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## Constitutional Law - Attorney & (and) Client: Denial of Admission to the Bar because of Past Conduct and Present Moral Character

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CONSTITUTIONAL LAW—ATTORNEY & CLIENT: DENIAL  
OF ADMISSION TO THE BAR BECAUSE OF PAST  
CONDUCT AND PRESENT MORAL CHARACTER

*Layon v. North Dakota State Bar Board*,  
458 N.W.2d 501 (N.D. 1990).

Frank Layon applied for admission to the North Dakota Bar in 1988 after graduating from California Western School of Law.<sup>1</sup> Following an investigation by the North Dakota Board of Bar Examiners (the Board), an informal hearing was held on June 15, 1989, which Layon and the members of the Board attended.<sup>2</sup> The Board concluded that Layon lacked the good moral character necessary to practice law.<sup>3</sup> The Board gave the following reasons for its conclusion: "1. Unlawful conduct; 2. It appears you may have made false statements and did not fully disclose information requested in the admission application; 3. Fraud and misrepresentation; 4. Neglect of financial responsibilities; 5. Compulsive gambling (emotional instability)."<sup>4</sup> Layon then requested a formal hearing pursuant to Rule 6(B)(2) of the North Dakota Supreme Court Admission to Practice Rules (North Dakota Admission Rules).<sup>5</sup> After a formal hearing was held, the Board confirmed its prior decision that Layon not be admitted to the North Dakota Bar.<sup>6</sup> Layon then filed a petition for review with the Supreme

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1. *Layon v. North Dakota State Bar Bd.*, 458 N.W.2d 501, 502 (N.D. 1990).

2. *Id.*

3. *Id.* Layon had passed the bar examination, thereby satisfying the academic requirement. *Id.* The Board informed Layon of the reasons for his lack of good moral character through notification dated June 21, 1989. *Id.*

4. *Id.* In response to the bar application question whether he had ever been charged with a crime, Layon answered, "Yes," mentioning a theft of property charge. *Id.* at 503-04. Layon went on to explain that he was acquitted of the charge at trial. *Id.* at 504. This was his only response to the question. *Id.* Layon answered, "No" to question 16b of the bar application, which states: "Have you ever been charged with violation of any motor vehicle law (excluding parking offenses)?" *Id.* After an investigation, the Board discovered many criminal charges that Layon had failed to disclose:

1. 07-17-69—Illegal possession and open container.
2. 11-17-76—Aggravated promotion of prostitution and gambling (Texas Courts).
3. 03-31-82—Forgery.
4. 06-22-82—NSF check (\$9,172.00).
5. 08-23-82—NSF check (\$6,800.00).
6. 09-20-82—Forgery (2 counts).
7. 06-07-83—Theft of Property (2 counts).
8. 01-18-88—No account check.

*Id.*

5. *Id.* at 502. Rule 6(B)(2) of the North Dakota Admission Rules provides that "[w]ithin 30 days after the mailing of the notification, the applicant may demand a formal hearing by written petition directed to the State Bar Board." N.D. R. ADMIS. TO PRAC. 6(B)(2) (1992).

6. *Layon*, 458 N.W.2d at 503. The Board's decision was by a written opinion dated November 3, 1989. *Id.*

Court of North Dakota pursuant to Rule 6(C) of the North Dakota Admission Rules, arguing that he had been denied due process, that the Board erred, and that he had met his burden of proving good moral character.<sup>7</sup> The North Dakota Supreme Court affirmed the Board's decision and *held* that Layon was not denied due process; that the evidence of prior misconduct—along with deception in financial matters which occurred in 1986 and 1988 and the false information provided on the application—was not too remote to prove present moral character; and that Layon's affidavits of support did not overcome the evidence against him.<sup>8</sup>

The requirement that attorneys possess "good moral character" has developed because of the necessity to safeguard the legal rights of those who rely on attorneys for representation and advice.<sup>9</sup> Another reason for character standards, though not as well pronounced, is the bar's interest in preserving a professional body and a respectable societal image of the profession.<sup>10</sup> Bar spokespersons have stated that this objective can be achieved by "eliminating the diseased dogs before they inflict the first bite."<sup>11</sup> Entry restrictions that are intended to protect the public, how-

