

Education & Practice

Published by the Virginia State Bar – SECTION on EDUCATION of LAWYERS – for Practitioners, Judges, and Law Teachers

Message from the Chair

[While our legal education may start in law school, the foundation of professionalism starts much sooner.]

The continuing education of lawyers is vital to the preservation of an effective legal system. This is the reason the Virginia State Bar formed the Education of Lawyers Section. According to the Section's description on the State Bar's website, "[l]egal education begins in law school, moves through a period dominated by bar review courses and bar exams, and continues through all stages of a lawyer's professional life." The "education of lawyers," however, transcends the classroom curriculum, the treatises, statutes, and case law that guide our legal work. Our "education" also includes a moral code of ethics and a level of professionalism that lawyers must maintain to ensure competent service and justice in our interactions with our clients, our colleagues, and the judiciary.

While our legal education may start in law school, the foundation of professionalism starts much sooner. We learned at a very early age it is wrong to lie, cheat, and steal, and as children, our team coaches told us that while everyone cannot win the game, we all can play fair and show good sportsmanship no matter the outcome. These lessons and words of wisdom were the foundation of professionalism. Whether from our parents, guardians, siblings, teachers, neighbors or friends, these were lessons meant to build character, teach civility, and shape our moral "compass."

Now as members of the legal profession, we seek opportunities that continue those "lessons and words of wisdom." The Education Section sponsors and co-sponsors several annual events that support our mission of offering educational programs to not only our Section members, but also all State Bar members and our Virginia law school students. In this Newsletter edition, we will highlight these programs because the Section wants to ensure our readers are aware of the programs and participate in the 2020 sessions open to them.

The Section's Newsletter is also an opportunity to share with our readers the important topics of the day that impact the profession and the participants, those being the law students, the law school deans and professors, the practicing attorneys, and the judges. The feature topic in this edition explores the character and fitness of lawyers and offers suggestions to better prepare our law students to handle this aspect of their application for membership in the State Bar.

My goal as the Section's Chair is for the Section to create a process that will ensure more membership involvement by submitting articles for the Newsletter to ensure its continuity. The Section currently is operating without an editor for the

EDUCATION & PRACTICE

Spring 2020

Published by the Virginia
State Bar – Section on
Education of Lawyers

Contents

Chair's Message

Rakes Award Winner Announced

Writing Workshop - April 24 in DC Cancelled

Annual Meeting CLE

Teaching Character and Fitness

<https://www.vsb.org/site/sections/educationoflawyers>

Chair
Bernadette S. Peele

Vice Chair
Sharon K. Eimer

Secretary
Kevin E. Martingayle

Immediate Past Chair
Kimberly A. Pierro

Newsletter Editor
Vacant

Liaison
Mallory J. Ralston

Newsletter, and this is the primary reason there has not been a publication since 2017. However, with the teamwork of the Section's resourcefully wonderful State Bar liaison, Mallory Ralston, and Section Board members Professor David Spratt and Kimberly Pierro, we accomplished this Edition's publication.

I want to thank Steven A. Isaacs, this Edition's featured author and the Section's 2018 recipient of the William R. Rakes Leadership Award, for sharing his insight and experience on the character and fitness of lawyers from his twenty-five years of service as Director to the Virginia Board of Bar Examiners. Mr. Isaacs volunteered to write his article because he witnessed a problem and identified possible solutions he felt needed to be shared with the Section. I hope Mr. Isaacs' initiative will inspire not only our Section members, but also anyone who reads our Newsletter to consider submitting an article for publication. We are a Section whose membership consists of educators, judges, and practicing attorneys, and our goal is to ensure the continuing education of lawyers. Our Newsletter is titled, "Education and Practice." There is a myriad of timely topics that will support the purpose of our Section. If you are interested in publishing an article, please contact our Section's liaison, Mallory Ralston at mralston@vsb.org.

I hope you enjoy this Edition!

Bernadette S. Peele, Chair



The Section on the Education of Lawyers in Virginia will proudly present its 2020 **William R. Rakes Leadership in Education Award** to Former President of the Virginia State Bar, **Jeannie P. Dahnk**, of Fredericksburg.

The award was established in 2012 to honor William R. Rakes, of Roanoke, for his longstanding and dedicated efforts in the area of legal education, both in Virginia and nationally. It recognizes a lawyer from the bench, the practicing bar, or the academy who has made a significant contribution to improving legal education, both in law school and throughout a lawyer's career, and to enhancing communication, cooperation and meaningful collaboration among the three constituencies of the legal profession.



