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Admission to the Bar

Key Concepts



- The highest court in each jurisdiction regulates the practice of law in that jurisdiction.
 - To practice law in a jurisdiction, you must be admitted to the bar of that jurisdiction.
 - For admission, states require graduation from an accredited law school; a passing score on the MPRE; a passing score on a bar exam; and a determination that the applicant is of “good moral character.”
 - A bar applicant must not “knowingly make a false statement of material fact,” on his or her bar application.
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Introduction



How do you go from being a law student to being a lawyer? You might have assumed that once you pass the bar exam in your state, you'll be ready to go! Well, not quite. There are several steps that you have to take in order to be fully admitted to any state bar. This chapter will highlight the basic steps required to gain admission to practice law in most jurisdictions.

For most of this nation's history, bar admission standards were strikingly permissive. Until the late nineteenth century, the chief method of legal education was apprenticeship. Students read law in a licensed attorney's office and did much of the tedious copying of legal documents that was necessary before typewriters and duplicating machines. Training was often inadequate, but most bar applicants had no realistic alternative. Except for a few fairly short-lived efforts by independent

law schools, American legal education remained rudimentary until the turn of this century.¹

Requirements for admission to the bar varied but were rarely rigorous. During the Jacksonian era, applicants simply had to satisfy good moral character requirements and pass an informal oral exam. The experience of one candidate is interesting. His examination *actually took place with Abraham Lincoln*, who was taking a bath in his hotel room. Lincoln made a few “meager inquiries” concerning extremely basic issues such as the definition of a contract, and certified the applicant as competent to practice!²

Things changed over time. The rise of bar associations brought increased efforts to upgrade admission standards and these associations actively assisted the campaign. Between 1880 and 1920, states established centralized boards of bar examiners and adopted additional entry requirements such as written exams and investigation by bar character committees. The exams were not all that difficult; some surveys suggested that about 90 percent of those who took the test eventually passed.³

Currently, the legal profession within a state is regulated by the supreme court of that individual state. So for example, the California Supreme Court has the authority to regulate lawyers in California. Each state’s highest court is ultimately responsible for deciding who may practice law in that jurisdiction. Further, each state’s highest court is responsible for creating the standards of conduct for those practicing law in the jurisdiction and disciplining lawyers who violate those rules of conduct.⁴

The supreme court in each state does not actually deal with the day-to-day admissions activities. The court delegates these tasks to a board or office of bar examiners. But a jurisdiction’s highest court will continue its supervisory involvement on policy matters, and it is directly involved in lawyer discipline.

The rule that governs admission to the bar is Rule 8.1. Under Rule 8.1, no applicant for admission to the bar *or any lawyer connected with an applicant’s bar admission* can make a false statement of fact. In addition, the bar applicant or lawyer must correct any known “misapprehensions” with regard to the bar application process—regardless of when the person finds out, and must respond to all demands for information.

A. Admission Requirements for New Lawyers

In order to practice law in any jurisdiction, you must be admitted to the bar of that jurisdiction. For a new lawyer, most states have four basic requirements for admission to the state bar. First, you must graduate from an accredited law school. Some states also may require that you have taken certain specific courses in law school such as a course in professional responsibility.

The second and third requirements involve exams. You must pass a national exam dealing specifically with the topic of professional responsibility, called the Multistate Professional Responsibility Examination (MPRE). In addition, you must pass a bar examination that tests various law subjects. Usually, the bar exam is composed of a multiple choice national exam portion (typically the Multi-State Bar Exam or MBE) as well as an essay portion that is often specific to the state. Each state has its own list of subjects covered by this exam—and the list of required subjects can be very different between states. Make sure to research what subjects your state will test so you can ensure that you have taken all the appropriate classes in law school.

The last typical admission requirement is that the person be of appropriate character and fitness for the practice of law. A candidate for admission has the burden of proving that he or she has this character and fitness. Often, the requirement is stated in the following way: a lawyer must have “good moral character.” To determine present moral character, the admissions committee often looks to past relationships and acts. Typically, you will be asked to list all prior employers and to provide names of character references. The state bar will then send forms directly to these individuals and ask them to complete a character reference describing the applicant’s “moral character.” Rule 8.1 requires any lawyer filling out a moral character and fitness form to do so honestly. Further, Rule 8.1 requires that the applicant be honest and forthright throughout the application process.

If it turns out the applicant has had significant acts of dishonesty—for example, lied to an employer—then the state bar may decline the applicant’s admission to the state bar. Incidences of dishonesty can occur in any setting: financial dishonesty, plagiarism or other forms of academic dishonesty, or even a failure to disclose information on the law school application or bar application. Further, if a candidate has shown a lack of respect for the law, the state can find that the applicant lacks the appropriate character and fitness. For example, a candidate who has repeatedly violated the law—even on small matters such as speeding tickets, DUI’s, etc.—may be found to lack the appropriate character and fitness to practice law. A candidate with a single violent offense may have the same problem. Some

states are particularly suspect of anyone with a past that includes a felony crime even if the crime did not involve violence.

