ERIC M. FINK

PROFESSIONAL RESPONSIBILITY

FALL TERM 2022

Eric M. Fink
Associate Professor of Law
Elon University School of Law
Greensboro, North Carolina 27408
https://www.emfink.net/ElonLaw/

Source code
https://github.com/EricMFink/PRcasebook

Version 1.0, July 2022

Contents

Preface

Acknowledgments

This book includes material from Bryan L. Frye & Elizabeth Schiller, Professional Responsibility: An Open-Source Casebook (2019).

Editorial Notes

Judicial opinions and other quoted texts have been edited for teaching purposes. For ease of reading, internal citations and other passages omitted from quoted texts are generally not indicated by ellipses.

Marginal notes are used in place of footnotes. Numbered notes are from the quoted text, with original reference numbers indicated where appropriate. Editor's notes are unnumbered and appear in sans serif type.

Part I

Law as a Regulated Profession

Chapter 1

Introduction

1. Professions and Professionalism

Work, Jurisdiction, and Competition

Andrew Abbott (1988)

Each profession is bound to a set of tasks by ties of jurisdiction, the strengths and weaknesses of these ties being established in the processes of actual professional work. Since none of these links is absolute or permanent, the professions make up an interacting system, an ecology. Professions compete within this system, and a profession's success reflects as much the situations of its competitors and the system structure as it does the professions own efforts. From time to time, tasks are created, abolished, or reshaped by external forces, with consequent jostling and readjustment within the system of professions.

Jurisdiction is a more-or-less exclusive claim. One profession's jurisdiction preempts another's. Because jurisdiction is exclusive, every move in one profession's jurisdictions affects those of others.

The tasks of professions are human problems amenable to expert service. They may be problems for individuals, like sickness and salvation, or for groups, like fundraising and auditing. They may be disturbing problems to be cured, like vandalism or neurosis, or they may be creative problems to be solved, like a building design or a legislative program. The degree of resort to experts varies from problem to problem, from society to society, and from time to time.

[J]urisdictional claims have three parts: claims to classify a problem, to reason about it, and to take action on it: in more formal terms, to diagnose, to infer, and to treat. Theoretically, these are the three acts of professional practice. Professionals often run them together. They may begin with treatment rather than diagnosis; they may, indeed, diagnose by treating, as doctors often do. The three are modal-

ities of action more than acts per se. But the sequence of diagnosis, inference, and treatment embodies the essential cultural logic of professional practice. It is within this logic that tasks receive the subjective qualities that are the cognitive structure of a jurisdictional claim.

Diagnosis, treatment, and inference are aspects of professional practice. In most professions, that work is tied directly to a system of knowledge that formalizes the skills on which this work proceeds.

A profession's formal knowledge system is ordered by abstractions alone. Like any knowledge it is organized into a classification system and an inferential system. The classification, however, is quite unlike the diagnostic and treatment classifications. It is not organized from common to esoteric or from treatable to recalcitrant. Rather it is organized along logically consistent, rationally conceptualized dimensions. In law there are rights, duties, procedures, and so on. While these resemble the dimensions of the diagnostic classification, they are in fact more formal and rationalized.

The ability of a profession to sustain its jurisdiction lies partly in the power and prestige of its academic knowledge. This prestige reflects the public's mistaken belief that abstract professional knowledge is continuous with practical professional knowledge, and hence that prestigious abstract knowledge implies effective professional work. In fact, the true use of academic professional knowledge is less practical than symbolic. Academic knowledge legitimizes professional work by clarifying its foundations and tracing them to major cultural values. In most modern professions, these have been the values of rationality, logic, and science. Academic professionals demonstrate the rigor, the clarity, and the scientifically logical character of professional work, thereby legitimating that work in the context of larger values.

Diagnosis, treatment, inference, and academic work provide the cultural machinery of jurisdiction. They construct tasks into known "professional problems" that are potential objects of action and further research. But to perform skilled acts and justify them cognitively is not yet to hold jurisdiction. In claiming jurisdiction, a profession asks society to recognize its cognitive structure through exclusive rights; jurisdiction has not only a culture, but also a social structure. These claimed rights may include absolute monopoly of practice and of public payments, rights of self-discipline and of unconstrained employment, control of professional training, of recruitment, and of licensing, to mention only a few. Which of them are actually claimed depends in part on the audience. Claims made in the political and legal systems generally involve much more than do those in public media. The claims also depend on the professions own desires; not all professions aim for domination of practice in all their jurisdictions. Finally, they depend on the social organization of the professions themselves. This indeed was the focus of the

professionalization literature. To understand the actual claims, then, it is less important to analyze their particular content than their location, their general form, and the social structure of the claiming professions themselves.

Jurisdictional claims can be made in several possible arenas. One is the legal system, which can confer formal control of work. Another is the related arena of public opinion, where professions build images that pressure the legal system. An equally important, but less studied, arena is the workplace. Claims made in the workplace blur and distort the official lines of legally and publicly established jurisdictions; an important problem for any profession is the reconciliation of its public and its workplace position.

Authority often confers obligation. But jurisdictional claims entail only secondarily an obligation to in fact accomplish the work claimed. Lawyers have a right to perform legal work as they wish, but only a hazy obligation to guarantee that all the needs of justice are served. Such general social obligations are more formal among continental professions than among Anglo-American ones. The relative power of continental governments has allowed them to place and enforce such obligations on the professions; in America these obligations are merely paraded in the preambles to codes of professional ethics. The different relation between authority and obligation is one of the profound differences between continental and Anglo-American professions.

Contests for legal jurisdiction occur in three places. The first of these is the legislature, which in America grants statutory rights to certain professional groups. The second is the courts, where such rights are enforced and the actual boundaries of loose legislative mandates specified. The third is the administrative or planning structure, which has always dominated the legal structuring of professions in France, and which increasingly does so in England and America. In England and America, legislatures have traditionally dominated in the legal establishment of professional rights, the American legislatures having been considerably more profligate in the number of rights so established.

The other, and equally important, arena is the workplace itself. In the workplace, jurisdiction is a simple claim to control certain kinds of work. There is usually little debate about what the tasks are or how to construct them. There is normally a well-understood and overwhelming flow of work—alleged criminals waiting to be processed, buildings to be designed, welfare clients to be handled. The basic question is who can control and supervise the work and who is qualified to do which parts of it. My example implicitly (and correctly) assumes that the typical professional worksite is an organization, although in some cases, professionals work in solo or small group practices in open markets.

Professionals in open markets and in organizations control jurisdictional relations in different ways. In open markets, jurisdictional boundaries between competing professions are established by referral networks and similar structures. Oc-

casionally, advertisements are used, either by official groups or by individuals, to establish for the public and for the referral sources the exact contribution of this or that profession. "Let the financial planning professionals at XYZ Bank help you find the money you need." More often, professionals simply establish rules for the kinds of things they do and the kinds of things they don't do, and refer the latter out. Small-town attorneys and accountants, for example, generally operate this way. They are enmeshed in a referral network maintained by club life, personal acquaintance, and a constant flow of business. Since such networks draw so directly on personal relations in fairly tight social systems, interprofessional relations in small towns have a fixed, enduring quality. In large cities, by contrast, several excellent studies have shown that interprofessional relations in open markets range from chaos to open warfare.

Within an organization the situation is quite different. The standard interprofessional division of labor is replaced by the intraorganizational one. More often than not, this locates professionals where they must assume many extraprofessional tasks and cede many professional ones. To be sure, the organizational division of labor may be formalized in job descriptions that recognize professional boundaries, but these have a rather vague relation to reality. In most professional work settings, actual divisions of labor are established, through negotiation and custom, that embody situation-specific rules of professional jurisdiction. These actual divisions of labor exist over relatively short time periods—perhaps a few months to a couple of years. They are extremely vulnerable to organizational perturbations. Professional staff are often replaced by paraprofessional or untrained staff without corresponding change of function. The division of labor must then be renegotiated, with the common result that boundaries of actual professional jurisdiction change to accommodate organizational imperatives.

It is in the workplaces, then, that the actual complexity of professional life insists on having its effect. If a professional is incompetent, organizational function demands that his or her work be done by someone else who is probably not officially qualified to do it. Or if there is too much professional work, nonprofessionals do it. Boundaries between professional jurisdictions therefore tend to disappear in worksites, particularly in overworked worksites. There results a form of knowledge transfer that can be called workplace assimilation. Subordinate professionals, nonprofessionals, and members of related, equal professions learn on the job a craft version of given professions' knowledge systems. While they lack the theoretical training that justifies membership in that profession, they generally acquire much of the diagnostic, therapeutic, and inferential systems discussed in the preceding chapter. This assimilation is facilitated by the fact that professionals are not in reality a homogeneous group. In the jurisdictional system of the workplace, it is the real output of an individual, not his credentialed or noncredentialed status, that matters. Since some professionals are much more talented than others,

the best of the subordinates often excel the worst of the superordinates; certain individuals in closely related professions end up knowing far more about a profession's actual work than do a fair number of its own practitioners.

The reality of jurisdictional relations in the workplace is therefore a fuzzy reality indeed. To be sure, in the elite workplaces—the university teaching hospitals, the Wall Street law firms, the leading architectural houses—the blurring is minimized. Since each group is represented by its best members, vertical and horizontal assimilation can be minimized. But in most professional worksites, the mix of workers is so broad that assimilation is considerable. It reaches its maximum in publicly funded worksites specializing in pariah clients—mental hospitals, jails, criminal courts—where few elite professionals venture, and where attendants, guards, and clerks effectively conduct such professional work as is done.

Dominant professions also form setting-based associations within themselves—for example, the American Academy of Matrimonial Lawyers, the American Society of Hospital Attorneys—while undermining interprofessional societies that are based on particular settings of work, such as the American Orthopsychiatric Association. Yet another strategy for maintaining the publicly clear picture of jurisdictional relations is media manipulation.

Since the advent of associational professionalism in the nineteenth century, the claim to full jurisdiction is nearly always made by a formally organized group. Certainly this has been true since the advent of the formally organized profession in the later nineteenth century.

Claims of full jurisdiction are maintained by a variety of means. Once successful, they are backed by legal rules prohibiting either work with the claimed task or the collection of fees for such work. Within organizations, they are backed by organizational rules. Professions particularly sensitive about professional invasion may maintain vigilante groups to guard the borders—the "unauthorized practice of law" committees of Americas bar associations being the best examples. The lawyers, of course, also directly control the means of enforcement, which may explain why they get away with such groups. Other professions have to depend on the law to back up their claims of full jurisdiction.

A professions social organization has three major aspects—groups, controls, and worksites. Professional groups have diverse forms and functions. Local groups usually emerge early in professional history and later amalgamate into larger ones. Some groups are lobbying groups, some informational ones, still others aim at practitioner control. Some are organized around mere professional membership, while others embody a wide variety of special interests within that membership. The mature profession typically has hundreds of professional associations, many or most of which are open only to members of some large, dominant association.

Under the heading of professional controls can be placed the schools that train practitioners, the examinations that test them, the licenses that identify them, and the ethics codes they are presumed to obey. There are in addition a wide variety of informal controls, usually specific to various professional worksites. Empirical studies of professions show that attempts at licensure seem to come early and ethics codes late in professional development. Examinations and formal schooling tend to come in the middle of professional development. Once begun, however, all develop continually. The typical profession has one ethics code, but usually dozens or hundreds of schools. Although recent years in America have seen consolidated licensure structure across state lines, licensure and examination have characteristically been state based in America, and the politics of license maintenance consequently continuous and complex. It is important to note that licensure alone, of these controls, has direct implications for others beyond the profession involved. Licensure normally carries certain preemptive rights over outsiders, particularly in the United States and France. That a profession has an ethics code does not keep another closely related profession from having one. With licenses, the reverse is generally true; where one profession has a licensed right to do certain work, others are excluded.

Professions operate in a bewildering variety of worksites. Some professions have consolidated, exclusive worksites whose divisions of labor they dominate. The hospital is the most familiar, but large law, accounting, and architectural firms are also examples.

A profession normally has some worksites that are not involved in practice, but only in the purely professional work of maintaining and furthering professional knowledge. These include not only the academic settings discussed before, but also journals, research institutes, and other such organizations. In the United States, such cultural organizations are nearly all affiliated with universities, with a few journals and research institutes being tied to the larger professional associations (e.g., the American Bar Foundation), to industry, or to government agencies.

The strength with which individual professionals are tied to this organized structure varies considerably. Some are central members tying elite worksites to elite schools and dominating major professional associations. Others are totally peripheral, passing their entire careers without contacting any of the central institutions of professional life beyond a few journals. This internal stratification of professions is often confounded with specialization. Often professional tasks are so complex as to require considerable specialization, and individual professionals develop enduring identification with specialty work. These specializations generally fall in a status order of their own, although there is within each an internal hierarchy.

The extent of structuring affects a profession's ability to deal with attack. Thus it is common in professions to create rigid entry standards, coupling extensive education with several levels of examination prior to formal entry into the pro-

fession. This is part of a structure of control that seems utterly advantageous to the profession. It protects recruitment, controls professional numbers (and consequently professional rewards), and guarantees a minimum standard of professional ability. This strategy seems perfectly monopolistic in effect. Yet it is clear that several professions have nearly lost jurisdictions because sudden expansions in demand found them committed to standards that would not permit rapid expansion. The only defense in such conditions is rapid and effective creation of subordinate groups to handle the business, the strategy that led solicitors to develop the managing clerks' role in conveyancing. But this has not been a terribly effective strategy. The British lawyers have in fact lost jurisdiction over many of the important aspects of dispute settlement in Britain precisely because they are too few to service demand and their divisions of labor have not been sufficient.

The social structure of professions is thus neither fixed nor uniformly beneficial. [T]he mature profession is constantly subdividing under the various pressures of market demands, specialization, and interprofessional competition. Some competitive conditions favor the less, some the more organized.

The central organizing reality of professional life is control of tasks. The tasks themselves are defined in the professions' cultural work. Control over them is established, as we have seen, by competitive claims in public media, in legal discourse, and in workplace negotiation.

The Discourse of Professionalism

Kathi Weeks (2011)

The discourse of professionalism today enjoys a wide application, serving as a disciplinary mechanism to manage the affects and attitudes of a service-based workforce that is less amenable to direct supervision.

The category of professional work was once defined narrowly. Confined to those jobs that were subject to a measure of self-regulation, required specialized knowledge, and involved a relatively high degree of discretion and judgment, the label was traditionally reserved for the fields of law, medicine, and the clergy. To be a professional was to have a career—a calling—as opposed to a "mere" job: "To the professional person his work becomes his life. Hence the act of embarking upon a professional career is similar in some respects to entering a religious order". The professional's relationship to his or her calling entailed an erosion of the temporal boundaries between work and life, and a different calibration of the qualities of emotional investment between the times and spaces of work and life outside

it. Professional socialization has always served as a disciplinary mechanism, one that can induce the effort and commitment, entitlement and identification, and—perhaps above all—the self-monitoring considered necessary to a profession's reproduction as such.

Whereas the term once suggested a certain mastery of a field of knowledge linked to a specific skill and expertise, increasingly the mastery that a professional is expected to achieve is over […] "the personality." [T]oday's professional is supposed to gain control over his or her thoughts, imagination, relationships, and affects. Certainly one purpose of this is to promote the kind of self-discipline and subjective investment long associated with being a professional.

Today the term "professional" refers more to a prescribed attitude toward any work than the status of some work. To act like a professional—to be professional in one's work—calls for subjective investment in and identification with work, but also a kind of affective distancing from it. A professional invests his or her person in the job but does not "take it personally" when dealing with difficult co-workers, clients, patients, students, passengers, or customers. As an ideal of worker subjectivity, this requires not just the performance of a role, but a deeper commitment of the self, an immersion in and identification not just with work, but with work discipline. The popular injunction to "be professional;" to cultivate a professional attitude, style, and persona, serves as one way that the autonomy, especially of immaterial workers, can be managerially constituted up and down the […] labor hierarchy.

---

2. Emergence of the Modern Legal Profession

Lawyers and Their Competitors

Andrew Abbott (1988)

Professions' histories are littered with splinter groups and faltering competitors. These are usually ignored in official mythologies, although occasionally recalled as precursors, charlatans, or worse. By studying interprofessional conflict, we can set the successful professions in their real context and correct our theories of their development.

Potential Jurisdictional Conflicts of the Legal Profession

Two organizational forms emerged in the late nineteenth and early twentieth centuries that generated enormous demand for legal services—the large commercial enterprise and the administrative bureaucracy. The growth of business practice involved some problems never before encountered—large-scale reorganizations, massive bond issues, tax planning, and, in America, antitrust. There were also vastly increased quantities of traditional business work. Governmental work grew similarly. It often involved practice before new tribunals, tribunals with their own staffs, their own forms of procedure, and their own sense of prerogative. Like business work, government-related work was extremely diverse, ranging from personal matters associated with the welfare state's involvement in housing and education to the corporate business generated by the state's regulatory intrusions into the economy. By contrast with business and government work, matters of land and property did not multiply but merely expanded additively with the population.

Potential legal jurisdictions in this period thus grew rapidly. In business and government there appeared qualitatively new areas of work. Even traditional business work expanded very rapidly. In land and property the expansion was slower, but still proportionate to population.

Did the legal profession grow in relation to this changing body of work? Garrison's detailed survey of the Wisconsin bar in the early 1930s estimated the growth in legal work since 1880. He concluded that legal work had vastly outstripped the growth of lawyers; work per lawyer was more plentiful than ever before. Even in urban Milwaukee the increase of lawyers did not keep pace with most of these indicators. Others, however, believed in overcrowding at the bar. In New York City, Isidor Lazarus noted, there were in 1930 264 lawyers per hundred thousand population, about five times the number in England. Indeed, the number of lawyers in the United States increased by over 30 percent from 1920 to 1930 alone. Yet Lazarus too saw large reservoirs of untapped demand in the "lower middle, and the more or less employed or active lower, sections of the community," as well as in "the legal needs of the economically submerged army of the practically un-

employed." But he recognized that this demand would be effective only if "the facilities were created for bringing together the supply and demand and adjusting them on an efficient, reasonable, and profitable volume basis."

Two developments allowed the American profession to avoid this situation. The first was the large firm, whose extensively divided labor accomplished more work with given resources; the Cravath firm, for example, had twenty-five lawyers by 1906 and fifty by 1923. The second was the replacement of clerkship with law school. In 1870, one-quarter of new lawyers had gone to law schools. By 1910, the figure was two-thirds. This shift decoupled the profession's rate of growth from its current size in two ways. First, not only could law schools take extra students more easily than could individual practitioners, but also, since schools were both profitable and prestigious, there was an enormous incentive to found them. There resulted an immense potential for recruitment. Second, the typical law-school career in this period was two years, not five, providing a much shorter response to demand changes.

This rapid expansion was, however, accompanied by a stratification of the American bar, indicated in part by the separation of the night law school graduates from the full-time law school graduates. This stratification has important implications for the interpretation of competition between lawyers and others. Roughly speaking, the night school graduates, along with some day school graduates, dealt with the land and property jurisdiction—individual matters expanding at the rate of population growth. The graduates of the elite full-time schools and their newly huge law firms controlled the qualitatively expanding area of big business practice as well as extensive parts of the new government practice. Work in the traditional business jurisdiction, expanding in amount but not kind, was split between the two groups. Since the majority of the United States lawyer expansion came in night schools and nonelite day schools (whose graduates entered the relatively slowly expanding area of land and property), the American legal profession was moving towards the paradoxical situation of having a lower tier oversupplied with lawyers and an upper one under-supplied.

The demographic and institutional flexibility of the American lawyers, so disturbing to the elite WASP lawyers of the East Coast, in fact enabled the [profession] to handle the demand expansion with relative ease. But as we shall see, this simple picture is by no means the whole story.

Complaints about Unqualified Practice and Other Invasions

GENERAL MATTERS

In the United States, organized concern with unauthorized practice began with the Committee on Unlawful Practice of Law of the New York County Lawyers Association in 1914, and spread from there to such other urban jurisdictions as Chicago, Nashville, Kansas City, and Memphis. In the late 1920s, unauthorized

practice became a serious concern of the American Bar Association, which directed a national attack on it throughout the 1930s. Americans generally handled unauthorized practice and external competition by councils and agreements if possible. Direct legal action was a last resort. [T]he urban origins of the first unauthorized practice committees are significant. Since city lawyers were by this time quite stratified, the first conflicts appeared either in the qualitatively new jurisdictions of the upper-tier or in the oversupply of lower-tier lawyers, who were pushing out for new work.

American unauthorized-practice committees characteristically started with large caseloads, then settled down to a lower but fairly steady level of work. "The number of inquiries does not vary much from year to year," said the Pennsylvania Bar Association committee in 1950, speaking of "the routine problems of the relationship between lawyers, bankers, realtors, accountants, justices of the peace, aldermen, and notaries public." This surprisingly constant pattern of activity implies that enforcement became something of a formality.

Despite the apparent stability of routine enforcement, lawyers' *sense* of the degree of unauthorized practice had definite cycles. Partly this reflected phases natural to any social movement. Interest in the problem would suddenly wax, with violent speeches, excited talk, and often some new kind of organization or interprofessional agreement. But then the newly created enforcement organization would go on to a fairly routine existence, indeed often complaining of lawyers' inattention. Agreements like the code of ethics negotiated between the Pennsylvania lawyers and the Pennsylvania Bankers Association in 1922 could endure a decade of benign neglect before grassroots complaints generated renewed Bar Association action.

AREAS OF CONFLICT

The areas about which lawyers complained included all of the chief legal jurisdictions—business affairs like bankruptcy and companies; property matters such as conveyancing, wills, and trusteeship; advocacy before courts and administrative tribunals; and finally, general advice on business, legal, and personal affairs.

[T]he invasion of lawyers' jurisdiction was not peripheral, at least in terms of areas. On the contrary, the rates of complaints seem to follow the rates of work. For example, figures from Pennsylvania on distribution of lawyers' actual work show that property matters were the most important work for 62 percent of the Pennsylvania profession outside of Philadelphia and Pittsburgh. The correspondence with the complaints of unauthorized practice in property matters (58 percent) is extremely close. Similarly, the greater level of business complaints in the American cities reflects the equally greater importance of business work there. Of course lawyers are more likely to act on a complaint the more central the area invaded. But still, it is noteworthy that jurisdictional enforcement is not just a matter

of professional borders. That this invasion occurred with peripheral *clients*, however, is easily verified from discussions of the complaints. Both in America and Britain the cases often involved small shopkeepers who refused to pay lawyers' rates for enforcing debts, as well as private individuals who sought inexpensive wills and deeds. The conflicts thus involved not change of cultural jurisdiction but largely change of clientele settlements.

The national differences, however, reflect important aspects of jurisdictional claims. Advocacy, the classic heart of lawyers' jurisdiction, was of equal concern to both, as was business, perhaps because of the rapid expansion that had called forth competitors in both countries. (It is notable that business conflicts were urban in the United States and rural in England.) Advice was a different matter. Although the British believed advice to be an important legal function, they never really attempted a dominant settlement in the area. American lawyers did, presumably because their greater numbers made them believe they could reasonably uphold the claim. Finally, land and property conflicts sharply differentiated urban from upstate lawyers in the United States, but not urban from provincial solicitors in England. This indicates a second division among United States lawyers—that between rural and urban attorneys. The two status-tiers discussed before were both largely urban. The extensive competition rural lawyers faced in their basic property jurisdiction suggests possible under-lawyering in the countryside, a fact often noted by rural lawyers in debate.

American urban lawyers pushed out into advice giving, an area the solicitors [in England] rapidly gave up. This expansion occurred both in the upper and lower tiers of the urban profession. These lawyers had little trouble in land and property, although their country cousins—the few who remained—faced a massive invasion of this heartland jurisdiction. In England, land and property clearly became the obsession of both urban and provincial solicitors. The reversal of patterns in business practice seems, at this point, to be quite anomalous.

This picture complements and expands the predictions made earlier. In the United States, a relatively understaffed urban upper tier of lawyers pushed into corporate and government work and found substantial competition there. The overstaffed urban lower tier perhaps pushed out into general advice and other areas, looking for work. The rural group was desperately understaffed and was losing its central monopolies.

The overall pattern thus emerging is one of activity within constraint. Professional groups take certain jurisdictional actions partly for internal reasons involving their own structure and knowledge base, partly for external reasons like status and power, and partly because these actions are constrained by the competitive environment.

AUDIENCES FOR JURISDICTIONAL CLAIMS

Efforts to curb unqualified practice are efforts to make the workplace relations of jurisdiction conform to the legal and public ones. As I argued before, if the lawyers have workplace jurisdiction but not public or legal jurisdiction, then they are expanding into the area. If, by contrast, they have legal and perhaps public jurisdiction, but not workplace jurisdiction, then they are facing an invasion.

The only sources where lawyers are fighting to get legal jurisdiction established are city sources. Both New York committees had active legislation and court subcommittees dedicated to solidifying legal control of jurisdictions lawyers had acquired in the workplace. [U]rban jurisdictions were the only sites of lawyer expansion. The rural lawyers were fighting invasions.

Additional evidence comes from the differing extents of legal and public jurisdiction. On the one hand, what was law for the city was law for the countryside; in the legal arena, lawyers' jurisdiction was theoretically uniform from one place to another. Yet throughout the [rural] data rings the message that the public simply doesn't know lawyers' prerogatives: "There undoubtedly does exist throughout the State in many places, throughout the laymen, a certain reluctance to go to a law office." "… the detestation of the law and lawyers evinced by the public, the general unthinking public …"

Such complaints seldom appear in city sources. That the public jurisdiction was less extensive than the legal one in the countryside reemphasizes the interpretation here given—that provincial lawyers were too few for the business and were facing serious invasion. This is further strengthened by the fact, which we know from the actual complaints, that large amounts of legally routine law work—conveyancing and other property matters—were being done by nonlawyers. The workplace jurisdiction was even less extensive than the public one.

