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Via Email to Comments.Mailbox@njcourts.gov.
Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments – Committee on Character Regulations
Hughes Justice Complex, PO Box 037
Trenton, NJ 08625-037

Re: Proposal to Change the Committee on Character Regulations

Dear Director Grant:

Kindly accept these comments from David Dugan, Esq. and me on the proposed regulation changes pertaining to the admission of candidates to the New Jersey bar.

We applaud the effort to improve the procedures and the intent as stated, “to expedite its consideration and disposition of character applications and also to provide additional guidance to candidates for admission.”

In particular, our combined decades of experience with admission and attorney ethics support the need for extending the time for which bar examination results remain valid from two years to three years. That expansion of time reflects the very lengthy time the admission process often takes – very frequently two years from successfully passing the bar exam, sometimes longer. We recommend that extension be adopted. Similarly, the proposal to allow certification on conditions, either after investigation 302:2 or after hearing 302:8, in both instances without a report, subject to candidate consent may serve to simplify and speedup the process in suitable cases.

We are, however, concerned that the proposed rules do not address some of the systemic issues surrounding the current procedures and practices.

Background

The Committee on Character determines the fitness to practice law of each candidate for admission to the New Jersey bar. (R.1:25) The Committee's screening task has been expanded as of September 1, 2016 to include out-of-state attorneys seeking admission by motion. (R.1:24-4; R.1:27-1) The procedures utilized by the Committee in screening bar candidates are contained in a document entitled "Regulations Governing the Committee on Character", approved by the Supreme Court. The current version became effective October 1, 2002.

In its Regulations the Committee places the burden upon bar candidates to demonstrate that they possess "the requisite traits of honesty, integrity, financial responsibility and trustworthiness" appropriate to the profession. (RG 202:1). As the first steps in demonstrating fitness, candidates must complete and submit a 19 page form entitled "Certified Statement of Candidate" (RG 201:1). Candidates have a continuing duty to amend their statements up until the moment when they take the oath of admission to the bar (RG 202:4). They must disclose all available information requested by the Committee (RG 202:1). Failure or refusal to supply information "deemed relevant" by the Committee may be grounds for withholding certification (RG 202:5).

The Committee has taken a very comprehensive approach to what it deems relevant to its screening function. For example,

- In more than 40 instances the Certified Statement form asks whether the candidate "ever" did a particular thing or was "ever" the subject of a particular proceeding. Obviously, this obligates candidates to make full disclosure and produce documentation with respect to events covering their entire lifetimes.

- With respect to a candidate's possible criminal record, the Committee requires disclosure not only of convictions but also arrests, whether resulting in conviction or not, dismissals and expungements. Mere "allegations" of fraud, perjury or false swearing (an extremely broad category) must be disclosed, as well as whether the candidate was "ever" the subject of an official investigation, regardless of outcome. Even juvenile delinquency proceedings must be disclosed. (RG 302:1 (c) and (g); Certified Statement form, section VIII, Questions B-F).

- With respect to a candidate's educational history the Committee requires disclosure of all instances ("ever") in which the candidate may have been placed on probation, suspended or expelled for academic reasons or otherwise. All formal or informal disciplinary procedures must be disclosed, regardless of disposition. And, since entering college (a rare example of a time limitation) the candidate must disclose every instance in which a faculty member or official confronted the candidate concerning excessive absences, fluctuation in grades or failure to complete assignments. (Certified Statement form, section III, Questions D-G).

- With respect to a candidate's employment history the Committee requires disclosure of all instances ("ever") in which the candidate may have been discharged, charged with improper behavior regardless of the outcome, or simply confronted by an employer concerning excessive absences or lateness, lack of diligence, failure to maintain confidential material or employment related misconduct or deficiency. (Certified Statement form, section IV, Questions D-F).

The Problem

The character review process is frequently slow at every stage. The delays in the process have created a situation that is often unfair to New Jersey Bar applicants. It has resulted in New Jersey achieving a reputation as an indifferent or even hostile jurisdiction for applicants. The delays are causing certain knowledgeable applicants to consider not applying for the Bar in New Jersey, solely for the purpose of realizing their goal of becoming attorneys in *some* jurisdiction within an acceptable time frame. The lengthy scrutiny results also in attorneys successfully practicing law in other jurisdictions, demonstrating daily their fitness to practice, while the admission process in New Jersey continues.