The best piece of advice we can give you is this: disclose all of these past incidents honestly and in *full detail*. Most state bars worry far more about the non-disclosure of a past event than the act itself. Rule 8.1 lays out this obligation very clearly.

The Rule

Rule 8.1 of the Delaware Lawyers' Rules of Professional Conduct (DLRPC) states generally that the rule to disclose honestly applies to any bar applicant or any lawyer in connection with a bar. Further, 8.1(a) provides that neither the applicant nor any lawyer connected with a bar admission shall "knowingly" make a false statement of fact.

THE RULE

Rule 8.1

Bar Admission and 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... .

Part (b) of Rule 8.1 goes on to state that if the applicant later finds that she made a mistake in her application to the bar or that a new fact arose, the applicant is required to correct any misapprehension or mistake. The same is true for a lawyer who is providing information to the state bar in connection with a bar admission application.

THE RULE

Rule 8.1

Bar Admission and Disciplinary Matters

An applicant ... or lawyer ... shall not:

...

- (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.

In order to be admitted to a state bar, you will need to complete a very long and detailed application. You need to be forthcoming with requested information. Law students are often surprised at the detail required for the bar application; it may require you to list all places you have lived over the past two decades. You may have to report any lawsuit you have been in—even a prior divorce. You may even have to list all your speeding tickets or any other driving violation since you were 18.

Further, you are required to be honest and forthright in the application process. This also applies in the event that an applicant commits an offense after the application is submitted. Rule 8.1(b) states clearly that an applicant or lawyer involved in the application process must disclose all facts known to them and correct any facts that are *later found to be incorrect*.

This honesty and forthrightness is not just a bar admission requirement; it is also an ethical requirement. While a candidate for admission is not yet an admitted lawyer and thus is not technically within the bounds of the rules of professional conduct for lawyers, the rules of professional responsibility still require this candor. Rule 8.1 states that an applicant for admission must not “knowingly make a false statement of material fact.” In addition, the candidate must not fail to disclose a fact necessary to correct a known misapprehension. Finally, an applicant must not “knowingly fail to respond” to demands for information unless such information is somehow protected by the duty of confidentiality of Rule 1.6.⁵

If an applicant is admitted to the bar of a jurisdiction and then the disciplinary authorities discover that the applicant was dishonest or not forthcoming with regard to the bar admission application, the admitted lawyer can be disciplined for a violation of Rule 8.1.

1. Being Honest and Forthcoming as an Applicant

Consider the following example.

Example. Lori, a bar applicant, had been fired from a job she had in college because she took money from the cash register without permission. Lori does not want to disclose that she was terminated from this job. If the

bar application in her state contains a question about past employment, does Lori have to disclose her employment history? And can she be disciplined if she does not disclose her employment history?

Analysis. Lori is required to disclose this information on her bar application. If the bar application contains a question about past employment and Lori does not disclose the employment history, the jurisdiction's disciplinary authority may discover the nondisclosure. Lori can be disciplined for violating Rule 8.1.

2. A Lawyer Involved in an Application for Admission of a Non-Lawyer Must Be Honest

Lawyers are often called upon to provide information to admitting entities in connection with applicants to the bar. Law students work for lawyers during law school and often have significant contact with these students. Further, students often ask their law professors to supply a moral character recommendation for the student. **Rule 8.1 makes it clear that the rule applies with equal force to these lawyers providing information about bar applicants.** Such lawyers must not “knowingly make a false statement of material fact” and must not fail to disclose a fact necessary to correct a known misapprehension. Further, the lawyer must not knowingly fail to respond to a demand for information unless such information is somehow protected by the duty of confidentiality of Rule 1.6.⁶

Example. Student is applying for admission to the State A Bar. When Student was in high school, he and his parents lived in State B, next door to Attorney Alex. Alex is admitted to practice in State B, but not in State A. Alex liked Student; Student mowed Alex's lawn frequently and seemed to be a good kid. Alex was disappointed to learn that during Student's senior year in high school, Student was convicted of burglarizing a liquor store. After serving his sentence, Student went to college and later to law school. Alex has had no contact with Student since his high school years, but as far as Alex knows, Student has not done anything since high school that would reflect badly on his character. The Bar of State A sent Alex a routine questionnaire, asking a series of questions about Student's character. Alex does not know whether Student disclosed the burglary conviction on Student's bar application, and Alex does not know where to contact Student

to find out. Should Alex respond to the questionnaire? And if so, what should Alex disclose?

Analysis. Alex is required under Rule 8.1 to disclose any relevant information he has on Student. Alex should state what he knows about Student, including mention of his burglary conviction. In fact, if Alex does not disclose the information he has about Student, Alex *himself* could be disciplined under State B's ethical laws for not providing honest information to a state bar. Under these circumstances, Alex has an absolute duty to respond honestly to the questionnaire.