In the city, as we have already seen, the arena pattern of jurisdiction shows evidence of expansion. An elegant example of this comes not from the expansion into advice giving and similar areas by the too-numerous lower-status lawyers. Rather it bespeaks an earlier expansion, at the expense of a group called conveyancers. We know that the expansion was old because the uncertainty about jurisdiction was merely at the legal level; the workplace and public jurisdictions, at least in the cities, were secure. The area immediately concerned was the drawing of wills. The legal status of this work was confusing even for lawyers themselves. Thus while most lawyers in both countries assumed that the drawing of wills was a legally established jurisdiction, it was in fact not so. In England, the Stamp Act of 1870 allowed an unqualified person to draw a will, power of attorney, or transfer of stock (provided the transfer contained no trusts or limitations) and to be paid for these activities. In America, when the Pennsylvania Bar Association's brand-new

unauthorized practice committee reported in 1932, its chairman, a Philadelphia suburban lawyer, asserted that "the Committee feels that the writing of wills is the practice of law." W. G. Littleton of Philadelphia rose to his feet and thundered:

> Is it not a fact that the writing of wills is not only not the practice of the law but in the English system lawyers themselves were not permitted to draw wills until the year 1760, when the exclusive privileges of the English association which formerly had that right were thrown open to members of the Bar, and when I come to speak, my mind running back personally as far back as 1885, when I was thrown in with that class of men who were known as conveyancers, who prepared deeds, mortgages, and other legal instruments, and wrote wills, it would be perfectly astonishing to the lawyer of that day to say that members of the conveyancers' association, whose names you probably know, some of whom I recollect, were violating any law.

This passage is notable not only for its total disagreement about the legally established jurisdiction, but also for its reference to an invisible group of non-lawyer legal professionals, who had in workplace fact been ousted from this jurisdiction within the half century of Mr. Littleton's memory. The new social-history method—studying conflict to find the lost people of history—has produced a lost profession.

The Philadelphia conveyancers had been, in fact, a small, elite group of practitioners, some of whom were lawyers and some of whom were not. They normally both drafted and stored title papers, wills, and other documents. At first employed as hired specialists to abstract titles, they eventually became independent consultants. A family lawyer would consult a conveyancer concerning property to be purchased, and the conveyancer would then abstract the title and take counsel from a consulting real-estate lawyer on the title's encumbrances. As specialists in property documents, the conveyancers naturally handled wills, mortgages, trusts, and related property matters. Apparently they had strong professional structure; as Littleton mentions, they had an association. Other sources report that their examinations were felt by many to be considerably more difficult than those of the lawyers.

Nonetheless, the conveyancers were destroyed, very rapidly, by a convergence of forces. The lawyers were rapidly increasing in numbers and looking for work. This threatened the conveyancers' control of wills, trusts, and similar documents. In their heartland title work, a crucial court case both gave them "professional" stature and destroyed them. In *Watson v. Muirhead* (57 PA 161, 1868), the court held conveyancers not liable for bad titles if they had taken reasonable precautions. But this left purchasers without recourse in cases of bad title, a situation the growing business community would not accept. A coalition of exasperated businessmen, lawyers, and conveyancers created in 1876 the Land Title Insurance Company (the first such corporation), to provide a mechanism for pooling the risks of property transfer. In a similar move, lawyers and bankers founded the Fidelity Trust Company to take up work with trusts and other financial matters. As a result of these changes, the conveyancers rapidly disappeared.

The example of the conveyancers shows again how the relative extents of jurisdictional claims can tell us much about the direction of jurisdictional change. For lawyers of the 1930s, the writing of wills was an old expansion jurisdiction, one in which they sought to convert a successful workplace invasion into publicly and legally recognized domination. That the rural public persisted in having wills drawn by banks, trust companies, prothonotaries, and aldermen indicates that this expansion had never had the success in rural areas that it enjoyed in the city.

COMPETITORS

The lawyers had other antagonists besides the vanquished conveyancers. These antagonists, as I have argued throughout, provide the structure that bends the two professions in different directions. They fall into seven groups. The first are the other free professions—the accountants, the bankers, and others. The second are the other professions affiliated with the law. In America this meant notaries, foreign (out-of-state or out-of-country) lawyers, and disbarred individuals working for other lawyers. A third group, the land professions, comprises the simple category of real estate agents in the United States. A fourth group is local officials—justices of the peace, magistrates, police, and other municipal authorities, as well as their various clerks. Fifth, a group of negligible importance in the United States, but of great importance in England, is national officials. Conversely, the sixth group was more important in the United States—corporations. These include title and trust companies, insurance companies, collection agencies, legal aid societies, trade associations, and various other groups. The seventh category of offenders is a miscellaneous group of outsiders—chiefly insurance agents in the United States.

Competition from other free professions is more common in the provincial than the metropolitan data in both countries, but the general level seems somewhat higher in England. Competition from other legal professionals, by exact contrast, is more common in metropolitan than provincial data, and distinctly more common in the United States. Competition from the land professionals is, as one might expect, largely a provincial concern, and perhaps a little more common in England. Competition from local authorities is purely a rural phenomenon in the United States, although about equally common for both groups in England. A sharp contrast between the two countries arises over competition from officials of national administrative bodies: in the United States, this was negligible, while in Britain it made up nearly a quarter of the Law Society's complaints, and was a substantial problem for the more provincially oriented *Law Notes.* The figures for competition from organizations—companies of various shapes and sizes—exactly reverse this situation. Companies supply the majority of urban complaints in the United States, and one-fifth of the rural ones. They supply about one-tenth of the English complaints. It is not unfair to summarize these patterns by saying that the English lawyers faced an invasion by officials and other free professionals, and the Americans an invasion by companies and other legal professionals.

[T]he amount of American jurisdiction in property was expanding with the population, and the business jurisdiction much more rapidly. Yet in both jurisdictions, American lawyers faced competition not from individuals but from specialized corporations—trust companies, title companies, collection agencies. This competition was directed not against the expanding law firms in the qualitatively new jurisdictions of big business and government, but against individual lawyers and small partnerships working in more slowly expanding areas. This conflict arose out of external invasion of areas under full lawyer jurisdiction, and proceeded by price cutting; it exemplifies the third form of conflict discussed above.

IMPORTANT CONTESTS

To gain a clearer picture of the actual settlements of the major jurisdictional disputes, we may analyze problem areas and competitors in detail. This means replacing general classifications (free professions, national officials, land and property) with actual groups and bodies of work (accountants, the Board of Trade, trusts).

In America, there is a distinct difference between the urban and rural complaints. The rural complaints concern bread and butter property work—wills first and foremost, followed distantly by conveyancing, general property work, the winding up of estates, and trusts. In the city, the specific problems are general debt work, bankruptcy, and advocacy on retainer, followed distantly by legal, tax, and published advice, the writing of threatening letters, wills, and trusts. It is noticeable that the two lists overlap only in wills, trusts, and general property work, and that much of this competition is attributable to one type of competitor—the trust company and the bankers who ran it. The collection agency, by contrast, seems a completely urban phenomenon, as do the title company and other corporations. Local officials are important chiefly in the countryside, while other legal groups have their chief impact in the city, although notaries do cause some problems in the country.

The urban bar's lower tier, over-supplied by the night law schools, is fighting to expand into (or perhaps to retain) a collection business that is apparently conceded in the country, where the declining lawyer populations are fighting to defend more central jurisdictions against invasion. The urban groups' most important competitors are corporations offering efficient services. Having achieved great economies of scale in searching titles, the title companies next sought to construe their right to draft legal instruments directly affecting insurability as a right to draft deeds. The lawyers managed to turn back this attempt to seize a coequal jurisdiction in land affairs—one that would have been fatal to them—but did have to settle for the removal of much title work that had once belonged to them. The same thing happened in collections. The lawyers defeated the collection agencies' bid to seize coequal legal jurisdiction—by denying them the rights to have lawyers on retainer, to write certain kinds of threatening letters, and so on. But the collection agencies in fact performed that centralization of demand which Lazarus had

foreseen as necessary and absorbed a considerable amount of demand for legal services in the process. The story was repeated with trust companies. The trust companies' bids to write wills and draft trusts were denied, retaining crucial aspects of property jurisdiction under lawyers' legal control. But the lawyers still lost most administrative work connected with trusts and probate.

In each of these competitions with companies, the lawyers preserved what I have called an advisory jurisdiction. Their competitors' administrative efficiency provided far more effective services in the collection, trust, and title areas than could lawyers. In defense against them, the best the lawyers could manage was to retain legal and public control over the purely legal residual of these areas. The companies took over the administrative work in the workplace and, as time passed, were conceded the public right to it in bar association arguments and the legal right to it in court cases. These jurisdictions proved poachable because the subjective jurisdictions over them were weak; only a small fraction of the traditional work in them actually involved lawyers' special skills. Most of it was administration for which lawyers were neither specially trained nor specially able. Yet all of it had been considered part of trusts, collections, or title work as the case might be. The courts tried for some time to defend the lawyers' view by holding *workplace* jurisdictional standards to apply to lawyers (practice of law includes anything that lawyers have customarily done) while holding *legal* standards to apply to their opponents (practice of title companies includes only what statutes say it does). Ultimately, however, the courts retreated and the poachers relented, satisfied with the lucrative administrative work they could so effectively handle. The result split each of the three old legal jurisdictions in half, giving their administrative portions to the corporations and their legal ones to the lawyers. The meaning of trust, title, and collections as areas of work thus radically changed.

The notaries and foreign lawyers offer two interesting footnotes to unauthorized urban practice.The New York bar attributed the notarial problem to the city's large foreign population. The bar associations attacked "ignorant foreigners coming from countries where the 'notary' is a quasi-lawyer" for supposing that notaries were capable of performing legal actions. Eventually, perhaps because America entered the First World War as France's ally, the committee's remarks became a little less nativistic. The (later) foreign lawyer problem was similar; foreigners arriving in the 1930s often saw fit to advise fellow countrymen concerning the laws of their own land, something the bar association originally tried to attack, but later permitted. But the chief problem with foreign lawyers was their procuring offshore divorces for clients, something which drove the bar committees quite mad. Under the heading of foreign lawyers came also those large law firms from other American cities that opened New York offices. These provide the lone example in these data of a conflict, within the qualitatively new big-business jurisdiction, between members of the upper tier of the profession. Although these invaders

In recent years, the organized bar has raised similar [concerns about unqualified practice by non-lawyer 'notarios'](https://bit.ly/3mipsT8), particularly in immigration matters.

were nationally reputable firms, the New Yorkers insisted that they announce on their letterheads their incapability of New York practice. The competition for the new commercial work was so intense as to cause fighting within the profession.

The American rural scene was quite different. There lawyers were scarce and even lawyers were frank about the necessity of non-lawyers doing some legal work. In 1921, half of Pennsylvania's counties had less than forty lawyers apiece, and a quarter had less than twenty. Justices of the peace, aldermen, notaries, prothonotaries, and various other officials and laymen had perforce to do a variety of lawyers' work. Complaints about this practice surfaced most in the smaller cities like Wilkes-Barre, Allentown, and Williamsport, where the clearly defined legal systems of the cities met the locally negotiated divisions of labor characteristic of the true countryside. The rural conflicts concerned basic heartland legal work in land and property and betray all the usual signs of invasion of an underserved jurisdiction. It is striking, by comparison with the urban data, that Pennsylvania shows no sign whatever of the problems associated with collections—complaints about letters, about representation on retainer, about debt work. This too signifies a retreat to heartland work.

Surprisingly, many problems related to the new government business—tax appeals and advocacy before minor and government tribunals—seem to be equally split between urban and rural American lawyers. The presumption that governmental work provided an expansion area mainly for upper-tier urban lawyers may thus be incorrect. The tax advice findings do support it, for that problem is a largely urban matter. But still, the government work may have offered more general opportunities than it seemed at the outset. Perhaps it was the attempt to enter this new jurisdiction that left the rural lawyers so open to invasion in their land and property work.

People v. Alfani

125 A. 671 (NY 1919)

Crane, J.

The defendant was convicted by the Special Sessions of the city of New York, borough of Brooklyn, of violating section 270 of the Penal Law. He was not an attorney and counselor-at-law, but had for a long period of time drawn legal papers and instruments for hire and held himself out to the public as being in that business. His conviction was reversed by the Appellate Division on the ground that such acts did not constitute practicing law and, therefore, were in nowise contrary to the statute.

The question is fairly presented whether the things done by Alfani are open to the public generally or require a license from the state before a person can perform them for compensation and as an occupation.

Henry Alfani had lived at 475 Park avenue, Brooklyn, New York, since 1888. In the basement he had an office in which he carried on a real estate and insurance business. Distinct from such work he also drew legal papers, contracts for real estate, deeds, mortgages, bills of sale and wills. A large sign placed over his dining-room or basement window bore the words in big letters "Notary Public—Redaction of all legal papers." The defendant said "redaction" meant the drawing of legal papers. He was sixty years of age and evidently an Italian, as he testified in part through the Italian interpreter.

On December 27, 1917, two investigators of the state industrial commission called on Alfani at his office and asked him to look after a matter for them. Gallo, one of the men, said his name was George Lecas and that he lived at 23 Cook street, Brooklyn, where he had a soda water stand which together with a stock of cigars, cigarettes, candies and malted milk he had sold to the other man whom he introduced as Geannelis. The terms of the sale were these: the purchaser agreed to assume the seller's contract to pay five dollars twice a month to the American Siphon Company from which the fountain had been obtained, $65 being still due thereon; the stock was to be $26 cash and the good will $145 to be paid for by Geannelis—$50 that night, $50 January 15th and $45 January 31st. The last payment was to be extended ten days if the purchaser was unable to meet it on time. The defendant advised that a bill of sale be drawn and that the purchaser give back a chattel mortgage. He explained about the necessity of filing the mortgage in the county clerk's office and the foreclosure by a city marshal in case of non-payment. The papers were drawn and executed for which the defendant charged and received four dollars. Before leaving Gallo said: "In case I have any trouble of any kind and I need any legal advice can I come back to you?" to which Alfani replied, "Yes."

By section 270 of the Penal Law it is a misdemeanor for any natural person "to make it a business to practice as an attorney-at-law * * * or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, * * * without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state." To practice or to represent as being entitled to practice law in any manner is prohibited to those not lawyers.

The Appellate Division was of the opinion that this section related only to practice connected with court or legal proceedings. The restriction is broader than this for effect must be given to the words "or in any other manner." The words "as aforesaid" have reference to practice in the courts mentioned, and the following "or in any other manner" refer to the practice as an attorney-at-law out of court and not in legal proceedings. Practicing as an attorney-at-law in or out of court or holding oneself out as entitled to so practice is the offense. Not only is this the natural reading of the section but the lower court in a previous decision held that practicing law was not confined to court work.

In *Matter of Duncan* it is said: "It is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law. An attorney-at-law is one who engages in any of these branches of the practice of law."

In *Eley v. Miller* the court stated: "As the term is generally understood, the practice of law is the doing or performing services in a court of justice in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court."

To make it a business to practice as an attorney-at-law not being a lawyer is the crime. Therefore, to prepare as a business legal instruments and contracts by which legal rights are secured and to hold oneself out as entitled to draw and prepare such as a business is a violation of the law.

It does not lead us to a conclusion to investigate the powers of notaries public under the Roman law or of scriveners and notaries under the English system past or present. The legislators who enacted section 270 knew what practicing law was in this state as many of them were of the profession and they were dealing with that as carried on here at the present day. It is common knowledge for which the above authorities were hardly necessary, that a large, if not the greater, part of the work of the bar to-day is out of court or office work. Counsel and advice, the drawing

of agreements, the organization of corporations and preparing papers connected therewith, the drafting of legal documents of all kinds, including wills, are activities which have long been classed as law practice. The legislature is presumed to have used the words as persons generally would understand them, and not being technical or scientific terms "to practice as an attorney-at-law" means to do the work, as a business, which is commonly and usually done by lawyers here in this country.

The reason why preparatory study, educational qualifications, experience, examination and license by the courts are required, is not to protect the bar as stated in the opinion below but to protect the public. Similar preparation and license are now demanded for the practice of medicine, surgery, dentistry and other callings, and the list is constantly increasing as the danger to the citizen becomes manifest and knowledge reveals how it may be avoided.

Why have we in this state such strict requirements for admission to the Bar? A regents' certificate or college degree followed by three years in a law school or an equivalent study in a law office marks the course to a bar examination which must finally be passed to entitle the applicant to practice as an attorney. Recognizing that knowledge and ability alone are insufficient for the standards of the profession, a character committee also investigates and reports upon the honesty and integrity of the man. And all of this with but one purpose in view and that to protect the public from ignorance, inexperience and unscrupulousness.

Is it only in court or in legal proceedings that danger lies from such evils? On the contrary, the danger there is at a minimum for very little can go wrong in a court where the proceedings are public and the presiding officer is generally a man of judgment and experience. Any judge of much active work on the bench has had frequent occasion to guide the young practitioner or protect the client from the haste or folly of an older one. Not so in the office. Here the client is with his attorney alone, without the impartial supervision of a judge. Ignorance and stupidity may here create damage which the courts of the land cannot thereafter undo. Did the legislature mean to leave this field to any person out of which to make a living? Reason says no. Practicing law as an attorney likewise covers the drawing of legal instruments as a business.

That such work is properly that of an attorney seems to be recognized by other provisions of law. Section 88 of the Judiciary Law, relating to the disbarment of attorneys, makes it the duty of the Appellate Division in each final order of suspension to forbid the giving to another of an opinion as to the law or its application or of any advice in relation thereto.

Section 835 of the Code of Civil Procedure provides in substance that an attorney shall not be allowed to disclose a communication made by his client to him or his advice given thereon, in the course of his professional employment. Such communications have referred to a deed; an affidavit; a chattel mortgage and a bill of sale.

Also the summary power of courts over attorneys may be exercised in matters unrelated to court proceedings.

Even the instances cited below of scriveners and notaries public in foreign lands drawing legal papers sustain this contention, as the laws require such to be trained and experienced men.

The duties of notaries public here are defined by section 105 of the Executive Law. Only in the name is there a correspondence to the continental official.

All rules must have their limitations, according to circumstances and as the evils disappear or lessen. Thus a man may plead his own case in court, or draft his own will or legal papers. Probably he may ask a friend or neighbor to assist him.

We recognize that by section 270 and also 271 a person, not a lawyer, may appear for another in a court not of record outside cities of the first and second class. The results cannot be serious. The cases are generally of minor importance to the parties; such occasions are seldom frequent enough to make it a business, and the procedure is so informal as to constitute the judge really an arbiter in the dispute.

We must, therefore, in harmony with these views, reverse the judgment of the Appellate Division and affirm that of the Special Sessions.

McLAUGHLIN, J. (dissenting).

The defendant was convicted of violating section 270 of the Penal Law. [On appeal], the judgment of conviction was reversed and he was discharged. The People, by permission, appeal to this court.

So much of the section of the Penal Law under which the conviction was obtained as is material to the question presented on appeal, reads as follows: "Practicing or appearing as attorney without being admitted and registered. It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as attorney and counsellor-at-law for another in a court of record in this state or in any court in the city of New York, or to make it a business to practice as an attorney-at-law or as an attorney and counsellor-at-law for another in any of said courts * * * or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, * * * without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state * * *."

The defendant, at the time stated in the information, was a notary public, living at 475 Park avenue, Brooklyn, in the basement of which he had a small office for the transaction of business. Over the entrance of the office was the following sign:

Agency of the Great Eastern Casualty Co. of New York	**Redaction of all Legal Papers**
Notary Public	**Loan Insurance Broker**
Real Estate Operator	**Established 1888.**

On the 27th of December, 1917, one Gallo, special investigator of the state industrial commission, in company with one Geannelis, entered defendant's office and he asked them what they wanted. Gallo stated that he was selling his store, which consisted of a soda water stand, together with a stock of cigars, cigarettes, etc., to Geannelis, for a certain consideration, which was named, part of which was to be paid down and the balance in installments. Gallo also stated there was a certain amount due to the American Siphon Company on the purchase price of the soda water fountain, which Geannelis was to assume and pay. The defendant advised that Gallo give a bill of sale to Geannelis and that he give a chattel mortgage for the amount remaining unpaid. He also explained it would be necessary to file the mortgage in the county clerk's office, so that the same could be foreclosed by the city marshal in case of non-payment. His suggestions as to the bill of sale and mortgage were followed and he thereupon prepared the same, for which he was paid four dollars.

It is contended that this transaction, together with the sign, amounted to a violation of the provisions of the statute quoted. I have been unable to reach this conclusion. The statute, unless something is read into it which does not there appear, is to prohibit a natural person practicing or appearing as an attorney-at-law in the courts mentioned, or to hold himself out to the public as being entitled to practice in such courts. The defendant did neither. Clearly, the drafting of the bill of sale and chattel mortgage was not practicing or appearing as an attorney-at-law in any court. Nor did the words on the sign, "Redaction of all legal papers" indicate that he was holding himself out as entitled to practice in such courts. The words "in any other manner," upon which stress is laid, relate to what precedes them in the sentence, viz., the courts referred to. The phrase, although general in its nature, is limited and qualified by the prior specific designations. The rule of ejusdem generis applies. Where the enumeration of specific things is followed by some more general word or phrase, such general word or phrase is held to refer to the things of the same kind.

At the time defendant was convicted it was not illegal, and is not now, for natural persons to draft papers usually intrusted to lawyers. Judicial notice may be taken of the fact that in the rural districts of the state leases, deeds, bills of sale, chattel

mortgages, wills and other instruments creating legal obligations are frequently prepared by laymen, notaries public and justices of the peace. Indeed, a natural person could, at the time defendant was convicted, appear for another in a Magistrate's Court, or before a justice of the peace, except in cities of the first and second class, and receive pay therefor. This practice is recognized by section 271, which prohibits a person from receiving compensation for appearing as attorney in a court before any magistrate in any city of the first or second class, unless admitted to practice as an attorney and counsellor in the courts of record of the state. That the legislature did not intend to prohibit such practice is apparent from the fact that at its last session it amended section 271, so that it now includes cities of the third, as well as those of the first and second class.

To give to the words "in any other manner" the legal effect suggested would prohibit a natural person anywhere in the state from drawing a legal paper of any description, or appearing in any court. This, the legislature has not yet indicated its intent to do.

One of the well-settled rules of statutory construction is that statutory offenses cannot be established by implication and that acts in and of themselves innocent and lawful cannot be held to be criminal, unless there is a clear and unequivocal expression of the legislative intent to make them such.

I am of the opinion that the defendant was not guilty of violating section 270 of the Penal Law; that the Appellate Division was right in reversing the conviction and discharging him; and its judgment should, therefore, be affirmed.

---

3. Regulation of Lawyers

Preamble and Scope

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of pro-

fessional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives,

cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For exam-

ple, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1

Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

NC Gen. Stat. §§ 84-15, 84-16, 84-23

In re Creasey

12 P.3d 214 (Ariz. 2000)

Sheller v. Superior Court

71 Cal.Rptr.3d 1697 (Cal. App. 2008)

Chapter 2

Professional Gatekeeping

1. Bar Admission

Rule 8.1: Bar Admission & Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or
(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

NC Gen. Stat. §§ 84-1, 84-2, 84-4.1, 84-4.2, 84-24, 84-32

Character & Fitness

Appeal of Lane

544 N.W.2d 367 (1996)

Per Curiam

Gary M. Lane, challenges the decision of the bar commission of the Nebraska State Bar Association to deny his application for readmission to the Nebraska bar through membership in the association.

[* * *]

Facts

At various times Lane was admitted to the bars of Colorado, Iowa, Nebraska, Texas, Virginia, and Washington, D.C. He permitted the Nebraska membership obtained in 1978 to lapse, and in 1994 when he again applied for admission to the Nebraska bar, he no longer held membership in the Iowa bar.

Noting that Lane had failed to list in his application any employment from October 1990 through October 1994, the association's admissions clerk, Jim L. Henshaw, wrote for an explanation. Lane responded by letter that he was unemployed during that period of time. However, in a later letter to the association's executive director, James Sajevic, Lane admitted that he had been employed in temporary jobs during the questioned period of time.

The commission then received information indicating that Lane had exhibited threatening, confrontational, obnoxious, and paranoid behavior. Henshaw wrote Lane requesting his appearance before the commission. Lane appeared, and the commission thereafter advised him that it would continue its background investigation, but that pending the results thereof, he would be permitted to sit for the February 1995 bar examination if he desired to do so. Lane took the examination and was notified that he had passed and that the commission was continuing its investigation.

After the investigation was concluded, the commission advised Lane's attorney by letter that it had concluded Lane lacked the current character and fitness required for admission to the Nebraska bar. The reasons for the denial of admission were stated to be:

1. Evidence of hostile, threatening, and disruptive interactions with individuals since … Lane has resided in Nebraska.

2. Lack of candor in completing his application for admission to the bar, including an incomplete disclosure of past employment and an incomplete disclosure of previous bar admissions.

Lane then wrote the commission requesting a hearing. Lane's attorney later requested that the commission furnish him with a bill of particulars regarding the reasons for the denial of admission. The commission wrote Lane's attorney that the reasons supporting its decision were:

> 1. Lack of candor in completing the application for admission to the Bar.
>
> A. The application was received on October 31, 1994. Question 2 inquired as to whether he had ever applied for admission to the Bar of any state or applied to take the Bar examination of any state. If so, he was to state the date of the application, the jurisdiction to which he applied, the outcome of the application, and the dates of admission in each jurisdiction. On January 27, 1995, he appeared at a hearing before the Commission and disclosed for the first time that he had been previously admitted in Nebraska and Iowa.
>
> B. In his Application received on October 31, 1994, he was asked to respond to questions . . . 7 and 8 relating to past employment. The response was to include temporary or part-time employment for the past 10 years. He did not list any employment since October of 1990. A specific inquiry was made of this matter by letter of November 22, 1994, from Jim L. Henshaw. He responded by letter of November 23, 1994, that he had been unemployed from October of 1990 to the date of his letter. It was not until a letter dated April 11, 1995, to Mr. Sajevic that he admitted to such temporary employment. No details were given. Our investigation has found that he had been employed for temporary employment in March and April, 1993, for Manpower and Apple One Employment.
>
> C. In his Application received October 31, 1994, Question 11 asked if any civil actions or judgments had ever been filed against him. He indicated that such actions or judgments were in existence. He did not attach NSBC Form 3 to the Application. It was not until the hearing of January 27, 1995, that this matter was explained.
>
> 2. Evidence of Hostile, threatening, and disruptive interaction with individuals since he resided in Nebraska which reflect upon his character and fitness to practice.
>
> A. At the hearing on January 27, 1995, he discussed his attempts to volunteer at the Creighton Legal Clinic. Catherine Mahern, the Director of the Clinic, has indicated that she and Connie Kearney had a meeting with him to discuss his role in the Clinic. At this meeting in September or October of 1994, it was reported that he was hostile and threatening. The next day, Catherine Mahern asked him to leave the Clinic and not return. He was again threatening, hostile and rude.

