

I hate to advocate drugs, violence or insanity to anyone, but they've always worked for me.

Hunter S. Thompson

CHARACTER AND FITNESS INVESTIGATIONS

1. Fitness: Whether a condition impairs ability to practice law.

Chemical dependency.

- Fitness considerations:
 - Documented abstinence.
 - Recovery program.

Mental Health.

- Hospitalizations (ten-year history) for: **schizophrenia** or other psychotic disorder; **bipolar** or **major depressive mood disorder**; **drug or alcohol abuse**; **impulse control disorder** (incl. kleptomania, pyromania, explosive disorder, pathological or compulsive gambling); and/or **paraphilia** (incl. pedophilia, exhibitionism or voyeurism).
- Treatment received (five-year history).
- Hospitalizations for treatment of any mental, emotional or psychiatric illness not listed above (one-year history).
- Disclosure of any mental health condition which impairs or limits, or if left untreated could impair or limit, your ability to practice law in a competent and professional manner (recent history).

CHARACTER AND FITNESS INVESTIGATIONS

1. Fitness: Whether a condition impairs ability to practice law (continued).

Fitness Consideration: Mental Health Issues.

- Treatment protocol.
- Compliance with treatment protocol.

CHARACTER AND FITNESS INVESTIGATIONS

2. Character: Whether past misconduct shows insufficient morality to practice law.

Examples.

- Educational discipline (honor code violations).
- Job terminations.
- Financial irresponsibility.
- Criminal conduct.
- Traffic offenses.
- Applicant's candor.
 - Applications for Admission to The Florida Bar and/or other jurisdictions.
 - Applications for Admission to law schools.
 - Employment applications and professional license applications.
 - Credit applications.

CHARACTER AND FITNESS INVESTIGATIONS

3. Character and Fitness.

Separate and distinct considerations.

Some overlap.

- Poor decision making when Applicant is unhealthy.

PROCEDURES

1. Bar Application and Investigation.

Conducted by administrative employees.

Extensive investigation.

- Applicant's disclosures.
- Internal investigations.
 - Criminal background.
 - Credit reports.
 - School records (undergraduate, graduate).
 - Applications (educational, bar admission, credit, professional).
 - Court documents, proceedings.
 - Driving history.
 - Internal Revenue Service records.
 - Treatment records.

PROCEDURES

2. Consideration of Character and Fitness Issues.

Investigative Hearing.

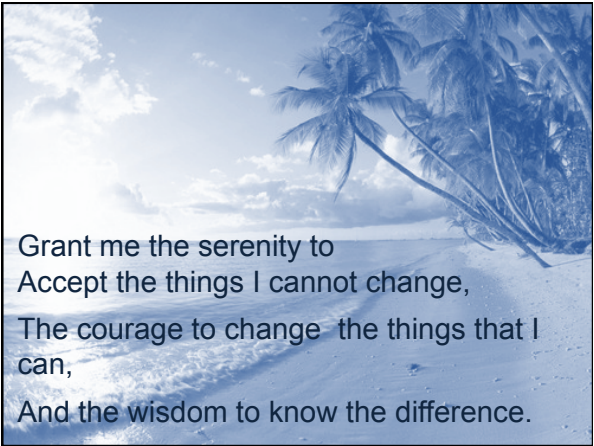
- Notice to Appear for Investigative Hearing.
 - Issues presented to Board (volunteers, appointed by the Florida Supreme Court to evaluate these issues; mostly lawyers, but non-lawyers, as well).
 - Summary of issues in the Notice to Appear.
- Investigative Hearing Panel.
 - Comprised of three members, with one member assigned primary responsibility for questioning Applicant.
 - Investigative, but not informal.
 - More like an interview than a trial.
 - Not a casual environment.

PROCEDURES

2. Consideration of Character and Fitness Issues (continued).

Formal Hearing.

- Specifications: Filed if, after the Investigative Hearing, disqualifying conduct directs General Counsel for the Board to prepare a charging document.
 - Similar to a civil complaint.
- Applicant's Answer and Affirmative Defense(s).
 - Asserts rehabilitation from past misconduct.
- Witness and exhibit lists are exchanged.
- Formal Hearing.
 - Five member panel.
 - General Counsel/Deputy General Counsel prosecutes.
 - Proceeds like a civil trial: opening, witnesses, exhibits, argument and closing.