An applicant having what the Committee perceives to be "issues" may anticipate delays of six to eight months and more, following passage of the bar examination, before an R303 hearing is held. Those same applicants often experience a delay of a year before receiving a report from the R303 Committee, often whether the result is favorable or not. Other applicants have experienced considerably longer delays.

In our experience, most law schools graduates who seek to apply to the New Jersey Bar are initially unaware of these obstacles. Many apply to the New Jersey Bar and to other state Bars at the same time. A multi-state applicant, typically, has no idea that by including New Jersey among his or her applications, he or she may be delaying not only certification in New Jersey but in the other states, which may await the New Jersey decision before deciding themselves. After graduation from law school, many aspiring lawyers find themselves heavily in debt, and nearly all of them face a particularly tight job market. There is no notice, or warning, other than anecdotal, to our knowledge, that an application to New Jersey may significantly delay applicants' prospects of becoming lawyers anywhere.

Proposal

The scope and detail of the information deemed relevant by the Committee is excessive. Much of it, such as that noted above, is of only marginal relevance. Dealing with this marginal material in the Committee's investigation/hearing process can be very time-consuming and contributes in a major way to the lengthy and unacceptable delays that are common in contested cases. In the opinion of the authors of this proposal, each of whom has had extensive experience representing candidates in Committee proceedings, the Committee's fitness requirements should be overhauled, limiting the scope and detail of evidence to what is most relevant.

First, we propose that what is deemed relevant be limited in time, deleting "ever" entirely and substituting a general time limit, perhaps "from the time the candidate commenced law school" or, alternatively, from the time the candidate attained the age of 21. (Alternate time periods may be required in some instances.)

Second, we propose that many of the questions in the Certified Statement form be stricken because the information they seek is at best of only marginal relevance. With respect to a candidate's criminal record, except for pending matters, disclosure should be limited to actual convictions in adult proceedings. With respect to a candidate's educational history, disclosure should be limited to established instances of academic dishonesty. With respect to a candidate's employment history, disclosure should be limited to situations where the candidate was discharged or resigned because of misconduct. These three categories of information (criminal record, educational history and employment history) are not the only ones needing reform, but they are the most critical

ones. We have cited them as illustrative of what needs to be done in reforming the entire process.

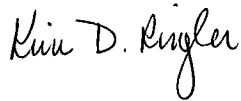
Substantial reduction in the scope and detail of material deemed relevant will have several positive consequences. There will be less data for candidates to have to research and produce, resulting in fewer charges of failure to disclose. Less data to review should result in more expeditious processing of cases by the Committee and fewer or at least shorter hearings. Simplified disclosure requirements may be better suited to the task of screening out-of-state attorneys applying by motion.

Finally, the assumption that careless or unintentional failure to disclose responsive but not material information can unduly aggravate the seriousness of the concerns regarding a particular applicant. We suggest that a less draconian approach should consider whether sloppiness explains the non-disclosure, especially of insignificant information.

We concur that the Regulations would benefit from amendment. Along with this letter we respectfully attach some proposed changes to certain Regulations, which we hope will streamline the certification process and lessen the work of the Committee.

Thank you for your attention to this important process of determining who shall become a member of the bar in New Jersey, and for your consideration of our suggestions for potential improvement.

Very truly yours,



Kim D. Ringler

s/(Authorized by telephone)
David Dugan

PROPOSED CHANGES TO REGULATIONS

REGULATION 301. Investigations

301:1 Investigation assistance. A Committee on Character member may request a detailed investigation of facts and circumstances bearing on a candidate's fitness to practice law. Staff of the Committee shall, to the extent practicable, provide investigative assistance as needed. The Secretary may arrange for additional investigation or other assistance from the Administrative Office of the Courts or such other agency as may be appropriate. Such additional investigation shall be conducted promptly.

REGULATION 302. Initial Review and Certification

302:1 Conduct Requiring Investigation. The appropriate Part of the Committee, or such member or members thereof so assigned, shall promptly review the Statement of Candidate and related documents. If, on such review, further information is deemed desirable, a request therefore may promptly be made of the candidate or any other appropriate source. The request may be made in person or by telephone or mail. Conduct requiring additional action may include, but is not limited, to the following:

- a. Non-disclosure of information;
- b. Academic dishonesty;
- c. Unlawful conduct, committed after the age of 21 resulting in conviction, or presently pending;
- d. Failure to file required federal, state, or local tax returns or to pay tax obligations;
- e. Financial misrepresentation, mismanagement, or neglect;
- f. Wilful default or arrearages in the payment of student loans;
- g. Formal allegations of fraud, perjury, or false swearing;
- h. Formal allegations of misconduct in employment;
- i. Having been disciplined as a member of a profession, trade or occupation, including but not limited to the practice of law;
- j. Failure to comply with Court orders, such as support and alimony orders;
- k. Domestic violence;
- l. Abuse of legal process or history of vexatious law suits;
- m. Current substance abuse; or
- n. Conduct incompatible with law practice occurring within the last three (3) years resulting from diagnosed psychotic disorders including paranoia, bi-polar disorder, or schizophrenia.