B. On or about January 19, 1995, he was in attendance at a BAR-BRI Review at Creighton University. Apparently, he could not locate his keys and began accusing other attendees of taking his keys. Kay Strong was one of the individuals accused. He also accused Corby Gary and threatened to fight him. He also indicated to Mr. Gary that he would find out where he lived. As a result, he was asked to not participate in the BAR-BRI Review. An arrangement was made whereby he could review the tapes of the sessions by himself. Thomp Pattermann and Laura Pattermann were also witnesses to other disruptive behavior at the review sessions before he was asked to leave. Robert J. Launbenthal, an active member of

the Nebraska and Iowa Bars, observed him making inappropriate and demeaning statements to a security guard at Creighton Law School during the early days of the BAR-BRI Review.

> C. Shortly after his dismissal from the BAR-BRI Review, he spoke by telephone with Kay Coffey and Cindy Lilleoien of NCLE by telephone [sic]. He was rude and threatening to both of the NCLE employees. There apparently had been a controversy regarding whether audiotapes or videotapes would be supplied.

A hearing was then held by the commission, which Lane attended with his attorney. Through his attorney, Lane was permitted to cross-examine witnesses testifying before the commission and to present his own witnesses and evidence, and he himself testified. The commission found there was no evidence to support the assertion that Lane had been rude or threatening toward employees of the NCLE and that he had substantially complied with question 11 on the application by listing a civil judgment against him on his bankruptcy schedules that had been provided to the commission. The commission also found that although Lane failed to reveal his prior admissions to the Nebraska and Iowa bars, as the application form requested, the omission was not the result of an intent to deceive, but that it did indicate a casual attitude about compliance with instructions and the need to fully inform the commission. The commission further found, however, that Lane had acted in a threatening and intimidating manner while at the Creighton University legal clinic and at the BAR-BRI review course. The commission also found that Lane had intended to conceal the history of his temporary employment in Colorado, denoting a lack of candor in the application process.

Reasons for Appeal

[Lane raised seven grounds for reversing the commission's decision, including that the evidence did not support denial of his application for admisssion.]

Evidence

The second reason rests on Lane's premise that the evidence is deficient in two respects. First, according to Lane, it does not support the conclusion that he was hostile, threatening, and disruptive, and even if the evidence does so, the conduct is not such as warrants denial of admission to the bar. Second, again according to Lane, the evidence that he failed to disclose his previous temporary employment does not support the conclusion that he lacked candor, and if the evidence does so, the conduct does not warrant denial of admission to the bar.

Hostile, Threatening, and Disruptive Conduct

At the June 9, 1995, hearing, various witnesses testified to events which occurred during September 1994 and January through February 1995. Two of the events are worthy of discussion.

The first concerns Lane's involvement at the Creighton University legal clinic. Catherine Mahern, an associate professor of law at Creighton, as well as the director of the clinic, and Connie Kearney, an adjunct professor at the clinic, testified that Lane had come to the clinic in the spring or early summer of 1994 and offered to volunteer after school started again. On his first day, September 19, 1994, Lane accompanied Kearney and two law students to a juvenile court hearing. Lane asked to sit with the students at counsels' table, but Kearney told him that he should remain behind the bar. Lane responded that he was a licensed attorney, that he was in good standing, and that he wanted to sit with the students. Kearney again told him that she wanted him to remain behind the bar, to which Lane responded, "I'll remember this." Kearney testified that she took this statement as a threat.

Mahern met with Kearney and Lane to discuss Lane's role in the clinic and to clear up any misunderstandings that might have occurred at the hearing. During the meeting, Lane stated that Kearney was the type of woman who does not know how to deal with men and is intimidated by them. He also admitted what he had said to Kearney at the hearing and that he did not take it back. He told Mahern that while he could work with students, he would not work with women students. Finally, Lane stated that "those people in Colorado" had gotten to Mahern, that what they had told her was not true, that the record had been expunged, and that they could not prove anything.

The next day, Mahern called Lane into her office and asked him to leave the clinic. Lane became very irritated and said that Kearney and a student were on the phones in the back room talking to each other about him in whispered voices or in code. When Mahern stated that he must have been mistaken, he said in a loud voice, "[D]on't you accuse me of auditory hallucinations, I've been accused of that before and it's not true." On his way out, Lane passed by Kearney's desk and asked that she keep him out of her phone conversations from now on.

Lane testified that he did not intend to threaten Kearney at the juvenile court hearing; he had made the statement to her because he felt she was being deliberately discourteous to him as a lawyer from a neighboring jurisdiction. He also stated that he did not tell Mahern that he would not work with the female students, but, rather, that he would let them approach him if they wanted help and that he would just work with the male students "who apparently didn't find [Lane] very intimidating."

The second event occurred during the BAR-BRI review course at Creighton University law school. During one of the review sessions, Lane left approximately 10 minutes early. After the review session ended, Lane returned and demanded to know who had stolen his keys. Lane used strong and profane language in accusing the students in attendance of stealing his keys. After the students had left the

room, Lane said to one of the students, Corby Gary, "[W]e can take this outside and settle this." Lane went on to say to Gary, "I'll find out where you live." Gary testified that the latter statement caused him concern for himself and his wife.

Other events which were mentioned by witnesses at the hearing included intimidating and rude conduct directed at a security guard and a custodian at Creighton and abrasive behavior during the BARBRI review sessions.

In addition, there are other events alluded to in the evidence which cause some concern, especially his interactions with women. His employment history at AppleOne Colorado, Inc., indicates that he had "outbursts in lobby while filling out application," that he was very rude to female employees, and that he walked off one job, allegedly telling a supervisor to have all of his employees see a psychiatrist. Lane testified that he did not quit that shift early, but, rather, was asked to leave because he was "having another one of these disagreements with another one of these women who didn't apparently like me or my demeanor." Lane acknowledged that his being accused of behaving in an intimidating manner toward women is "part of a recurring problem that I've experienced," and that more women tend to find him intimidating than men.

Lane was also discourteous in his answers to various questions put to him by commission members at the hearing:

> Q. Well, it was a stormy night that night, is that correct?
>
> A. No, it was not. We're going to talk about the weather now[?]
>
> . . . .
>
> Q. Aren't you glad you didn't go outside with him?
>
> A. I think that's kind of a silly question.
>
> . . . .
>
> Q. What's the title of the one that was published?
>
> . . . .
>
> A.... I don't see what relevance this has....
>
> . . . .
>
> Q. Were [the keys] lost?
>
> . . . .
>
> A. I don't understand why this is so important.

Moreover, his correspondence with the commission during the investigation process evidences a sarcastic and cavalier attitude toward it and its responsibilities. One letter to Harold L. Rock, the chairperson of the commission, contains the following:

> I am sure you are cognizant of the ethical obligation attorneys have to be courteous to one another. Mr. Henshaw clearly disregards this obligation. If Mr. Henshaw does not have an undisclosed agenda perhaps he should be questioned concerning his unnecessary sarcasm. Perhaps my unemployment is not so difficult to understand after all, if this is the attitude of persons in positions of authority.

Another letter to the commission chairperson reads:

> I do not think slanderous innuendoes constitute sufficient grounds to deny me a license to practice law in the State of Nebraska. I recognize that you may have a qualified privilege during this process.... I note your sarcastic use of the phrase "working with dispatch" in your letter. If the Commission had worked with dispatch on my application, the investigation would have been completed by now....
>
> ... Apparently, my failure to fail has again found your side "delaying the game". I use the words "your side" because this process has taken on the characteristics of a football match, not an administrative inquiry. Are you hoping that only if you delay long enough, something negative will happen to disqualify me for admission?
>
> ... My economic burden of your continued refusal to find me fit to practice in the face of overwhelming favorable evidence pales in comparison to the shabbiness of your effort to impune [sic] my professional integrity.

Also of concern is his belief in various conspiracies being aligned against him. In his interview in January 1995, Lane asserted that because as an attorney he had taken on powerful interests in Texas and because Colorado is dominated by Texas investors, Texas businessmen, and Texas finance, there was an effort on the part of various people in Colorado to politically harass him. Lane stated that the reason a judge in Colorado Springs filed an ethics complaint against him was out of political animosity because "she's a conservative judge in a conservative county."

He also attributed the three other ethics complaints filed against him in Colorado to political harassment. According to Lane, clerks, judges, and attorneys were upset that he came to Colorado Springs to set up a law practice because his reputation in Texas had preceded him.

Lane also implies that the commission was politically motivated in its investigation of his character and fitness. This assertion had been made earlier in a letter from Lane to the commission, in which he objected to the "inquisitorial approach to [his] Bar admission that [he] believe[s] to be motivated by personal or political animosity." Furthermore, Lane is under the impression that all of the people who were in the BAR-BRI course were against him, allegedly because of racial animosity they felt toward him (Lane testified that he is part Hispanic, part Italian, and part "Anglo Irish"), and because they may have heard of his reputation.

While any one of the events described above, viewed in isolation, could perhaps be attributed to the pressures of taking the bar examination or perhaps a misunderstanding, taken together these incidents show that Lane is prone to turbulence, intemperance, and irresponsibility, characteristics which are not acceptable in one who would be a counselor and advocate in the legal system.

Accordingly, our de novo review of the record leads us to independently conclude that Lane has exhibited a pattern of acting in a hostile, threatening, and disruptive manner.

Having so determined, we turn our attention to Lane's claim that even so, the behavior does not constitute sufficient relevant conduct to deny admission under the provisions of rule 3.

Rule 3 provides, in part, as follows:

> An attorney 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.

Apparently, Lane is arguing that abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent conduct does not reflect on his "honesty, trustworthiness, diligence, or reliability." He is wrong.

Appendix A to rule 3 explains that "[a]n attorney 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 of conduct which shows a history of abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior is not the type of record which justifies the trust of others with respect to the professional duties owed them. Our Code of Professional Responsibility speaks directly to this issue. Canon 7, EC 7-10, provides that a lawyer is obligated to treat with consideration all persons involved in the legal process, and Canon 7, EC 7-37, provides that although ill feelings may exist between clients in an adversary proceeding,

> such ill feeling should not influence a lawyer in his or her conduct, attitude, and demeanor toward opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

The requisite restraint in dealing with others is obligatory conduct for attorneys because "[t]he efficient and orderly administration of justice cannot be successfully carried on if we allow attorneys to engage in unwarranted attacks on the court [or] opposing counsel…. Such tactics seriously lower the public respect for … the Bar." It necessarily follows that "[a]n attorney who exhibits [a] lack of civility, good manners and common courtesy … tarnishes the … image of … the bar…."

In addition, appendix A declares, in part, that "[t]he 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 attorneys." When members of the public engage attorneys, they expect that those attorneys will conduct themselves in a professional and businesslike manner. Attorneys who routinely exhibit abusive, disruptive, hostile, intemperate, intimidating, irrespon-

sible, threatening, or turbulent behavior toward others involved in the legal system are not worthy of such trust and confidence. What cannot be permitted in attorneys cannot be tolerated in those applying for admission as attorneys.

Moreover, the qualities listed in the rule are merely illustrative; "[t]he fact is that in reviewing an application for admission to the bar, the decision as to an applicant's good moral character must be made on an ad hoc basis." We therefore join other courts in holding that abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior is a proper basis for the denial of admission to the bar.

Even if we assume, arguendo, that Lane believes he is the victim of a conspiracy which encompasses various interests in Texas, various people in Colorado, and the commission itself, the sincerity of his belief in this supposed wide-ranging conspiracy against him cannot overcome the requirements for the practice of law. Belief unrelated to reason is a hallmark of fanaticism, zealotry, or paranoia rather than reasoned advocacy. The practice of law requires the ability to discriminate between fact and faith, evidence and imagination, reality and hallucination. While an applicant for admission to the bar is entitled to argue vigorously that the commission erred in its findings and recommendation, and this court would take seriously any substantiation of the existence of bias or misconduct on the part of the commission, a much stronger showing is needed than demonstrated by this record to warrant a conclusion that the commission had acted out of some type of political or personal animus.

Verbal abuse, unfounded accusations, and the like have no place in legal proceedings. While occasional lapses in decorum can be overlooked, Lane's transgressions exceed occasional incivility, anger, or loss of control. On this record, they form a pattern and a way of life which appear to be Lane's normal reaction to opposition and disappointment.

We agree with and adopt the observations in *Matter of Ronwin,* 139 Ariz. at 583-84, 680 P.2d at 114-15:

> Care with words and respect for courts and one's adversaries is a necessity, not because lawyers and judges are without fault, but because trial by combat long ago proved unsatisfactory.
>
> . . . .
>
> The profession's insistence that counsel show restraint, self-discipline and a sense of reality in dealing with courts, other counsel, witnesses and adversaries is more than insistence on good manners. It is based on the knowledge that civilized, rational behavior is essential if the judicial system is to perform its function. Absent this, any judicial proceeding is likely to degenerate into verbal free-for-all and some, no doubt, into physical combat.... [H]abitual unreasonable reaction to adverse rulings ... is conduct of a type not to be permitted of a lawyer when acting as a lawyer. What cannot be permitted in lawyers, cannot be tolerated in those applying for admission as lawyers.

Our de novo review leads us to independently conclude, contrary to Lane's contention, that his egregious pattern of abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent conduct is sufficient relevant conduct to deny him admission to the bar.

Lack of Candor

Question 7 of the application read: "List every job you have held for the ten year period immediately prior to the date of this application or since the age of 18, beginning with your present employment, if any. Please include self-employment, clerkships, internships, temporary or part-time employment and military service." Lane explained that he had failed to list the Colorado temporary employment because he held simple common labor jobs, and he may have either misread the question or forgotten about the jobs. We agree with the commission's determination that such an explanation is not credible. The correspondence between Lane and Henshaw set out earlier establishes not only that Lane failed to list the employment, but that he originally denied having had any employment during the period in question.

In addition, not only did Lane fail to list his former membership in the Iowa bar, but he failed to reveal that he had previously been a member of the bar of this state, the very state whose bar he was again seeking to join. That piece of information was certainly one of the more important and relevant items he could have provided the commission. His explanation that he simply forgot to list it, or that he had run out of space, or that he did not think it was relevant or material, we find to be incredible, despite the somewhat contrary finding of the commission.

Contrary to the commission's implication, we have never held that in order to be found to have lacked candor in filling out an application, an applicant must have had an intent to deceive. On the contrary, in *In re Application of Majorek,* we observed that "false, misleading, or evasive answers to bar application questions may be grounds for a finding of lack of requisite character and fitness." While an intent to deceive will reflect on whether such answers are false, misleading, or evasive, and would properly be considered by the commission, an applicant who recklessly fills out an application, as the consequence of which the application contains false answers, is just as culpable of lacking candor in the application process as is the applicant who intends to deceive the commission.

Accordingly, our de novo review of the record leads us to independently find that Lane lacked candor in filling out the application at issue. Moreover, contrary to Lane's contention, we independently find such conduct reflects on Lane's honesty, trustworthiness, diligence, and reliability, and thus provides an additional reason to deny him admission to the bar of this state.

[* * *]

Conclusion

For the foregoing reasons, we affirm the commission's decision to deny Lane's application to be readmitted to the bar of this state through membership in the Nebraska State Bar Association.

AFFIRMED.

WRIGHT, Justice, dissenting.

The various incidents described by the majority suggest that Lane is at times obnoxious, has a temper, and can be difficult to work with and that these qualities appear to be amplified around women. With this, I cannot quibble. Until today, however, being obnoxious, having a quick temper, and being hard to get along with were not grounds for the extreme sanction of denial of admission to the Nebraska bar. The majority reaches far beyond the current rules governing admission to the Nebraska bar; therefore, I respectfully dissent.

The majority cites two grounds for excluding Lane: (1) Lane's disruptive, threatening, and hostile behavior and (2) Lane's lack of candor.

After reviewing the factual basis for its first allegation against Lane, the majority concludes that "these incidents show that Lane is prone to turbulence, intemperance, and irresponsibility, characteristics which are not acceptable in one who would be a counselor and advocate in the legal system." While I do not approve of such characteristics, there are no bar admission rules for excluding an applicant on such grounds.

The majority states that it has found authority to exclude turbulent or intemperate people such as Lane in Neb.Ct.R. for Adm. of Attys. 3 (rev.1992). The pertinent portion of rule 3 provides:

> An attorney 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.

Lane's behavior does not meet this definition. Rule 3 provides authority for the bar to deny admission for behavior which manifests "a significant deficiency in the honesty, trustworthiness, diligence, or reliability" of an applicant. Obnoxious and rude behavior *by definition* simply do not reflect on one's character for honesty, trustworthiness, diligence, or reliability—let alone demonstrate a "significant deficiency" in these traits, as required by rule 3.

Dishonesty and incivility are two vastly different behavioral traits. Rule 3 reaches the former, but simply does not reach the latter. Nothing in the record suggests that Lane has manifested dishonesty toward clients, adversaries, courts, or others with respect to the professional duties owed to them. Rule 3 is not a catchall exclusionary rule reaching all sorts of personality defects in applicants.

The majority explains that we must preclude Lane from membership in the bar in order to protect the public. However, Lane has practiced law in a number of states since being admitted to practice in 1977. Whatever interpersonal problems Lane may have, they apparently have not led to injury to his clients.

Lane is accused of lacking candor based on two omissions on his bar application. First, Lane failed to report approximately 60 to 100 hours of temporary employment during a 5-week period in 1993. At the commission hearing, Lane could not recall exactly why he left the temporary employment off his application. He thought that he may have either misread the question or forgotten about the jobs. Lane speculated that given that the jobs were short-lived, trivial positions, he may have thought that it was not important to mention them or that he may have been embarrassed to do so. The majority does not find this explanation credible.

Second, Lane failed to report that he was formerly a member of the Iowa and Nebraska bars. Lane noted that there were only three lines available on the application for listing past or current bar memberships. Lane speculated that once he filled in those three lines—with information about his other bar memberships—he intended to attach an extra sheet listing these memberships, but forgot to do so prior to sending in his application.

Whatever the case, an allegation of lack of candor is only probative of one's character for honesty if there is evidence of some intent to deceive, or at least purposeful evasiveness. The record does not show any such intent or even any motive for Lane to deceive the commission. The record shows no disciplinary sanctions against Lane in the omitted states, nor any evidence of malpractice. Lane apparently just filled out his application carelessly.

Nevertheless, the majority concludes that an applicant who "recklessly" fills out an application—and as a result the application contains false answers—is just as culpable of lacking candor in the application process as an applicant who intends to deceive the commission. Consequently, the majority finds that Lane lacked candor in filling out the application and that such conduct reflects on his honesty, trustworthiness, diligence, and reliability. The majority cites this as an additional reason to deny him admission to the bar.

However, the determination of whether someone is dishonest is a judgment about that person's state of mind and about his or her intentions. If the goal of the "lack of candor" standard is to ensure that potential attorneys are not dishonest, then a rule which holds that lack of candor can be established without showing any culpable state of mind is a rule that does not advance its own purpose.

Moreover, such a rule completely ignores the "use of information" instructions that we have issued to the commission. Appendix A to the rules for admission of attorneys states: "In making this determination [of whether the present character and fitness of an applicant qualify the applicant for admission], the following factors should be considered in assigning weight and significance to prior conduct:… 10. The materiality of any omissions or misrepresentations." The majority's approach to application omissions ignores factor No. 10. Likewise, we have held that an omission can be material to a consideration of honesty if the omission also demonstrates an intent to deceive, give false answers, or be evasive. Lane's omissions do not establish that he intended to deceive the commission or that he is dishonest.

Under the current rules for admission to the Nebraska bar, I do not believe that Lane can be denied admission.

In re Converse

602 N.W.2d 500 (Neb. 1999)

Per Curiam

Paul Raymond Converse appeals a decision of the Nebraska State Bar Commission (Commission) denying his request to take the July 1998 Nebraska bar examination. Converse claims that the decision of the Commission should be reversed because the Commission rested its denial of Converse's application, at least in part, upon conduct protected by the First Amendment to the U.S. Constitution and, in the alternative, that Converse's conduct did not constitute sufficient cause under Nebraska law for denying his application on the ground of deficient moral character. For the reasons that follow, we affirm the decision of the Commission.

Factual Background

In 1998, Converse applied for permission to sit for the Nebraska bar examination. On June 29, 1998, Converse was notified by letter that the Commission had denied permission for him to take the July 1998 Nebraska bar examination because it had determined that Converse lacked the requisite moral character for admission upon examination to the Nebraska State Bar Association. On July 7, the Commission received notice that Converse was appealing the Commission's initial determination. Converse's appeal was heard on September 15, after which the Commission reaffirmed its initial determination and notified Converse on December 18 that he would not be allowed to sit for the Nebraska bar examination at that time.

The evidence at the Commission hearing revealed that as part of the application process, Converse was required to request that the dean of his law school submit a form certifying completion of Converse's law school studies. That form contained a question asking, "Is there anything concerning this applicant about which the Bar Examiners should further inquire regarding the applicant's moral character of fitness to practice law?" The question was answered, "Yes," and the dean also noted, "Additional information will be provided upon request." The Commission followed up on this notation by conducting an investigation which ultimately revealed certain facts regarding Converse.

After the completion of his first semester at the University of South Dakota (USD) Law School, Converse sent a letter to then assistant dean Diane May regarding certain issues—not relevant to this appeal—that he had had with the law school during fall classes, closing that letter with the phrase, "Hope you get a full body tan in Costa Rica." Subsequent to that note, Converse had several more encounters with May, beginning with his writing letters to May about receiving grades lower than what he believed he had earned in an appellate advocacy class.

After he received a grade he believed to be unjustified by his performance in the appellate advocacy course, Converse wrote letters to May and to the USD law school dean, Barry Vickrey, requesting assistance with an appeal of that grade. In addition to writing letters to Vickrey and May, Converse also sent a letter to the South Dakota Supreme Court regarding the appellate advocacy course professor's characterization of his arguments, with indications that carbon copies of the letter were sent to two well-known federal court of appeals judges. The letter was written to suggest the professor believed her stance on certain issues was more enlightened than that of the judges. Converse sent numerous correspondence to various people regarding the grade appeal against the specific professor. Despite all such correspondence, Converse testified at the hearing that no formal appeal of the grievance was ever filed. Converse's grade was never adjusted.

The evidence showed that following the grade "appeal," Converse prepared a memorandum and submitted it to his classmates, urging them to recall an "incident" in which yet another professor lashed out at him in class, and to be cognizant of the image that incident casts "on [that professor's] core professionalism" prior to completing class evaluations. Converse also wrote a letter to a newspaper in South Dakota, the Sioux Falls Argus Leader, regarding a proposed fee increase at the USD law school. Converse immediately began investigating the salaries of USD law professors and posted a list of selected professors' salaries on the student bulletin board, as well as writing a letter that accused Vickrey of trying to pull a "fast one."

Converse's next altercation at the USD law school involved a photograph of a nude female's backside that he displayed in his study carrel in the USD law library. The picture was removed by a law librarian. In response to the removal of this photograph, Converse contacted the American Civil Liberties Union (ACLU) and re-

ceived a letter indicating that his photograph might be a protected expression under the First Amendment. Once again, Converse went to the student newspaper to alert the student body of the actions of the law school authorities, accusing them of unconstitutional censorship.

Converse redisplayed the photograph once it was returned by the law librarians. Vickrey received several complaints about the photograph from other students, classifying Converse's behavior as "unprofessional and inappropriate." Upon Converse's redisplay of the photograph, Vickrey sent him a memorandum explaining that the picture would not be removed only because Vickrey did not want to involve the school in controversy during final examinations. Converse testified that he redisplayed the photograph in order to force the alleged constitutional issue.

The evidence also revealed that Converse filed an ethics complaint with the North Dakota Bar Association regarding certain correspondence between Vickrey and a retired justice of the North Dakota Supreme Court. The complaint was dismissed. Converse went to the USD student newspaper, claiming that a letter from a retired North Dakota justice to the ACLU, in response to questions from Vickrey, was a violation of professional ethics (apparently Model Rules of Professional Conduct Rule 4.2 (1999), which precludes a lawyer from discussing matters with opposing parties the lawyer knows to be represented by counsel). In addition to going to the press, Converse also contacted the president of USD, referring to Vickrey as an "incompetent" and requesting that Vickrey be fired. In addition to this incident, Converse reported his suspicions about USD's student health insurance policy to the student newspaper under the title of "Law Student Suspects Health Insurance Fraud," as well as in a separate article alleging that USD had suppressed an investigation of its insurance carrier.

The Commission also heard testimony regarding Converse's attempt to obtain an internship with the U.S. Attorney's office in South Dakota. Converse arranged for the internship on his own, only to have his request subsequently rejected by the law school. Upon receiving his denial, Converse sent a complaint to all of USD's law school faculty members. Vickrey testified that Converse's internship was rejected because he failed to comply with the law school's procedures regarding internships. Converse then contacted the chairperson of the law school committee of the South Dakota State Bar Association with his complaint, expressly referring to Vickrey as being "arrogant." There is no indication of a response from the chairperson in the record.

The issue next considered by the Commission was that of various litigation threatened by Converse. Converse indicated that he would "likely" be filing a lawsuit against Vickrey for violations of his First Amendment rights. Converse was also involved in a dispute with other law students, in which he threatened to file a lawsuit and warned the students that all lawsuits in which they were involved would need to be reported to proper authorities when they applied to take a bar examination. Further, Converse posted signs on the bulletin board at the law school

denouncing a professor, in response to the way in which Converse's parking appeal was handled, and then went to the student newspaper to criticize the process and those involved in that appeal.