7. *Id.* Rule 6(C)(1) provides: "An applicant who, after a formal hearing, receives notice that the State Bar Board will recommend against admission or has given a negative decision on licensure may request review of that recommendation or decision by the Supreme Court." N.D. R. ADMIS. TO PRAC. 6(C)(1)(1992). Layon raised the following issues with the Court:

1. WAS THE APPLICANT DENIED DUE PROCESS OF LAW AS A RESULT OF THE ACTIONS OF THE BOARD AND THE PROCEDURE WHICH WAS FOLLOWED IN THIS MATTER?
2. DID THE BOARD ERR IN DENYING THE APPLICANT'S MOTION FOR IMMEDIATE ADMISSION TO THE NORTH DAKOTA BAR?
3. DID THE APPLICANT MEET THE REQUIRED STANDARD OF PROVING HIS PROPER MORAL CHARACTER BY A PREPONDERANCE OF THE EVIDENCE DURING THE HEARING IN THIS MATTER?

*Layon*, 458 N.W.2d at 503.

8. *Layon*, 458 N.W.2d at 508-12. Layon argued that he was denied due process because he was not afforded notice specific enough for him to develop a proper defense. *Id.* at 507. The court stated that although the reasons in the notice were not models of specificity, he had the opportunity to request that they be made more specific—which he failed to do. *Id.* at 508. Thus, the court found that he was afforded all the vestiges of due process. *Id.*

9. Eric Neisser, *Conscientious Draft Refusal, Marijuana Possession, and the Bar Admission Requirement*, BAR EXAM., Aug. 1971, at 7. See *State v. Cannon*, 240 N.W. 441 (Wis. 1932). Perhaps the *Cannon* court recites the reasons for character standards best:

Realizing that those who assume to practice law without the proper learning and good moral character have it in their power to work great harm upon those who have a right to assume that they are properly qualified to advise them in legal matters and to protect them in their legal rights, the legislature has very properly prescribed certain qualifications which must be possessed by those whom become licensed as attorneys at law.

*Id.* at 444.

10. Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 509 (1985).

11. Donald T. Weckstein, *Recent Developments in the Character and Fitness*

ever, are often ineffective in weeding out those who engage in inappropriate conduct.<sup>12</sup> Thus, the fallout of these ineffective measures is a society that demands more protection from immoral and dishonest lawyers.<sup>13</sup>

Historically, an individual's moral fitness or character to practice law has been an incontrovertible credential.<sup>14</sup> The roots of moral character as a requirement to enter the legal profession date back as early as the Roman Theodesian Code.<sup>15</sup> The Anglo-American ties to moral character extend as far back as thirteenth century England,<sup>16</sup> when lawyers were subject to disbarment if they did not take an oath to "discharge 'their duty with care, diligence and fidelity.'"<sup>17</sup> Societal concern for the good moral character of lawyers seems to have emerged around the mid-seventeenth century, when governmental bodies began creating character requirements for admission to the bar.<sup>18</sup>

In the United States, the requirement of good moral character is believed to have arisen because of the fiduciary relationship between a lawyer and client.<sup>19</sup> In a concurrence in *Schware v. Board of Bar Examiners*,<sup>20</sup> Justice Frankfurter wrote: "From a profession charged with such responsibilities there must be exacted those qualities of . . . the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.'"<sup>21</sup>

The relationship of lawyer and client, as described by Justice Frankfurter, requires a higher degree of fiduciary responsibility than that of business partners.<sup>22</sup> For example, in *Mailath v. Oklahoma Board of Bar Examiners*,<sup>23</sup> an applicant was denied admission to the bar because he had induced clients to become business partners by concealing facts that would have in all

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*Qualifications for the Practice of Law: The Law School Role; The Political Dissident*, BAR EXAM., Aug. 1971, at 23.

12. R. J. Gerber, *Moral Character: Inquiries Without Character*, BAR EXAM., May 1988, at 15.

13. C. Graham Carothers, *Character and Fitness: A Need for an Increased Perception*, BAR EXAM., Aug. 1982, at 25.

14. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 248 (1957) (Frankfurter, J., concurring).

