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## LEGAL ETHICS

### Guardians at the Gate

Understanding the Supreme Court's Committee on Character

By Marc Garfinkle

In our last column, we looked at the role of RPC 8.3 (Reporting Professional Misconduct) in identifying the unfit lawyers who have already been admitted to practice. We mentioned briefly the Supreme Court's Committee on Character that guards the gate, assuring that all incomers demonstrate good character. Few lawyers are aware of how much time and effort is spent "vetting" those who would be lawyers here. It is worthwhile to understand the standards and procedures that pertain. As a bonus, the fitness protocol offers professional opportunities for counsel to assist bar applicants in gaining admission.

In matters of admission, the Committee on Character (COC) holds all the marbles. Their mandate is to investigate each candidate and to certify (or refuse to certify) each one as fit to practice. The members, all members of the bar, are carefully selected by the Supreme Court for three-year terms, and are eligible for re-appointment.

A candidate's fitness is determined

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on the basis of his/her personal record and reputation. Candidates must show the requisite traits of honesty, integrity, financial responsibility and trustworthiness. At the core of the candidate's record is the character and fitness questionnaire (CFQ), submitted online, which answers pages of questions about the candidate's personal, academic, employment, criminal and financial histories.

Significantly, the candidate has a continuing obligation to keep the COC abreast of any changes that occur. Failure to do so can alone be reason for exclusion. There is also a presumption that any material nondisclosure on the CFQ is prima facie proof of the lack of good character, even when the nondisclosure is discovered *after* the candidate has been admitted to the bar. This presumption may be rebutted, however, but only by clear and convincing evidence of mistake or of rehabilitation and current good character.

The investigation is more thorough than most of us would imagine. The COC can review college and job applications, employment files, tax and bankruptcy files, Facebook pages, civil court filings, criminal dossiers (including arrests, as well expunged, dismissed and juvenile matters), telephone and credit card records, travel papers and papers long forgotten by the candidate. Scrutiny often reveals inconsistencies in

such matters as the names and addresses used by the candidate in applications, the dates of residence or birth, the reasons given for job or school changes, and much more.

Among the list of fitness issues that concern the COC are: nondisclosure of information, academic dishonesty at any level, unlawful conduct of any kind anywhere, failure to file required tax returns or to pay taxes, financial irresponsibility, misconduct in employment, domestic violence, any evidence of moral turpitude, present psychotic condition and much more, all set out in RG 302:1.

When a candidate has drawn the COC's attention, s/he is advised by the Bar Examiners that his/her cooperation is required in providing more information. Usually, they want records and an interview with the applicant. Then, perhaps, more records will be required. Following the inquiry, the committee may be satisfied that the matter is trivial, unlikely to recur or not reflective of bad character. Where appropriate, such as with substance use issues and mental health questions, the COC demands proof of rehabilitation before certifying the candidate.

If the COC cannot certify a candidate's fitness, it will notice a "RG 303 hearing," to further investigate all matters of concern. Abundant records are often required in advance. The notice advises the candidate of the right to counsel, but many of these prospective lawyers appear without. Some would benefit from representation, but express the mistaken concern that the COC will draw a negative inference from the pres-

ence of counsel. Counsel that is unfamiliar with the role and authority of the COC may not be helpful to the candidate.

The call from a candidate to a lawyer typically comes from someone who has passed the bar exam, but has had a skeleton or two in a closet, which skeletons fell out when the COC opened the door. An old marijuana bust, a DWI or three, a job termination for suspicion of theft, a bankruptcy or bad check, an almost-forgotten tenancy dispute, failure to mention on a tax return a job mentioned elsewhere, child support arrearage, an omission on the CFQ or some other ghost from the past—whether distant or recent—has returned to haunt the candidate.

Some candidates are genuinely surprised that the bar is concerned with such matters. Others have been dreading this moment of reckoning for years. The COC understands that everyone has ghosts and skeletons, but they need to know more about the candidate in order to assess what his/her character is *today*. The COC does not seem to prejudge, but they don't seem to miss much, either. Above all, they want unfiltered candor and the candidate's insight into the misconduct.

In some instances, a hearing is scheduled because the COC just wants another look at a candidate before certifying. In other cases, the COC has serious reservations. The hearings are always unhurried. The members challenge the candidate to show why s/he will be fit to practice. Letters of character reference are welcome, and, if judiciously selected, may be helpful. Do not bother offering

such a letter, however, unless the signer indicates therein that s/he is aware of the specific matters of concern to the COC, and that s/he believes that the candidate is, nonetheless, of good moral and ethical character.

The hearing typically is in a conference room at the office of one of the members. Present will be the candidate, staff counsel from the COC, and a three-member panel of COC members. The hearing may be congenial or it may seem inquisitorial to the candidate. There appear to be no rules of order, other than courtesy, for the questioning. The members take turns asking questions and follow-ups, sometimes sticking with an issue, sometimes moving quickly through them, and sometimes returning several times to the same point of concern. The candidate's counsel may have little or nothing to say.

The best way to represent a candidate may be counter-intuitive to lawyers, who tend to downplay negative facts or explain them in context. We want to offer defenses, justifications or mitigating circumstances. Our impulse is to argue our way to success, prevailing when everyone understands that our client's transgressions were trivial, ancient history or merely misunderstood. This strategy is flawed.

At an RG 303 hearing, we enter the ring with our hands down. Instead of teaching our clients how to counter-punch, we explain the importance of candor, humility, acceptance of responsibility and remorse. Bear in mind that the most egregious offense in the file may

not damn the candidate so much as even the most feeble attempt to hide, belittle or justify it. The candidate must be able to articulate the lessons learned from the transgressions and understand the justification for the COC's concern.

Imagine that the COC has already seen your client in the shower. Throwing on a robe, slapping on some antiwrinkle cream, or favorably describing your client's physique will not change their perception.

During or after the hearing, the candidate may be asked to provide further information or documentation to the COC. Another interview may also be required. Eventually, the decision is rendered, and the candidate is notified. A decision to not certify may be appealed. A candidate who is ultimately unsuccessful may re-apply. In cases where rehabilitation is the issue, the passage of time may be the passage to success, if the candidate complies with prescribed rules and guidelines and produces convincing evidence of fitness to practice law.

The COC was created to protect consumers, but it protects the legal profession as well. It seeks to restore public confidence in our lawyers after a generation of derision and scorn. We have been made the butt of tasteless insulting jokes. We have plummeted from professional esteem into common disdain. The Committee on Character is the Supreme Court's response. They are determined to keep more bad apples from joining our ranks. Perhaps they will succeed. Perhaps they won't. But if they don't, it won't be for lack of trying. ■