Making the Mark:
Character and Fitness for Admission to the State Bar
2023 Update

Rebecca Mick
Assistant Director, Office of Bar Admissions

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We all know that lawyers must pass a bar examination to practice law. However, future lawyers must first receive certification of fitness to practice law before they are eligible to sit for the Georgia bar examination. The responsibility of ensuring that all who practice law are both competent and possess the requisite fitness rests with two separate boards appointed by the Supreme Court of Georgia: (1) the Board of Bar Examiners, which evaluates competence; and (2) the Board to Determine Fitness of Bar Applicants, which determines whether each bar applicant possesses the requisite character and fitness to be admitted to the practice of law in Georgia.

The Fitness Application Process

The Board to Determine Fitness of Bar Applicants (the "Fitness Board" or "Board") was established in 1977 by the Supreme Court of Georgia with the charge to "inquire into the character and fitness of applicants for admission to the practice of law and . . . certify as fit those applicants who have established to the Board's satisfaction that they possess the character and fitness requisite to be members of the Bar of Georgia."[1] The Fitness Board is composed of ten members, seven lawyers and three members of the public, all appointed by the Supreme Court.

Consistent with the Supreme Court of Georgia's decision in *In re Beasley*, 243 Ga. 134 (1979), the Board adopted a Policy Statement Regarding Character and Fitness Reviews, which states that the burden is on the applicant to establish and document his or her current good character and fitness for admission.[2] The Policy Statement explains that "a person with a record showing a deficiency in honesty, trustworthiness, diligence, reliability, or judgment might not be recommended by the Board to the Supreme Court for admission." The Supreme Court and the Fitness Board view character as a function of honesty and trustworthiness, and they view fitness as a function of diligence, reliability, and good judgment. For example, in *In re Payne*, 289 Ga.746, 749 (2011), the Court explained that the applicant's record revealed that he had "an inclination for misleading and evasive behavior . . . which, at best, shows a complete lack of diligence and judgment, which goes to his fitness, and, at worst, a lack of candor, which goes to his character."

The Policy Statement describes the types of conduct that the Fitness Board considers when evaluating a candidate's current fitness and lists the problematic areas of conduct that form the basis for further inquiry by the Board. These "problem areas" include, but are not limited to, unlawful conduct; academic misconduct; any act involving dishonesty, fraud, or deceit; neglect of financial responsibilities; violation of a court order; and showing a significant impairment to one's ability to practice law due to untreated mental illness or substance abuse.

The Board generally processes between 1,600 and 2,000 fitness applications each year, and the majority of these applications reveal no material problem areas. In this regard, historically, less than 10% of the applications each year reveal fitness issues that require more attention, and less than one tenth of one percent of all applications culminate in a final fitness denial for an applicant.

To initiate the fitness process, the applicant completes an online Application for Certification of Fitness to Practice Law. This application includes requests for personal information (including employment history), educational history, criminal records, credit history, and litigation. The information on the application is verified by analysts in the Office of Bar Admissions, and inquiries are sent to personal references, educational institutions, employers, schools, and other individuals familiar with the applicant.[3] All requested information and documentation must be received by the applicant's analyst and reviewed by attorneys in the Office of Bar Admissions before the file can be presented to the Fitness Board for a certification decision. In evaluating the current good character and fitness of an applicant whose file shows past misconduct, the Board considers the seriousness and recency of the misconduct as well as the applicant's age at the time. In addition, the Board looks at patterns of misconduct and evidence of rehabilitation from the misconduct.[4]

Applicants must be completely candid in completing the Application and answering follow-up questions from the Office of Bar Admissions on behalf of the Board. While the application asks for sensitive information, the Applicant's file remain strictly confidential and are not subject to public disclosure.[5] Confidentiality is an essential feature of the process.

The character-and-fitness determination requires the Board to examine an applicant's "innermost feelings and personal views on those aspects of morality, attention to duty, forthrightness and self-restraint, which are usually associated with good character."[6] The Board's primary responsibility is to protect the public by confirming "that those who are admitted to practice are ethically cognizant and mature individuals who have the character to withstand temptations which are placed before them as they handle other people's money and affairs." The ultimate goal is to protect the public because lawyers admitted to the State Bar must be worthy of trust and confidence. If the Board is not "reasonably convinced" that an applicant

could the withstand the temptations placed before them as they handle the affairs of their clients, the Board may deny that applicant certification of fitness.[7]

The Supreme Court has held:

> [B]ecause the Board's and this Court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the applicant in favor of protecting the public.[8]