15. Gerber, *supra* note 12, at 14.

16. *Id.*

17. Orin N. Carter, *Ethics of the Legal Profession*, 9 ILL. L. REV. 297, 308 (1914).

18. Rhode, *supra* note 10, at 496.

19. Gerber, *supra* note 12, at 15.

20. 353 U.S. 232 (1957).

21. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring).

22. *Mailath v. Oklahoma Bd. of Bar Examiners*, 752 P.2d 803, 810 (Okla. 1988).

23. 752 P.2d 803 (Okla. 1988).

probability caused them to refrain from such an association.<sup>24</sup> As a result, the *Mailath* court found that the applicant lacked the "ethical qualifications" necessary for admittance to the bar.<sup>25</sup>

Bankruptcy, as opposed to breach of fiduciary duty, has rarely been a reason to deny an individual admission to the bar.<sup>26</sup> However, on occasion courts have denied admission based on frivolous bankruptcy filings.<sup>27</sup> In *In re Gahan*,<sup>28</sup> for example, the Minnesota Supreme Court denied an applicant admission to the bar because he filed bankruptcy in order to get out of paying his student loans even though he was suffering no serious financial hardship.<sup>29</sup> The court stated that such blatant financial irresponsibility showed a lack of moral duty to others.<sup>30</sup> Therefore, the court concluded that his act of filing bankruptcy for no sound reason demonstrated a lack of good moral character.<sup>31</sup>

Along the same lines as moral character requirements, professional rules of ethics emerged in 1887, when Alabama adopted a code of ethics for lawyers.<sup>32</sup> The American Bar Association (ABA) followed suit in 1908 by adopting the Canons of Professional Ethics, which were based largely on Alabama's code.<sup>33</sup> The Canons have since been revised, the first change appearing in 1969, when the ABA adopted the Model Code of Professional Responsibility,

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24. *Mailath v. Oklahoma Bd. of Bar Examiners*, 752 P.2d 803, 809 (Okla. 1988). *Mailath*, the applicant, failed to inform his clients of important facts relating to their potential liability in business ventures. *Id.* *Mailath* also did not afford his clients the opportunity to sell an interest in the business ventures to new partners, while all along he was disposing of his interest and liability. *Id.*

25. *Id.* at 810.

26. Martha E. Raymond, *The Effect of Bankruptcy on Bar Admission*, BAR EXAM., Feb. 1988, at 24.

27. See *In re G.W.L.*, 364 So. 2d 454, 459 (Fla. 1978) (denying an applicant's admission to the bar because he filed bankruptcy without a thorough job search, and he was not under any real economic hardship); *In re Taylor*, 647 P.2d 462, 466 (Or. 1982) (denying admission to the applicant because he did not make any effort to repay his student financial loans); Raymond, *supra* note 26, at 24 (Bar examiners view the reasons for filing bankruptcy with a suspicious eye.). But see *In re Kwasnik*, 508 So. 2d 338, 341 (Fla. 1987) (holding that the failure to pay back a forgiven debt cannot be a basis to deny admission to the bar).

28. 279 N.W.2d 826 (Minn. 1979).

29. *In re Gahan*, 279 N.W.2d 826, 831 (Minn. 1979). *Gahan* was unemployed for almost two months before he filed for bankruptcy. *Id.* at 827. The court discovered, however, that although he was unemployed for a time, his gross income was between \$1,250 and \$1,500 monthly, while his expenses were approximately \$500. *Id.* at 831.

30. *Id.* The court recognized that "such flagrant financial irresponsibility reflects adversely on an applicant's ability to manage financial matters and reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness to the practice of law." *Id.*

31. *Id.* at 832.

32. Carter, *supra* note 17, at 308. The Alabama code was primarily based on the lectures of Judge Sharwood, which were collected and published in 1954, and David Hoffman's "Fifty Resolutions" contained in his two volume book, *A Course of Legal Study*, published in 1836. A.B.A., PROFESSIONAL RESPONSIBILITY: MODEL RULES AND CODE OF JUDICIAL CONDUCT, MODEL CODE OF PROFESSIONAL RESPONSIBILITY ix (1984).

