



# THE LAW FIRM OF J.W. STAFFORD

## **Dealing with Character Issues in the Maryland Bar Application Process**

For most applicants applying to gain admission into the Maryland Bar, the Application for Admission to the Maryland Bar (the “Bar Application”) is the height of inconvenience. Oftentimes, applicants are in law school and trying to complete the lengthy and extremely detailed Bar Application, which requires them to track down, among other things, former employers, college transcripts, and driving history records in every state where they obtained a license. In addition to that, they are also trying to prepare for those final round of law school exams.

For some applicants, however, the application process can turn into a nightmare because of something that happened years ago that raises a red flag on the character portion of your Bar Application. If you are an applicant that has any misconduct in your past – criminal charges or convictions, civil lawsuits, academic honor code issues or otherwise – the application process is a critical juncture for you. If these character issues are not properly disclosed and adequately addressed by you in your Bar Application, you may not be admitted to practice law in the State of Maryland.

If you have some issues in your past (or even present) that you think could be problematic in your quest to gain admission to the Maryland Bar, this article is for you. In this article, we will discuss (1) the character review process and how questions or issues relating to a Bar Applicant’s character are handled in Maryland; (2) analyze some recent Bar Application cases from the Maryland Court of Appeals; and (3) give you some practical advice if you are anticipating dealing with difficult issues arising out of your Application for Admission to the Maryland Bar.

### **An Overview of the Character and Fitness Review Process in Maryland**

Every applicant seeking to gain admission to the Maryland Bar should understand that there are three (3) separate and distinct entities that evaluate an applicant’s character and fitness in Maryland before you are sworn into the Maryland Bar. Those three entities are the Character Committee, the State Board of Law Examiners and the Maryland Court of Appeals.

#### **The Character Committee**

Each judicial circuit in the State of Maryland (there are 7 total) has a character committee that consists of at least five members, which are appointed by the Maryland Court of Appeals.

Every applicant seeking admission to the Maryland Bar must be personally interviewed by a member of the Character Committee. The members of the Character Committee are tasked with (1) personally interviewing each applicant, (2) verifying the facts stated in the questionnaire, contacting an applicant's references, and making any further investigation it finds necessary or desirable, (3) evaluating the applicant's character and fitness for the practice of law, and (4) transmitting to the Board a report of its investigation and a recommendation as to the approval or denial of the application for admission.

The first sign of trouble for an applicant seeking admission to the Maryland Bar is usually at the Character Committee stage. If the member of the Character Committee who interviews you concludes that there may be grounds for denying your Bar Application, you will be notified in writing and a hearing before the full Character Committee will be scheduled. At the hearing, which will be recorded, you will have the opportunity to testify, to present testimony and evidence, and have the right to be represented by counsel. After the hearing, the Character Committee will prepare a report and recommendation setting forth findings of fact on which its recommendation is based and a statement supporting its conclusion, as well as prepare a transcript of the hearing, which will all be transmitted to the State Board of Law Examiners.

### **The State Board of Law Examiners**

The State Board of Law Examiners ("the Board") consists of seven members of the Maryland Bar who are appointed by the Maryland Court of Appeals. The Board, in addition to overseeing the administration of the actual bar exam, exercises general supervision over the character and fitness requirements and the operations of the character committees, including adopting rules and procedures relating to the character and fitness process.

Upon receipt of the Character Committee's report and the hearing transcript, the Board has to determine if it believes there may be grounds for recommending denial of an application. If the Board concludes that there may be grounds for denial of the application, it must notify the applicant and give the applicant the opportunity for a hearing. If the Board reaches a conclusion that differs from the recommendation made by the Character Committee, then the Board must prepare a report and recommendation setting forth its findings of fact on which its recommendation is based and a statement supporting the Board's conclusion. Those documents are then transmitted to the Character Committee and the applicant.

If the Board decides to recommend denial of the application, it must first give the applicant an opportunity to withdraw his or her application. If the applicant chooses not to withdraw the application, then the Board will transmit its report and recommendation, as well as all other papers, to the Court of Appeals. Alternatively, if the Board recommends approval of an application but the Committee recommended denial of an application, the Committee can file exceptions to the Board's recommendation with the Court of Appeals within 30 days after the filing of the Board's report.

## **The Court of Appeals**

The Court of Appeals is the final arbiter of character and fitness of an applicant seeking admission to the Maryland Bar. If the Court of Appeals concludes, after reviewing the report of the Character Committee and any report from the Board, that there may be grounds to deny admission, the Court will order the applicant to appear for a hearing to show cause as to why their application should not be denied. The hearing before the Court of Appeals is held on the record in the presence of both the Character Committee and the Board.