Upon reviewing a file, if the Board has concerns about an applicant's character, it may table the application for further investigation, invite the applicant to meet with the Board in an informal conference, or request that the applicant undergo an independent medical evaluation with a licensed psychiatrist or psychologist recommended by the Board and paid for by the Board.[9]

The informal conference is a discussion between the applicant and the Board. The conference is recorded but does not rise to the level of a formal proceeding where the applicant would be required to take an oath before testifying. In the conference, the Board asks questions of the applicant regarding the areas of concern and gives the applicant an opportunity to resolve any concerns the Board may have. Although an applicant may bring counsel to the conference, the applicant must answer the Board's questions directly and may not do so through their attorney. The Board generally conducts five to ten conferences per year. In the vast majority of cases, the informal conferences alleviate the concerns of the Board, and the applicant is granted final Certification of Fitness to Practice Law.

After the investigation of an applicant's file is completed, the Board may certify the applicant as fit, table the application to give the applicant time to show rehabilitation or seek treatment, or issue a tentative order of denial of certification of fitness. There is no "conditional" admission in Georgia (i.e., certifying an applicant as fit subject to conditions that must be met after the applicant becomes a member of the State Bar). In the absence of extraordinary factors, no applicant is tentatively denied fitness certification before meeting with the Board in an informal conference. On average, four to six applicants are issued tentative denials of certification of fitness each year. If the Board issues a tentative order of denial, the applicant may request a formal evidentiary hearing before an independent hearing officer appointed by the Supreme Court.[10] Historically, one to three hearings are held each year.

The Hearing Process

If the applicant timely requests a hearing, the Board makes the initial presentation of the reasons for the tentative order of denial by issuing "Specifications" to the applicant, who then files an "Answer to the Specifications."[11] The burden is

always on the applicant to prove that he or she possesses the requisite character and fitness required for certification.[12]

The hearing officer is not strictly bound by the rules of evidence and can consider all evidence deemed relevant to the proceedings.[13] After hearing the evidence, the hearing officer makes findings of fact and recommendations to the Board, but these recommendations are not binding upon the Board or the Georgia Supreme Court. In fact, no other previous findings or recommendations on the ultimate issue are binding on the Board or the Supreme Court, including those made by a law school or the Judicial Qualifications Commission.[14] After receiving the hearing officer's recommendations, the Board will decide whether to issue a final order of denial of certification of fitness. The Georgia Supreme Court will generally uphold the final decision of the Board if there is any evidence to support it. However, the ultimate decision regarding a Bar candidate's fitness always rests with the Supreme Court.[15]

Grounds for Denial of Certification

Certification of fitness is most often delayed or denied based on six general areas of concern:

1. lack of candor in all aspects, including the application process;
2. financial irresponsibility with regard to consumer debt, repayment of student loans, and one's duty to comply with court orders;
3. impairment or condition resulting in conduct that would significantly inhibit one's ability to practice law in a competent, ethical, and professional manner;
4. unlawful/criminal conduct;
5. academic misconduct; and
6. attorney disciplinary actions in other states and improper conduct in court.

Lack of Candor

The most common reason for a denial of certification of fitness in Georgia and nationally is if a candidate shows a lack of candor or a pattern of dishonesty, especially in the application for certification of fitness. Honesty is the hallmark of a person of trust and good character who is fit to practice law. Lack of candor encompasses a plethora of behavior, including, but not limited to, providing false or misleading answers in applications, committing fraud or deceit on any court, abusing the legal process, engaging in unscrupulous business practices, and committing academic misconduct (including plagiarism).[16] Even if the applicant's law school or employer finds that the applicant did not commit fraud, deceit, or plagiarism, such findings are not binding on the Board.[17] Giving false, evasive, and misleading

answers to the Board during the application process is a ground for denial of certification in itself. The rule to follow is, "when in doubt, disclose," or at the very least contact the Office of Bar Admissions through the applicant's fitness analyst to seek clarity about what is required.[18]

It is important to consistently demonstrate honesty and transparency, rather than rely on last-minute disclosures and admissions. In *In re Certion*, 305 Ga. 504 (2019), the applicant had been convicted of the assault and false imprisonment of a female friend while in law school. The victim testified at trial that she was brutally attacked, punched, dragged, and choked by the applicant. But the applicant claimed that the victim falsely accused him of the crimes because she was jealous of his involvement with another woman. He told the Board during an informal conference that the victim had received bruises from "play fighting and wrestling" with him. At the formal hearing, however, the applicant admitted that he had assaulted the victim, that she had been telling the truth, and that he was not honest with the Board at his conference. Following the hearing, the special master found that the applicant's lack of candor was not to deceive the Board, but rather was due to his "shame." The special master recommended that the applicant be certified as fit to practice law. However, the Board found that the applicant made a conscious decision to be untruthful in his informal conference, and it issued a final order of denial of certification of fitness. The applicant appealed the final order of denial, and, on appeal, the Georgia Supreme Court held that the Board was justified in finding that the applicant's "lack of candor during the earlier stages of the bar application process was more indicative of his true character than his acceptance of responsibility at the eleventh hour."[19]