33. PROFESSIONAL RESPONSIBILITY, *supra* note 32, at ix.

followed by a second change in 1983 by the adoption of the Model Rules of Professional Conduct.<sup>34</sup> The Model Rules are intended to serve as an exemplar for states.<sup>35</sup> While ethical rules inside the legal profession have developed in the United States, and educational standards have differed, good moral character has remained a die-hard requirement for admittance to the bar.<sup>36</sup>

The right to admit persons to practice belongs to the states and their courts.<sup>37</sup> Every state requires an individual to be of good moral character in order to be admitted to the bar.<sup>38</sup> The standard of good moral character, however, cannot be created arbitrarily or discriminatorily without violating the Due Process or Equal Protection Clauses of the Fourteenth Amendment.<sup>39</sup>

The fact is, however, that "'good moral character' is an elusive, ill-defined concept."<sup>40</sup> Nonetheless, good moral character has been found to embody the ambiguous qualities of "honesty, fairness, candor, trustworthiness, [and] observance of fiduciary responsibility. . . ."<sup>41</sup> In addition, there is not a black letter definition of good moral character; rather, each case must be determined by its own facts.<sup>42</sup>

Lack of candor or misinformation on the bar application raises the presumption of bad moral character because it is believed these acts of dishonesty are likely to continue in the professional role.<sup>43</sup> Therefore, lack of candor in an application for admission is viewed as a serious violation and is quite often viewed as more

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34. *Id.* at x.

35. *Id.* at 9.

36. Rhode, *supra* note 10, at 493.

37. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 248 (1957) (Frankfurter, J., concurring). The North Dakota legislature has delegated to the Supreme Court of North Dakota the power to admit persons to the bar. N.D. CENT. CODE § 27-11-02 (1991). "The power to admit persons to practice as attorneys and counselors at law in the courts of this state is vested in the Supreme Court." *Id.*

38. THE BAR EXAMINERS HANDBOOK 122 (Stuart Duhl, ed., 2d ed. 1980).

39. *Schware*, 353 U.S. at 249. The court in *Schware* stated: "A State can require high standards of qualification, such as good moral character or proficiency in its law . . . but any qualification must have a rational connection with the applicant's fitness . . . to practice law." *Id.* at 239. Upon review, the burden is on the applicant to prove good moral character by a preponderance of the evidence. BAR EXAMINERS HANDBOOK, *supra* note 38, at 122.

40. Carothers, *supra* note 13, at 25.

41. *Pacheco v. State Bar of California*, 741 P.2d 1138, 1139 (Cal. 1987) (citing RULES REGULATING ADMISSION TO PRACTICE LAW IN CALIFORNIA, Rule x § 101, subd.(a)).

42. *In re Klahr*, 433 P.2d 977, 979 (Ariz. 1987). It has been postulated that a more appropriate inquiry into moral character should be "an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty [and] fairness. . . ." *In re G.W.L.*, 364 So. 2d 454, 458 (Fla. 1978).

43. See generally, Eric H. Miller, Annotation, *Falsehoods, Misrepresentations, Impersonations, and Other Irresponsible Conduct as Bearing on Requisite Good Moral Character for Admission to Bar*, 30 A.L.R. 4th 1020 § 5 (1984) (a collection of American cases concerning nondisclosure and the relation to lack of moral character).

serious than the act the candidate is trying to conceal.<sup>44</sup> For example, an applicant for the North Carolina Bar was denied admission because he failed to disclose material matters on his application.<sup>45</sup> The North Carolina Supreme Court stated that an individual who does not take care in filling out his or her application is not likely to exhibit any greater care when representing clients.<sup>46</sup> More specifically, the court recognized that lack of candor fails to show maturity and professional discipline necessary to prove good moral character.<sup>47</sup> Thus, efforts to deceive in the application procedure may be seen as blatant dishonesty that is likely to continue in the future.<sup>48</sup>

In North Dakota, an applicant must apply to take the bar examination provided by the State Bar Board.<sup>49</sup> One of the basic requirements to practice is that the candidate be of good moral character.<sup>50</sup> A character evaluation of each applicant is made by the Board, after which a recommendation is made to the North Dakota Supreme Court, and notification of the result is then sent to the applicant.<sup>51</sup> If the Board makes a negative recommendation, the applicant may then request a formal hearing.<sup>52</sup> If the recommendation remains negative after the formal hearing, the applicant may request a review by the North Dakota Supreme Court.<sup>53</sup>