One of the final issues addressed by the Commission in its hearing was that of a T-shirt Converse produced and marketed on which a nude caricature of Vickrey is shown sitting astride what appears to be a large hot dog. The cartoon on the shirt also contains the phrase "Astride the Peter Principle," which Converse claims connotes the principle that Vickrey had been promoted past his level of competence; however, Converse admits that the T-shirt could be construed to have certain sexual overtones. Converse admitted that the creation of this T-shirt would not be acceptable behavior for a lawyer.

In response to not being allowed to post signs and fliers at the law school, Converse sent a memo to all law students in which he noted to his fellow students that his "Deanie on a Weanie" T-shirts were in stock. In that same memo, Converse included a note to his schoolmates:

> So far 4 causes of action have arisen, courtesy Tricky Vickrey. [He then listed what he believed the causes of action to be.] When you pass the SD Bar, if you want to earn some atty [sic] fees, get hold of me and we can go for one of these. I've kept evidence, of course.

Vickrey asked Converse not to wear his T-shirt to his graduation ceremony, and Converse decided that "it would be a better choice in [his] life not to go to that commencement." Converse acknowledges that Vickrey's request was made in a civil manner.

The evidence also revealed that prior to law school, Converse, in his capacity as a landlord, sued a tenant for nonpayment of rent and referred to the tenant as a "fucking welfare bitch." At the hearing, in response to questioning from the Commission, Converse testified at great length as to how he tends to personally attack individuals when he finds himself embroiled in a controversy.

After the Commission notified Converse that he would not be allowed to sit for the Nebraska bar examination, Converse appealed the adverse determination to this court.

Assignments of Error

Converse claims that the Commission erred in basing its decision, in part, upon conduct and speech arguably protected by the First Amendment; not making Converse aware of all of the "charges" against him in the proceedings in violation of the 14th Amendment; and determining that Converse's conduct gave rise to sufficient cause under Nebraska law for the Commission to deny his application to sit for the Nebraska bar examination.

[* * *]

Analysis

Converse first assigns as error that the Commission's determination should not stand because it is based in large part upon speech that is protected by the First Amendment. Thus, the threshold question we must answer is whether conduct arguably protected by the First Amendment can be considered by the Commission during an investigation into an applicant's moral character and fitness to practice law. We answer this question in the affirmative.

There are four U.S. Supreme Court cases that provide particular guidance with respect to this issue. In *Konigsberg v. State Bar,* 366 U.S. 36 (1961), the bar applicant argued that when the California bar commission forced him to either answer questions about his affiliation with the Communist Party or to face the repercussions of not being certified as possessing the required moral character to sit for the bar, the commission violated his First Amendment rights. The Supreme Court disagreed, pointing out that "regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment [forbids] … when they have been found justified by subordinating valid governmental interests." In the context of a character inquiry, "it is difficult, indeed, to imagine a view of the constitutional protections of speech and association which would automatically … exclude all reference to prior speech or association on such issues as character, purpose, credibility, or intent." The Court balanced the effect of allowing such questions against the need for the state to do a complete inquiry into the character of an applicant and concluded that questions about membership would not chill association to the extent of harm caused by striking down the screening process. The Court held that requiring the applicant to answer the questions was not an infringement of the applicant's First Amendments rights.

In 1971, the Court was once again confronted with the issue and decided a trilogy of cases concerning the bar admissions procedures of various states. It was the final case in this trilogy, *Law Students Research Council v. Wadmond*, that clarified the law as to the appropriate depth of a state bar commission's inquiry on an applicant's moral character. The Court declined to uphold a First Amendment attack against the admission procedure of the New York bar association. The Court upheld the statute, which required that the admitting authority be " 'satisfied that [the applicant] possesses the character and general fitness requisite for an attorney and counsellor-at-law.' " The Court declared that a state is constitutionally entitled to make such an inquiry of an applicant for admission to the bar and placed its imprimatur upon a state's conducting a preliminary inquiry into the moral character of those seeking admission.

Converse conceded at oral argument that the Commission's decision cannot be based solely on an applicant's exercise of First Amendment freedoms but that it is proper for the Commission to go behind the exercise of those freedoms and consider an applicant's moral character. That is exactly what was done by the

Commission in the instant case. An investigation of Converse's moral character is not a proceeding in which the applicant is being prosecuted for conduct arguably protected by the First Amendment, but, rather, "an investigation of the conduct of [an applicant] for the purpose of determining whether he shall be [admitted]." Converse's reliance upon cases where a judgment was invalidated at least in part because it was based on conduct protected by the First Amendment is therefore misplaced.

Were we to adopt the position asserted by Converse in this case, the Commission would be limited to conducting only cursory investigations of an applicant's moral character and past conduct. Justice Potter Stewart, writing for the majority in *Law Students Research Council v. Wadmond*, noted that the implications of such an attack on a bar screening process are that no screening process would be constitutionally permissible beyond academic examination and an extremely minimal check for serious, concrete character deficiencies. "The principle means of policing the Bar would then be the deterrent and punitive effects of such post-admission sanctions as contempt, disbarment, malpractice suits, and criminal prosecutions." Assuming but not deciding that Converse's conduct may have been protected by the First Amendment to the U.S. Constitution, *Law Students Research Council v. Wadmond* makes clear that a bar commission is allowed to consider speech and conduct in making determinations of an applicant's character, and that is precisely what has occurred in the instant case. As aptly stated by the South Dakota Supreme Court in *In re Egan,* 24 S.D. 301 (1909):

> [T]here can be such an abuse of the freedom of speech and liberty of the press as to show that a party is not possessed "of good moral character," as required for admission to the bar of this state … and therefore to require that such person be excluded from the bar of this state; and to our mind the evidence submitted here shows such an instance…. "Nor can the respondent be justified on the ground of guaranteed liberty of speech. When a man enters upon a campaign of villification, he takes his fate into his own hands, and must expect to be held to answer for the abuse of the privilege extended to him by the Constitution…."

We conclude that the Commission properly considered Converse's conduct as it reflects upon his moral character, even if such conduct might have been protected by the First Amendment. Converse's first assignment of error is therefore without merit.

Converse next contends that the Commission violated his due process rights by not making him aware of all of the "charges" against him in these proceedings. This argument is basically that when the Commission determined that he lacked the requisite moral character and gave some examples as to why they reached such a determination, they should have provided an all-inclusive list delineating every reason on which their decision was based. We conclude that such a procedure is not required.

By alleging that he has not been made fully aware of the "charges" against him, Converse has confused this inquiry into his moral character with a trial. Such is not the case. An inquiry regarding an application to the bar is not a lawsuit with the formalities of a trial, but, rather, is an investigation of the conduct of an applicant for membership to the bar for the purpose of determining whether he shall be admitted. No charges have been filed against Converse, and he has been advised of the reasons for which his application was denied. Converse's assignment of error that he has been denied due process of law is therefore without merit.

Converse's third assignment of error alleges that the Commission erred by determining there was sufficient cause to deny his application to sit for the Nebraska bar exam. Much of his argument centers around his conduct being protected by the First Amendment, as discussed previously. However, the question presented is not the scope of Converse's rights under the First Amendment, but whether Converse's propensity to unreasonably react against anyone whom he believes opposes him reveals his lack of professional responsibility, which renders him unfit to practice law.

There is no question that "[a] state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar…." The Court has also stated that it must be "kept clearly in mind … that an applicant for admission to the bar bears the burden of proof of 'good moral character'—a requirement whose validity is not, nor could well be, drawn in question here." "If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission…." Nebraska does, in fact, require a bar applicant to show that the applicant is of good moral character. Therefore, the burden is upon Converse to adequately prove his fitness to practice law in Nebraska, and the evidence will be viewed in this light.

The legal reality is that this court, and only this court, is vested with the power to admit persons to the practice of law in this state and to fix qualifications for admission to the Nebraska bar. With that in mind, we commence our analysis with the standards for moral character required for admission to the Nebraska bar as set out in our rules governing the admission of attorneys. Neb. Ct. R. for Adm. of Attys. 3 (rev.1998) governs this situation, which provides in pertinent part:

> An attorney 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 by an applicant in one or more of the following essential eligibility requirements for the practice of law may constitute a basis for denial of admission. In addition to the admission requirements otherwise established by these Rules, the essential eligibility requirements for admission to the practice of law in Nebraska are:

> (a) The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
>
> ….
>
> (c) The ability to conduct oneself with respect for and in accordance with the law and the Code of Professional Responsibility;
>
> ….
>
> (j) The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

Under rule 3, Converse must prove that his past conduct is in conformity with the standards set forth by this court, and the record in this case compels the conclusion that he has failed to do so.

We considered an appeal of a similarly situated bar applicant in *In re Appeal of Lane,* 249 Neb. 499 (1996). *In re Appeal of Lane* involved an individual seeking readmission to the Nebraska bar whose past included confrontations with law school faculty, the use of strong and profane language with fellow students at his bar review course, the use of intimidating and rude conduct directed at a security guard at the place where he was taking his bar review course, and some controversial interactions with females. We held that, taken together, "these incidents show that Lane is prone to turbulence, intemperance, and irresponsibility, characteristics which are not acceptable in one who would be a counselor and advocate in the legal system," and we upheld the denial of his application.

We explained in *In re Appeal of Lane* that the "requisite restraint in dealing with others is *obligatory conduct for attorneys* because '[t]he efficient and orderly administration of justice cannot be successfully carried on if we allow attorneys to engage in unwarranted attacks on the court [or] opposing counsel…. Such tactics seriously lower the public respect for… the Bar.' " Furthermore, " '[a]n attorney who exhibits [a] lack of civility, good manners and common courtesy … tarnishes the … image of … the bar….' " We held in *In re Appeal of Lane* that "abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior is a proper basis for the denial of admission to the bar." Expanding on this holding, we stated:

> "Care with words and respect for courts and one's adversaries is a necessity, not because lawyers and judges are without fault, but because trial by combat long ago proved unsatisfactory.
>
> ….
>
> "The profession's insistence that counsel show restraint, self-discipline and a sense of reality in dealing with courts, other counsel, witnesses and adversaries is more than insistence on good manners. It is based on the knowledge that civilized, rational behavior is essential if the judicial system is to perform its function. Absent this, any judicial proceeding is likely to degenerate into [a] verbal free-for-all….

> [H]abitual unreasonable reaction to adverse rulings… is conduct of a type not to be permitted of a lawyer when acting as a lawyer. *What cannot be permitted in lawyers, cannot be tolerated in those applying for admission as lawyers."*

In Nebraska, *In re Appeal of Lane* is clearly the rule and not an exception thereto.

The evidence in this case shows that Converse's numerous disputes and personal attacks indicate a "pattern and a way of life which appear to be [Converse's] normal reaction to opposition and disappointment." The totality of the evidence clearly establishes that Converse possesses an inclination to personally attack those with whom he has disputes. Such inclinations "are not acceptable in one who would be a counselor and advocate in the legal system."

In addition to Converse's tendency to personally attack those individuals with whom he has disputes, his pattern of behavior indicates an additional tendency to do so in arenas other than those specifically established within the legal system. This tendency is best exemplified by observing Converse's conduct in situations where there were avenues through which Converse could have and should have handled his disputes, but instead chose to mount personal attacks on those with whom he had disputes through letters and barrages in the media.

One such incident occurred when Converse received the below average grade in the appellate advocacy course, and he wrote letters to various individuals regarding his arguments. Converse testified that he wrote letters to members of the South Dakota Supreme Court, Judge Richard Posner, Judge Alex Kozinski, and others, but filed no formal appeal. Moreover, upon return of the nude photograph, Converse testified that he redisplayed the photograph to force the issue with the university, but chose not to pursue any action regarding the alleged violation of his rights. There was also the incident regarding Converse's internship with the U.S. Attorney's office, where Converse went outside established procedures, arranged for the internship on his own, and then complained to all faculty and to members of the South Dakota bar when his request was denied for not complying with established procedures. Finally, there was Converse's production and marketing of the T-shirt containing a nude depiction of Vickrey on a hot dog as a result of the ongoing tension between Vickrey and himself. Converse is 48 years old, and his actions cannot be excused as isolated instances of youthful indiscretions.

Taken together with the other incidents previously discussed, the evidence clearly shows that Converse is prone to turbulence, intemperance, and irresponsibility; characteristics which are not acceptable in one seeking admission to the Nebraska bar. In light of Converse's admission that such conduct would be inappropriate were he already an attorney, we reiterate that we will not tolerate conduct by those applying for admission to the bar that would not be tolerated were that person already an attorney. Furthermore, Converse has consistently exhibited a tendency to cause disruption and then go to some arena outside the field of law to settle the dispute, often to an arena not specifically designed for dispute resolution. As explained by Justice Stewart in *Law Students Research Council v. Wadmond*,

> a State is constitutionally entitled to make … an inquiry [into the moral character and past conduct] of an applicant for admission to a profession dedicated to the peaceful and reasoned settlement of disputes between men, and between a man and his government. The very Constitution that the appellants invoke stands as a living embodiment of that ideal.

The record before us reflects that the Commission conducted such an inquiry and, at the conclusion thereof, correctly determined that Converse possessed a moral character inconsistent with one "dedicated to the peaceful and reasoned settlement of disputes," but, rather, more consistent with someone who wishes to go outside the field of law and settle disputes by mounting personal attacks and portraying himself as the victim and his opponent as the aggressor. Such disruptive, hostile, intemperate, threatening, and turbulent conduct certainly reflects negatively upon those character traits the applicant must prove prior to being admitted to the Nebraska bar, such as honesty, integrity, reliability, and trustworthiness.

The result might have been different if Converse had exhibited only a "single incident of rudeness or lack of professional courtesy," but such is simply not the case. The record clearly establishes that he seeks to resolve disputes not in a peaceful manner, but by personally attacking those who oppose him in any way and then resorting to arenas outside the field of law to publicly humiliate and intimidate those opponents. Such a pattern of behavior is incompatible with what we have required to be obligatory conduct for attorneys, as well as for applicants to the bar.

Converse has exhibited a clear lack of self-restraint and lack of judgment, and our de novo review of the record leads us to independently conclude that Converse has exhibited such a pattern of acting in a hostile and disruptive manner as to render him unfit for the practice of law in Nebraska. We conclude that the Commission's determination to deny Converse's application was correct, and Converse's third assignment of error is therefore without merit.

Conclusion

The Commission correctly determined that Converse possessed insufficient moral character and was unfit to practice law in the State of Nebraska. This determination was based on an inquiry into Converse's moral character that was both proper and constitutionally permissible. Finding no error in the Commission's determination or the process used to reach that determination, we affirm the Commission's denial of application.

In re Roots

762 A. 2d 1161 (RI 2000)

Per Curiam

This case comes before us on an application by the petitioner Roger I. Roots (petitioner or Roots) seeking admission to the bar of the State of Rhode Island. Roots, who was born in October, 1967, is a 1999 graduate of the Roger Williams University School of Law. Following his law-school graduation, he took and passed the Rhode Island bar examination. In accordance with its usual procedures, this Court's Committee on Character and Fitness (committee) examined Roots's record and interviewed him after he had passed the bar examination. Because the committee had serious concerns relating to his character and fitness to become a member of the bar of this state, it conducted a number of hearings to determine whether it would recommend Roots's admission to the bar. As a result of these hearings, the committee in November 1999 voted on his application. The vote of the committee was five in favor of his admission and two opposed.

After this vote, members of the committee circulated memoranda setting forth the views of the majority of the committee and also the views of the minority. The committee conducted a further investigation to determine whether additional information existed that should be taken into account. Upon determining that no additional information, other than that already obtained by the committee, was available, the committee called a meeting for April 12, 2000. Before the date of that meeting, the membership of the committee had changed. One member had resigned and the Attorney General's designee had been replaced. The person who replaced the member who had resigned recused herself from participation in the vote on April 12. The Attorney General's new designee, however, did participate in the vote. The committee then voted, resulting in a recommendation by four members to admit the petitioner and a recommendation by two members to reject his application. Three members of the majority wrote a memorandum in support of their recommendation. One member of the majority presented a separate concurring memorandum that expressed serious doubts about the petitioner's candor and honesty, but nevertheless recommended his admission. The minority members submitted two separate memoranda. The chairman of the committee, who had voted against the admission of petitioner, wrote one memorandum; the Attorney General's designee wrote a separate memorandum.

To avoid an unduly long recitation of the pertinent facts concerning Roots's application, the various reports that the majority and minority members prepared are attached to this opinion and made a part hereof. The report of the majority is appended and marked as exhibit A. The concurring report recommending admission is appended and marked as exhibit B. The minority report that Chairman Steven M. McInnis wrote is appended and marked as exhibit C. The dissenting

opinion of the Attorney General's designee is appended and marked as exhibit D. All these reports contain very similar accounts of the factual elements underlying the reports of the members of the committee. Nevertheless, we shall attempt to set forth in this opinion the important facts and circumstances that we believe justify our conclusion.

Through its hearings and by examining the material submitted in support of and in opposition to the application, the committee sought to resolve three major areas of concern about the petitioner: (1) his criminal record; (2) his candor and veracity; and (3) his ability to take and abide by the attorney's oath. Some of the evidence was documentary in nature. In addition, extensive testimony was taken from the petitioner himself. The three areas of concern shall be dealt with separately in this opinion.

[W]e are of the opinion that Roots's application should be denied without prejudice to Roots reapplying at some later date after he has proven that he has truly rehabilitated himself.

I

Petitioner's Criminal Record

In 1985, when he was eighteen years old, Roots was charged with and convicted of shoplifting in the State of Florida. He had relocated there after leaving his home in Montana during his freshman year in high school. In his bar application, Roots admitted that, following his arrest for this crime, he "failed to appear at [his] scheduled hearing on the matter." He conceded that he was aware that he needed to attend the hearing but claims that his immaturity at the time caused him to disregard the court's order. Within two months, however, the Orlando police rearrested him on the same charge. He was then detained until he could be presented to a judge. And even though the court still treated him with leniency, Roots shirked his responsibility to abide by the terms of his probation when he failed to perform the community-service condition of his sentence. (He admitted in his application to the bar that he just "left Orlando without performing the community service.")

Within a year, however, he was arrested again in Florida and convicted of yet another crime, the felony of resisting arrest with violence. Generally, this crime involves disobeying, with the use of force (as opposed to mere flight), a police officer's lawful attempt to arrest an alleged criminal. As reflected in the police report and in Roots's law school application, the alleged facts of the crime reveal that Roots's truck had collided with another vehicle. A police officer arrived at the accident scene and an argument ensued between Roots and the officer. When the officer learned that Roots had failed to pay two fines for separate moving violations and was driving on a suspended license, he attempted to take Roots into custody but Roots physically resisted the arrest. Although a federal sentencing judge would later characterize this incident as minor because, in attempting to subdue

Roots, the police officer struck the only actual blow, a Florida sentencing judge, who presumably was more familiar with the relevant facts and circumstances, ultimately sentenced Roots to fifty-one weeks in prison following his *nolo contendere* plea after he again violated his initial three-year-probation sentence.

The petitioner then left Florida and moved to Wyoming, where he attended the Northwest Community College in Powell, Wyoming. While there, he exhibited in class a homemade air gun that he had constructed. (This may have been part of a speech presentation.) Because the authorities knew that petitioner had a prior record, they searched his dormitory room. There, they found additional weapons, including an automatic pistol, an automatic rifle with approximately 500 rounds of ammunition, and an assault rifle described as an AK-47. The petitioner was charged in federal court with being a felon in possession of firearms and with the possession of an unregistered firearm in violation of various federal statutes. Pursuant to a plea agreement, petitioner pled guilty to the registration count (relating to the air gun). The other counts were dismissed. A federal judge sentenced petitioner to twenty months in federal prison on January 10, 1992. This sentence terminated on April 4, 1993. As previously mentioned, the federal judge indicated that the petitioner's felony conviction for resisting arrest with violence in Florida was not as serious an offense as might appear on the surface since the only injury was to the officer's hand when he struck the petitioner in the face. Nevertheless, it was established that in purchasing the various weapons, the petitioner had filled out a number of forms in which he had misrepresented his status as a person convicted of a felony in Florida.

The applicant's criminal record also includes the following:

(1) On at least eight occasions from the spring of 1986 to as recently as the winter of 1997, Roots was caught speeding and ordered to pay fines. These moving-traffic violations occurred in Utah, Washington, and Montana.
(2) Roots apparently ignored his previous driver's license suspensions and flouted these dispositions because he later was charged in Georgia not once but twice in 1989 for driving on a suspended license. On the first occasion he not only drove on a suspended license, but also was issued citations for driving without a license, without insurance, and without proper registration. On the second such occasion, he was again driving on an expired registration plate and a suspended license. Roots's bar application explains his conduct thus:

"I was without sufficient money for insurance or registration. I made it to work for several days but was pulled over by another officer only a couple days later. Again, I was arrested for driving without a license, registration, or insurance. * * * To this day I do not know what became of the cases in Georgia."

On the present record, we do not know whether Roots has satisfied whatever lawfully imposed fines he was obliged to pay in Georgia. Apparently, he has not inquired about what present responsibilities — or possible warrants for his arrest

based on his failure to resolve these matters — he still may have outstanding in Georgia.[1] Nothing in the record shows that Roots has resolved these matters. Moreover, even if Roots formerly lacked sufficient funds to pay for his automobile insurance or registration, he should have arranged to use public transportation or pursued other alternatives (for example, carpooling with friends or co-employees), rather than driving continuously on a suspended or revoked license as he did when he was caught doing so on three separate occasions.

[1] (n. 4 in Opinion.) Roots also has not accounted for his 1986 Utah speeding and reckless driving violations. His bar application lists the disposition or fine for these speeding and reckless driving violations as "u/k," which we assume means "unknown." Although Roots has not forgotten about these violations, he has neglected to determine for over fourteen years whether any sanctions remain outstanding against him in Utah for these transgressions.

Every prospective attorney in this state must complete an application that asks for a listing of all the candidate's "violations of * * * traffic law[s] or ordinance[s] other than parking offenses." This part of the application is not superfluous nor a mere incursion into the applicant's privacy, and it should not be so considered. Rather, it bears a logical and appropriate relationship to the ability of a prospective attorney in this state to maintain respect for and to uphold the law. And although repeated violations of various traffic laws, in isolation, may not preclude a candidate from admission to the bar, they certainly are relevant to the moral fitness and good-character determination that must be made when evaluating the qualifications of prospective attorneys.

(3) In Florida, Roots was convicted of providing a false statement to the authorities. To be sure, Roots has admitted that he provided a false name, but it should go without saying that this crime also reflects upon a candidate's ability to serve the public as an attorney, as well as upon the applicant's candor and truthfulness.

In their totality, these various citations, misdemeanors, and felonies that Roots has accumulated over the years present sufficient evidence to warrant, at minimum, a significant delay in acting favorably upon his application for admission to the Rhode Island bar, especially in light of the fact that Roots has admittedly ignored and violated the terms of his two previous probationary periods. Indeed, Roots's first probation required him to perform community services — yet he chose to ignore that mandate from the Florida court. Instead, it was only after he scuffled with an arresting police officer — itself a display of disobedience to the officer's attempt to effect a lawful arrest — and again disobeyed the terms of his probation, that Roots was ultimately forced to serve time in prison.

We recognize that Roots has not been convicted of violating any criminal laws since his conviction on the federal weapons charge and since his release from prison in 1993 after serving his federal jail sentence of twenty months. We also acknowledge and commend Roots's award-winning writings, his law-school class rank, his position on the student newspaper, and his service on the Roger Williams University Law Review. On the other hand, while these more recent accomplishments are indeed praiseworthy, they are largely irrelevant in establishing his moral fitness and good character to practice as a member of our bar. Indeed, no one has sought to disqualify Roots based on his academic incompetency or lack of intelligence. On the contrary, his record in this regard

is conceded to be outstanding. But even some notorious criminals can point with pride to their relative intelligence. Thus, mere intelligence and academic achievement do not necessarily equate to moral fitness and good character, both of which are preconditions to becoming a member of our bar.

Notwithstanding these more recent positive factors, it is our belief that we have not yet had enough opportunity to conclude that Roots has totally rehabilitated himself, especially because his conduct during the years leading up to and including the filing of his bar application raises further questions about the depth, scope, and extent of his alleged rehabilitation. Indeed, his probationary status on the federal-weapons conviction expired only a mere four years ago, after which he then enrolled in law school and continued to engage in activities that cast doubt on his candor, truthfulness, and ability to take the attorney's oath in good faith.

II

The Petitioner's Lack of Candor and Truthfulness

It has been established that the petitioner was not truthful in applying for the purchase of firearms. It also has been established that petitioner was not truthful in answering a question on the bar application about the use of aliases, although he did admit to having used three aliases: Carl Davis, Rodger Roop, and Roger Bell. He indicated on his application that these aliases were used for the purpose of attending school, writing, and telephone fundraising. In his testimony before the committee, however, he admitted that the use of the alias Carl Davis was to help him evade the law after he was indicted for the weapons charge in Montana. When he assisted in a senatorial campaign, he also used another alias, Roger Bell, in order to hide his true identity when salary payments were made to him. The minority report that Chairman McInnis submitted concluded that Roots's lack of candor in this respect would not be consistent with allowing petitioner to practice law.

We have recently affirmed that "[t]he attorney-client relationship is 'one of mutual trust, confidence, and good will,' in which the attorney 'is bound to * * * the most scrupulous good faith.' " A central purpose of requiring character review as part of the attorney-admission process is to protect those members of the public who might become clients of the practicing lawyer from those attorneys who are so morally or ethically challenged that they are unable to demonstrate the type of good character and moral fitness requisite to serving in a fiduciary capacity. As Mr. Justice Frankfurter once observed, lawyers stand

> 'as a shield' * * * in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.'

The fiduciary position of trust that a lawyer assumes vis-à-vis his or her clients demands that individuals whom this Court admits to the bar should be worthy of the confidence that members of the public repose in them. An equal and complementary concern is to safeguard the administration of justice from those who might subvert it through misrepresentations, falsehoods, or incomplete disclosures when full disclosure is necessary.

