

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET MARSHALL

Chief Justice

1. Court Submitting Rules for Approval:

Board of Bar Examiners

2. Date Rules Submitted for Approval:

December 12, 2008

3. Date Approved and Promulgated by the Supreme Judicial Court:

April 1, 2009

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Amendment to Board of Bar Examiners Rules (New Rule V,
Character and Fitness Standards of Admission under
Rule 3:01, attached)

Effective date - July 1, 2009

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

Rule V. Character and Fitness Standards of Admission Under Rule 3:01

V.1 Report On Character & Fitness:

Pursuant to Supreme Judicial Court Rule 3:01 the Board of Bar Examiners shall report to the Court as to the character, acquirements and qualifications of each candidate for admission who has passed the written bar examination or who has filed a motion application.

The Board considers good character to embody that degree of honesty, integrity and discretion that the public and members of the bench and the bar have the right to demand of a lawyer. The Board considers sufficient acquirements and qualifications to be those that are necessary to demonstrate a lawyer's fitness to practice law. In evaluating character and fitness, the Board takes into consideration all available pertinent information as to past conduct of the candidate. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of a candidate may constitute a basis for denial of a recommendation for admission. Engaging in any conduct which would have subjected the candidate to discipline if he/she had already been a member of the bar will weigh strongly against a determination of good character and fitness. There shall be a rebuttable presumption that nondisclosure of a material fact on the candidate's application(s) to the bar, law school or undergraduate school is prima facie evidence of the lack of good character.

The Board considers the following attributes to be essential for all applicants seeking admission to the Massachusetts bar:

- The ability to reason, recall complex factual information and integrate that information with complex legal theories;
- The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;
- The ability to use good judgment on behalf of clients and in conducting one's professional business;
- The ability to conduct oneself with respect for and in accordance with the law;
- The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;
- The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;
- The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
- The ability to comply with deadlines and time constraints.

V.1.1 Relevant Conduct: The standards listed below should be used as guidance for candidates rather than a finite list of subjects considered by the Board. The revelation or discovery of information on any of the following will be treated as cause for further inquiry before the Board of Bar Examiners in deciding whether the candidate possesses the character and fitness to practice law:

- Unlawful conduct
- Academic misconduct
- Making of false statements, including omissions
- Misconduct in employment
- Acts involving dishonesty, fraud, deceit or misrepresentation
- Abuse of legal process
- Neglect of financial responsibilities
- Neglect of professional obligations
- Violation of a court order
- Evidence of mental or emotional instability
- Evidence of drug or alcohol dependency
- Denial of admission to the bar in another jurisdiction on character and fitness grounds
- Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

The Board shall determine whether the current character and fitness of a candidate qualifies the candidate for admission. In considering the factors listed above, the Board will consider the following:

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

V.1.2 Other Relevant Information: Until the attorney oath has been administered, candidates have a continuing duty to disclose promptly any changes that occur with respect to information given in response to questions in the application.

A candidate's failure or refusal to supply information deemed relevant by the Board or otherwise to cooperate with the Board may be grounds for denial of a recommendation for admission. Failure to respond in a timely manner, without good cause, to inquiries by the Board or to make a timely request for an extension of time to respond shall result in a declaration that the application for admission of the candidate has been abandoned.

V.1.3 Informal Oral Interview: When a candidate's record contains information that may cast doubt on his/her good character, he/she will be asked via written notice to appear before a member or members of the Board for an informal oral interview. The candidate will be given the opportunity to respond to the information and to demonstrate current good character and fitness. Following the interview, the Board will render a decision to either a) recommend the candidate for admission, or b) request additional information/action from the candidate, or c) request that the candidate appear for a formal hearing before the Board.

If the Board's decision is to recommend the candidate to the Court for admission, the Board will issue a report of qualification to the Court and notify the candidate. No further action will be taken on the applications of those whom the Board requests to supply additional information or take corrective action until after the Board's requests have been fulfilled. If the Board is unable to recommend the candidate to the Court for admission, the Board will provide the candidate with an opportunity for a formal hearing before the Board; establish the date, time and place of the hearing; and so notify the candidate.

V.2 Formal BBE Hearing Procedures: Formal hearings shall take place before members of the Board and be recorded by a stenographer. The candidate has the burden to convince the Board that it should recommend him or her to the Supreme Judicial Court for admission to the bar.

V.2.1 Notice of Hearing: A written notice shall be sent to the candidate requesting his or her appearance at a hearing before the Board of Bar Examiners. The notice shall contain the date, time and place of the hearing as well as the reason for the hearing. All hearings will take place at the offices of the Board of Bar Examiners unless otherwise designated.

V.2.2 Burden of Proof: The candidate shall have the burden to establish by clear and convincing evidence his or her current good character and fitness to be admitted to the practice of law in the Commonwealth.

Factors such as incarceration, probation, restrictions of parole still in effect, current unsatisfied judgments or unfulfilled sentences, while not determinative, generally are considered to indicate that the rehabilitation process has not been completed.

V.2.3 Investigation: Prior to a hearing, the Board may conduct a detailed investigation of facts and circumstances bearing on a candidate's character and fitness to practice law. A copy of any investigative report prepared for the Board shall be given to the candidate and his/her counsel.

V.2.4 Witnesses: The Board may authorize witness summonses either for counsel, for the Board or for the candidate.

V.2.5 Evidence: The candidate and counsel for the Board shall be provided the opportunity to present testimonial and documentary evidence at the hearing. Conformity to the legal rules of evidence shall not be

necessary. The Board shall determine the admissibility, relevance and materiality of the evidence offered. Counsel for the Board and the candidate (or his/her counsel) have the right to call witnesses, request the issuance of witness summonses in accordance with V.2.4 and cross-examine witnesses. The Board shall have the discretion to question witnesses directly. The Board has the discretion to vary this procedure provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

V.2.6 Testimony: All testimony shall be given under oath.

V.2.7 Report and Recommendation: Following the conclusion of the formal hearing, the Board shall make its findings of fact and recommendation for or against the admission of the candidate. If the Board determines that it will recommend a candidate for admission, it shall file a report of qualification with the Clerk of the Supreme Judicial Court for Suffolk County and so notify the candidate. If the Board determines that it will not recommend a candidate for admission, it shall file a report of non-qualification with the Clerk of the Supreme Judicial Court for Suffolk County and notify the candidate.

V.2.8 Non-Qualified Candidates: Any candidate who is dissatisfied with the Board's recommendation concerning his or her character and fitness may, within sixty days after the Board's recommendation, request that the Chief Justice of the Supreme Judicial Court order a hearing on the matter. See S.J.C. Rule 3:01, Sec. 5.3.

V.3 Qualification:

The attorney oath will not be administered to any candidate prior to the Board of Bar Examiners' report of qualification to the court. In addition, qualification of a candidate may be revoked by the Board at any time prior to the administration of the oath on the receipt of information warranting further review.

The following are noteworthy Supreme Judicial Court decisions relevant to character and fitness:

Matter of Hiss, 368 Mass. 447 (1975)

Matter of Prager, 422 Mass. 86 (1996)

In Re Admission to Bar of Commonwealth, 431 Mass. 678 (2000)

In Re Admission to Bar of Commonwealth, 444 Mass. 393 (2005)