In *Layon v. State Bar Board*,<sup>54</sup> the North Dakota Supreme Court reviewed the present moral character of Frank Layon, taking into consideration the findings of the State Bar Board.<sup>55</sup> Layon

44. Siegel v. Committee of Bd. Examiners, 514 P.2d 967, 983 (Cal. 1973).

45. *In re Legg*, 386 S.E.2d 174 (N.C. 1989). The applicant had failed to disclose several debts that the application required him to reveal. *Id.* at 175. He had also failed to disclose suits in which he was personally involved, and he failed to list on the original application memberships in professional organizations to which he belonged. *Id.* at 175-76.

46. *Id.* at 183.

47. *Id.*

48. Leonard W. Copeland, Note, *Admission and Reinstatement of Felons to the Bar: West Virginia and the General Rule*, 91 W. VA. L. REV. 451, 477 (1988-89).

49. N.D. R. ADMIS. TO PRAC. 3(A)(2) (1992). Rule 3(A)(2) provides: "(A) All applicants for admission by bar examination . . . (2) shall apply to take the examination on forms provided by the State Bar Board." *Id.*

50. *Id.* at R. 1(A). Rule 1(A) provides: "No person may be admitted to practice as an attorney and counselor at law in this state unless the person: . . . (2) is of good moral character." *Id.*

51. *Id.* at R. 3(D). Rule 3(D) provides: "Taking into consideration the results of the bar examination, along with the applicant's moral character, the State Bar Board shall make recommendations to the Supreme Court regarding the admission of each applicant to the Bar." *Id.*

52. *Id.* at R. 6(B)(2). For the text of Rule 6(B)(2), see *supra* note 5.

53. *Id.* at R. 6(C).

54. 458 N.W.2d 501 (N.D. 1990).

55. *Layon v. State Bar Bd.*, 458 N.W.2d 501, 509 (N.D. 1990). The comments to the *Statutes and Rules Governing Admission to the Bar* indicate that the applicant's present

argued that he proved, by a preponderance of the evidence, that he possessed good moral character and that the Board's reliance on his past conduct was too remote in time to prove his present moral character.<sup>56</sup> The court found that Layon's conduct relating to deception in financial matters, which occurred in 1986 and 1988, was not too remote to prove his present moral character.<sup>57</sup> In addition, the court found that the false information Layon gave on the bar application was deceitful and not completely candid, both of which also went to prove his present character.<sup>58</sup> The court furthered its position by stating that neither the letters of support nor the testimony in his favor were enough to overcome the evidence of his prior bad acts.<sup>59</sup>

The court suggested that if Layon had truly wanted to prove his present good moral character and rehabilitation, he should

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moral character should be considered. STATE BAR BD., STATUTES AND RULES GOVERNING ADMISSION TO THE BAR 9 (N.D. State Bar Bd., Bismarck, ND, 1990). The comments provide, in relevant part:

The Admission to Practice Rules of the North Dakota Supreme Court require (Rule 1A.2) that all admittees be of good moral character . . . . The State Bar Board will determine that an applicant's moral character is such as permits a positive recommendation when the applicant's record of conduct indicates that the applicant is presently honest, trustworthy, diligent, and reliable. Those traits in an applicant suggest that the applicant is one who, if otherwise admissible, will properly perform the obligations a member of the bar owes to clients, the courts, opposing parties and counsel, and the public generally.

*Id.* For the Board's reasons for finding Layon lacking in moral character, see *supra* note 4 and accompanying text.