As we have noted previously, Roots was not truthful in applying to buy firearms. Indeed, he repeatedly checked a box indicating that he was *not* a convicted felon when he applied for his gun purchases, despite previously having been convicted of a felony. Thereafter, Roots was convicted for violently resisting arrest, and ultimately spent close to a year in prison for that offense after violating his initial three-year-probation sentence. He was also well aware of his convictions at the time he applied to buy his various assault weapons, yet he failed to disclose them.

Furthermore, Roots admitted to the committee that he was less than forthcoming on his bar application about the reason for his use of the "Carl Davis" alias. Significantly, Roots submitted this untruthful application for admittance to the bar *in 1999.* When pressed about this discrepancy, Roots was unable to reconcile these contradictory statements.

Moreover, as mentioned above, Roots already had been convicted criminally of providing a false statement to the authorities. Such a record of dishonesty, combined with Roots's other criminal misconduct and recent fabrication on his bar application, appears to us to justify at least a several-year delay before Roots's application even should be considered again for his possible admission to the bar. And Roots's use of an alias to mask his "unsavory" connections to white supremacy groups while working for the Committee to Reelect Conrad Burns, and his use of false indorsements on his paychecks, are simply further reasons for this Court to deny Roots's application at this time.

In sum, then, we agree with the minority report that this applicant's lack of candor is inconsistent with admitting him to practice law at this time.

III

Ability to Abide by the Attorney's Oath

Pursuant to Article II, Rule 8 of the Supreme Court Rules, "[e]very person who is admitted as attorney and counselor at law shall take in open court the following engagement:"

" 'You solemnly swear that in the exercise of the office of attorney and counselor you will do no falsehood, nor consent to any being done; you will not wittingly or willingly promote, sue or cause to be sued any false or unlawful suit; or give aid, or consent to the same; you will delay no man's cause for lucre or malice; you will in all respects demean yourself as an attorney and counselor of this court and

of all other courts before which you may practice uprightly and according to law, with fidelity as well to the court as to your client; and that you will support the constitution and laws of this state and the constitution and laws of the United States. So help you God.' "

Beginning in 1993 petitioner has published a number of articles — including articles as recent as 1998 — that express explicit racial and ethnic bias as well as contempt and disdain for the federal government. His 1993 article is entitled "100 Truths and One Lie" and purports to establish that members of the black race are inferior to members of the white race. Excerpts from this work are set forth in the minority report. Moreover, as recently as 1998, Roots has written that he disavows the "de facto" regime of the United States government, its laws, and, apparently, its Constitution. Similarly, he has written in support of the bogus liens that the Freemen in Montana have attempted to place on federal officials who, in his opinion, have violated certain dictates that the Freemen espouse. It is noteworthy that Roots expressed these views in writing even while he was attending law school in 1998. Roots, however, now attempts to retreat from that stance. He would now have us believe that, consistent with the oath all prospective attorneys must take, he now can swear that he will support the constitution and the laws of this state as well as those of the federal government. This oath, as well as similar oaths that prospective attorneys across the United States must take, does not violate any individual constitutional right that Roots may have to express his contrary views.

At the same time, the United States Supreme Court has stated that "[c]itizens have a right under our constitutional system to criticize government officials and agencies. * * * Government censorship can no more be reconciled with our national constitutional standard of freedom of speech and press when done in the guise of determining 'moral character,' than if it should be attempted directly." Thus, we have no intention or desire to censor or to punish Roots for his past or present political views or for exercising his rights of free speech. Nevertheless, when as here, a candidate for admission to the bar of a state has published writings that communicate his or her explicit refusal to accept our federal government as the legitimate government of this country, such a candidate raises legitimate questions about whether he or she in good faith can take and abide by the attorney's oath to support the laws and the constitution of the United States while in the exercise of the office of attorney and counselor. For example, if a candidate for admission to the bar were to express the view that, in his or her opinion, the laws and constitution of the United States were illegitimate and, for that reason, unsupportable, but that in the exercise of his or her office as an attorney or counselor, he or she still could and, therefore, would swear to support that constitution and those laws, then the committee and this Court would be entitled, we believe, to view that candidate's professed oath-taking ability with some degree of skepticism — especially if the candidate were a convicted felon with a history indicating a recurring lack of truthfulness and candor. While it is possible to draw and maintain a sharp line

between a lawyer's personal beliefs and his or her professional conduct, a predictive assessment of a prospective lawyer's ability to take and abide by the attorney's oath is a fair subject for character review when considering an applicant for admission to the bar. Here, Roots bore the burden at all times to demonstrate his moral fitness and character to practice as a lawyer in this state. But his recent 1997-1998 publications and comments disavowing the legitimacy of our federal government — especially when considered in light of his criminal record and history of other misconduct indicating a lack of forthrightness and candor — give us pause in accepting his avowal to us that he can now in good faith take and abide by the requisite attorney's oath.

Nevertheless, in reaching this conclusion, we agree with the majority of the committee that the First Amendment inhibits both the committee and this Court from denying membership in the bar to the petitioner because of his political beliefs and unorthodox political and social ideas. All of these cases related to applicants who either were or had been at one time members of the Communist Party or refused to answer questions relating to their membership in an organization (presumably the Communist Party) that advocated the violent overthrow of the government of the United States. We also recognize, as did the majority members of the committee, that neither a criminal record nor the political views of an applicant constitute an automatic bar to his or her admission. Yet both may be *relevant* in assessing (1) the applicant's candor, honesty, sincerity, and good faith in professing a willingness to take and abide by the requisite attorney's oath, and (2) the ability of the applicant, in the exercise of his or her office as an attorney and counselor, to support the constitution and laws of the United States.

The petitioner has stated to the committee and to this Court that he will not only take the attorney's oath if admitted to the bar, but that he will abide by it. He stated unequivocally under oath to this Court that he would not discriminate against any person for racial or ethnic reasons. He further stated that he would abide by the lawyer's oath in all respects without any mental reservation or purpose of evasion. And he has stated to the committee that he no longer entertains his extremist views on the illegitimacy of the government of the United States.

We are of the opinion, however, that the prior record of the petitioner — including his criminal past and the other conduct referenced above demonstrating his lack of candor and truthfulness — casts such doubt upon the sincerity of Roots's professed willingness to abide by the terms of the oath that he must take as a member of the bar of this state that his application should be denied at this time.

Conclusion

For the above reasons, we conclude that Roots's application to the bar should be denied. The record in this case reveals far too many recent and past criminal acts, instances of untruthfulness, and a lingering inability of this candidate to take the

requisite attorney's oath in good faith. Thus, we cannot endorse Roots's admission to the bar of this state at this time. Nevertheless, our denial of his application shall not preclude the possibility of Roots reapplying for and obtaining approval of his admission to the bar at some later time, but no sooner than two years from the date of this opinion. Moreover, if Roots reapplies for admission to the bar of this state within three years from the date of this opinion, he shall not be required to retake the bar examination. However, in addition to satisfying the committee's usual criteria, he shall be required to demonstrate to the satisfaction of the committee and, ultimately to this Court, that, during the period between the date of this opinion and his reapplication:

1. He has secured and maintained gainful employment;
2. He has kept the peace and been of good behavior;
3. His writings and other conduct are consistent with his ability to take the attorney's oath in good faith;
4. His previous motor vehicle and driving violations and any resulting sanctions in the states of Georgia and Utah have been satisfied and are no longer outstanding;
5. He has performed *pro bono publico* services of a substantial and continuing nature;
6. His post-1993 conduct and achievements outweigh the misconduct and other detrimental factors detailed in this opinion and, thus, are better indications of his moral character and fitness to practice law than his previous misconduct.

Accordingly, we hereby deny Roots's application without prejudice to his reapplication at some later time (no sooner than two years) when a more accurate and adequate assessment of Roots's professed rehabilitation can be undertaken.

EXHIBIT A

Report of the Committee on Character and Fitness Regarding Roger Roots

Roger Roots is recent graduate of Roger Williams Law School and a applicant for admission to the Rhode Island Bar. Mr. Roots has a problematic history which has necessitated an investigation and a hearing into his moral character and fitness as required by Article II, Rule 3. On the one hand, Mr. Roots has an exemplary record in college and in law school. On the other hand, for a period of some five years ending in 1990, he exhibited gross disrespect for the law, which disrespect was exacerbated by a stream of extremist writings, some of which have continued into the near past. In large measure, resolution of Mr. Roots' candidacy boils down to a question of whether one should emphasize the pre-1991 Mr. Roots or the man who post-dates that period. The issue is compounded by the First Amendment implications of considering content of his numerous political writings, some of which have attacked our system of laws and others of which have been on occasion blatantly racist.

On balance, a majority of the Committee on Character and Fitness (the Committee) believe Mr. Roots should be given the benefit of the doubt, and that the decision here should be made on the basis of his actions, not his political opinions.

1985-1990

Roger Roots grew up in rural Montana. He left home in 1985, the spring of his freshman year in high school. For the next several years, he criss-crossed the country, supporting himself as an itinerant worker while at the same time obtaining his G.E.D. He ran afoul of the law in Florida in 1985, first with a shoplifting charge, and then, having ignored the terms of his probation, with a series of probation violations which culminated in a resisting arrest charge, a felony under Florida law. For this final offense, he was first held, and later violated on his probation for failure to report. He ended up serving a total of some 51 weeks in prison.

On his return to the West, Mr. Roots attended Northwest Community College in Powell, Wyoming. There he was arrested and charged by the federal government with being a felon in possession of firearms in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) and with the possession of an unregistered firearm in violation of 26 U.S.C. §§ 5845(e), 5861(d), and 5871. He pled guilty to the registration count. On January 10, 1992, he received a the sentence mandated by the Federal Sentencing Guidelines: 20 months in federal prison terminating on April 4, 1993.

The count of conviction, the registration count, involved a homemade weapon which apparently was constructed as part of a class project. The dismissed counts, however, involved the possession of substantially more serious armament: an AK-47 rifle, a 12 gauge shotgun, a .38 caliber revolver and a .22 caliber semi-automatic rifle. In obtaining several of these weapons, Mr. Roots was required to fill out forms on which he misrepresented his status as a Florida felon.

At several points during this period Mr. Roots briefly used an alias. There is no indication that his purpose was to facilitate further violations of the law.

The Committee views this conduct as serious and potentially disabling to his candidacy. The Committee recognizes, however, that all of this conduct occurred during a five year period which ended approximately a decade ago. At the time Mr. Roots was a very young (and apparently very angry) young man. The Florida charges, particularly the felonious resisting arrest, may well have overstated the seriousness of the actual conduct, as indeed the federal judge who sentenced Roots on the weapons charge explicitly found. As for the weapons charges themselves, they apparently resulted from some kind of far-right survivalist gesture designed to assert a citizen's right to possess weapons, including essentially military weapons, before such possession was banned by the Government. The Committee has received no evidence of a more traditional criminal purpose.

Rhode Island has never made conviction of a felony an absolute bar to the practice of law. Several persons have been admitted to practice here even after conviction of violent felonies. The Committee views the continuing nature of Mr. Roots' offenses to be serious. In particular, the Committee is concerned about the misrepresentations on the gun applications. On the other hand, the Committee has no evidence that Mr. Roots has done anything illegal for a full decade. Given this lapse of time and the intervening events, the Committee does not believe that his criminal conduct by itself renders Mr. Roots ineligible.

Extremist Positions

Mr. Roots has a substantial history of advocating far-right survivalist-type views. He has made statements which directly disparage the rule of law, using such inflammatory phrases as "the Zionist occupation government" and the like. At times, his writings have included explicitly racist statements. Mr. Roots has testified that many of his more extreme statements grew out of angry ignorance, before he had ever been to college; and that college and law school have moderated his views, although they remain at the far right end of the political spectrum.

The committee believes that any weighting of an applicant's political beliefs is fraught with constitutional peril. The Supreme Court has observed that " 'mere unorthodoxy [in the field of political and social ideas] does not as a matter of fair and logical inference negate 'good moral character' ". Further, under the First Amendment, "views and beliefs are immune from bar association inquisitions designed to lay a foundation for barring an applicant from the practice of law." In particular, the State cannot "penalize [a bar] petitioner solely because he personally… 'espouses illegal aims' ".

The Committee acknowledges there may be circumstances where the First Amendment will not prevent this Court from assessing communications or conduct which bear on the fitness to practice law. Similarly, Rule 8.4(d) of the Rules of Professional Conduct requires that an attorney not engage in conduct prejudicial to the administration of justice which includes but is not limited to "harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, nationality, or sex." Presumably disciplinary action could be taken for conduct violating this Rule. But any foray into this area based upon speech alone is problematic. As the Supreme Court has noted, the requirement of "good moral character" is "unusually ambiguous" and being "easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law."

Roger Roots has been involved in extremist political activity. He has flirted with aggressive anti-system views and has made explicit racist statements, although the latter appear to date back to his period of imprisonment in 1992. Certain of his statements are sufficiently extreme to cause one to doubt the soundness of his judgment. However, to do so in this context is to penalize him for the content of

his views, precisely what the First Amendment prohibits. Consequently, and in the absence of recent *Conduct* demonstrating unfitness, the Committee believes that Mr. Roots' extremist writings do not rise to the level that should require this Court to press the constitutional envelope by excluding him from the practice of law.

The Bar loses as well as gains when the fringes of diverse opinion are excluded from its membership. "We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes." The Committee believes that neither the Bar nor the Court is so fragile that it cannot survive an attorney whose politics may be outlandish or even egregiously offensive. As an attorney, Mr. Roots will have an ethical obligation to abide by Rule 8.4. He has stated in sworn testimony that he will be able to do so. He has also testified that he can and will support the laws and Constitution of Rhode Island and the United States, all of which proscribe discrimination on the basis of race. The Committee is not able to forecast his inability to live up to this obligation.

1994-2000

Mr. Roots was released from federal prison on April 4, 1993. Since that time, his achievements have been impressive. He graduated at the very top of his class in college. In law school he was a member of the Law Review, the executive editor of the student newspaper, and the student president of the school's chapter of the Federalist Society for Law and Public Policy studies. He has won several national writing competitions and has graduated near the top of his law school class.

Two deans of Roger Williams Law School testified on his behalf, Deans Cogan and Harrington. Both stated that Mr. Roots has been an active and valuable member of the law school community. Both stated that he has been a very motivated student, always prepared and always ready to help his fellows. They made these statements knowing of his criminal record, which he had disclosed on his law school application forms. They were not conversant, however, with his past extremist political writings. Both stated their belief that, if given the opportunity, Mr. Roots would prove to be a credit to the Bar.

Candor Before the Committee

Mr. Roots fully disclosed both his criminal record and his past use of aliases on the Bar questionnaire. He did not disclose his political writings, but he was not asked to do so. In the course of the hearing, questions arose concerning Mr. Roots' candor in answering certain questions on his law school application, particularly those relating too past employment — a failure to list his position as correspondent to a far-right newspaper as a job and the reasons for his termination from a senatorial campaign. The Committee concludes that Mr. Roots was not being deliberately evasive on these points.

Mr. Roots promptly furnished the Committee with any and all materials requested. His file is now voluminous with the materials which he supplied. Appearing before the committee, he was not a carefully prepared witness. Many of his answers seemed confused, as he groped for explanations of decade-old aberrant behavior. He did not, however, appear consciously untruthful. The Committee can find no substantial evidence which would support the conclusion of lack of candor.

Conclusion

For these reasons, the Committee concludes that Mr. Roots meets the minimum requirements for the admission to the practice of law and recommends to this Court that it admit him to the Bar of the State of Rhode Island.

EXHIBIT B

CONCURRING REPORT TO THE SUPREME COURT ON THE APPLICATION OF ROGER ROOTS {*#concurring-report-to-the-supreme-court-on-the-application-of-roger-roots*
}

I write this separate report to the Court because, while I agree with the Majority that neither Mr. Roots' personal beliefs nor his past criminal convictions should disqualify him from being a member of the bar, I cannot fully agree with their assessment of his credibility and candor before this Committee.

I, like the majority, question whether an applicant's political or personal opinions should disqualify him from membership in the bar, so long as they do not manifest themselves in illegal, unethical or otherwise improper conduct. Furthermore, I join with the majority in the belief that Mr. Roots' past criminal conduct should not, by itself, disqualify him from the practice of law, given the nature of his crimes and the time that has passed since they were committed. During my tenure, the Committee has been especially concerned with crimes involving theft or dishonesty. An attorney is often placed in position of trust where the only real protection his client or the public has from an abuse of that trust is the attorney's own integrity and sense of honesty. Although the method Mr. Roots used to commit his last crime, lying on gun applications, and the method he used to avoid prosecution, use of aliases, certainly involved dishonest conduct, the underlying crimes did not.

In reviewing Mr. Roots' criminal record in preparation for his testimony, I did not perceive his crimes as demonstrating a dishonest heart so much as a disregard for any law which was inconvenient for him or conflicted with his political beliefs or personal desire. This attitude appeared to manifest itself when he argued with

the police officer in Florida, decided to leave Florida rather than comply with the requirements of his probation, and lied on several gun applications so he could purchase the weapons that he wanted.

In the documents he submitted and his testimony, I hoped to see some indication that he realized that the law was more than just something to be ignored or gotten around when inconvenient or in conflict with his personal beliefs or desires. I was also hoping for candor from Mr. Roots and, as a Committee member, I believe, I was entitled to receive it. Despite his protestations of candor and production of voluminous records, I, like the minority, do not believe that Mr. Roots was fully open and frank with us. The documents he submitted as part of his application as several points provided only half truths, e.g. his characterization in his bar application of the reasons for his use of aliases, his omissions from his law school application of his attendance at the very school at which he was arrested and later convicted of having possession of firearm (whether seized from a school dormitory or his apartment, as stated in the bar and law school application, is not clear), and his mischaracterization of the reasons for his being terminated from the senator's campaign.

In reviewing the recommendations before the hearing, I questioned whether Mrs. Justice Goldberg was truly aware of Mr. Roots' political beliefs listing Adolph Hitler, among others, as evidence of the superiority of the white race, and likening the physical characteristics of African Americans to apes, R. Roots, "100 Truths and One Lie" (1993?), and supporting the Freemen's right to operate their own judiciary, complete with the issuance of liens on the property of public officials, Roger Roots, "Five Freemen Convicted One Acquitted in Federal Show Trial," *The Jubilee Newspaper,* Vol.10 No. 4, April 13, 1998, "How Strong Is the Case Against the Freemen?" *The Jubilee Newspaper,* Vol. 9, No. 3 (1997 or 1998). I also wondered if Mr. Wiernusz had truly read much that Mr. Roots had written. In fact, Mr. Roots admitted that Ms. Justice Goldberg was not aware of his political/social beliefs, which he said he had held in the past. Neither was Mr. Wiernusz aware of any of his Freemen or racial writings, but only his law school articles.

I do not know if these people would have recommended Mr. Roots if they were as fully aware of his writings and personal beliefs as they thought they were, but it does concern me that Mr. Roots offered recommendations of two people who were misinformed about issues of which they represented they were aware. I do not know whether Mr. Roots knew the content of the recommendations of Mrs. Justice Goldberg and Mr. Weirnusz before they were submitted, but if he did, I believe his actions were misleading to the committee and disservice to his employer and friend.

I questioned Mr. Roots as to whether he believed that there should be an extra judicial system and whether the Freemen had the right to file liens that they issued themselves. His answer was that he did not. I find it difficult to reconcile his answer at the hearing with his published writings as recently as 1997 and 1998.[2]

When Mr. Roots asked if there was further information he could provide, I explained that may concern was with his candor and credibility. His response was to immediately deny testimony which he had clearly given just a few minutes before, causing his attorney to stipulate that he had testified to that effect.

I cannot go so far as the dissent in characterizing some of these statements as flat out lies but I certainly was left with the impression that documents submitted in support of his application and his testimony contained a number of half-truths and evasive answers. It appeared that he was trying to soften the hard facts of his criminal record and avoid inquiry into his political/social writings, by evasive, incomplete or misleading statements. Nevertheless, Mr. Roots certainly did disclose his criminal record in detail and, although he did not disclose his political or social beliefs, he was not asked to do sol Moreover, anyone of the instances I described above would not cause me to vote against his application. I recognize that on paper Mr. Roots has made a significant effort to rehabilitate himself and that successful rehabilitation is a goal of the criminal justice system. Mr. Roots pleaded passionately before the Committee that he be given an opportunity to work as a attorney on behalf of prisoners in need of representation. If Mr. Roots had been as frank as the majority felt he was, he would have made my decision much easier.

Weighing all of these factors, I join with the majority in recommending his admission to the bar, however, I do so with significant doubt as to the wisdom of my decision, and therefore I, like the minority, would urge the court to view Mr. Roots' entire record and interview him carefully to determine whether it believes he has the character and fitness to be a member of the bar.

Respectfully submitted,

Brendt W. Anderson

EXHIBIT C

MINORITY REPORT APPLICATION OF ROGER ROOTS {#*minority-report-application-of-roger-roots* }

To: Supreme Court of Rhode Island

Re: Bar Application of Roger Roots

This letter is written as dissenting report to the majority vote of the Committee regarding Mr. Roger Roots. Unlike the majority, I believe that the Court should deny admission to the Bar to Mr. Roots. The basis for this belief is threefold:

[2] (n.2 in Exhibit B.) See e.g., Roger Roots, "Five Freemen Convicted One Acquitted in Federal Show Trial," *The Jubilee Newspaper,* Vol.10 No. 4, April 13, 1998, where it is stated by the author, "The bank fraud and false claim charges stemmed from documents issued from the common-law court of the Freemen Justices over an extended period. Such charges had occupied more than half of the two week trial. The Jury, however, even though selected and indoctrinated according to the de facto legal system-rejected this entire aspect of the case." and Roger Roots, "How Strong Is the Case Against the Freemen?" *The Jubilee Newspaper,* Vol. 9, No. 3 1997 or 1998, where Mr. Roots wrote, "For once, a judge was asked to rule on the validity or invalidity of the Freemen financial instruments, all of which are backed by judgments and liens. Ultimately, the notes are redeemable upon liens lawfully placed on the oaths or property of public officials who have violated the law. Thus the chain of recovery is lawful. It is where the buck stop that is so unsettling to de facto regime that now occupies America. It is no wonder that the regime is now waging an around-the-clock war against the common-law movement?"

I. Criminal Record. Mr. Roots has been convicted of various misdemeanors and two felonies. The last conviction resulted in his incarceration in a Federal penitentiary for a term ending in 1993, the year he returned to college and only three years before entering law school. His probation period ended in 1996.

II. Untruthfulness. Mr. Roots has affirmatively lied on his law school application and his application for admission to the Bar, and I believe has carefully avoided disclosing aspects of his past which may rise to the level of tacit untruthfulness. He also by his own admission, lied on the gun permit applications by affirming that he had not been convicted of a felony.

III. Mr. Roots' on the legal system, as evidenced by his publications. I believe that the Committee's charge to inquire into a candidate's moral character and fitness to practice law encompasses a reasonable review of the candidates attitudes and opinions on social issues, to the extent that such views may reflect on his or her ability to take in good conscience and uphold the oath required of all attorneys or on his or her ability to practice law in accordance with the equitable principles enunciated in our rules of professional responsibility. Mr. Roots' writings evidence to me a severe deficiency in this regard.

The record transmitted to the Court contains the full written documentation bearing on the above matters. However, I would like to summarize the contents of some of those documents that relate to my concerns.

Criminal Record. The file discloses many arrests and convictions while Mr. Roots led a basically itinerant life in Florida and other southern states. These occurred when Mr. Roots was young, in some cases in his teens. As the majority of the Committee has noted in its deliberations, taken individually these matters may seem remote in time and relatively minor in severity. However, the last conviction was for a felony, resisting arrest, and in his testimony Mr. Roots conceded that he knew or should have known that the conviction was a felony which would remain on his record if he did not complete his probation. Mr. Roots then fled the jurisdiction and returned to Montana, his home state, and therefore did not complete his probation in Florida. Despite that fact, Mr. Roots obtained numerous weapons the possession of which is prohibited, by federal law, to convicted felons. Mr. Roots testified that he obtained these weapons at various times from various dealers, and that he was required to sign a form at each dealership attesting to the fact that he was not a convicted felon. Each time Mr. Roots falsely replied "No" on the form, and concedes now that he probably knew at the time that the statement was false, and certainly knows it now. It is also worth noting that these weapons were not ordinary handguns; they consisted of an automatic pistol, an automatic rifle with at least 500 rounds, and an assault rifle commonly known as an AK47.

When Mr. Roots exhibited in a college class a homemade air gun that he constructed, the authorities, apparently knowing that he was a convicted felon, raided his dorm room and found the air gun and also the additional weapons. Ultimately, Mr. Roots pleaded guilty to a single charge concerning the air gun, and the remain-

ing charges were dropped. He conceded in his testimony that the other weapons were present and were seized, and that possession of them violated the law as well as the weapon for which he pleaded guilty. Mr. Roots then served time in federal prison, was released in 1993. His probation ended in 1996, while he was in law school.

I believe that the series of convictions is a serious matter. There was no good reason for Mr. Roots to possess such a number of high-powered weapons; in fact, in his testimony before the Committee he could not come up with a coherent reason for purchasing the weapons. Doing so knowingly as a convicted felon is inexcusable, in my view, and should be a bar to his becoming an attorney.

Truthfulness. Mr. Roots was untruthful in at least three areas.

The first concerns an item on his law school application regarding previous employment. The question asks for ceasing employment. Mr. Roots listed a job with the Committee to Reelect Conrad Burns (a Senator from Montana) and he stated that the reason for leaving was conflict with his school schedule. In fact, he was terminated from the job because of his unsavory associations with white supremacist activists. He not only admits this now, but also published several letters to the editor to the local newspaper at the time which bemoaned his firing for that reason. These letters to the editor were also untrue in some respects. He states in them that the reason for his firing was that the Young Republicans at his college, a group that he founded, had a Ku Klux Klan activist as a member, whom Mr. Roots says in his letter to the editor that he barely knew the man. That is untrue; he in fact befriended the man at college, and requested that he helped found the Young Republicans on campus and become its vice president. All of these matters took place after he was released from prison, and within his probationary period.