B. The Moral Character Application: What's the Purpose?

Every jurisdiction in the United States requires applicants to the state bar to establish their good moral character. To meet that requirement, bar candidates are required to provide extensive personal information to boards of examiners or character committees. The decisions of these boards are subject to judicial oversight. The scope and formality of the investigation processes vary from state to state— although all denials of admission to practice law must meet minimum due process standards of notice and an opportunity to be heard.⁷

There are two main purposes for the moral character inquiry. The first is to protect clients and the public at large from lawyers likely to engage in misconduct. The second is the state bar's own interest in maintaining its public image and sense of professional community with shared "moral" values. Whether the current procedures and application processes adequately serve these objectives is unknown.

The U.S. Supreme Court has acknowledged that the moral character requirement is "unusually ambiguous" and "any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer."⁸ The Court does require that any criteria for disqualification have a "rational connection with the applicant's fitness or capacity to practice law."⁹ The Court also has stated that the focus is on whether a "reasonable [person] could fairly find that there were substantial doubts about the [applicant's] honesty, fairness, and respect for the rights of others and for the laws of the state and nation."¹⁰ According to more recent case law, relevant factors

include the recurrence, seriousness, and circumstances of the conduct; evidence of rehabilitation; and candor in the application process.

1. Differing Standards of Moral Character and Fitness

One of the problems for bar applicants in any state is that reasonable people can and *do* disagree about what sort of conduct raises substantial doubts about someone's moral character. When you review the decisions of courts reviewing these matters, you find inconsistent judgments about the very same issue. Consider the following question. You are a member of your state bar moral character committee. Would you vote to deny admission to the following applicant? What factors would you consider?

- a. A candidate who was suspended for plagiarism during his second year of law school.
- b. A candidate who discharged his student loans in bankruptcy after a temporary loss of employment. What if the person had experienced financial or health problems—or made an effort to repay?

While you may have your own thoughts about the situations mentioned above, the supreme courts in each of the states dealing with these real-life situations came to very different conclusions on similar facts.

In Minnesota, an applicant who plagiarized a paper did so because he was experiencing “stress” due to his wife's illness. The Supreme Court of Minnesota admitted this applicant.¹¹ Yet the Supreme Court of Minnesota denied an applicant when the discharge of his student loans suggested a disregard for his responsibility to hold true to the loan commitment and an inability to manage finances.¹² In Georgia, the court denied an applicant who failed to make a good faith effort to pay her student loans.¹³ And in Florida, the Board of Examiners was ordered to admit an applicant who declared bankruptcy during law school because she was unsuccessful in a job search.¹⁴

As you can see, different courts have different opinions. But the conventional view has been that certain illegal acts, regardless of the likelihood of their repetition in a lawyer-client relationship, evidence attitudes toward law that cannot be accepted among practitioners. The difficulty, of course, is that this logic necessitates inquiry

into “any illegal activity, no matter how remote or minor.”¹⁵ Your best course of action in your moral character application is to be as open and honest as possible, and to provide your state bar with as much information as possible with regard to any potential character issue.

Quick Summary



Rule 8.1 governs the admission of lawyers to the bar in any given state. Typically, the highest court in each jurisdiction regulates all aspects of the practice of law in its jurisdiction. With regard to the bar application and process, a bar applicant or lawyer must not “knowingly make a false statement of material fact,” must correct known misapprehensions, and must respond to demands for information.

Test Your Knowledge



To assess your understanding of the material in this chapter, [click here](#) to take a quiz.

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- ¹ James William Hurst, *The Growth of American Law* 256–284, 292–293 (1950).
 - ² Len Yang Smith, *Abraham Lincoln as a Bar Examiner*, 51 *Bar Examiner* 35, 37 (1982).
 - ³ *Id.*
 - ⁴ See Chapter 5, Lawyer Discipline.
 - ⁵ See Chapter 32, The Duty of Confidentiality.
 - ⁶ See Chapter 32, The Duty of Confidentiality.
 - ⁷ *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963).
 - ⁸ *Konigsberg v. State Bar*, 353 U.S. 252, 263 (1957).
 - ⁹ *Schware v. Board of Bar Examiners*, 353 U.S. 252, 263 (1957).
 - ¹⁰ *Konigsberg*, 353 U.S. at 264.
 - ¹¹ *In re Zbiegien*, 433 N.W.2d 871 (Minn. 1988).
 - ¹² *Application of William W. Hahan*, 279 N.W.2d 826 (Minn. 1979).
 - ¹³ *In re Application for Certification for C.R.W.*, 481 S.E.2d 511 (Ga. 1997).
 - ¹⁴ *Florida Board of Bar Examiners re S.M.D.*, 609 So. 2d 1309 (Fla. Sup. Ct. 1992).
 - ¹⁵ Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 *Yale L.J.* 491, 538 (1985).