56. *Layon*, 458 N.W.2d at 508-09. Layon also argued that he was denied due process because the allegations made against him were too vague to permit him to prepare a sufficient defense. *Id.* at 507. The court recognized, however, that while the allegations were not "models of specificity," Layon could have requested that they be made more specific. *Id.* at 508. The court went on to state that the applicants are allowed access to the files on which the Board bases their findings. *Id.* The court stated that not only did Layon have sufficient notice and an opportunity to be heard, but he also was fully aware of his past conduct. *Id.* The court concluded, therefore, that Layon was given more than adequate due process. *Id.*

57. *Id.* at 510. Layon argued that he had been rehabilitated. *Id.* at 509. However, the Board discovered "conversion and misappropriation of funds" of stock options in 1986. *Id.* at 504. Layon had represented to a stock broker that his approximate income on March 12, 1986 was \$70,000 to \$100,000 and that his net worth was from \$1,500,000 to \$2,000,000; in actuality, the Board discovered that his income was \$12,000 to \$14,000. *Id.* at 504-05. In a letter dated May 4, 1988, he continued to justify his belief of his higher net worth to the stock broker. *Id.* at 505. When the Board asked him if he believed the information given to the broker was false, he stated: "In looking back on it, yes . . ." *Id.*

58. *Id.* Question 20 of the bar application asks: "Have you ever been treated or confined for mental or emotional disorders . . . ?" Layon answered "No." *Id.* at 506. However, the Board discovered, through several witnesses testifying on Layon's behalf, that he had a problem with gambling and that he had in fact undergone treatment. *Id.* at 507.

59. *Id.* at 512. There were 20 letters of support from judges, attorneys and other professionals. *Id.* at 511. However, Layon's character witnesses were personal friends and relatives who had limited knowledge of his background. Brief of the Respondent at 13. *Layon v. State Bar Bd.*, 458 N.W.2d 501 (N.D. 1990) (No. 890303). One of his witnesses confessed, after hearing other testimony, that there were certain past events in Layon's life of which he was not aware. *Id.*



have been completely honest in his application, especially in his response concerning his treatment for a compulsive gambling addiction.<sup>60</sup> The court stated it was appropriate to view gambling addictions when deciding if an applicant can be considered "trustworthy and dependable" in the fiduciary relationship between lawyer and client.<sup>61</sup>

In addition to considering gambling addictions as a sign of a lack of trustworthiness or dependability, the Supreme Court Rules also permit examination of "evidence of drug or alcohol dependency" in moral character determinations.<sup>62</sup> If past substance abuse is considered by the North Dakota Supreme Court, what type of standards or requirements will the court look to for guidance when deciding if an applicant has rehabilitated himself? Perhaps decisions from other jurisdictions will serve as the best guides.

In *In re Strait*,<sup>63</sup> the New Jersey Supreme Court reviewed an applicant's past crimes and candor in determining moral character, but viewed his addiction to drugs and alcohol as the main concern regarding his admission to the bar.<sup>64</sup> The court was primarily concerned with whether or not the applicant had been rehabilitated.<sup>65</sup> The court alluded to a variety of areas relating to the applicant's rehabilitation, such as his candor concerning the addiction, whether or not he had been in some sort of treatment facility, commitment to recover, expert testimony regarding his recovery, the connection to the addiction and prior bad conduct, and his community service.<sup>66</sup> After review, the court admitted the applicant subject to certain rehabilitation conditions prescribed by the

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60. *Id.* at 507. The comments to Bar Board booklet, *Statutes and Rules Governing Admission to the Bar*, provide, in relevant part:

In determining whether the present moral character of an applicant qualifies her or him for a positive recommendation, the State Bar Board will assess the weight and significance of any inappropriate conduct by considering the following factors:

...

the applicant's candor in the admission process, the materiality of any omission or misrepresentations . . . .

STATE BAR BD., STATUTES AND RULES GOVERNING ADMISSION TO THE BAR 10 (N.D. State Bar Bd., Bismarck, ND 1990).

61. *Layon*, 458 N.W.2d at 507. Layon professed that he had control of his gambling problem. *Id.* He had testified that he had some treatment, which was contrary to his answer on the bar application. *Id.*

62. SEE STATE BAR BD., STATUTES AND RULES GOVERNING ADMISSION TO THE BAR cmt. (N.D. State Bar Bd., Bismarck, ND 1990).

63. 577 A.2d 149 (N.J. 1990).

64. *In re Strait*, 577 A.2d 149, 157 (N.J. 1990). The applicant had been addicted to drugs and alcohol since adolescence. *Id.* at 149.