The second area of untruthfulness concerns an answer given by Mr. Roots in response to a question on the Bar application about any aliases used by the applicant. Mr. Roots listed three aliases, Carl Davis, Rodgers Roop and Roger Bell, and stated on the application that they were used for purposes involving attending school, writing and telephone fundraising. However, in his testimony before the Committee, he revealed after questioning that the real reasons were quite different. The alias Carl Davis was used while Mr. Roots was evading the law after he was indicted for the weapons charge in Montana. Another alias, Roger Bell, was used by the Conrad Burns campaign to hide his true identity in making salary payments to him. Apparently, Mr. Roots falsely endorsed these paychecks and deposited them into his bank account. It is unclear if he ever paid income taxes on these amounts.

The third area, already mentioned above, is that Mr. Roots falsely stated on his gun applications that he was not a convicted felon.

I believe that Mr. Roots has shown a pattern of untruthfulness that is not consistent with practicing law.

Ability to Take Oath in Good conscience. Of all the areas of concern, this is to me the gravest. Mr. Roots has shown by publications and articles he has written to be a committed racist, and has shown utter disdain for the fairness of the legal system and our system of government. These views were advanced not in the far distant past, but as recently as 1998, when he was well through law school. His views in this regard are summarized in two publications. The first is a pamphlet that Mr. Roots apparently composed largely while he was in prison, and which was released no earlier than 1993, since the bibliography in the work lists references published in 1993. The title of the work is "100 Truths and One Lie" and is a manifesto proving the inferiority of blacks as compared with whites. Here are some samples from this enlightening work:

> Fact # 6: Blacks are 6 times as likely to have I.Q.'s of 50 to 70 which put them in the slow learner (retarded) category, while Whites are ten times more likely to score 130 or over.
>
> Fact # 17: among human races numerous studies have been made of the comparative weight of White and Negro brains with results that fell within the range of about an 8-12 percent lower weight for the Negro brain…
>
> Fact # 19: The thickness of the supragranular layer (the outside layer) of the Negro brain is about 15 percent thinner, and its convolutions are fewer and more simple, on average, than that of the White brain.
>
> Fact # 20: The frontal lobes of the Negro brain, responsible for abstract conceptional (sic) reasoning, are smaller relative to body weight, less fissured, and less complex than those of the white brain.
>
> Fact # 24: The Negro skull, in addition to having a smaller brain volume and thicker cranial bones than that of the White, is prognathous; i.e. the lower face projects forward, rather in the manner of an animal's muzzle. In consequence, the Negro jaw is substantially longer, relative to its width, than the White jaw. A feature of the Negro lower jaw is its retention of a vestige of the "simian shelf", a bony region immediately behind the incisors. This simian shelf is a distinguishing characteristic of apes, and it is absent in Whites.
>
> Fact # 46: Scientific research on what constitutes human beauty, in which 300 judges of various backgrounds were shown portrait photographs and asked to rate the beauty of the individual's face, has revealed that Nordic Whites are universally recognized as the most attractive humans, even by Blacks…"

The other publications are those Mr. Roots has written as a reporter for *The Jubilee.* This is an extreme right-wing publication, and Mr. Roots' articles have focused on racial matters and the trials involving the Montana Freemen. The Freemen believe that, as "organic white Americans" (as Mr. Roots calls them), they are not subject to the laws of the United States. They conduct their own trials and appeals in their own "common law" courts, and issue "liens" against the assets of public officials whom their "courts" believe trample on their rights. These include sheriffs, police officers, lawyers and judges. Mr. Roots apparently believes that these liens are legally valid. He states as follows:

In commenting on the liens and notes (January 1997): "Ultimately, the notes are redeemable upon liens lawfully placed on the oaths or property of public officials who have violated the law. Thus the chain of recovery is lawful. It is where the buck stops that is so unsettling to the defacto regime that now occupies America. It is no wonder that the regime is now waging an around-the-clock war against the common law movement?(sic)"

Mr. Roots also apparently believes that the legal system is out to get the Freemen. Here are some samples of his statements

In commenting on the trial of the Montana Freemen (January 1997): "With the prosecution of the Montana Freemen characters, the Zionist occupation government is again targeting what it perceives as the most serious threat to its power: law without lawyers and courts without legislative or executive sanction…" In that same article he refers to public defenders appointed by the Court as "public pretenders" and laments that "[e]ven during the 1996 stand-off at Justus, Montana, U.S. Attorney Matterucci was expressing hope that the men would all surrender and accept government-licensed lawyers. (Isn't it odd that U.S. prosecutors desire their opponents to be represented by bar attorneys?) Later, only those who accepted bar-lawyers were granted bail."

Again, these are not statements made many years ago; the above-referenced articles have been penned while he was attending Roger Williams Law School. I believe that these positions show disrespect and disregard for the legal system and for the many men and women who devote themselves to the practice of law and are inconsistent with the oath that all attorneys are required to take.

Mr. Roots now states that he is not a racist, and would have no problem serving persons of all races and backgrounds as an attorney. However, the Committee, I believe, has every right to examine all the facts and circumstances in order to evaluate the applicant's assertions. Given the facts of this case, I don't accept Mr. Roots' current assertions. I don't think he can in good conscience take the oath of an attorney to treat all members of the public and the legal system, such as judges, clients, and other attorneys with respect. His insulting, disdainful writings about judges, "bar association lawyers", "public pretenders" the "Zionist government" and the like can't be erased by merely stating that all has changed. These writings were not from many years ago, in a misspent youth. They continued right up to at least 1998, and, based on Mr. Roots testimony, even up to today. They were not disclosed or mentioned anywhere; I located them personally on the Internet. I believe that these matters, when taken together with the criminal charges and the untruthfulness, should prevent Mr. Roots from becoming a member of the bar. I know that the majority of the Committee finds individual reasons for overlooking each of these matters taken individually, but I would urge the Court to look at the record in its entirety, and consider whether Mr. Roots is the kind of person that should be representing the Court and the Bar as an attorney. I do not believe that he is.

Respectfully submitted,

Steven M. McInnis

Chairman

April 19, 2000

In re Hinson-Lyles

864 So.2d 108 (La. 2003)

Per Curiam

This matter arises from a petition by Kelle Hinson-Lyles seeking admission to the Bar of the State of Louisiana. For the reasons that follow, we deny the petition.

Underlying Facts and Procedural History

In her application to sit for the July 2002 Louisiana bar examination, petitioner disclosed that she was convicted of a felony sexual offense in 1999. By letter dated June 12, 2002, the Committee on Bar Admissions ("Committee") notified petitioner that in light of her conviction, she would not be certified for admission to the practice of law. A majority of this court subsequently granted petitioner permission to sit for the bar, subject to the condition that upon her successful completion of the exam, she apply to the court for the appointment of a commissioner to take character and fitness evidence. Petitioner successfully passed the essay portion of the July 2002 bar exam. We thereafter appointed a commissioner to take evidence and report to this court whether petitioner possesses the appropriate character and fitness to be admitted to the bar and allowed to practice law in the State of Louisiana. We also authorized the Office of Disciplinary Counsel to conduct an investigation into petitioner's qualifications to be admitted to the bar.

Proceedings before the Commissioner

The commissioner conducted a character and fitness hearing on February 18, 2003. The commissioner received documentary evidence and heard testimony given by petitioner and her witnesses. This record reveals that in May 1996, petitioner received an undergraduate degree in business and office education. With the assistance of her father, who was then the Superintendent of the Vernon Parish School Board, petitioner obtained a teaching position at DeRidder High School in Beauregard Parish. In May 1998, as petitioner was completing her

second year of teaching at DeRidder High, she began a sexual relationship with M.C., a fourteen-year old student in her ninth-grade English class. Petitioner was twenty-three years of age at this time.

Over a period of approximately six weeks, petitioner spoke with M.C. on the telephone or saw him in person nearly every day. Because M.C. was too young to have a driver's license, petitioner arranged to pick him up in an alley behind his home and to take him back to her house, where they engaged in sexual intercourse. In addition, petitioner and M.C. drank alcohol supplied by petitioner, and on one occasion, petitioner allowed M.C. to smoke marijuana that he had brought to her home.

On the evening of July 11, 1998, petitioner picked up M.C. and brought him back to her house, where they engaged in sexual intercourse. However, unbeknownst to petitioner or M.C., the Beauregard Parish Sheriff's Office had received a report from M.C.'s father that his son was "having a sexual affair with one of his school teachers." The officers agreed to investigate the complaint. Upon arriving at petitioner's home, the officers knocked on the door and announced themselves. Petitioner turned off the lights in the house and told M.C. to hide. Meanwhile, petitioner dressed and eventually opened the door, telling the officers she had not heard the knocking because she had been washing her hair. The officers asked whether M.C. was in the house; petitioner lied, said that he was not, and denied he had been inside her home. The officers then requested and obtained petitioner's permission to search the home. M.C. was found hiding in a bedroom closet, underneath a pile of clothes.

Petitioner was arrested and charged with five counts of carnal knowledge of a juvenile and three counts of contributing to the delinquency of a juvenile. On February 25, 1999, pursuant to a plea agreement, the State filed an amended bill of information charging petitioner with two counts of felony carnal knowledge of a juvenile and one count of indecent behavior with a juvenile, also a felony. Petitioner pleaded guilty to the charges in the amended bill of information and was placed on supervised probation for a period of three years with special conditions.

Following her conviction, petitioner was terminated from her position at DeRidder High and she was required to forfeit her teaching certificate to the Louisiana State Department of Education. Petitioner's probation concluded on February 25, 2002, and she has subsequently received an automatic first offender pardon.

At the character and fitness hearing, petitioner admitted she knew her relationship with M.C. was wrong. At the conclusion of the hearing, the commissioner issued detailed findings of fact and conclusions of law and recommended that petitioner be conditionally admitted to the practice of law in Louisiana, subject to a probationary period of two years.

The Committee timely objected to the commissioner's recommendation, and oral argument was conducted before this court.

Discussion

This court has the exclusive and plenary power to define and regulate all facets of the practice of law, including the admission of attorneys to the Bar of this state. Among other requirements for admission to the Bar, applicants must demonstrate by competent evidence that they have "good moral character and the fitness necessary to practice law in the State of Louisiana." Supreme Court Rule XVII, § 5(E).

The primary purpose of character and fitness screening is to assure the protection of the public and to safeguard the administration of justice. The term "good moral character" includes, but is not limited to, the qualities of honesty, fairness, candor, trustworthiness, observances of fiduciary responsibility and of the laws of the State of Louisiana and of the United States of America, and a respect for the rights of other persons. One of the specific factors to be considered in making a determination of good moral character and fitness is whether the applicant has been convicted of a felony.

This court has never taken the view that a prior felony conviction will automatically bar an applicant from admission to the practice of law, and we decline to adopt that approach at this time. Rather, we prefer to consider the facts of each case based on the totality of the circumstances which brings the applicant before us. In other words, a felony conviction is simply one of many factors to be considered in determining whether an applicant presently possesses good moral character and fitness.

After reviewing the record developed in this matter, we find that serious character and fitness concerns are present which necessitate the denial of petitioner's application for admission to the practice of law. Setting aside for a moment the gravity of any felony sexual offense, particularly those involving a juvenile victim, we are extraordinarily troubled by the factual circumstances underlying the crimes of which petitioner was convicted. Petitioner occupied a position of trust as a teacher, yet she knowingly and intentionally breached that trust to gratify her own needs. Knowing full well that her conduct was immoral, inappropriate, and illegal, petitioner nevertheless carried on a sexual affair with her fourteen-year old student for nearly two months. Far from discouraging M.C.'s involvement in the relationship, petitioner in fact fostered and encouraged it. She candidly admitted during the character and fitness hearing that the affair would have continued indefinitely but for the fact that M.C.'s father called the police. On more than one occasion, petitioner supplied alcohol for consumption by a minor child, and she countenanced and permitted his use of marijuana while in her home. Finally, when confronted by law enforcement officials, petitioner lied, denied any involvement with M.C., and hid him in a closet in an effort to avoid detection by the police and his parents. Taken as a whole, we find this conduct is not an isolated instance of poor judgment on petitioner's part, but is rather evidence that she fun-

damentally lacks the character and fitness to be admitted to the practice of law. Accordingly, we must reject the commissioner's recommendation that petitioner be granted the privilege of practicing law in Louisiana.

Decree

After hearing oral argument, reviewing the evidence, and considering the law, we conclude petitioner has failed to meet her burden of proving that she has "good moral character" to be admitted to the Louisiana State Bar. Accordingly, it is ordered that Kelle Hinson-Lyles' petition for admission be and is denied.

WEIMER, J., concurring.

I find the past criminal conduct of the petitioner reprehensible. However, I believe the per curiam fails to adequately document those facts that led the commissioner to recommend that petitioner be admitted to the bar. At some time in the future, after the lapse of a more substantial period of time from the termination of petitioner's probation and following an evaluation of petitioner's intervening conduct, this court might be called upon to consider whether petitioner has been sufficiently rehabilitated. Therefore, for the sake of completeness, the majority opinion should include the following factual findings of the commissioner which were included in a thorough, thirteen-page report to this court:

- Except for defensive postures mandated by defense counsel, petitioner never denied responsibility for the inappropriate relationship with her fourteen-year old student.

- Until the events leading up to petitioner's guilty plea, she had led an exemplary life with no moral or legal problems whatsoever.

- Petitioner was a model probationer, cooperative, understood she had done wrong, was very remorseful, did more than necessary, wanted to make changes for the good, and owned up completely to her responsibility. Both of her probation officers and counselor confirm all issues were met, she is not a re-offender threat, and all support her application.

- Psychiatric and psychological evaluations by very competent experts in those fields concluded that at the time of the incident petitioner knew right from wrong, but in an immature way. She was a budding adolescent emotionally. She was very naive and inexperienced sexually. (This was her first sexual encounter.) Dr. Harper, psychologist, found no evidence of mental predisposition to re-offend. Dr. Ware, psychiatrist, found a very low risk to re-offend (there being no absolutes).

- All witnesses and exhibits pertinent thereto have a consensus—petitioner presents one of the best examples of how one can change, her maturity is now impressive, she actually has greater resilience than usual in facing ethical demands, she will not re-offend, and they support her application.

- Her only opportunity thus far in the field of law gained her an unqualified recommendation from her employer, a member of the judiciary.

> • She is now married, expecting a child, and by all accounts available, is functioning as a normal young married professional.

The commissioner made particular note that at the time of the incident, petitioner was "alone, had no prior experience, [was] immature and at a vulnerable position in her life." He also concluded that petitioner has done all that can be done to achieve the rehabilitation necessary for admission to the practice of law.

In conclusion, the commissioner stated:

> This is a case of past conduct. Based simply on the cold record, the obvious seriousness of the charge, and the self evident interest of society, one would be likely to view with great suspicion an offender's application to practice law some five years after commission. Therein lies the problem. What to do when, within a five year span, by clear and convincing evidence, an applicant satisfies the requirements of admission.
>
> …
>
> I have not found, or been cited a decision by this Court addressing our particular situation. The Commissioner's report in the matter _In re: Michael Lawrence Bernoudy, Jr., pending before this Court, was submitted. Though involved, carnal knowledge was only one of the complaints. Further, the recommendation was greatly influenced by a finding of lack of candor and cooperation on the part of Mr. Bernoudy, Jr., elements not found in the instant matter.
>
> This is a 1998 incident…. It would be ironic, to say the least, for society to admit to law school, with full disclosure, then permanently prevent enjoyment notwithstanding passing all scholastic requisites. Further, I don't feel the level of misconduct herein rises to the level of examples cited. Also, almost five years have elapsed. If she had been in practice and disbarred as a result, she could now apply for reinstatement.

In light of "the totality of circumstances involved," the commissioner recommended that petitioner be conditionally admitted to the practice of law in Louisiana, subject to a probationary period of two years. The commissioner further recommended that during the period of probation, petitioner be required to provide an affidavit to the Supreme Court Committee on Bar Admissions on a quarterly basis, stating that she has not committed or been accused of any misconduct; otherwise, her probationary period may be extended for an additional two years, or her conditional right to practice may be terminated or she may be subject to other discipline pursuant to the Rules for Lawyer Disciplinary Enforcement.

In summary, while I agree that petitioner should not be admitted to the practice of law at this time, I believe that it is important to chronicle all the facts, both favorable and unfavorable, reflected in the record. Therefore, I respectfully concur in the majority opinion of this court.

KNOLL, J., concurring.

I agree with the majority that petitioner fundamentally lacks the character and fitness to be admitted to the practice of law. I write separately to express my concern that this case demonstrates the need for an admission rule in tandem with permanent disbarment. In my view, it is a mockery of our rules to allow someone to apply for admission when the undisputed conduct at issue is a recommended ground for permanent disbarment.

Drafting conduct rules governing the legal profession is a very difficult and grave responsibility that we exercise with great caution. However, it is clear in my mind that when conduct is so egregious that it constitutes grounds for permanent disbarment, then the person involved should likewise be permanently prohibited from applying for admission.

The petitioner before us should never be admitted to the practice of law because her admitted and egregious conduct constitutes grounds for permanent disbarment.

KIMBALL, Justice, dissenting.

In my view, this case presents a tragic example of this court's inability to formulate definitive rules to cover these difficult character and fitness issues. In this particular case, this applicant was allowed to attend law school, notwithstanding the fact that she was on active felony probation and had surrendered her teaching certificate, thereby effectively disqualifying her from her original profession. After successfully completing her studies, this court allowed the applicant to sit for the bar examination, which she passed.

This court's rules relating to admission to the bar of the State of Louisiana exist to protect the public and to safeguard the administration of justice. The required assessment of moral character and fitness looks to an applicant's record of past conduct. Admission may be denied on the basis of an applicant's record of past conduct when such record manifests "a significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant." When an applicant is found to have engaged in conduct which at that time would have constituted grounds for an unfavorable recommendation, then that applicant bears the burden of proof to affirmatively show character rehabilitation and that such inclination or instability is unlikely to recur in the future.

In the instant case, the record clearly reveals that the applicant overwhelmingly proved that her character has been rehabilitated and that such inclination or instability is unlikely to recur in the future. For example, the supervisor of applicant's first five months of probation described the applicant as a model probationer and recommended her for admission to the bar. Additionally, the attorney who previously represented applicant in connection with the criminal charges that are

the subject of this investigation testified that applicant took responsibility for her actions from the outset and, because the attorney had "the utmost confidence in her," wrote a strong letter of recommendation to Southern University Law Center and, later, the National Conference of Bar Examiners. He also assisted the applicant in obtaining a position as a law clerk in the Ninth Judicial District Court. A Shreveport psychiatrist who evaluated the applicant opined there is a very low risk that the applicant will commit a sexual offense in the future. The director of the clinical education department at Southern University Law Center who supervised the applicant's class work testified that the applicant was very dedicated, extremely committed, and worked all the time to make "sure that it's right." The judge for whom applicant worked as a law clerk reported that her work has been excellent, that she is very conscientious, and that she gets along well with others in the court. The judge highly recommended the applicant for admission to the bar "regardless of her past situation or the circumstances." After hearing all the evidence in this case, the commissioner found the applicant understood her past behavior was wrong, was remorseful, and wanted to make positive changes in her life. The commissioner found that psychiatric and psychological evaluations showed applicant knew right from wrong, but in an immature way such that she was emotionally a budding adolescent when the behavior at issue occurred. Finally, the commissioner found that the applicant is now married, expecting a child, and by all accounts is functioning as a normal young married professional.

Although this appears to be an unusual case with extraordinary facts, it is clear to me that the applicant has produced an impressive amount of evidence proving that she has good moral character and the fitness necessary to practice law in the State of Louisiana. The medical evidence consistently reveals that there is a very low risk the applicant will re-offend. In concluding that this case presents serious character and fitness concerns that necessitate the denial of the petitioner's application for admission to the practice of law, the majority disingenuously focuses solely on the applicant's past deplorable conduct and fails to consider or even mention the overwhelming evidence that the applicant has turned her life around. The retired judge appointed as a commissioner by this court to hear evidence in this case found as a matter of fact that the applicant has done all that can be done to achieve the rehabilitation necessary for admission to the practice of law. In reaching its decision to deny the applicant admission, the majority simply ignores the factual findings made by the appointed commissioner.

The case before us illustrates the need for clear rules detailing what conduct will likely prevent an applicant from being admitted to the bar of our state. In my view, potential law students should be given notice of the types of conduct that will probably preclude them from practicing law before they undertake the challenge of law school and, in many cases, incur substantial debt to acquire a legal education. This court should work with Louisiana's law schools to ensure potential students are given clear information so they can make informed choices.

Under the facts of this particular case, I believe the applicant should be conditionally admitted to the practice of law, subject to a probationary period of two years. As the commissioner found, the applicant has done everything she can to show the necessary rehabilitation. Because the applicant has complied with every requirement presently contained in our rules, it is simply unjust to deny her admission at this juncture.

TRAYLOR, J., dissenting.

In July of last year, Kelle Hinson-Lyles applied to sit for the Louisiana Bar Examination. Her application was opposed by the Committee on Bar Admissions based upon her three 1999 felony convictions. This Court, in its collective wisdom, allowed the petitioner to take the bar examination, upon the condition that she apply to the court for the appointment of a commissioner to take character and fitness evidence. I opposed allowing the petitioner to take the examination and voted, along with Justices Kimball and Knoll, to deny her application.

Ms. Hinson-Lyles took and passed the bar examination and subsequently requested the appointment of a commissioner to take character and fitness evidence. The commissioner held a hearing, took evidence, and found that petitioner possessed the requisite character and fitness to be conditionally admitted to the bar based upon her rehabilitation. This Court now determines that the petitioner should not be admitted to the bar, even though the only new evidence we have before us supports her conditional admission, as recommended by the commissioner that this Court appointed for that purpose.

I do not take the position that Ms. Hinson-Lyles possesses the character and fitness required to be admitted to the bar and, in fact, adhere to my previous determination that she should not have been allowed to sit for the bar examination. I do, however, believe that when this Court allows a person to take the bar examination upon condition, and then that person passes the examination and meets the conditions set before them, it is disingenuous for the Court to then decide that more conditions must be met, especially without stating what those conditions are.

In this case what can the petitioner do that she has not done? Wait and apply later? When or what is the "magic moment" which will show that rehabilitation has occurred? If Ms. Hinson-Lyles applies five years from now, will that be long enough? Ten years? Will she ever be able to show successful rehabilitation? If not, why was she allowed to take the bar examination at all?

Matter of Anonymous

875 N.Y.S.2d 925 (N.Y. App. Div. 2009)

Per Curiam

Applicant passed the February 2008 New York State bar exam and the State Board of Law Examiners certified him for admission to this Court. The Committee on Character and Fitness has completed its investigation of his application for admission, including an interview of applicant.

Applicant has disclosed various student loans with balances now totaling about $430,000. He has stated that the loans are currently delinquent but professes good faith intentions to pay them. He has attributed his nonpayment to the downturn in the economy and bad faith negotiations on the part of some of the loan servicers. Our review of the application indicates that the disbursement dates of the loans cover a 20-year period, from as early as 1985. Applicant has not made any substantial payments on the loans. He has not been flexible in his discussions with the loan servicers. Under all the circumstances herein, we conclude that applicant has not presently established the character and general fitness requisite for an attorney and counselor-at-law.

In re Glass

316 P.3d 1199 (Cal. 2014)

Stephen Randall Glass made himself infamous as a dishonest journalist by fabricating material for more than 40 articles for The New Republic magazine and other publications. He also carefully fabricated supporting materials to delude The New Republic's fact checkers. The articles appeared between June 1996 and May 1998, and included falsehoods that reflected negatively on individuals, political groups, and ethnic minorities. During the same period, starting in September 1997, he was also an evening law student at Georgetown University's law school. Glass made every effort to avoid detection once suspicions were aroused, lobbied strenuously to keep his job at The New Republic, and, in the aftermath of his exposure, did not fully cooperate with the publications to identify his fabrications.

Glass applied to become a member of the New York bar in 2002, but withdrew his application after he was informally notified in 2004 that his moral character application would be rejected. In the New York bar application materials, he exaggerated his cooperation with the journals that had published his work and failed to supply a complete list of the fabricated articles that had injured others.

Glass passed the California Bar examination in 2006 and filed an application for determination of moral character in 2007. It was not until the California State Bar moral character proceedings that Glass reviewed all of his articles, as well as the editorials The New Republic and other journals published to identify his fabrications, and ultimately identified fabrications that he previously had denied or failed to disclose. In the California proceedings, Glass was not forthright in acknowledging the defects in his New York bar application.

At the 2010 State Bar Court hearing resulting in the decision under review, Glass presented many character witnesses and introduced evidence regarding his lengthy course of psychotherapy, along with his own testimony and other evidence. Many of his efforts from the time of his exposure in 1998 until the 2010 hearing, however, seem to have been directed primarily at advancing his own well-being rather than returning something to the community. His evidence did not establish that he engaged in truly exemplary conduct over an extended period. We conclude that on this record he has not sustained his heavy burden of demonstrating rehabilitation and fitness for the practice of law.

I. FACTS

A. Committee of Bar Examiners's evidence

Stephen Glass was born in September 1972, in a suburb of Chicago, Illinois. After early success as a journalist in college and a developing interest in the law, in 1994 Glass was admitted to New York University School of Law but deferred his intended legal training to accept a position in Washington, D.C., with Policy Review magazine.

In September 1995 Glass accepted a position at The New Republic magazine. In early June 1996 he began fabricating material for publication. The fabrications continued and became bolder and more comprehensive until he was exposed and fired in May 1998.

Glass's fabrications began when an article entitled *The Hall Monitor* was published containing a fabricated quotation from an unnamed source disparaging United States Representative Pete Hoekstra for behaving in Congress like an elementary school "super hall monitor." He started by fabricating quotations or sources, and ended by publishing wholesale fictions. He testified that "all but a handful" of the 42 articles he published in The New Republic contained fabrications or were entirely fabricated. He also routinely prepared elaborate reporter's notes and supporting materials to give the false impression to the magazine's fact checkers that he had done all the background work for each article and that his informants had spoken words he falsely attributed to them.