The Georgia Supreme Court has also held that there is no "accommodation" for someone who claims to have a condition that impairs their ability to be truthful, accurate, and forthcoming. In the case of *In re Montesanti*, 304 Ga. 380 (2018), the applicant was denied certification of fitness based on a lack of candor. He failed to disclose relevant information to the Board and provided inconsistent explanations for failing to pay legal judgments against him. The applicant argued that his diagnosis of sleep apnea entitled him to a waiver of the fitness process as an accommodation, claiming that his condition limited his ability to be fully honest and candid with the Board. The Bound found, and the Court agreed, that he was not an otherwise qualified individual with a disability under the Americans with Disabilities Act.[20]

Financial Responsibility

The Board recognizes that, at times, applicants experience financial issues associated with law school and family obligations. While the Board does not require perfect credit, it does require that applicants be honest and responsible with creditors. The Georgia Supreme Court has emphasized in a number of cases the importance of demonstrating one's ability to meet their financial obligations.[21]

Consistent with this emphasis, the Board expects applicants to demonstrate a good faith effort to exhibit financial responsibility. In this regard, the Board's Policy Statement explains that, if an applicant currently has an unsatisfactory credit record (especially unpaid collections, judgments, or liens), the Board will table the application until the applicant has provided proof of six current consecutive months of payments in the amount agreed to by the creditor(s).

Impairment Due to Mental Illness or Substance Abuse

The Board may deny certification to applicants whose current ability to function as a lawyer would be significantly impaired by mental illness or substance abuse. Indeed, the ability to function as an attorney is an area of concern that is consistent with the public purpose that underlies the Board's responsibilities. However, it is important to emphasize that the Board does **not** deny certification to applicants based on their decision to seek treatment or support to address their mental health or substance abuse issues. In fact, treatment or other professional assistance is encouraged and applauded. The decision to seek treatment is indicative of a person who possesses the requisite character and fitness to become a member of the Bar of Georgia. In cases where an applicant demonstrates a pattern of impaired functioning, the Board has the option of requiring the applicant to obtain an independent medical evaluation from a licensed medical specialist at the expense of the Board to gain more insight into the applicant's ability to function as an attorney.

Academic Misconduct

The Board believes that misconduct such as plagiarism is indicative and predictive of untrustworthiness in the practice of law. The Board is particularly concerned when academic misconduct occurs in law school.[22] An applicant who is accused of plagiarism or sanctioned in any way regarding an act of plagiarism should explain the incident in detail and provide documentation concerning the matter, including a Statement of Rehabilitation.

Improper Conduct in Court

The Board takes abuse and disrespect of the legal process and state bar ethical rules very seriously, especially for applicants who are already attorneys in other states and who have taken an oath to practice under such rules. Applicants have been denied certification of fitness for filing frivolous complaints, making threatening comments to attorneys and judges or others involved in their cases, and sending disrespectful emails using profanity to those involved in a court action.[23] *In re: Richard Barrett*, 260 Ga. 903 (1991), provides an example involving an applicant licensed to practice law in another state who appeared pro hoc vice in the United States District Court for the Northern District of Georgia. The trial judge held that the applicant tried to perpetrate a fraud upon the court by attempting to present a

false appearance of competency for a witness to testify.[24] This conduct alone justified a denial of certification. In another case, the Georgia Supreme Court held that an applicant was properly denied certification because the applicant's conduct during his worker's compensation cases was "inappropriate, threatening, and an abuse of the legal process," and this inappropriate conduct also included the filing of frivolous complaints.[25]

The Georgia Supreme Court has also upheld the Board's decision where an applicant was intoxicated and insubordinate during an unpaid internship. While this applicant had other issues as well, part of the denial of certification of fitness was based upon the applicant's conduct at his internship, including his refusal to sit by the senior attorney in court, leaving the courtroom without permission, and sending insulting and profane emails to the senior attorney.[26]

Rehabilitation

The Fitness Board takes the position that there is no prior conduct that *automatically* excludes an applicant from admission, and that an applicant can be rehabilitated regardless of the seriousness of the prior conduct; however, the burden is on the applicant to demonstrate full rehabilitation. Evidence of rehabilitation is the most crucial factor the Board considers in determining whether past problems should lead to a denial of fitness certification. To make this determination, the Board looks carefully at the applicant's conduct — particularly as it relates to honesty, trustworthiness, diligence, reliability, and judgment. Generally, the Board will assess whether the problems of the past continue, and, if they do not, whether the applicant's life has changed in ways that suggest the problems of the past are unlikely to recur.