302:3 Determination of Certification. On a determination for the Committee that a candidate is fit to practice law, the member or members of the Committee shall so certify to the Supreme Court within ten (10) days. Such determinations, wherever possible, are encouraged.

REGULATION 303. Part Hearing

303:1 When Held. If a single member of the Committee determines not to certify a candidate as fit to practice law or desires to have a determination made by a Panel, a hearing shall be conducted by three members of the Committee within ninety (90) days of such determination. In the discretion of the assigned member and subject to the approval of the Part Chair, the candidate may waive entitlement to a three-member Panel and proceed with a hearing before the assigned member of the Committee.

303:2 Reasons for a hearing. Reasons for a hearing may include, but are not limited to, evidence of the conduct specified in RG. 302:1.

If a substantial factual question arises in respect of the candidate's certification pursuant to RG. 202:6 or RG. 202:7, a hearing shall be held. The Panel shall make findings of fact on whether the candidate is in violation of one or more of the conditions contained in the Regulations. If the Panel determines that the candidate has failed to meet or comply with one or more of the conditions of the Regulations, the Panel shall report same for final decision on the candidate's eligibility for admission pursuant to RG. 304:2.

A determination that the candidate is not currently in violation of the requirements of RG. 202:6 in respect of child support obligations shall not prohibit the Committee from inquiring into the impact of past violations of child support orders on the current fitness and character of the candidate.

303:3 Presumption from Nondisclosure. There shall be a rebuttable presumption that nondisclosure of a material fact, which nondisclosure appears to be willful, knowing and /or intentional, on the Statement of Candidate is prima facie evidence of the lack of good character.

a. The presumption shall be the same whether the nondisclosure is discovered prior or subsequent to the applicant's admission to the bar.

b. The presumption may be rebutted by clear and convincing evidence of mistake or of rehabilitation and current good character.

303:4 Notice. The hearing shall be conducted on at least seven days' written notice to the candidate. The notice shall state the reasons for the hearing. The Committee shall promptly schedule the hearing and hold the hearing within ninety (90) days of the official date for the admission of successful applicants.

303:8 Determination; Report and Recommendations. On the conclusion of the hearing, if the evidence adduced clearly and convincingly demonstrates that the matter could have been

resolved appropriately through the informal interview process set forth in RG. 302, the Panel shall certify the candidate pursuant to RG. 302:3. If the Panel issues a report, the vote of each member shall be expressly noted. Any Panel member who does not join in the report may prepare a separate report.

a. If the Panel determines to certify the candidate, it shall file forthwith a simple notice thereof, with the Secretary and the Statewide Panel. A copy shall be sent forthwith to the candidate.

b. If the Panel determines to recommend that certification be withheld, or granted with conditions, it shall file a report, not to exceed twenty-five (25) pages, with the Secretary and the Statewide Panel. A notice of determination shall, in all cases, be filed and sent to the candidate within 60 days of the conclusion of the hearing. If the Committee determines to file a report, such report must be filed within three (3) months of the hearing. A copy shall be sent forthwith to the candidate. On receipt thereof, a candidate may file an appeal pursuant to RG. 304:1. Reasons for withholding certifications may include, but need not be limited to, the criteria listed in RG. 302:1.

c. In cases in which the Panel determines, that inappropriate conduct has resulted from substance abuse, mental illness, psychological disorder, or such other grounds as the Committee, with good cause, may determine or when the candidate has been treated for substance abuse or bipolar disorder, schizophrenia, paranoia, or other psychotic disease within the twelve months preceding the submission of the Statement, the Panel may recommend certification subject to conditions. If the Panel determines to certify with conditions, it shall file a report within three (3) months with the Secretary and the Statewide Panel. A copy shall be sent forthwith to the candidate, who may file an appeal pursuant to RG. 304:1.