

BOLE Doesn't Appreciate Haste or a Bad Memory

Texas Lawyer May 13, 2002

Copyright 2002 NLP IP Company - American Lawyer Media All Rights Reserved.

by ROBERT "BOB" S. BENNETT and RENE E. MOELLER

The Texas Board of Law Examiners tells you that you fail to meet the standards of good moral character and fitness. Is all hope lost in the discretionary purview of the board? Most applicants for admission to the State Bar of Texas will tell you their greatest fear is that they will not do well on the bar examination or, horror of horrors, fail some part of the examination. However, there are those applicants who will tell you there is a worst-scene scenario: The Board of Law Examiners (BOLE) informs you that you fail to meet the standards of good moral character and fitness, and therefore you are not eligible to take the bar examination.

Even if you already are licensed in another state or country, you still have to pass muster on the "good moral character and fitness" requirements. Is your Texas legal career over before you've begun? What do you do? Don't panic, hire good counsel. While the BOLE has wide discretion, not all is a total mystery. Understanding the burden of proof and making a good presentation of the circumstances, mitigating factors and strong testimonial support by noteworthy individuals in the community may save the day.

In 1994's Board of Law Examiners v. Stevens, the Texas Supreme Court ruled that there must be "substantial evidence" of a "clear and rational connection between a character trait of the applicant and the likelihood that the applicant would injure a client (or violate the Texas Disciplinary Rules of Professional Conduct) if the applicant were licensed to practice law. . . ."

Most applicants to law school run afoul of the BOLE and a law school's Admissions Disclosure Committee in responding to the inquiry regarding any legal matters other than minor traffic violations for which they were "arrested, cited, ticketed or charged" within the 10 years preceding filing their applications, even if the charges were later dismissed or the applicants were found not guilty.

Additionally, any such matters where the applicant was found guilty, pleaded guilty or nolo contendere (no contest), or had any other adverse disposition, including a fine, sentence of probation or restitution, or a grant of deferred adjudication; or all such matters involving drugs or alcohol, no matter when they occurred, must be disclosed. In most instances, the applicant is fresh out of undergraduate school (or in the final stages of completing undergraduate work) and approaches the question from a layman's perspective, considering himself or herself to be a good, honest, moral individual.

Woe to the individual who completes the application in a hurry and/or simply does not remember one or more incidents - minor to them. Did you have a failure to appear on a traffic violation that you later took care of then dismissed from your mind? Did you bounce

a check, even for a minor amount, due to an accounting error, took care of the matter and dismissed it from your thoughts? After all, it's not like you purposely wrote a bad check.

The above applies equally to the application to take the bar exam sent to the BOLE, whether you are a law student or seek admission to the Texas bar having already been licensed in another jurisdiction. Haste and belated memory will cause more trouble than a carefully thought out initial response will cause.

Financial Responsibility

Another criteria that falls under the rubric of good moral character and fitness is the issue of financial responsibility. Questions regarding outstanding child support, bankruptcy, default on student loans or unsatisfied judgments also can lead you afoul of the BOLE by raising questions regarding financial responsibility and professional conduct (if you already are licensed in another jurisdiction). They may be considered indicative of the character traits of deceptiveness, dishonesty, lack of trustworthiness in carrying out responsibilities and a lack of financial responsibility, which are undesirable in one who wishes to be licensed to practice law, become an officer of the court and who may be entrusted with client funds.

In such a scenario, the questions presented are primarily ones of due process and rehabilitation. There are constitutional arguments, under the U.S. Constitution and Texas Constitution, on the due process issue. As to rehabilitation, the Texas bar has no written standards on what constitutes evidence of rehabilitation.

A requirement to show that one is "clearly and convincingly rehabilitated" requires a higher standard than substantial evidence or preponderance of the evidence used to determine good moral character. The result is that the Texas bar has a high evidentiary standard with no guidelines for interpretation, which may lead to arbitrary and capricious decisions.

Whether you are a law student or already licensed in another jurisdiction, when completing your application for admission to law school or your application to take the bar examination, take the time to think back carefully over "past misadventures." Ask your immediate family if there is anything you might have forgotten or left out.

According to the law schools and the BOLE, when in doubt, you should always err on the side of full disclosure. If you think there is something that is going to be a problem, make full disclosure and consult a good attorney. That ounce of protection is definitely worth a pound of cure.