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INDIANA STATE BOARD OF LAW EXAMINERS



CHARACTER AND FITNESS RESOURCE GUIDE

Indiana State Board of Law Examiners

251 North Illinois Street, Suite 550

Indianapolis, IN 46204

Tel: (317) 232-2552

In July 1931, the Supreme Court of Indiana adopted rules regulating admission to the practice of law in Indiana. Under these laws an applicant was required to take an examination to determine his professional fitness. A Board of Law Examiners was appointed to conduct examinations, and a Committee on Character and Fitness was established. Today, the State Board of Law Examiners is responsible for the admission of attorneys, the certification of legal interns and the formation and renewal of professional corporations, limited liability companies and limited liability partnerships for the legal profession.

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Staff Contacts

Bradley W. Skolnik
Executive Director
bradley.skolnik@courts.in.gov
Tel: (317) 233-0227

Tina C. Hopson
Deputy Director
tina.hopson@courts.in.gov
y Tel: (317) 233-0263



CHARACTER & FITNESS CHECKLIST

I. WHAT TO DO PRIOR TO THE INTERVIEW

- ☐ LOG INTO THE PORTAL AND DOWNLOAD, PRINT OR VIEW THE APPLICANT FILE AND CASE FILE. CAREFULLY REVIEW THE ENTIRE FILE
- ☐ MAKE NOTE OF ANY CONCERN(S) (I.E. MULTIPLE TRAFFIC OFFENSES, ALCOHOL RELATED OFFENSES, ACADEMIC MISCONDUCT INCIDENTS, FINANCIAL CONCERNS, ETC.)..
- ☐ YOU MAY SEEK ADDITIONAL INFORMATION FROM THIRD PARTIES, IF NEEDED, BY PROVIDING THEM WITH A COPY OF THE "AGREEMENT, RELEASE, AND AUTHORIZATION," SIGND BY APPLICANT

II. WHAT TO DO DURING THE INTERVIEW

- ☐ HAVE A SERIOUS, SUBSTANTIVE CONVERSATION WITH THE APPLICANT THAT CONVEYS THE IMPORTANCE OF HONESTY, INTEGRITY, CIVILITY, AND GOOD CHARACTER THAT MOST MEMBERS OF THE INDIANA BAR SHARE.
- ☐ INSURE THAT THE APPLICANT IS FAMILIAR WITH THE INDIANA RULES OF PROFESSIONAL CONDUCT. YOU MAY EVEN WANT TO PREPARE HYPOTHETICAL QUESTIONS TO DETERMINE IF THE APPLICANT UNDERSTANDS THE RULES.
- ☐ ALWAYS ASK, "IS THERE ANYTHING YOU HAVE NOT DISCLOSED IN YOUR APPLICATION THAT HAS A BEARING ON YOUR CHARACTER OR FITNESS TO PRACTICE LAW?"

III. WHAT TO DO AFTER THE INTERVIEW

- ☐ ONCE YOU HAVE COMPLETED YOUR INTERVIEW, PLEASE SUBMIT YOUR RESPONSE VIA THE ONLINE PORTAL IMMEDIATELY FOLLOWING THE INTERVIEW.
- ☐ IF YOU WOULD LIKE TO MAKE COMMENTS CONCERNING THE INTERVIEW, THERE IS SPACE ON THE PORTAL SUBMISSION PAGE.

Admission & Discipline Rule 12, Sections 1 and 2

Section 1. The State Board of Law Examiners shall inquire into and determine the character, fitness and general qualifications to be admitted to practice law as a member of the bar of the Supreme Court of Indiana. It is a condition precedent to admission, whether upon examination or upon foreign license, that the Board report and certify to the Supreme Court that the applicant, after due inquiry, has been found to possess the necessary good moral character and fitness to perform the obligations and responsibilities of an attorney practicing law in the State of Indiana, and has satisfied all general qualifications for admission.

Section 2. The applicant must be at least 21 years of age and possess good moral character and fitness to practice law. The applicant shall have the burden of proving that he or she possesses the requisite good moral character and fitness to practice law. The applicant has the absolute duty to inform the Board with full candor of any facts which bear, even remotely, upon the question of the applicant's character and fitness and general qualifications to practice law, which obligation continues from the date of application to the time of admission, and includes the obligation to promptly and to fully inform the Board of any such facts occurring or discovered prior to admission. The term "good moral character" includes, but is not limited to, the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, and of the laws of this State and of the United States, and a respect for the rights of other persons and things, and the judicial process. Anyone who has been convicted of a felony *prima facie* shall be deemed lacking the requisite of good moral character as defined in this section. The term "fitness" includes, but is not limited to, the physical and mental suitability of the applicant to practice law in Indiana. In satisfying the requirements of good moral character and fitness, applicants should be persons whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them, and whose record demonstrates the qualities of honesty, trustworthiness, diligence, or reliability. In the determination of good moral character and fitness, relevant considerations may include, but are not limited to the following: unlawful conduct; academic misconduct; making of false statements, including omissions; misconduct in employment; acts involving dishonesty, fraud, deceit or misrepresentation; abuse of legal process; neglect of financial responsibilities; violation of an order of a court; evidence of mental or emotional instability; evidence of drug or alcohol dependency; denial of admission to the bar in another jurisdiction on character and fitness grounds; and disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

