining authority should adopt procedures for the calibration of the graders to assure uniformity of the grading standards. The bar examining authority may adopt procedures dispensing with the grading of the answers to some of the essay questions of applicants who attain high scores on multiple-choice questions, but no failing score should be given except upon the basis of the grades of the applicant on all questions. The grading process and grade distributions should be periodically reviewed in order to assure uniformity in grading.

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25. **Rights of Failing Applicants.** The decision of the bar examining authority as to whether an applicant has passed or failed a bar examination should be final. An applicant who fails a bar examination should have the right, within a reasonable period of time after announcement of the results of the examination, to see the applicant's answers to the essay questions and the grades assigned thereto, and to compare each of these answers with an approved answer.
 26. **Re-examination.** An applicant who has failed to pass three or more bar examinations may be required to complete additional study prescribed by the bar examining authority, or to establish that the reasons for previous failures no longer exist, before being permitted to take any subsequent examination.

VI. ADMINISTRATION

27. **Adequacy of Staff.** The bar examining authority should be provided with adequate administrative and clerical staff.
28. **Publication of Results.** The bar admission authority should announce the numbers of applicants who have passed and who have failed the bar examination as a whole and by law school.
29. **Periodic Studies.** A thorough study should be periodically made of the bar examination results to determine its effectiveness, to discover defects and to suggest possible improvements in the bar examination system. Each jurisdiction should make the results of these studies available to other jurisdictions upon request.
30. **Conferences with Applicants.** The bar examining authority should make representatives available to meet with potential applicants upon invitation at least once each year at each of the law schools in the jurisdiction. Such representatives should be prepared to discuss general purposes, policies, and procedures of the examination.
31. **Committee on Cooperation.** Each jurisdiction should have an active committee on cooperation consisting of representatives of the bar examining authority, the law schools, the judiciary and the bar which meets at least annually to consider issues relating to legal education, eligibility and admission to the bar.