Glass testified at the State Bar Court hearing that he "wrote nasty, mean-spirited, horrible" things about people: "My articles hurt, and they were cruel." He testified that the fabrications gave him "A-plus" stories that afforded him status in staff meetings and also gave particular enjoyment to his colleagues. He said: "Overwhelmingly, what everyone remembers about my pieces are the fake things."

A notable 1996 article was entitled *Taxis and the Meaning of Work.* It was Glass's first cover article and one he viewed as "key" to his successful period of writing for The New Republic. Its theme was that Americans, and in particular, African-Americans, were no longer willing to work hard or to take on employment they consider menial. The article falsely recounted as factual supposed encounters between Glass and three entirely fabricated characters, one a limousine driver, one a taxicab driver, and one a criminal. The limousine driver was depicted as an African-American man who had driven a cab at one time, but now drove a limousine instead because he was "sick of those curry people" and found that limousines attracted beautiful women, or, in the purported words of the driver, gave him "the woo quotient." The author went on to say that he had been permitted to ride along for journalistic purposes with a taxi driver of Middle Eastern descent. The article recounted that the driver stopped for a young African-American passenger—"the type of fare Imran would normally refuse" but felt he had to accept because of nearby police observation. The article describes the pounding music audible from the young fare's headphones, and claims that as they neared his destination, the young African-American man threatened the driver with a knife, hurled coarse abuse at him, and took his wallet. According to the article: " 'These things happen,' Imran said coldly on the drive back downtown. 'I give them whatever they want. I just want my life.' "

Spring Breakdown, published in March 1997, was another example of Glass's fabrications. The theme of the article was that young, conservative Republicans had given up on electoral politics and had turned to drugs and sex. Glass invented a fictional group of male college students attending the Conservative Political Action Conference. To convey the young men's view that conservatives had lost their direction, he attributed to one of them the comment that conservatives were " 'like a guy who has to pee lost in the desert, searching for a tree.' " Glass described the young men using marijuana for an hour, then embarking on a search for a young woman to humiliate. The plan was "to choose the ugliest and loneliest they can find," a person the young men described as "a real heifer, the fatter the better, bad acne," for a few of them to lure to their hotel room and persuade to undress. At that point, the remaining men would emerge from under the bed, shout " 'we're beaching. Whale spotted!' " and photograph the woman. After turning to a discussion of asserted losses in popularity experienced by the conservative movement, the article went on to recount the execution of the plot described above. It asserted that a woman in fact emerged from the young men's room unclothed and in tears, while the perpetrators congratulated each other. The article went on: "This repellent scene was only a little beyond the norm of the conference. A wash

of despair and alcohol and brutishness hung over the whole thing." More examples of drug use ensued, along with examples of shameless sexual behavior. All of this was fabricated.

In another article, entitled *Deliverance,* published in November 1996, Glass recounted receiving unsatisfactory service from a named computer company, and claimed that his complaints to a telephone customer service representative were met with an anti-Semitic slur. In truth, no such slur ever was uttered. Glass also wrote a letter to the president of the company, repeating the accusation, and sent a copy to the Anti-Defamation League.

Glass also engaged in fabrications in freelance articles published by other magazines. An example was *Prophets and Losses,* an article published in Harper's Magazine in February 1998, at which time Glass was also a law student. In that article, Glass represented that he had worked for a telephone psychic service for a time, and recounted fabricated conversations with management, represented as mercenary and either stupid or cynical, and also fabricated conversations with callers, who were depicted as ignorant and desperate. In one case a caller, a fabricated character to whom Glass had attributed an African-American dialect, could not be persuaded to use his money to feed and clothe his seven children by five different mothers instead of buying VCRs and calling telephone psychics for advice on lottery numbers. The article was almost entirely a fabrication. Glass explained at the hearing that his intent was to expose "how the telephone psychic industry preys on minorities.… It uses minority celebrities to advertise and shows that are watched predominantly by minorities to lure them into paying insane amounts of money. [¶] I was angry about that, and I wanted to attack that, and I used terrible, horrible stereotypes to create, essentially, straw men to knock down."

In another example, Glass wrote an article entitled *The Vernon Question* for George magazine. The lengthy article, published in April 1998, concerned Vernon Jordan, an advisor to then President Clinton during the then emerging Monica Lewinsky scandal. In two paragraphs, Glass used nonexistent sources to describe Jordan's supposed reputation as a "boor" and attributed various fictitious statements to "political operatives," "socialites," "political hostesses" and officials. These persons assertedly stated that Jordan was well known for sexually explicit comments, unwanted sexual advances, and crude stares, and added that he was known in their circles as "Vern the Worm" or "Pussyman," and that young women needed protection against him. Another paragraph attributed to a fictional "watchdog" group contained certain claims about Jordan's asserted conflicts of interest and questionable corporate ethics along with statements attributed to fictional "senior officials" at companies on whose boards Jordan sat, saying that Jordan is "totally unaware of the issues" but "we get what we want, access, and he gets what he wants, cash." These were all fabrications.

Charles Lane, who was the editor of The New Republic at the time of Glass's exposure, testified for the Committee of Bar Examiners (hereafter sometimes Committee) that he had received an early complaint about Glass concerning an article entitled *Boys on the Bus,* depicting the actor Alec Baldwin and his brother as silly celebrities whose efforts during a bus tour to campaign on the issue of campaign finance reform were based on ignorance. A representative of Baldwin's disputed the assertion in the article that the actor had been giving out autographs during the bus tour, but Glass repudiated the accusation in print in The New Republic. It was not until Glass prepared his application to the California State Bar that he acknowledged that this article contained fabricated evidence to the effect that interest in the bus tour came from movie fans seeking autographs and referred to a fabricated person who opined that Baldwin lacked real understanding of campaign finance reform.

Although at the time, the *Boys on the Bus* incident seemingly was resolved in Glass's favor, Lane's suspicions were aroused in May 1998 when a journalist employed by Forbes Digital Tool telephoned to warn him that factual assertions in Glass's recent article for The New Republic magazine, *Hack Heaven,* did not seem to be true. The article had described a teenager hacking a California software company and extorting money to stop the intrusion. The article described a convention in Bethesda, Maryland, where some of the events occurred, and when Lane challenged Glass, the latter journeyed with Lane to Bethesda, purporting to identify the building where the convention had been held. A person working in the building denied such a convention had occurred, and Lane became persuaded that Glass was lying. Lane pressed Glass about the factual basis for the article, and although Glass was evasive, he insisted the article was accurate. Glass spent the night at home fabricating what he would assert were his reporter's notes from interviews, fake business cards, a voicemail box, a Web site, and newsletters. He also induced his brother to impersonate a source.

Upon their return to the office from Bethesda, Glass lobbied the executive editor and others to intervene on his behalf with Lane, urging that he was being treated unfairly. Lane, now suspecting that other fabrications may have occurred, wanted to fire him, but in response to the lobbying, suspended him. The next day, a Saturday, Lane was surprised to discover Glass at the office. Thinking Glass had been told not to return, Lane suspected he had altered his computer files. He confronted Glass with evidence that Glass had used his brother as a false source in the *Hack Heaven* piece. Ultimately, during this exchange Glass admitted the article was fabricated, and Lane fired him. Lane found on Glass's desk a letter Glass had written to his landlord, falsely stating he had been transferred by The New Republic to New York and needed his security deposit refunded. Lane also found the letter Glass had written to the chief executive of Gateway computers, again stating the falsehood that a customer service employee had used an anti-Semitic slur against Glass.

Lane reviewed all of Glass's articles over the course of the following three or four weeks. He received a letter from Glass apologizing and saying he had instructed his lawyers to cooperate with The New Republic. Lane compiled a summary of the material in Glass's articles that he found suspicious and submitted the summary to Glass's counsel, who it was agreed would stipulate to those findings of Lane's that Glass believed to be correct. At the time, Lane concluded that 27 of the 42 articles Glass had written for the magazine contained fabrications, and Lane wrote two editorial articles informing the magazine's readership to this effect.

Lane was very surprised to learn for the first time in the California State Bar proceeding that there were four articles Glass identified in his California Bar application as fabrications that he, Lane, had not even suspected were flawed. Lane was also surprised that four of the articles he had identified to Glass's counsel as suspicious, but which Glass had declined to stipulate contained fabrications, were now admitted in the California State Bar application to involve fabrications—including the disturbing *Taxis and the Meaning of Work,* along with *Deliverance,* with its false claim of anti-Semitism, and *Boys on the Bus,* which had involved the magazine in a dispute over authenticity even before Glass's exposure.

Lane testified that he thought Glass had perpetrated an elaborate hoax on readers and was engaged in a con game, not journalism. He testified that Glass's case had been highlighted at the Newseum, a Washington, D.C., museum of journalism, as one of the worst examples of misconduct in journalistic history. Lane noted that The New Republic was put to the expense of hiring a private investigator to analyze Glass's articles and incurred legal fees in the tens of thousands of dollars. He testified that Glass had not offered him reimbursement for the magazine's expenses, nor did he offer to refund any portion of the salary he had been paid. Lane added that the fabrications hurt the magazine's reputation, relationships between employees, and of course hurt those maligned in the articles. Lane was not mollified by a letter of apology he received from Glass in August 2003, around the time Glass's novel, The Fabulist, was published. Lane considered the letter fawning. Lane considered Glass "flagrantly incapable of producing honest journalism," and concluded that his record of systematic deception and lack of thorough confession made him unemployable as a journalist.

Richard Bradley, who was Washington affairs editor for George magazine and Glass's editor for his freelance articles for that magazine, testified on behalf of the Committee. Bradley stated that when he learned of the scandal involving Glass at The New Republic, he investigated the background for the three freelance articles Glass had published, as well as a fourth article that Glass had submitted and that was being edited. On investigation, the article on Vernon Jordan "blew apart like a dandelion in a strong wind." Assertions in the other articles were difficult to substantiate. When, within a week of learning there were problems with Glass's work, Bradley contacted Glass for help in identifying problems in the articles, Glass responded that he was psychologically incapable of doing so and that he was suici-

dal, and hung up. The magazine published an editorial indicating that significant portions of the Vernon Jordan article appeared to be false, and that the fabrications were woven into reliable reporting so that it was difficult to distinguish them. Glass never contacted Bradley to tell him what was true or false in his articles in George magazine, nor was Bradley contacted by Glass's lawyer. (Glass did send a letter of apology to the magazine's editor-in-chief.) Bradley believed that Glass had discredited journalism, contributing to the misconception that journalists are "craven and dishonest." Bradley commented that Glass's articles "caricatured and mocked their subjects … and I felt that the perceptions promoted by [Glass's] fabrications, in these examples [of] African-American people and conservatives, could not be corrected as easily as a factual mistake could be." Because he would not be credible, Bradley would not hire Glass as a journalist.

Joseph Landau, who later became a law professor at Fordham University Law School, was a fact checker at The New Republic while Glass worked there. He testified that Glass had a superior reputation for accuracy among fact checkers because his notes were so thorough and he was apparently so forthcoming, but he tended to push the fact-checking process to the last minute so that it was rushed and could not be done face-to-face. At times Glass could not verify certain facts but would promise Landau to telephone the source. Glass would soon return with confirmation and updated material, a process that reaffirmed the witness's sense that the fact checking was working. Landau had trusted him. Landau received a letter of apology from Glass in the summer of 2004, some six years after Glass had been exposed, and found it to be general and vague.

Louis Miller, a lawyer and chairperson of the board of D.A.R.E. (Drug Abuse Resistance Education), testified that Glass published falsehoods in articles in The New Republic in March 1997 and Rolling Stone in March 1998 that impaired the organization's reputation, because the articles claimed D.A.R.E. was ineffective. According to Miller, the articles contained fabricated "evidence" that the organization had engaged in a widespread campaign of heavyhanded and even violent criminal tactics to counter academic and journalistic criticism of the program. D.A.R.E. sued Glass for libel and settled after Glass agreed the challenged information was fabricated, issued a retraction, and paid the organization's legal expenses of between $25,000 and $50,000. D.A.R.E. did not receive a letter of apology from Glass before it filed suit. D.A.R.E. sued Rolling Stone for defamation but lost on the ground that D.A.R.E. had failed to establish actual malice.

Glass graduated from law school in 2000, when he also took and passed the New York bar examination. He applied to become a member of the New York bar in 2002. After an evidentiary hearing before a subcommittee of a committee on character and fitness, and pursuant to apparent custom, in September 2004, a representative of that committee informed Glass informally that his application would be rejected, so he withdrew it. The record does not disclose the reason for the tentative decision.

In his application to the New York bar, Glass described his misconduct and firing. His application and supporting materials included only 20 articles containing fabrications. Glass wrote that he had apologized to the editor of The New Republic, saying, "I also worked with all three magazines [(referring to The New Republic, Harper's, and George magazines)] and other publications where I had written freelance articles to identify which facts were true and which were false in all of my stories, so they could publish clarifications for their readers."

At the hearing, Lane challenged the quoted statement as untrue. Lane believed that Glass had failed to come forward to actively assist The New Republic in identifying his fabrications, and instead had placed the entire burden of identifying his errors on Lane. Lane testified: "Well, he didn't work with us. The effort we went through, over the course of nearly a month, to investigate all those stories would have been unnecessary if he had worked with us, and simply come forward and laid bare everything that was untrue in his stories. Instead, he sought legal counsel and, in effect, clammed up. [¶] … [W]hen I read the statement that he's laid out in this proceeding, I discovered that, even to this day, he has not—or had not—come clean about everything. So I'm a little amazed to see that he was representing to somebody that he worked with The New Republic to separate fact from fiction in his articles. That was definitely not my experience."

B. Applicant's evidence

According to Glass, during his childhood and young adulthood his parents exerted extremely intense and cruel pressure upon him to succeed academically and socially. Glass felt that The New Republic offered an extremely competitive atmosphere and that his journalistic efforts there failed to make a mark sufficient to ensure his retention after his year term had elapsed. It was after a visit to the family home, when his parents berated him for his apparent failure even in what they considered the worthless career of journalism, that he began fabricating material for publication. He also fabricated reporter's notes and supporting materials for his articles. His aim was to impress his parents and colleagues.

Once he was fired from The New Republic, Glass was distraught, suicidal, and unable to focus, almost immediately entering therapy. He nonetheless hired counsel whom he directed to "work with The New Republic." Glass testified that he believed that The New Republic wanted to conduct its own investigation because it did not trust him and testified that "I came to understand that they were going to provide me with a list of [fabricated] articles, and that I was to affirm whether or not the article was fabricated that they showed me or that they listed." He had fabricated more than The New Republic had discovered in its investigation, although he testified that due to his distress he did not realize this when he reviewed the list or later when he glanced at The New Republic's editorials listing his fabrications. Four of his articles containing fabrications were not on the list and he had erroneously denied there were fabrications in four articles that were on the list,

including *Boys on the Bus, Deliverance,* and *Taxis and the Meaning of Work.* He did not read the editorials—incomplete, as it turned out—that Lane published listing his fabricated articles. In fact, he closely read those articles for the first time when the California State Bar asked him to list all of his fabricated articles. Glass testified that he had "no information" indicating that his lawyers had failed to convey information to The New Republic.

Glass did well in law school. Within a few days of his firing, he rescheduled an exam and within a week, managed to earn a B-plus grade on an exam. He explained, however, that this was a poor grade for him.

Members of Georgetown University's law school faculty testified on his behalf at the hearing. Professor Susan Bloch telephoned him when the scandal first broke and asked if he needed someone to talk to. She appointed him as her research assistant, praising him as one of the brightest and best workers she ever had encountered. She found him to be honest and developed complete trust in him. She recommended him for a judicial internship during law school and a clerkship after graduation. Bloch maintained friendly contact with Glass over the years, including after he moved to California, and testified on his behalf when Glass applied for admission to the New York bar. She testified that she believed Glass had learned from his wrongdoing, that the trauma of his exposure would keep him from ever repeating such behavior, and that she had never observed any dishonesty on his part. She did not read his fabricated articles but was generally aware of their content.

Professor Stephen Cohen, also of the Georgetown law school, testified that Glass took full responsibility for his misconduct. They became friends and Glass was a welcome visitor with Cohen's family. Cohen believed Glass would be honest and ethical as an attorney; in sum, he believed Glass to be fully rehabilitated. Cohen deemed it "presumptuous" and "offensive" when counsel for the Committee of Bar Examiners asked him whether the Georgetown law school application should be read to have required Glass to notify the school that the journalistic honors he listed in his application may have been based in part on fabricated journalism.

In 2001, at the end of his clerkship, Glass moved to New York to be with his girlfriend, and underwent psychoanalysis on a four-day-a-week basis. In June 2001 Glass entered into a contract to write a novel based on his experiences at The New Republic, testifying that his psychiatrists advised him that it would be therapeutic to write the book, which he hoped would serve as a warning to young journalists. He was paid an advance of $175,000 and sold subsidiary rights for $15,000. He wrote the novel, The Fabulist, and appeared on the television program *60 Minutes* in May 2003 (just prior to the date of publication) to discuss his experiences. He claimed that it was not his intent to use the appearance to sell his book, but rather to offer a public apology.

During his residence in New York, and mostly between 2001 and 2004, Glass also undertook to handwrite approximately 100 letters of apology to journalists affected by his fabrications, as well as to the persons who were injured by his articles. He also spoke at a journalism forum at George Washington University in 2003, where he was loudly berated by other journalists. He spoke at a journalism class at Columbia and to a civics organization for high school students. In addition, he worked at a senior center on a regular basis for approximately one year in New York.

Concerning the questions that had arisen about the accuracy of his New York bar application, specifically his assertion that he had "worked with" the affected magazines "to identify which facts were true and which were false in all [his] stories, so they could publish clarifications," Glass testified that perhaps he should have written that he " '*offered* to work with all three magazines,' " or in fact, that he " 'offered to work … *through counsel,*' " but added that he did not intend to make any misrepresentation or exaggeration. He testified that he assumed his lawyer had contacted George magazine, as Glass had instructed him to do, and that he did not prepare a list of fabrications for George magazine. He explained that he attached to his New York bar application the editorials The New Republic had published incompletely listing his fabrications, but he did not read them, or at least did not read them carefully at that time. He also attached the notice that George magazine had published about his work—an article that did not refer to two of his three articles for George that contained fabrications. He reviewed these carefully for the first time in preparation for the California State Bar hearing.

When asked at the hearing in the present matter whether it would be accurate to say that he offered to work with The New Republic to identify which facts were true and which were false in all of his stories, he answered, "I believe that was my intention at the time, yes, and I believe I tried to do that." He explained that what he meant by this was that he asked his counsel to offer to go through the articles to identify fabrications, and then a "joint defense agreement was entered into, proposed by The New Republic, and we entered into a joint defense agreement that constructed this system."

Similarly, Glass explained, he did not actually undertake any work with Harper's Magazine to identify what was true and what was false in his articles, but "offered to work with them, or asked counsel to offer." He did not "have a memory of asking" his attorney whether counsel had contacted Harper's. When asked whether, when he prepared his New York bar application, he noticed or was troubled by the absence of any article from Harper's about his fabrications, he testified that he still assumed counsel had offered to exchange information or to enter into an agreement with Harper's. When pressed on his failure to confirm counsel's contact with Harper's, he testified: "I confirmed—well in my head I asked [counsel] to do something and he didn't tell me otherwise, I believed it to have occurred."

Concerning his decision to list only 20 articles containing fabrications in his New York bar application materials, Glass emphasized that he had not been asked for a complete list of articles containing fabrications, but rather in a telephone conversation, an employee of the committee on character and fitness asked for "a list of articles that contained a statement about a real person or real entity, as opposed to a fake person or a fake entity, that reflected something negative upon that real person or real entity." He wrote a letter to that committee memorializing this telephone conversation, saying he had been asked to list instances in which his fabrications "had a harmful impact on real persons. In response, I've gone back through all of my articles to identify those in which potentially harmful false statements were made about actual persons and actual organizations," and also warning that there might be inadvertent omissions. He did not list *Deliverance, Boys on the Bus,* or an article concerning Ted Turner entitled *Gift of the Magnate,* although these contained fabrications. He explained at the California hearing that the customer service agent to whom he attributed the anti-Semitic slur in *Deliverance* was a "made-up character," and so, he insisted, the article did not harm a real person. When pressed, he admitted that the article could have caused harm to the customer service agent the company determined had assisted him, and to the company.

Similarly, he did not include the *Boys on the Bus* article in his New York bar materials because the person to whom he attributed the statement that Alec Baldwin did not know much about campaign finance reform was fake, and he had created some "fake fans." When asked whether the article harmed Alec Baldwin, a real person, he responded that "Alec Baldwin, truth be told, did not know much about campaign finance reform." When pressed, he conceded that there was a potential for injury to Baldwin.

Glass testified that he moved to California in the fall of 2004. He was hired by the Carpenter, Zuckerman and Rowley law firm as a law clerk. The firm has many homeless clients, and in addition to the legal work he does on their cases, he has helped them with their personal problems, even with regard to matters of personal hygiene.

Originally Glass undertook volunteer work in Los Angeles, but because his law firm encouraged him to stop taking time off during the workday, he arranged to work extra hours for deserving clients on matters for which his firm had no expectation of collecting fees.

California Attorney Paul Zuckerman testified that he decided to give Glass a chance as a law clerk. After initially assigning Glass minor projects and exercising close oversight, Zuckerman became convinced that Glass was one of the best employees in the firm, with a fine intellect, a good work ethic, and reliable commitment to honesty. Glass exhibited great compassion, assisting at a personal level with difficult clients and helping to find resources and social services for some of the firm's many homeless clients. Other lawyers who had

worked for or with the firm confirmed Zuckerman's view of Glass as an employee who conducted excellent legal research, was assiduous and hyperscrupulous about honesty, and stopped to think about ethical issues.

Also offered in support of Glass's application were affidavits that had been submitted in support of his New York bar application from the judges for whom Glass had worked during and immediately after completing law school. Both found him highly competent and honest at that time. Additional declarations from attorneys and friends that had been submitted with the New York bar application were offered in support.

Dr. Richard Friedman, a psychiatrist, testified that he had treated Glass since 2005, and believed he had developed good judgment, scrupulous honesty, and the ability to handle difficult situations well. Dr. Friedman reported that he would be astonished if Glass committed misconduct as he had in the past, both because of the growth of character and moral sense the doctor had observed, but also because of a strong instinct to protect himself from the traumatic results of his prior misconduct. He reported that Glass had no sociopathic personality traits.

Dr. Richard Rosenthal, a psychiatrist and psychoanalyst who is known for treating gamblers and those with impulse control disorders, was approached by Glass's attorney in 2005. Rosenthal had an evaluative as well as therapeutic relationship with Glass that began in 2005 and continued with meetings once or twice a month until the time of the hearing.

Dr. Rosenthal identified Glass's underlying psychological issues as a need for approval, a need to impress others, and a need for attention, and pointed also to Glass's fear of inadequacy, rejection, and abandonment. Rosenthal testified that when they met in 2005, Glass needed to overcome enormous shame and learn to forgive himself. Through therapy, Glass learned to be realistic about family issues and to set boundaries. Rosenthal believed that Glass had grown up in a family that exerted tremendous pressure on him to succeed yet always made him feel like a failure. In Rosenthal's opinion, Glass was rehabilitated, meaning that he was extremely conscientious and honest, avoided the appearance of impropriety, had reasonable goals and expectations, had gained empathy and tolerance, and would not allow himself to be overwhelmed by stress. The doctor saw no evidence that Glass was a sociopath.

Glass himself described his therapy, which had commenced very shortly after his exposure and continued to the time of the 2010 hearing, that is, for 12 years. Through therapy he had learned to separate his feelings about his family from the work environment and to "set boundaries within my family." He testified that he believed the most important thing he could do to make amends was to change himself.

Martin Peretz, who owned and managed The New Republic at the time of the fabrications, testified on Glass's behalf and had developed a charitable view of his misconduct by the time of the California State Bar hearing. He blamed himself and, even more, the magazine's editors for encouraging Glass to write zany, shocking articles and for failing to recognize the improbability of some of Glass's stories. He found the harm of the scandal to the magazine to be minimal. He had renewed social contact with Glass in the past few years and believed that Glass had been harshly treated. He would not rule out hiring Glass again as a journalist. He explained that in his experience as a professor "[t]he most brilliant students plagiarize," complaining to the Committee's counsel, "I actually find your pursuing him an act of stalking."

Additional character witnesses included Melanie Thernstrom, a journalist, memoirist, and friend who testified that she had known Glass for more than a decade because she was a close friend of his girlfriend, Julie Hilden. Her initial skepticism about him dissolved soon after she met him and she believed he had become kind, generous, loyal, responsible, empathetic and above all, honest. Thernstrom witnessed Glass during the period he wrote letters of apology and said that each letter required considerable work and caused him anguish. She found him to be very sorry for the deceptions, and believed that he had taken responsibility for his past acts and would never deceive again. She had observed that Glass was intelligent, hardworking, and empathetic with clients who were injured. She thought the Committee was "picking on" irrelevant issues—that is, the exact number of Glass's deceptive articles and whether or when he had disclosed them all. She believed the Committee's position was "sophistic." In her view, it was enough that he had admitted his misconduct and apologized for it, and she believed that there was no current, ongoing damage from his fabricated articles because Glass's work had been entirely discredited.

Lawrence Berger, a friend, testified on Glass's behalf, saying that Glass immediately told him about the scandal when they met. He testified that Glass is especially committed to being a good person now, being remarkably ethical and a devoted friend. According to Berger, Glass's efforts during the period he wrote the letters of apology were never perfunctory.

Julie Hilden, a freelance lawyer and aspiring scriptwriter and Glass's longtime live-in girlfriend, also testified on his behalf. He took good care of her during a prolonged, serious illness, even though she lived in New York and he was completing law school and doing his clerkship in Washington, D.C., at the time. She testified that he immediately demonstrated that he was very serious about being completely honest in every detail, and honesty is still an overriding concern. She observed the great effort he put into writing letters of apology during a prolonged period between 2002 and 2004. She explained that he takes a personal interest in clients, works very hard for them, and accepts their telephone calls at all hours, including nights and weekends.