INTRODUCTION

The State Board of Law Examiners is responsible for ensuring that individuals admitted to practice have met all of the requirements as specified in the Admission & Discipline Rules of the Indiana Supreme Court. An integral part of this process is the determination of the character and fitness of all applicants. The Board is greatly assisted in this important endeavor by the members of the Character and Fitness Committee of the Supreme Court of Indiana.

CHARACTER & FITNESS

Before any applicant can be admitted to the bar, the Board must make a determination and certify to the Supreme Court that the applicant possesses the requisite good moral character and fitness to practice law. In assessing the character and fitness of applicants (sometimes abbreviated in this Handbook as “C&F”), the Board does not demand perfection on the part of applicants. The Board wants to ensure, as best it can on the information available to it, that each applicant understands and will do his or her best to follow the rules of the legal profession and, in following the rules, will do no harm to the citizens of Indiana. The character and fitness interview conducted by members of the Character and Fitness Committee is a key part of this process.

Character and fitness are two distinct concepts, and both are necessary qualities in a licensed professional.

Character relates to an applicant’s moral fiber and traits. Does the applicant have integrity? Does the applicant show respect for the law and for others?

Fitness relates to an applicant’s ability to practice in a careful and competent fashion. Does the applicant possess the requisite intellectual capacity and education to practice law? Is the applicant impaired or potentially impaired in some way, such as through an addiction or illness, that calls into question the applicant’s ability to meet the applicable standards.

In some instances, the same conduct can call into question either character or fitness or both depending on the surrounding circumstances.

WHAT TO DO PRIOR TO THE INTERVIEW

It is important to all applicants that they understand that both the Board and the members of the Character and Fitness Committee take this process seriously.

The first thing to do is read the interviewee's application thoroughly, including any additional documentation that the applicant has provided. Make note of any areas of concern, such as those discussed later in this handbook (*e.g.*, multiple traffic offenses, alcohol related offenses, honesty issues, etc.).

If you feel the need to seek additional information either before or after the interview, you may do so. Along with the application you will receive a copy of the “**Agreement, Release, and Authorization**” signed by the applicant. When asking for additional information from any source, an individual or organization may ask you for a copy of the Agreement, Release, and Authorization. You may provide a copy to anyone who is providing you with additional information.

Many C&F Interviewers will contact the applicant's references to talk about the individual or to inquire into whether the reference was aware of a particular disclosure on the application. It is not uncommon to find that references are unaware of some blemishes on an applicant's record, such as multiple traffic citations or arrests. If an applicant has more than one arrest, the Interviewer may want to ensure that the applicant's references were aware of the applicant's issues and stand by the recommendation given. C&F Interviewers are not required to contact references, but many have found doing so is helpful.

Please make a record of all contacts or communications you have with any applicant. This includes noting any difficulties you had contacting the applicant and arranging for the interview. Information such as the applicant's untimely response to your request should be reported to the Board, since it may reflect on the individual's fitness.

Prior to assigning the applicants for interviews, the staff tries to identify conflicts and other potential problems. However, not all potential conflicts will be apparent to the staff. If you are assigned to interview an applicant and you believe you may have a conflict or, for any other reason, it would be inappropriate for you to interview the individual, please contact the Board's office immediately.

WHAT TO DO DURING THE INTERVIEW

The main purpose of the C&F interview is to gather additional information about whether the applicant possesses the requisite character and fitness to practice law in Indiana. In conducting the interview, one should keep in mind how the interview can be most helpful to the entities that consider the information, namely the State Board of Law Examiners, which recommends candidates to the Supreme Court, and the Supreme Court itself, which ultimately certifies all applicants' character and fitness.

The interviewer should:

- Have a serious, substantive conversation with the applicant that conveys the importance of honesty, integrity, civility and good character that most members of the Indiana bar share.
- Consider preparing questions or hypotheticals on topics such as professional responsibility. These should be designed to assure you that the applicant has *general* knowledge. Inquiring into obscure or technical areas does not necessarily further the goal of determining whether an applicant possesses the requisite character and fitness.