The Georgia Supreme Court was one of the first courts to issue a decision on the issue of rehabilitation for character and fitness purposes. In *In re Cason*, 249 Ga. 806 (1982), the Court defined rehabilitation as "the re-establishment of the reputation of a person by his or her restoration to a useful constructive place in society."[27] Since that time, the Court has further clarified that merely showing that one has complied with their obligations without getting into further trouble is *not* sufficient proof of rehabilitation.[28] The applicant must take full responsibility for any past misconduct and show by positive action that they have restored themselves to a useful place in the community. This can be shown, for example, through one's "occupation, religion, or community service."[29]

The very important first step is for the applicant to *fully* accept responsibility for their conduct and to show understanding, insight, and remorse for their actions, including rectifying situations where someone has been harmed by the applicant's actions. Simply admitting that the conduct happened or making the boilerplate statement, "I take responsibility," is not enough.

In *In the Matter of Davis*, the applicant had been disbarred for misconduct involving dishonesty in two lawyer-disciplinary proceedings. She applied for readmission but continued to deny all culpability and showed no remorse or rehabilitation. The Court noted that the applicant showed the same type of dishonesty and inability to take responsibility for her prior misdeeds that she demonstrated in the disciplinary proceedings that led to her disbarment in the first place, and that the Court "d[id] not countenance such dishonesty and blame shifting."[30] And, "[t]o the extent that the evidence of good character and community service presented by Davis could have raised a question about the extent of her rehabilitation, any doubts about her rehabilitation [were] resolved in favor of protecting the public rather than reinstating her to the practice of law."[31]

In *In re Roberson*, the applicant was disbarred for gross misconduct that included disbursing client settlement funds to himself and nonparties without the court's approval, falsely inflating the value of his client's future medical expenses, and willfully disregarding legal matters entrusted to him (including failing to set up a $600,000 trust fund for a deceased client's indigent children). As a condition for readmission, the Georgia Supreme Court mandated that the applicant make full restitution to the estate of all monies he received for his representation. During his informal conference, the applicant told the Board that he "took full responsibility" for his actions. But he mischaracterized and minimized the circumstances leading to his disbarment as an issue of over-calculating his attorneys' fees. The applicant also claimed that, while he did not return all the money to the estate, he settled a lawsuit with the estate for a fraction of what he collected, which "made the estate whole." The Board and the Court disagreed with Roberson, finding that he had failed to comply with the Court's mandate of full restitution and failed to produce evidence that he took full responsibility for his actions or showed insight into the reasons why his conduct raised fitness concerns.[32]

The second step is for an applicant to provide evidence of service that would restore the applicant's reputation in the community. The Board has found rehabilitation where applicants have involved themselves in various public service activities and in associations that serve the community. For example, performing service at homeless shelters or religious nonprofit organizations and taking leadership roles in such activities has been recognized as strong evidence of rehabilitation.[33] However, self-serving activities, such as legal externships where the applicant receives law school credit, will not count toward rehabilitation.[34] Letters from community and other leaders attesting to the service and positive change in the applicant are also helpful.

In re Robbins illustrates how community service on its own is insufficient to show rehabilitation where the applicant is also "equivocal with respect to demonstrating a recognition of the wrongdoing that resulted in disbarment" and

"evasive" in answering questions during his hearing before the Board. The applicant in *Robbins* provided evidence of community service, but this was "not enough to establish rehabilitation . . . since the evidence [was] offset by the applicant's failure to meet the burden of proof with respect to other elements of rehabilitation, such as candor, credibility, as well as appreciation and insight into why his previous conduct raise[d] fitness concerns."[35]

Rehabilitation is the most critical element that the Board considers when deciding whether past misconduct should form the basis for a denial of certification of fitness. The Board will certify those applicants with *current* good character and fitness, and those applicants who cannot show sufficient rehabilitation from past misconduct cannot show current fitness.