C. California State Bar proceedings

Glass took and passed the California Bar examination in 2006 and in July 2007 filed an application for determination of moral character as part of his bar application. The Committee of Bar Examiners denied the application, but on Glass's request a moral character hearing was conducted in the State Bar Court in April and May of 2010.

The State Bar Court's hearing judge found that Glass had established good moral character. The Committee sought review. The State Bar Court Review Department (Review Department) independently reviewed the record, and a majority of the three-judge panel agreed with the hearing judge that Glass had established good moral character.

The Review Department majority acknowledged that Glass's misconduct had been "appalling" and "egregious," but believed that Glass had satisfied his "heavy burden of proof" and established his rehabilitation. The majority stated that Glass's burden of proof as a first-time applicant was "substantially less rigorous" than it would have been for an attorney seeking reinstatement after disbarment. Moreover, the majority declared, its "task here is not to dwell on his past misdeeds, but to determine his present moral fitness." It added that because the "policy of the state favors admission of applicants who have achieved reformation," the majority resolved any reasonable doubt concerning Glass's rehabilitation in his favor and "[gave] him the benefit of any conflicting but equally reasonable inferences flowing from the evidence." The majority concluded that "[c]umulatively, Glass's legal employment history, community service, character witnesses, progress in therapy, remorse and acceptance of responsibility" provided a more accurate picture of his moral character than his misconduct of many years ago.

The majority acknowledged that Glass had not fully identified his fabrications until the California Bar proceedings, but observed that Glass had not asked the bar to excuse that failure. The majority also expressed some concern regarding Glass's New York bar application, observing that he had "mischaracterized the degree to which he cooperated with the magazines to identify the fabricated articles." On the other hand, in the majority's view, Glass's careful review of his prior articles in connection with the California State Bar proceedings indicated that he had fully acknowledged his wrongdoing, an " 'essential step towards rehabilitation.' " In addition, the majority concluded that Glass had left it to his attorneys to work with the magazines because of his emotional turmoil, and "[t]he State Bar did not prove whether Glass's attorney failed to 'work with' some of the publishers and neither did Glass establish that his attorney had completed the task as requested."

The majority commented upon Glass's excellent reputation with law professors and judicial employers, and observed that Glass's rehabilitation seemed to have occurred over a number of years. The majority recounted the course of Glass's therapy and his therapists' testimony on his behalf in support of the view that

he was rehabilitated. The majority further referred to Glass's community service in New York and commented that his work commitments rendered him unable to continue non-work-related community service in Los Angeles, where he had resided since 2004.

The majority placed great emphasis on Glass's character witnesses, saying: "We afford great weight to Glass's character witnesses, who were community leaders, employers, judges, and attorneys, and all of whom spoke with the utmost confidence in Glass's good moral character and rehabilitation."

The majority declined to believe restitution was required of Glass. "We consider his present character in light of his previous moral shortcomings [citation], and we are at a loss to understand how monetary restitution would mitigate the reputational harm that Glass had caused." The majority found more significant evidence that he has made amends both to the journalistic community in his public admissions concerning his fabrications and to his victims in the letters he sent them.

The majority concluded that "even those who have committed serious, indeed egregious, misconduct, are capable of overcoming their past misdeeds" and that persons who had reformed should be rewarded with an opportunity to serve as lawyers.

The Review Department panel's dissenting opinion concluded that Glass had not proven full rehabilitation, pointing to his " 'staggering' " two-year period of "multilayered, complex and harmful course of public dishonesty." The dissenting judge found especially troubling Glass's omissions and misstatements in his application to the New York bar. "[T]o gain admission to practice law in New York, Glass understated the number of articles he had fabricated and exaggerated his efforts to help the magazines identify those articles. At a time when he should have been scrupulously honest, he presented an inaccurate application because it benefitted him—the same behavior as his earlier misconduct." The dissenting opinion concluded: "Given the magnitude of his misconduct and his subsequent misrepresentations on his New York bar application, Glass has not shown proof of reform by a lengthy period of exemplary conduct which 'we could with confidence lay before the world' to justify his admission."

II. DISCUSSION

A. Applicable Law

(1) To be qualified to practice law in this state, a person must be of good moral character. Good moral character includes "qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process." "Persons of good character … do not commit acts or crimes involving

moral turpitude—a concept that embraces a wide range of deceitful and depraved behavior." A lawyer's good moral character is essential for the protection of clients and for the proper functioning of the judicial system itself.

(2) When the applicant has presented evidence that is sufficient to establish a prima facie case of his or her good moral character, the burden shifts to the State Bar to rebut that case with evidence of poor moral character. Once the State Bar has presented evidence of moral turpitude, the burden "falls squarely upon the applicant to demonstrate his [or her] rehabilitation."

Of particular significance for the present case is the principle that "the more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." "Cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of *exemplary* conduct following the applicant's misdeeds." Moreover, "truly exemplary" conduct ordinarily includes service to the community.

(3) We independently weigh the evidence that was before the State Bar Court, recognizing that the applicant bears the burden of establishing good moral character. We ask whether the applicant is fit to practice law, paying particular attention to acts of moral turpitude and prior misconduct that bears particularly upon fitness to practice law.

In reviewing moral fitness findings made by the State Bar, we accord significant weight to the State Bar Court hearing judge's findings of fact to the extent they are based on witness demeanor and credibility. Although "the moral character determinations of the Committee and the State Bar Court play an integral role in the admissions decision, and both bear substantial weight within their respective spheres," we are not bound by the determinations of the Committee or the State Bar Court. Rather, we "independently examine and weigh the evidence" to decide whether the applicant is qualified for admission.

(4) Contrary to the Review Department majority's view that Glass's burden was significantly lighter than it would be for an attorney seeking readmission because he was a first-time applicant, in many respects the difference between admission and disciplinary proceedings is "more apparent than real." "Because both admission and disciplinary proceedings concern fitness to practice law as evidenced by acts of moral turpitude, this court routinely consults its disciplinary cases in deciding whether applicants for admission possess, at the outset, the requisite moral character." At both admission and disciplinary proceedings, "[t]he common issue is whether the applicant for admission or the attorney sought to be disciplined 'is a fit and proper person to be permitted to practice law, and that usually turns upon whether he has committed or is likely to continue to commit acts of moral turpitude' ", particularly misconduct that bears upon the applicant's fitness to practice law.

"However, unlike in disciplinary proceedings, where the State Bar must show that an already admitted attorney is unfit to practice law and deserves professional sanction, the burden rests upon the candidate for admission to prove his own moral fitness."

B. Analysis

(5) The Review Department majority believed it was reasonable to draw all inferences in favor of Glass, failing to be constrained by our discussion in *Gossage* as we shall explain. Although an applicant ordinarily receives the benefit of the doubt as to "conflicting, equally reasonable inferences" concerning moral fitness, the State Bar Court majority failed to recognize that this rule does not materially assist applicants who have engaged in serious misconduct. This is because "[w]here serious or criminal misconduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and *more reasonable.*" When there have been very serious acts of moral turpitude, we must be convinced that the applicant "is no longer the same person who behaved so poorly in the past," and will find moral fitness "only if he [or she] has since behaved in exemplary fashion over a meaningful period of time."

Applying the *Gossage* standard in this case of egregious malfeasance, we begin our own independent review of the record with a focus on Glass's many acts of dishonesty and professional misconduct, and then ask whether he has established a compelling showing of rehabilitation and truly exemplary conduct over an extended period that would suffice to demonstrate his fitness for the practice of law.

Glass's conduct as a journalist exhibited moral turpitude sustained over an extended period. As the Review Department dissent emphasized, he engaged in "fraud of staggering' proportions" and he "use[d] … his exceptional writing skills to publicly and falsely malign people and organizations for actions they did not do and faults they did not have." As the dissent further commented, for two years he "engaged in a multi-layered, complex and harmful course of public dishonesty." Glass's journalistic dishonesty was not a single lapse of judgment, which we have sometimes excused, but involved significant deceit sustained unremittingly for a period of years. Glass's deceit also was motivated by professional ambition, betrayed a vicious, mean spirit and a complete lack of compassion for others, along with arrogance and prejudice against various ethnic groups. In all these respects, his misconduct bore directly on his character in matters that are critical to the practice of law.

Glass not only spent two years producing damaging articles containing or entirely made up of fabrications, thereby deluding the public, maligning individuals, and disparaging ethnic minorities, he also routinely expended considerable efforts to fabricate background materials to dupe the fact checkers assigned to vet his work. When exposure threatened, he redoubled his efforts to hide his misconduct, going

so far as to create a phony Web site and business cards and to recruit his brother to pose as a source. In addition, to retain his position, he engaged in a spirited campaign among the leadership at The New Republic to characterize Lane's obviously well-founded concerns as unfair and to retain his position.

Glass's conduct during this two-year period violated ethical strictures governing his profession. Believing that "public enlightenment is the forerunner of justice and the foundation of democracy," the Code of Ethics of the Society of Professional Journalists provides that "[t]he duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues[,] … striv[ing] to serve the public with thoroughness and honesty.… [¶] … [¶] … Deliberate distortion is never permissible." Glass's behavior fell so far short of this standard that Lane recounted seeing Glass featured in an exhibit in the Newseum, a Washington, D.C., museum dedicated to journalism, as embodying one of the worst episodes of deceit in journalistic history.

Glass's misconduct was also reprehensible because it took place while he was pursuing a law degree and license to practice law, when the importance of honesty should have gained new meaning and significance for him.

Moreover, Glass's lack of integrity and forthrightness continued beyond the time he was engaged in journalism. Once he was exposed, Glass's response was to protect himself, not to freely and fully admit and catalogue all of his fabrications. He never fully cooperated with his employers to clarify the record, failed to carefully review the editorials they published to describe the fabrications to their readership, made misrepresentations to The New Republic regarding some of his work during the period he purported to be cooperating with that magazine, and indeed some of his fabrications did not come to light until the California State Bar proceedings. He refused to speak to his editor at George magazine when the latter called to ask for help in identifying fabrications in the articles Glass wrote for that magazine.

(6) The record also discloses instances of dishonesty and disingenuousness occurring after Glass's exposure, up to and including the State Bar evidentiary hearing in 2010. In the New York bar proceedings that ended in 2004, as even the State Bar Court majority acknowledged, he made misrepresentations concerning his cooperation with The New Republic and other publications and efforts to aid them identify all of his fabrications. He also submitted an incomplete list of articles that injured others. We have previously said about omissions on bar applications: "Whether it is caused by intentional concealment, reckless disregard for the truth, or an *unreasonable refusal to perceive the need for disclosure,* such an omission is itself strong evidence that the applicant lacks the 'integrity' and/or 'intellectual discernment' required to be an attorney."

Our review of the record indicates hypocrisy and evasiveness in Glass's testimony at the California State Bar hearing, as well. We find it particularly disturbing that at the hearing Glass persisted in claiming that he had made a good faith effort to work with the magazines that published his works. He went through many verbal twists and turns at the hearing to avoid acknowledging the obvious fact that in his New York bar application he exaggerated his level of assistance to the magazines that had published his fabrications, and that he omitted from his New York bar list of fabrications some that actually could have injured real persons. He also testified that he told his lawyer to work with Harper's Magazine to identify his fabrications, yet evaded questions concerning whether his lawyer had done so, while insisting that he took responsibility for an inferred failure to follow what obviously were significant instructions. He asserted that he had been too distraught to recognize that the list of fabrications The New Republic gave his lawyer was incomplete—or that in his response he had denied that articles including the egregious *Taxis and the Meaning of Work* were in fact fabricated—while acknowledging that within a few days of his firing he made arrangements to reschedule a final examination for the end of the exam period and did well on the exam he took within a week of his exposure. Indeed, despite his many statements concerning taking personal responsibility, and contrary to what he suggested in his New York bar application, it was not until the California Bar proceedings that he shouldered the responsibility of reviewing the editorials his employers published disclosing his fabrications, thus failing to ensure that all his very public lies had been corrected publically and in a timely manner. He has "not acted with the 'high degree of *frankness* and truthfulness' and the 'high standard of integrity' required by this process."

(7) Honesty is absolutely fundamental in the practice of law; without it, "the profession is worse than valueless in the place it holds in the administration of justice." "[M]anifest dishonesty … provide[s] a reasonable basis for the conclusion that the applicant or attorney cannot be relied upon to fulfill the moral obligations incumbent upon members of the legal profession." As the dissent in the Review Department pointed out, "if Glass were to fabricate evidence in legal matters as readily and effectively as he falsified material for magazine articles, the harm to the public and profession would be immeasurable."

We also observe that instead of directing his efforts at serving others in the community, much of Glass's energy since the end of his journalistic career seems to have been directed at advancing his own career and financial and emotional well-being.

(8) [W]e do well to repeat Justice Felix Frankfurter's "eloquent description" of the moral character required of lawyers: "It is a fair characterization of the lawyer's responsibility in our society that he [or she] stands 'as a shield' … in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense

of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.' "

(9) As for Glass's case for admission, although he points to his youth at the time of his employment as a journalist and an asserted period of rehabilitation of 12 years (measured between the time he was fired and the hearing in the State Bar Court), we have outlined instances of dishonesty and disingenuousness persisting throughout that period, including at the California State Bar evidentiary hearing. In addition, Glass's behavior was under the scrutiny of first the New York bar from 2002 to 2004, and then the California Bar from 2007 to 2010, reducing the probative value of the evidence of his good conduct during those periods. "[G]ood conduct generally is expected from someone who has applied for admission with, and whose character is under scrutiny by, the State Bar."

(10) The Review Department majority relied heavily on the testimony of Glass's character witnesses, but the testimony of character witnesses will not suffice by itself to establish rehabilitation. Moreover, stressing that Glass's reputation as a journalist had been exploded and that so many years had passed, some of the character witnesses did not sufficiently focus on the seriousness of the misconduct, incorrectly viewing it as of little current significance despite its lingering impact on its victims and on public perceptions concerning issues of race and politics. They also did not take into account, as we do, that the misconduct reflected poorly on the particular commitment to honesty that Glass might have been expected to have had as a law student. For these reasons we believe the Review Department majority accorded too much probative value to the testimony of Glass's character witnesses.

(11) Glass emphasized the remorse he expressed through his letters to victims, and characterized his novel and his appearance on *60 Minutes* as efforts to make amends. Remorse does not establish rehabilitation, however, and in any event, the weight of this evidence is diminished because the letters were not written near the time of his misconduct and exposure, when they might have been most meaningful to the victims, but rather seemed timed to coincide with his effort to become a member of the New York bar. The novel served Glass's own purposes, producing notoriety and a fee of $175,000, and the appearance on *60 Minutes* was timed to coincide with the release of the novel. Glass did not offer any restitution to Lane or Bradley. It was not until approximately 2008 that he made an offer to the then friendly Peretz—who roundly disclaimed any interest in restitution—to repay his salary. This offer was made after Glass applied to the California Bar and was another oddly belated and, we believe, disingenuous effort at making his victims whole.

The record of Glass's therapy does not represent "truly exemplary conduct in the sense of returning something to the community." To be sure, through therapy he seems to have gained a deep understanding of the psychological sources of his

misconduct, as well as tools to help him avoid succumbing to the same pressures again. His treating psychiatrists are plainly highly competent and well regarded in their field, and they are convinced that he has no remaining psychological flaws tending to cause him to act dishonestly. Glass believed that he could best make amends by changing himself. But his 12 years of therapy primarily conferred a personal benefit on Glass himself.

(12) Glass points to the pro bono legal work he does for clients of his firm as evidence of sustained efforts on behalf of the community, but we observe that pro bono work is not truly *exemplary* for attorneys, but rather is expected of them.

(13) Glass and the witnesses who supported his application stress his talent in the law and his commitment to the profession, and they argue that he has already paid a high enough price for his misdeeds to warrant admission to the bar. They emphasize his personal redemption, but we must recall that what is at stake is not compassion for Glass, who wishes to advance from being a supervised law clerk to enjoying a license to engage in the practice of law on an independent basis. Given our duty to protect the public and maintain the integrity and high standards of the profession, our focus is on the applicant's moral fitness to practice law. On this record, the applicant failed to carry his heavy burden of establishing his rehabilitation and current fitness.

III. CONCLUSION

For the foregoing reasons, we reject the State Bar Court majority's recommendation and decline to admit Glass to the practice of law.

Pro Hac Vice

Page v. Oath, Inc.

C.A. No. S20C-07-030 CAK (Del. Super. Jan. 11, 2021)

Karsnitz, J.

Several weeks ago, I issued a Rule to Show Cause why the approval I had given to L. Lin Wood, Esquire to practice before this Court in this case should not be revoked. Mr. Wood is not licensed to practice law in Delaware. Practicing *pro hac vice* is a privilege and not a right. I respect the desire of litigants to select counsel of their choice. When out of state counsel is selected, however, I am required to ensure the appropriate level of integrity and competence.

During the course of this litigation, a number of high profile cases have been filed around the country challenging the Presidential election. The cases included, *inter alia,* suits in Georgia, Wisconsin and Michigan. Opinions were delivered in all of the States which were critical in various ways of the lawyering by the proponents of the lawsuits. In the Rule to Show Cause, I raised concerns I had after reviewing written decisions from Georgia and Wisconsin. Specifically, in Georgia, a lawsuit filed by Mr. Wood resulted in a determination that the suit was without basis in law or fact. The initial pleadings in the Wisconsin case were riddled with errors. I had concerns as listed in the Rule to Show Cause.

I gave Mr. Wood until January 6, 2021 to file a response. He did so at 10:09 p.m., January 6. The response focused primarily upon the fact that none of the conduct I questioned occurred in my Court. The claim is factually correct. In his response, Mr. Wood writes:

> Absent conduct that prejudicially disrupts the proceedings, trial judges have no independent jurisdiction to enforce the Rules of Professional Conduct.

Mr. Wood also tells me it is the province of the Delaware Supreme Court to supervise the practice of law in Delaware and enforce our Rules of Professional Conduct. With that proposition I have no disagreement. In my view it misses the point and ignores the clear language of Rule 90.1. The response also contains the declaration of Charles Slanina, Esquire. I know Mr. Slanina and have the highest respect for him, especially for his work and expertise in the area of legal ethics. His declaration here focused on my lack of a role in lawyer discipline and was not helpful regarding the issue of the appropriateness and advisability of continuing *pro hac vice* permission.

Rule 90.1(e) reads in full:

> Withdrawal of attorneys admitted *pro hac vice* shall be governed by the provisions of Rule 90(b). The Court may revoke a *pro hac vice* admission *sua sponte* or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission *pro hac vice* to be inappropriate or inadvisable.

The standard then I am to apply is if the continued admission would be inappropriate or inadvisable.

I have no intention to litigate here, or make any findings, as to whether or not Mr. Wood violated other States' Rules of Professional Conduct. I agree that is outside my authority. It is the province of the Delaware Office of Disciplinary Counsel, and ultimately the Delaware Supreme Court, or their counterparts in other jurisdictions, to make a factual determination as to whether Mr. Wood violated the Rules of Professional Conduct. Thus, the cases cited by Mr. Wood are inapposite and of no avail. In *Lendus, LLC v. Goode,* 2018 WL 6498674 (Del. Ch. Dec. 10, 2018) and *Crumpler v. Superior Court, ex. rel New Castle County,* Del. Supr., 56 A.3d 1000 (Del. 2012), the courts allowed the foreign lawyer to withdraw as *pro hac vice* counsel and referred alleged ethical violations to the Office of Disciplinary Counsel. Neither of those is happening here. Similarly, in *Kaplan v. Wyatt,* 1984 WL 8274 (Del. Ch. Jan. 18, 1984), Chancellor Brown, on very different facts, allowed *pro hac vice* counsel to continue his representation but stressed that this did not constitute approval of his conduct and that ethical violations could be addressed elsewhere.

What I am always required to do is ensure that those practicing before me are of sufficient character, and conduct themselves with sufficient civility and truthfulness. Violations of Rules of Professional Conduct are for other entities to judge based upon an appropriate record following guidelines of due process. My role here is much more limited.

In response to my inquiry regarding the Georgia litigation Mr. Wood tells me he was (only) a party, and the case is on appeal. He also tells me that the affidavit filed in support of the case only contained errors. Neither defense holds merit with me. As an attorney, Mr. Wood has an obligation, whether on his own or for clients, to file only cases which have a good faith basis in fact or law. The Court's finding in Georgia otherwise indicates that the Georgia case was textbook frivolous litigation.

I am also troubled that an error-ridden affidavit of an expert witness would be filed in support of Mr. Wood's case. An attorney as experienced as Mr. Wood knows expert affidavits must be reviewed in detail to ensure accuracy before filing. Failure to do so is either mendacious or incompetent.

The response to the Rule with regard to the Wisconsin complaint calls the failings "proof reading errors". Failure to certify a complaint for injunction or even serve the Defendants are not proof reading errors. The Complaint would not survive a law school civil procedure class.

Prior to the pandemic, I watched daily counsel practice before me in a civil, ethical way to tirelessly advance the interests of their clients. It would dishonor them were I to allow this *pro hac vice* order to stand. The conduct of Mr. Wood, albeit not in my jurisdiction, exhibited a toxic stew of mendacity, prevarication and surpris-

ing incompetence. What has been shown in Court decisions of our sister States satisfies me that it would be inappropriate and inadvisable to continue Mr. Wood's permission to practice before this Court. I acknowledge that I preside over a small part of the legal world in a small state. However, we take pride in our bar.

One final matter. A number of events have occurred since the filing of the Rule to Show Cause. I have seen reports of "tweets" attributable to Mr. Wood. At least one tweet called for the arrest and execution of our Vice-President. Another alleged claims against the Chief Justice of the Supreme Court of the United States which are too disgusting and outrageous to repeat. Following on top of these are the events of January 6, 2021 in our Nation's Capitol. No doubt these tweets, and many other things, incited these riots.

I am not here to litigate if Mr. Wood was ultimately the source of the incitement. I make no finding with regard to this conduct, and it does not form any part of the basis for my ruling. I reaffirm my limited role.

I am revoking my order granting Lin Wood, Esquire the privilege of representing the Plaintiff in this case.

IT IS SO ORDERED.

2. Unauthorized Practice of Law

Rule 5.5

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice

on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

NC Gen. Stat. §§ 84-2.1, 84-2.2, 84-4, 84-5, 84-5.1, 84-6, 84-7, 84-7.1, 84-8, 84-9, 84-10.1

Birbrower, Montalbano, Condon & Frank v. Superior Court

70 Cal.Rptr.2d 304 (Cal. 1998)

Estate of Condon v. McHenry

76 Cal.Rptr.2d 922 (Cal. App. 1998)

In re Trester

172 P.3d 31 (Kan. 2007)

Chapter 3

Attorney Discipline

8.2, 8.3, 8.4, 8.5

Restatement § 5

NC Gen. Stat. § 84-28, 84-36

Neal v. Clinton

No. CIV 2000–5677, slip op. (Ark. Cir. Ct. Jan. 19, 2001)

In re Riehlmann

891 So.2d 1239 (La. 2005)

In re Diaz

288 P.3d 486 (Kan. 2012)

In re Gates

Misc. Case No. 18-00301-KRH (Bankr. E.D. Va. 2018)

Matter of Giuliani

No. 2021-00506 (NY App. Div. June 24, 2021)

Chapter 4

Law Firms

Lawyer Disciplinary Board v. Veneri

524 S.E.2d 900 (W. Va. 1999)

In re Columbia Valley Healthcare System, L.P.

320 S.W.3d 819 (Tex. 2010)

Hoff v. Mayer, Brown, & Platt

772 N.E.2d 263 (Ill. App. Ct. 2002)

Cardillo v. Bloomfield 206 Corp.

988 A.2d 136 (N.J. Super. 2010)

Chapter 5

Advertising and Solicitation

1. Advertising

Rule 7.1

Rule 7.2

Bates v. State Bar of Arizona

433 U.S. 350 (1977)

Florida Bar v. Pape

918 So.2d 240 (2005)

Hayes v. New York Attorney Grievance Committee

672 F.3d 158 (2d Cir. 2012)

Hunter v. Virginia State Bar

744 S.E.2d 611 (Va. 2013)

2. Solicitation

Rule 7.3

Rule 7.6

NAACP v. Button

371 U.S. 415 (1963)

Ohralik v. Ohio State Bar Assn.

436 U.S. 447 (1978)

In re Primus

4 (3) 6 U.S. 412 {1978}

Zauderer v. Office of Disciplinary Counsel

471 U.S. 626 (1985)

Shapero v. Kentucky State Bar Assn.

486 U.S. 466 (1988)

Florida Bar v. Went for It

515 U.S. 618 (1995)

Part II

The Lawyer-Client Relationship

Chapter 6

Prospective Clients

Chapter 7

Establishing Representation

Part III

Duty of Care

Part IV

Confidentiality

Part V

Conflicts of Interest

Part VI

Advocacy

Bates v. State Bar of Ariz., 433 US 350 (U.S. 1977).

Birbrower, Montalbano, Condon & Frank v. Superior Ct., 17 Cal. 4th 119 (Cal. 1998).

Clark Capital Management v. Annuity Investors Life Ins. Co., 149 F. Supp. 2d 193 (E.D. Pa. 2001).

Matter of Cooperman, 633 NE 2d 1069 (N.Y. 1994).

Matter of Giuliani, 197 AD 3d 1 (N.Y. 2021).

Nix v. Whiteside, 475 US 157 (U.S. 1986).

Shapero v. Kentucky Bar Assn., 486 US 466 (U.S. 1988).

Togstad v. Vesely, Otto, Miller & Keefe, 291 NW 2d 686 (Minn. 1980).

Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 US 626 (U.S. 1985).

Andrew Abbott. 1988. *The System of Professions: An Essay on the Division of Expert Labor*. University of Chicago Press.

Gustave Flaubert. [1857] 2015. *Madame Bovary*. Penguin Classics.

Kathi Weeks. 2011. *The Problem with Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries*. Duke University Press.