- Inquire specifically into any items that appear on the application that raise any doubts about the applicant. From the Board's point of view, this part of the interview probably is the most important.
- Always ask, "Is there anything you have not disclosed in your application that has a bearing on your character or fitness to practice law?"

A good interview should last at least thirty minutes to give the C&F interviewer a sufficient opportunity to assess the applicant fully, and some interviews can last substantially longer, especially where there are issues present in either the applicant's application or his or her answers during the interview.

WHAT TO DO AFTER THE INTERVIEW

Most applicants raise no special issues of character and fitness. In those cases, it is appropriate to simply mark "certified" on the online portal portion of your user home page.

When the application raises one or more issues, the Interviewer should talk with the applicant about those issues. When the Interviewer is satisfied with the applicant's answers and explanations, it is helpful to tell the Board that you discussed the matter with the applicant and were satisfied. Sometimes the applicant's explanation leaves the Interviewer unsatisfied. The Interviewer may also do additional investigation such as looking at court records, speaking to key individuals, or performing Internet research. These additional investigations are optional, but the Board certainly has benefited from them in the past.

In difficult cases, Interviewers assist the Board by writing a letter or memo providing the Interviewer's observations and insights, as well as the results of any additional research or

investigation the Interviewer has done. Sometimes these letters just narrate the Interviewer's conversation with the applicant and provide the Interviewer's conclusions and reasoning. Occasionally, they provide the results of additional research, such as information from court records or calls with former employers or law school officials. These insights are helpful.

AREAS OF CONCERN THAT MAY BE PRESENT

A. Traffic Offenses

It is not uncommon for applicants to have traffic offenses, including speeding, on their driving records. A handful of speeding tickets, especially over a lengthy period of years, raises no real concerns. But if an applicant has a long history of tickets, a significant number of traffic citations *while in law school*, or if the applicant does not disclose a number of tickets shown on his or her driving record, the Board might conclude that the applicant may insufficiently appreciate his or her duty to obey the law.

In summary, a ticket here or there would not necessarily raise concerns, but a C&F interviewer should look for patterns (or even a single incident, if serious) that may show an applicant's disregard for his or her responsibilities under the law.

B. Underage Drinking/Drugs

Many applicants' records reveal arrests for underage alcohol consumption or possessing illegal drugs. One or two "youthful indiscretions" will not raise serious issues for bar admission. Everyone makes mistakes, and the Board understands that fact. However, to merit bar admission, an applicant should evidence a mature understanding of any unlawful actions committed as a minor.

C. Operating While Intoxicated/Alcohol-Related Arrests

The Board views certain alcohol-related arrests more seriously than convictions or adjudications for possessing and consuming alcohol while a minor. There is a range of offenses in this category, from public intoxication to acts of violence while intoxicated to operating a motor vehicle while intoxicated.

The Board is fortunate to have access to the services of the Judges and Lawyers Assistance Program (JLAP) and its cadre of experts. In some cases, especially where there is more than one incident, the Board will require the applicant to be evaluated by JLAP. JLAP will sometimes conclude that an applicant has no substance abuse problem and needs no ongoing supervision. In other cases, JLAP will find evidence of addiction or abuse and recommend treatment and supervision. Because the Board is permitted by Admission & Discipline Rule 12, Section 6(c), to offer conditional admissions, it will often make adherence to a treatment program a condition of admission when the applicant is found to be addicted to alcohol or some other substance.

D. Honesty

Actions that raise issues about an applicant's honesty are of paramount importance to the Board's decision about an applicant's character. Our profession simply cannot tolerate dishonesty, and the Board treats incidents evincing dishonesty with the utmost gravity.

Any incident of *theft* or *fraud* should be subjected to the highest scrutiny. The C&F Interviewer should obtain detailed information about any such incident; ask whether there are other incidents the applicant has not reported; and be satisfied that the applicant has overcome these past misdeeds (or inform the Board clearly of any doubts about the applicant's honesty).

Similarly, *academic misconduct* that reflects on an applicant's honesty must be examined carefully. These incidents include, but are not limited to, cheating or plagiarism. A C&F Interviewer should ask in detail about any such incident and determine whether the applicant

understands that what he or she did is wrong and how that action not only was dishonest, but also could have negatively impacted others who were obeying the rules (*e.g.*, where a class is graded on a curve).

E. Mental Health Issues

The incidence of mental health issues, particularly depression, is significantly higher among lawyers than the rest of the general population. It is therefore likely that mental health issues will arise among our applicants.