The Georgia Supreme Court

If the Board issues a final order of denial of certification of fitness to practice law, the applicant has the right to appeal the denial to the Georgia Supreme Court. As stated above, the Supreme Court will uphold a final decision if there is any evidence to support it, but the ultimate decision always rests with the Court. While all applicant files on appeal are sealed, the Supreme Court will use the full name of the applicant in published opinions "[b]ecause public access to the decisions of this Court is essential to our role in establishing and interpreting the law."[36] The applicant's fitness file remains confidential.[37]

Character and Fitness is Ultimately Based on Our Choices

In the Star Wars films, creator George Lucas uses his characters and stories to teach basic moral values. Luke Skywalker must choose between the light side of the force and the dark side, and the choice is always his to make. If he stays on the light side by remaining honest and true, he can become a Jedi Master and save the galaxy from the evil Galactic Empire. However, even if he chooses the dark side like his father, (spoiler alert!) Darth Vader, did, there is still a chance for redemption. The Board to Determine Fitness takes an in-depth look at the past and present choices of applicants when evaluating their current character and fitness to get a full picture of the applicant. The dark choices of the past do not define the sum total of an applicant's character because there is always a chance for rehabilitation and redemption through honesty, candor, and a commitment to taking responsibility for one's actions. As case law on character and fitness continues to evolve, one thing remains certain: honesty, integrity and taking responsibility will invariably carry the day.

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[1] Rules Governing Admission to the Practice of law, Part A, Sec.2.

[2] Policy Statement of the Board to Determine Fitness of Bar Applicants.

[3] Rules Governing Admission to the Practice of Law, Part A, Sec. 6.
[4] Policy Statement of the Board to Determine Fitness of Bar Applicants.
[5] Rules Governing Admission to the Practice of Law, Part F, Sec. 4 (b).
[6] *In re Lubonovic*, 248 Ga. 243, 246(1981).
[7] *In re Lubonovic*, 248 Ga. 243, 245(1981).
[8] *In re Cook*, 284 Ga. 575, 576 (2008).
[9] Policy Statement of the Board to Determine Fitness of Bar Applicants, Sec. F.
[10] Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (a).
[11] Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (a).
[12] *In re Beasley*, 243 Ga. 134 (1979).
[13] Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (c).
[14] Rules Governing Admission to the Practice of Law, Part A, Sec. 8 (c); *In re K.S.L.*, 269 Ga. 51, 52 (1998); *In re Jenkins*, 278 Ga. 529 (2004).
[15] *In re Spence*, 275 Ga. 202 (2002).
[16] *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011); *re Cook*, 284 Ga. 575(2008); *In the Matter of White*, 283, Ga. 74 (2008); *In re: K.S.L.,* 269 Ga. 51 (1998); *In re: R.M.C.*, 272 Ga. 99 (2000); *In re: J.W.N.*, 266 Ga. 58 (1995).
[17] *In re Jenkins*, 278 Ga. 529 (2004); *In re K.S. L.*, 269 Ga. 51 (1998).
[18] *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011).
[19] *In re Certon*, 305 Ga. 504 (2019).
[20] *In re Montesanti*, 304 Ga. 380 (2018).
[21] *In re C.R.W.,* 267 Ga. 534 (1997); *In re Johnson*, 259 Ga. 509 (1989); *In re Adams*, 273 Ga. 333(2001).
[22] Policy Statement of the Board to Determine Fitness of Bar Applicants, Sec.B.
[23] *In re Yunker*, 2011 Ga. Lexis 662 (Ga. Sept. 12, 2011), *In re D.K.M.*, 271 Ga. 473 (1999).
[24] *In re Barrett*, 260 Ga. 903 (1991).
[25] *In re D.K.M.,* 271 Ga. 473 (1999).
[26] *In re Yunker*, 2011 Ga. Lexis 662 (Ga. Sept. 12, 2011).
[27] *In re Cason*, 249 Ga. 806, 808 (1982).
[28] *In re Lee*, 275 Ga. 763, 764 (2002).
[29] *In re Cason*, 249 Ga. 806, 808 (1982).
[30] *In the Matter of Davis*, 307 Ga. 276, 280 (2019).
[31] *In the Matter of Davis*, 307 Ga. at 280.
[32] *In re Roberson*, 888 S.E.2d 567 (2023).
[33] *In re Friedberg, 286 Ga. 472 (2010); In re Calhoun, 286 Ga. 417 (2010),*
[34] *In re Payne* 2011 Ga. LEXIS 656 (Ga. Sept. 12, 2011).
[35] *In re Robbins* 295 Ga. 64 (2014).
[36] *In re Johnson*, 272 Ga. 444 (2000).
[37] Rules Governing Admission to the Practice of Law, Part F, Sec. 4 (b).