Now that we've discussed the general process by which character and fitness issues are resolved in Maryland, let's talk about some important issues that come up during this process.

## **The Bar Application**

The most important aspect of the character and fitness process starts well before you ever go for your personal interview with a member of the Character Committee. The character and fitness process begins with your Bar Application. Again and again, the Character Committee, the Board and the Court of Appeals look to what an applicant said or did not say in their Bar Application as the reason for denying that applicant admission to the Maryland Bar. There are two (2) major concepts about the Bar Application that one must understand to gain insight into why the Court ultimately leans so heavily on the disclosures or omissions in the Bar Application.

As an initial matter, you must understand that statements made in your Bar Application are under oath and subject to the penalties of perjury. See Maryland Rule 19-202(b). This makes the statements within your Bar Application extremely important and requires that you go above and beyond to make sure that a full **and** accurate disclosure of information is made in your Bar Application. To do otherwise is simply to invite trouble and to give the Court of Appeals a ground for denying your application.

The second issue you must understand is that every applicant is under a duty to supplement their application up to the very moment that they are sworn into the Maryland Bar. In the Bar Application itself, you are required to sign a lengthy affirmation that you understand that your disclosures in the Bar Application are of a continuing nature and that you have a duty to supplement your responses until you are formally admitted into the Maryland Bar. This means that if you receive a DUI or are charged with a crime (regardless of whether you are actually convicted or not) after submitting your Bar Application, you have an obligation to inform the State Board of Law Examiners immediately, in writing, of these events, even if they occur the day before you are to be sworn into the Maryland Bar. Failure to do so, if discovered by the Board, could result in you being denied admission to the Maryland Bar.

These two issues were front and center in *In re Brown*, 449 Md. 669 (2016) and *In re Gjini*, 448 Md. 524 (2016). In *In re Brown*, applicant Deidre Brown was denied admission to the Maryland Bar by the Court of Appeals, despite narrowly being recommended for admission by both the Character Committee and the State Board of Law Examiners. In this case, Ms. Brown

had some character issues that raised red flags, including a misrepresentation of her GPA in law school to prospective employers for which she was sanctioned by her law school, outstanding credit card debts and past criminal charges of making a false statement to a police officer and felony theft, of which she failed to disclose the latter charge in her Bar Application.

The Court of Appeals ultimately denied Ms. Brown's application for admission to the Maryland Bar and based their decision largely on her failure to disclose the felony theft charge in her Bar Application, not the alleged conduct itself. The court explained that it has long emphasized the importance of candor and full disclosure in the Bar application process. *In re Brown*, 449 Md. 669, 685 (2016) (citing cases). Here, Ms. Brown provided inconsistent testimony to the Character Committee as to why she failed to disclose the felony theft charge in her Bar Application. While this inconsistent testimony may have been an honest mistake on the part of Ms. Brown, who represented herself at all stages of the character review process (you know what they say about lawyers who represent themselves....), the court viewed her inconsistent testimony as evasive. Additionally, the court also found it troubling that Ms. Brown falsified her GPA on a resume she submitted to prospective employers during her 3L year in law school. Her testimony that she only withdrew her falsified resume because of fear of getting caught, as the prospective employer likely would have found the discrepancy in her transcript, likely did not give the court comfort about admitting her into the Maryland Bar.

The case of *In re Gjini* demonstrates not only the importance of notifying the State Board of Law Examiners of any changes to the representations made in your Bar Application but also demonstrates that the Character Committee and other individuals involved in the character review process actually do some independent investigation of applicants. *In re Gjini*, 448 Md. 524 (2016). Here, Mr. Otion Gjini had a history of alcohol related driving offenses, including a then recent charge of driving under the influence of alcohol for which he received a probation before judgment, which he disclosed on his Bar Application. A member of the Character Committee independently researched Mr. Gjini and found on-line comments he made on an internet message board, which referred to women and homosexuals in an extremely derogatory manner. Needless to say, the Character Committee member forwarded his recommendation of denying Mr. Gjini's application to the full Character Committee.

Mr. Gjini's downfall, however, was not based on any of the issues relied on by the Character Committee interviewer. Rather, Mr. Gjini's hopes for admission to the Bar were dashed when he failed to supplement his Bar Application to let the State Board of Law Examiners know that a Petition to Violate Probation had been filed by his probation officer for his DUI months before his Character Committee hearing.