The reason for addressing these issues in character and fitness interviews reflects the primary purpose of our work: protecting the public from applicants who pose a potential significant danger to the public. The best predictor for present and future mental fitness is past behavior, rather than any specific diagnosis. Our questions should be aimed only at addressing mental health issues with behavioral correlates that could have an effect on the applicant's performance after he or she is admitted to the bar. Further, Interviewers should be careful to limit their questions only to mental health issues disclosed in the applicant's file or that present during the interview (*e.g.*, unusual behavior or evidence of alcohol or drug use apparent during the interview). It is inappropriate (and may constitute, in some instances, a violation of an applicant's rights under the Americans with Disabilities Act) to ask about an applicant's lifetime history of mental health issues or to go beyond the scope of the questions asked in the application.

If the C&F Interviewer has any questions about whether an applicant's history of mental illness would affect the applicant's ability to practice law, the Interviewer should defer the C&F decision to allow the Board to use its resources at JLAP. Similarly, if the Interviewer feels that the applicant's treatment regimen should be explored, the Interviewer should not seek to obtain releases from the applicant to obtain that information, but should defer that decision to the Board.

F. Involuntary Termination From Employment

When an applicant's record shows even one termination from employment, and certainly where there is more than one, the C&F Interviewer should follow up on that information with detailed questions to determine whether the terminations reflect patterns or traits that give insight into the applicant's character or fitness.

G. Arrests/Convictions (Non-Traffic/Non-Alcohol Related)

Every prospective lawyer must take an oath to be admitted to practice law in Indiana. Included in that oath is an affirmation that the applicant will support the Constitution of the United States and the Constitution of the State of Indiana. Implicit in that statement is an agreement to uphold both federal and state laws. Admission & Discipline Rule 12, Section 2 specifically states that "the term 'good moral character' includes, but is not limited to . . . observance of . . . the laws of this State and of the United States, and a respect for the rights of other persons and things and the judicial process. Anyone who has been convicted of a felony *prima facie* shall be deemed lacking the requisite of good moral character as defined in this section."

The Board finds offenses that occurred during law school to be especially troubling. By the time a person has made the decision to become a lawyer and has enrolled in law school, that individual should have a level of maturity to understand that negative personal conduct reflects poorly on an individual's judgment and integrity.

The heightened level of scrutiny applies to arrests as well as convictions. Many offenses are eligible for deferral programs when charges are dismissed provided the individual completes some type of court program or simply does not get arrested again for a specified period of time. The dismissal of charges in these instances does not necessarily equate to the individual not having

committed the offense. For that reason, inquiry should be made to determine the exact nature of the resolution of the charges.

Finally, Indiana's expungement statute, Ind. Code § 35-38-9, **does not** apply to the State Board of Law Examiners for purposes of determining whether an applicant possesses good moral character. Applicants are required to include and disclose all matters, including any arrests or convictions that may have been expunged, dismissed or otherwise set aside.

H. Financial Matters

Because of the nature of the practice of law, many lawyers have access to money/funds that are not their own. Most specifically, lawyers on a regular basis hold money in their client trust accounts. An applicant with a history or record of debt collection actions, default judgments, and even a bankruptcy, therefore, warrants close attention.

In many instances, a job loss or large medical bills are beyond the control of the applicant and, other than demonstrating an awareness of the situation and a person's financial responsibilities, there is little an applicant can do by way of behavior modification that would guard against recurrence. However, for large credit card bills, default judgments, and debt collection actions, the Board is looking to see that the applicant did not ignore an obligation or a court order related to an obligation.

I. Misrepresentations/Omissions on the Application

Regarding omissions, the key question that the Board tries to answer is whether the omission was intentional or a mistake caused by either misreading the question or not paying close enough attention to the question. Intentional omissions present a character issue related to honesty and integrity. If the omission is a mistake, the issue is one of competency. The C&F Interviewer's job is to try to identify omissions by asking the applicant for

more information about disclosed matters and by asking if there is anything that the individual has not disclosed.

J. Incomplete Applications

An applicant is under an obligation to submit an accurate and complete application. The failure to do so reflects directly on an applicant's character and fitness. If an application is incomplete or missing material information, it is appropriate to request that the applicant amend the application. In addition, the C&F Interviewer may contact the Board's office if he or she believes that an application is woefully insufficient, unresponsive, or otherwise lacking.

CONCLUSION

The importance of the Character and Fitness Committee cannot be overstated. In the case of most applicants, the personal interviews conducted by committee members are the only one-on-one assessments of bar admission applicants. Your commitment to the protection of the public and the strength and integrity of the bar as a whole through your service on your district's Character and Fitness Committee is greatly appreciated. If you ever have any questions or concerns, or if the Board's staff can be of assistance to you, please feel free to call the Board's office at (317) 232-2552.