65. *Id.*

66. *Id.* at 157-58.

Review Panel.<sup>67</sup>

In some cases, however, rehabilitation is not enough. For example, in *In re Glenville*,<sup>68</sup> the Illinois Supreme Court denied an applicant's admission, stating that prior bad acts connected to alcoholism were not lessened by the applicant's recent good conduct and recovery.<sup>69</sup> The applicant argued that the prior bad acts were related to his alcoholism and alcohol-related blackouts that resulted in his loss of memory.<sup>70</sup> The applicant contended further that the hearing panel arbitrarily dismissed the expert testimony regarding his alcohol-related blackouts.<sup>71</sup> The court recognized that the panel had given the expert testimony credence, but stated that, in the final analysis, the members of the panel were free to choose whether or not to believe the testimony.<sup>72</sup> The court held, therefore, that although the applicant had overcome his alcohol addiction, his prior bad acts were not diminished by his recovery.<sup>73</sup>

In another recent case concerning alcohol dependency, *In re Haukebo*,<sup>74</sup> the Minnesota Supreme Court remanded for reconsideration a decision by the Minnesota Board of Bar Examiners which denied an applicant admission based on an unsatisfactory chemical

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67. *Id.* at 158. The Review Panel's recommendations, which were to be in place for a period of three years, stated:

1. that he engages in the practice of law in New Jersey only as a partner, shareholder, associate, or employee of at least one other member of the New Jersey Bar or, in the alternative, as a solo practitioner under the supervision of a proctor, who is a member of the New Jersey Bar;
2. that he attends at least one meeting per week of Lawyers concerned with Lawyers (LCL) and five meetings per week of Alcoholics Anonymous (AA), and have another member of LCL and another member of AA confirm his attendance at the meeting(s);
3. that he undergoes and bears the expense of random urine testing for the presence of alcohol, cocaine, heroine, and marijuana; and
4. that he, another member of LCL, and another member of AA submit quarterly affidavits to the Committee, which affidavits are to demonstrate Strait's ongoing compliance with the above conditions.

*Id.* at 156.

68. 565 N.E.2d 623 (Ill. 1990).

69. *In re Glenville*, 565 N.E.2d 623, 629 (Ill. 1990). Though the applicant had a long history of arrests, the hearing panel and the court viewed the conduct of the applicant in March 1984 as the most important aspect relating to his present moral character. *Id.* at 628. As a result of his conduct in March 1984, the applicant was "charged with home invasion, armed robbery, residential burglary, armed violence and theft." *Id.* at 625. At the trial, however, the applicant was found guilty of only theft. *Id.*

70. *Id.* at 625.

71. *Id.* at 626. The applicant had a clinical psychologist testify to the fact that he had suffered a black-out on March 28, 1984, because of overconsumption of alcohol, and since that time, he had fully recovered. *Id.* The applicant also had a senior-certified-addictions counselor testify to the fact that he would not perform immoral or violent acts when sober. *Id.*

72. *Id.* at 627.

73. *Id.* at 629.

74. 352 N.W.2d 752 (Minn. 1984).

dependency evaluation.<sup>75</sup> Because of three driving while intoxicated convictions between 1979 and 1981, the Board ordered that the applicant undergo three chemical dependency evaluations, two from agencies the Board chose and one from an agency chosen by the applicant.<sup>76</sup> The Board concluded from the evaluation that there was insufficient evidence that the applicant had the requisite moral character necessary for admission.<sup>77</sup> On review, however, the court was unclear whether the Board concentrated on the applicant's behavioral pattern in making its decision, or whether the Board simply used the addiction to determine his moral character.<sup>78</sup> Consequently, the court remanded the case, stating that an applicant's moral character should not be decided completely on the individual's addiction to alcohol, but upon his or her "past and present pattern of conduct."<sup>79</sup>

The decision by the Minnesota Supreme Court was an appropriate one. Alcoholism is generally thought to be a disease, not a flaw in one's character.<sup>80</sup> Thus, standing alone, alcoholism should not constitute a deficiency in an individual's ability to practice law.<sup>81</sup> A blatant denial of an applicant because of alcoholism will serve only to stigmatize the individual, while at the same time ignoring the disease itself.<sup>82</sup> Accordingly, an applicant who has a substance addiction should not be viewed as untrustworthy or undependable based purely upon the addiction.