The Court of Appeals, in a split decision, once again rejected the recommendations from both the Character Committee and the State Board of Law Examiners and denied Mr. Gjini's application for admission to the Maryland Bar. Again, the Court of Appeals was not necessarily concerned with the charge itself. Rather, their issue with Mr. Gjini was his failure to supplement his Bar Application to inform the State Board of Law Examiners that a petition to violate probation

had been filed against him. The court reiterated its previous pronouncements about a Bar Applicant's mandatory obligation to supplement their Bar Application, stating that "[w]e emphasize that disclosure on the Bar application and immediate and full supplementation after an incident warranting exposition is mandatory, not voluntary. It is not the choice of a candidate for admission whether to disclose and under what conditions." *In re Gjini*, 448 Md. 524, 545 (2016) (citing *Application of Strzempek*, 407 Md. 102 (2008)).

Both the *In re Brown* and *In re Gjini* cases make clear the importance of a full and complete disclosure of any and all potential character issues in the Bar Application, as well as the importance of supplementing your Bar Application up until you are ultimately admitted. As these cases demonstrate, the Court of Appeals does not simply pay lip service to these obligations and is not hesitant to reject the recommendations of the Character Committee or the State Board of Law Examiners.

### **The Burden of Proof is Yours to Bear**

Under Maryland Rule 19-203(d), you – the applicant – bear the burden of proving to the Character Committee, the Board, and the Court that you have a good moral character and are fit to practice law. This places a significant onus on you and requires you to err on the side of over disclosure should you have any character issues in your past or present that could be problematic. Another key point to keep in mind is that if you fail or refuse to answer fully and candidly any question in your Bar Application or any relevant question asked by a member of the Character Committee, the Board or the Court, that alone is a sufficient ground for finding that you have not met your burden of proving your good moral character and fitness to practice. See Maryland Rule 19-203(d).

### **The Subpoena Power: They Don't Just Take Your Word for It**

If you thought that the Character Committee or the Board lacked the necessary tools to dig into your background, you would be sadly mistaken. The Character Committee and the Board have the authority to issue subpoenas to acquire documents and to compel testimony, making it nearly impossible for any applicant in their crosshairs to lead them astray. Indeed, if the target of the subpoena fails to cooperate, they can be held in contempt. On the other hand, you also have the right to request that a subpoena be issued on your behalf to acquire documents or to compel testimony.

While it is likely a rare circumstance where an applicant will need to or want to request a subpoena to procure records or to compel testimony, the strategic decision to do so should be made early in the process when the case is before the Character Committee. The reason for the need to make a decision on whether to subpoena records or testimony at the Character Committee stage is because the State Board of Law Examiners has discretion whether to permit

additional evidence to be submitted that was not heard before the Character Committee. See Md. Rule 19-203(b). Thus, not coming forward with all of your evidence at the Character Committee stage could very well backfire.

### **Takeaways for Those Seeking Admission to the Maryland Bar with Potential Character Issues**

If you know that your Bar Application may raise a red flag before the Character Committee — you have a prior conviction, an academic honor code violation, a bad credit history or range of other issues — it is advisable that you consult with legal counsel before filing your Bar Application. Smart and experienced legal counsel can assist you in a few ways. First, they can make absolutely certain that you don't fail to disclose a particular charge in a prior criminal proceeding by researching the criminal case and doing their due diligence to uncover a charge that maybe you forgot had been filed against you. Ms. Brown, in *In re Brown*, seemed to suggest that she did not know a theft charge had been filed against her, but she later contradicted herself on this issue. Secondly, they can counsel you on any steps that you may need to take to increase the likelihood of getting a recommendation of admission to the Maryland Bar in the character review process. For example, if you have a history of drug abuse or dishonesty, experienced counsel can give you recommendations on steps to take now so that you can make a strong case for admission during your interview with the member of the Character Committee. Finally, legal counsel can help you avoid making contradictory statements at hearings during the character review process. While the contradictions made by Ms. Brown were likely honest mistakes, legal counsel may have been able to help her avoid these contradictions at her hearing by properly preparing her to testify.

If you are seeking admission to the Maryland Bar but have some character issues in your past that may raise red flags, please do not hesitate to contact the Law Firm of J.W. Stafford, L.L.C. at (410) 514-6099 so that we can schedule a confidential consultation to help you navigate this process. Now that you've done all of this work to get through law school, don't leave your admission to the Maryland Bar to chance. Let us help you today.