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# BROWN & CONNERY, LLP

ATTORNEYS AT LAW  
6 NORTH BROAD STREET  
WOODBURY, NEW JERSEY 08096  
(856) 812-8900  
FAX (856) 853-9933

Donald K. Ludman, Esq.  
[dludman@brownconnery.com](mailto:dludman@brownconnery.com)  
Direct Dial: (856) 858-8178

January 15, 2018

## Via Email

Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Comments on the Character Review Process Report  
Hughes Justice Complex; P.O. Box 037  
Trenton, New Jersey 08625-0037  
[Comments.Mailbox.njcourts.gov](mailto:Comments.Mailbox.njcourts.gov)

### **Re: Comments on the Character Review Process Report**

Dear Director Grant:

I have been a member of the Committee on Character since July 2014. I would like to thank the Ad Hoc Committee on the Character Review Process (the "Ad Hoc Committee") for its work towards improving the candidate review process and preparing its Report & Recommendations dated October 27, 2017 (the "Report"). I believe that several of the recommendations offered in the Report, including, but not limited to, more utilization of file abandonment, streamlining the substance abuse/mental health evaluation process, placing time limits on the scheduling RG 303 hearings, permitting two-member hearing panels, and condensing the hearing reports will streamline the candidate review process.

I offer the following comments and suggestions for your consideration and the consideration of the Ad Hoc Committee.

Preliminarily, I note a factual error in the Report. At pages 7 and 13, the Report states that the candidate files are made available to the reviewing attorney "prior to the administration" of the bar examination. In my experience, candidate files have been made available several weeks *after* the administration of the bar exam.

#### **Initial Determination of Completeness of Applications Before Referrals to the Character Committee**

Each application should be complete on the surface before being assigned to a reviewing attorney. If a law school certification, driver's abstract or other mandatory application document has not been provided, the bar candidate should be sent a letter from committee staff advising

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that the application is incomplete, provide a deadline to respond, and inform the candidate that the application will not be considered until the missing information is provided. This places the initial burden on the candidates to complete their applications and would allow reviewing attorneys to focus their efforts on candidates who complied with the application requirements.

In addition, if the bar candidate has disclosed financial delinquencies, committee staff typically sends a request to the candidate early in the application process (well before the file is assigned to a reviewing attorney) to provide information regarding such delinquencies. In my experience, candidates rarely respond to these requests. I would also recommend that committee staff requests regarding financial delinquencies be treated similarly to missing application materials—i.e., if the applicant does not respond to the staff request for additional information, the application is not submitted to the reviewing attorney.

The Ad Hoc Committee's Recommendation 1.1 of a thirty (30) day deadline for reviewing attorneys to perform an initial review of the applications would provide only a modest improvement to the review process. Except for basic application materials such as a missing driver abstract, law school certification, release form, etc.—which should all be received by the committee before an application is assigned for review—a reviewing attorney may not have an understanding that an application is incomplete until a substantive review of the file is performed. In many situations, a candidate will respond "Yes" to an inquiry in the Character and Fitness Questionnaire ("CFQ") but fail to upload required materials. Recommendation 1.1, as stated, may lead to further inefficiencies and multiple requests made by a reviewing attorney to a candidate. A single comprehensive request by the reviewing attorney following a substantive review of the file will be more efficient and easier to manage.

The Ad Hoc Committee's Recommendations 2.2 and 3 provides that reviewing attorneys should communicate information requests and to follow-up with nonresponsive candidates in writing, via email or through the secured portal. Currently, reviewing attorneys only have access to a candidate's application materials that are manually "pushed down" to them by committee staff. Aside from reviewing attorneys not receiving supplemental candidate submissions in real time, the current settings for the secured portal do not provide a mechanism for reviewing attorneys to communicate with candidates.

### **Additional Recommendations to Improve the Committee Review Process**

(1) *Notify reviewing attorneys at least one (1) week prior to the release of bar results whether any of their assigned candidates failed or will likely fail the bar exam.* Reviewing attorneys typically triage applications, focusing initially on expeditious processing of the large majority of candidates who have no apparent character and fitness issues, reserving more

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problematic applications for later review. Typically, those applications that have not been fully processed by the time that bar exam results are released have a multitude of issues, extensive documentation, and require a substantial amount of time to analyze. Over the past few exam cycles, reviewing attorneys have not been notified if the remaining candidates failed the bar exam until just prior to the release of exam results. Earlier notifications of exam failure would avoid substantial amounts of lost time.

(2) *Delay assigning "red-flagged" candidates to reviewing attorneys until the candidate passes the bar exam.* Some candidates are red-flagged by committee staff because character and fitness issues are readily apparent from the CFQ or other application materials. Many of these red-flagged candidates will require a more extensive file review, supplemental disclosures by the candidate, and/or perhaps independent research by the reviewing attorney. To promote efficiency in the review process, applications of red-flagged candidates should not be assigned until the candidate passes the bar exam. Any decision by committee staff to red-flag a candidate should be reviewed by committee counsel or an experienced committee member to make sure a candidate is not mistakenly red-flagged.

(3) *Where an applicant has sought admission in previous years, reviewing attorneys should only review the current application materials unless the reviewing attorneys request prior applications.* Candidates who have sat for the bar exam several times may have an extensive number of CFQs and other documents in their file. Application materials can also be scattered across several applications. Reviews of previous applications and support documents delay the review process. To address this situation, reviewing attorneys should be given and directed to review only the candidate's most recent application package. Any pertinent materials from earlier applications should be transferred to the current application or the candidate should be required to resubmit the materials with each application. This would streamline the review process and reduce the number of exhibits in the record for a RG 303 hearing. Prior application materials should be made available to the reviewing attorney only upon request or if there are significant character and fitness issues and such materials may be helpful during the review process.

Thank you for your consideration.

Respectfully submitted,  
**BROWN & CONNERY, LLP**



Donald K. Ludman