Moreover, the North Dakota Supreme Court should not regard an applicant who is addicted to alcohol as lacking in moral character. Rather, North Dakota should follow the Minnesota Supreme Court's view in *Haukebo*, judging the moral character of an individual addicted to alcohol on his or her behavioral pattern.<sup>83</sup> When faced with an applicant who has satisfied the general

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75. *In re Haukebo*, 352 N.W.2d 752, 754 (Minn. 1984). The Board of Law Examiners allowed the applicant to take the examination but conditioned his entry on passing a chemical evaluation or successfully completing a treatment program. *Id.*

76. *Id.*

77. *Id.* Two of the evaluations conducted by agencies chosen by the Board stated that the applicant was chemically dependent, while the evaluation conducted by the agency of the applicant's choosing stated that these incidents were related to mental health factors and not alcohol addictions. *Id.* The court referred to the Board's action as a "conscientious performance of its screening function." *Id.* at 755.

78. *Id.* at 756. The court concluded that an applicant's admission is determined according to his or her behavioral pattern. *Id.*

79. *Id.* at 755.

80. Jerome Braun, *Some Thoughts on Alcoholism and Admission to the Bar*, BAR EXAM., May 1988, at 10.

81. *Id.* at 7.

82. *Id.* at 10.

83. See *In re Haukebo*, 352 N.W.2d at 756.

requirements of the Bar,<sup>84</sup> but is found to be addicted to alcohol or to have alcohol-related problems, an appropriate solution for the North Dakota Supreme Court would be to admit the applicant upon the successful completion of a treatment or counseling program.<sup>85</sup>

The North Dakota Bar has recently adopted policies which may aid the court and the Board in discovering applicants' addiction-related problems. The new policy requires all applicants to complete an application form from the National Conference of Bar Examiners (NCBE) so that a character evaluation can be conducted.<sup>86</sup> The application is more in-depth than the application used by the North Dakota Bar Board.<sup>87</sup> For example, on the NCBE form, there are fourteen questions concerning character and fitness.<sup>88</sup> In light of this new policy, the applications will likely reveal more information regarding an applicant's moral character. Thus, the Board will likely consider dependency problems, such as substance abuse or Mr. Layon's gambling addiction, which, considered alone, may be unrelated to an individual's moral character.

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84. N.D.R. ADMIS. TO PRAC. 1 (1992). Rule 1, lists the general requirements for admission to the bar:

- (A) No person may be admitted to practice as an attorney and counselor at law in this state unless the person:
- (1) is at least eighteen (18) years of age;
  - (2) is of good moral character;\*
  - (3) has designated the Clerk of the Supreme Court as the applicant's agent or service of process for all purposes;
  - (4) has received a juris doctor or equivalent degree from a law school approved for accreditation by the American Bar Association;
  - (5) has complied with either Rule 3 or Rule 4; and
  - (6) has paid all required fees.

*Id.* Rule 3 discusses admission by examination and related procedures. *Id.* at R. 3. Rule 4 gives the requirements and procedure for admission by motion or attorney's exam. *Id.* at R. 4.

85. Braun, *supra* note 80, at 10.

86. Letter From the State Bar Board to Dean Jeremy Davis of the University of North Dakota School of Law (Feb. 11, 1992) (discussing the new policy).

87. Previously, applications were not processed by the NCBE for character evaluations unless the applicant was an individual who never lived or worked in the State of North Dakota, thereby making it unfeasible for the North Dakota State Bar Board staff to process the applicant. Telephone Interview with Carla Kolling, State Bar Board, Bismarck, North Dakota (May 8, 1992).

87. The questions range from, "Have you ever been addicted to or treated for, or counseled concerning the use of any drug, including alcohol?" to "Have you ever had a credit card revoked?" National Conference of Bar Examiners Application 11 (1992).

88. *Id.* at 9-12. A release of one's medical records must be signed if there has been an affirmative answer to the questions inquiring about substance addiction and related treatment, as well as treatment concerning emotional or mental conditions. *Id.* at 11.