RECOGNIZING WHAT WE CAN AND CANNOT CHANGE

We cannot change or control the Florida Supreme Court.

1. Florida Supreme Court: Exclusive jurisdiction over admission of lawyers.

Marching orders to:

- Florida Board of Bar Examiners.
- The Florida Bar.
- Florida Lawyer's Assistance, Inc.

RECOGNIZING WHAT WE CAN AND CANNOT CHANGE

Conditional admissions.

- Instructions.

Preventative Measures.

- Call in / log in requirements.
 - Visual notes by something that will not vary with routine (toothbrush).
 - Alarms on phones.
 - Enlist support from others.

RECOGNIZING WHAT WE CAN AND CANNOT CHANGE

Preventative Measures (continued).

- In case of emergency.
 - Self-test within twenty-four hours.
- Research/prepare ahead of time: labs with late or weekend hours; chain of custody forms with you (glove box, purse/wallet).
- Don't neglect recovery.
 - Advocacy – reference stable recovery.
 - Sponsorship.
 - Relationship with monitor.
 - Attendance/participation in meetings.

FLORIDA BOARD OF BAR EXAMINER HEARINGS

Board's perspective.

- Interview that focuses on the bad.
- In-person assessment of Applicant.
 - Is the Applicant candid?
 - Is the Applicant going to make full disclosures?
 - Will the Applicant stay to excuse and justify misconduct?
- Applicant's (mistaken) perspective.
 - Focus on the positive.
 - Afraid to acknowledge negative.
 - Fighter personality.
- Board v. Applicant.
 - Board wins every time.



It may help to understand human affairs to be clear that most of the great triumphs and the tragedies of history are caused not by people being fundamentally good or fundamentally bad, but by people being fundamentally people.

Neil Gaiman

TELL THE TRUTH

Simple, but not easy.

Ask: Why did I make these poor choices?

- Dig deep.
- Describe and share insight.
- Recognize mistake.
 - Understand why it happened.
 - It won't happen again.

Power of vulnerability.

Recovery program.

- Forced participation.
 - Turn reluctance into training ground.
- Sounding board / neutral feedback.
 - Family members not helpful.
 - Rigorous honesty and feedback.

PROACTIVE STEPS TO SUCCESS

Fitness issues.

- Proof of a strong recovery program.
 - Abstinence.
 - Strict compliance with call in / log in requirements.
 - Recovery group participation – AA, NA, GA.
 - F.L.A. support group.
- Recent sobriety or prior non-compliance. What's different?
 - Acceleration of treatment.
 - Intensive outpatient.
 - Residential.
 - Recommendation of an evaluator.
 - F.L.A. evaluations.
 - Board's experts.
 - Service-oriented volunteer work.
 - Reinforce sobriety.
 - Form of community service

PROACTIVE STEPS TO SUCCESS

Character issues.

- Preventing candor issues.
 - Don't rely on memory. Collect the documents!
 - Termination:* Contact the employer; confirm the reason for the termination.
 - Delinquent tax return(s):* Contact the IRS and obtain abstract.
 - Arrest(s):* Collect police reports and court records.
 - Traffic citation(s):* Get driving history.
 - Delinquent debt:* Three-in-one credit report.
 - Educational discipline:* Get copies of your student file(s).
 - Worthless Check(s):* Collect bank account statements.
- If disagree.
 - Careful reflection.
 - Disclose both sides.
- Objective person to check.
 - No minimization.
 - No non-disclosure.
 - No shading, coloring, spinning.
 - Neutral truth.
- Correct prior candor issues.

PROACTIVE STEPS TO SUCCESS

Rehabilitation.

- Elements of rehabilitation, Rule 3-13.

Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

- (a) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (b) unimpeachable character and moral standing in the community;
- (c) good reputation for professional ability, where applicable;
- (d) lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- (e) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- (f) restitution of funds or property, where applicable; and,
- (g) positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar.

PROACTIVE STEPS TO SUCCESS

Rehabilitation (continued).

- Concrete element. Positive action = community service.
 - Confirm hours/efforts with a letter from organization/agency.
- Character affidavit.
 - Disclose issues in Notice to Appear/Specifications.

Good opinion based on good and bad.

We should not be embarrassed by our difficulties,
only by our failure to grow anything beautiful from
them.

Alain de Botton