More information about Jeannie's contributions can be found on the section's webpage at www.vsb.org.

Fifth Annual Legal Writing Workshop

The Fifth Annual Legal Writing Workshop that was scheduled to be held on April 24, 2020 **has been cancelled**. On behalf of the sponsors of the program, the WCL Legal Rhetoric Program, Virginia CLE, and the Virginia Bar Association Law Practice Management Division, this Virginia State Bar Section on the Education of Lawyers hopes you will join us next year. Stay tuned on the [section's webpage](#) for upcoming news and events.

"Where else can you receive advice to improve your legal writing abilities from writing professors, judges, and leading practitioners, all at the same time?"



Your section leadership is hard at work, gearing up for the Annual Meeting in June!

Together with the Senior Lawyers Conference, the Young Lawyers Conference, and the Family Law Section, we bring you a CLE that is so important, it's taking up TWO time slots:

**What the #\$\$%^ is Going On?
Strategies for Fostering Professionalism
in the Practice of Law**

You won't want to miss it.

The VSB is currently evaluating all upcoming meetings and events and has delayed opening registration for the VSB Annual Meeting. Check back in for updates [here](#).

Education & Practice

Teaching Character and Fitness

This article will discuss ideas that law schools may consider to assist students in addressing character and fitness issues. Although the procedures and policies described herein will be limited to the procedures followed in Virginia, by and large these are the same procedures followed in all fifty states. I was asked in 1994 by W. Scott Street, III, then Secretary/Treasurer of the Virginia Board of Bar Examiners (“Board”) to fill the newly created position of Director of Character and Fitness. As of this writing, I have completed twenty-five years serving the Board as Director. The ideas and suggestions here are based on those years of experience. The responsibilities of the position include the screening of all applicants for licensure, including those that take the bar examination or apply by motion without examination. On average, over 1500 persons apply for licensure each year. Each person must complete a character and fitness questionnaire (“questionnaire”). After review of the responses to the questionnaire and independent investigation by Board staff, a determination is made whether any disqualifying factors exist. Past behaviors that manifest a possible defect in the honesty, trustworthiness, diligence or reliability of an applicant would warrant further scrutiny.

In 1995, pursuant to Virginia Code Section 54.1-3925.1, the Board assumed sole responsibility for certifying that each applicant’s character and fitness ensures “that he or she could ‘perform the obligations and responsibilities of a practicing attorney,’” *Rules, Virginia Board of Bar Examiners, Section III, Character and Fitness Requirements (“Rules”)*. Prior to that time, either the Deans of the state law schools or designated lawyer representatives of the Circuit Court made a recommendation as to the character and fitness of the applicant. It became apparent that law schools could not and did not want to assume the responsibility for vetting their students’ backgrounds. This reluctance was logical as the number of students at the law schools had increased and the law schools did not have the resources to conduct in-depth investigations. But as stated herein, the role of the law school in this process remains no less important today.

The purpose of this scrutiny and screening is to provide the public assurance that the applicant has the moral character and fitness to perform the responsibilities of a practicing attorney. *Rules, Section III (A)*. Character and fitness is critical to the legal process. A July 2016, *Institute for the Advancement of the American Legal System* study, whose respondents were practicing lawyers, found that “integrity, trustworthiness, and common sense, as well as the professional competencies of listening attentively and respectfully, arrival on time for meetings, appointments, and hearings, were prioritized in brand-new lawyers over legal skills (e.g. drafting policies, preparing a case for trial).”

In the preamble to the Virginia Rules of Professional Conduct, the Virginia Supreme Court emphasizes the attribute of moral character required of an attorney, as “within the frame work of these Rules, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and *moral* emphasis added) judgement guided by the basic principles underlying the Rules” Rules of Prof. Conduct Preamble, Part 6, §II, p.255. The oath of fidelity in Virginia that every prospective lawyer person must take before licensure states that “You will *honestly* (emphasis added) demean himself/herself in the practice of law and execute his/her office of attorney at law to be best of his/her ability.” “A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs.” *Id.*, Rules of Prof. Conduct. To become licensed, therefore, the applicant must not only pass the Bar exam, but also simultaneously provide the admitting authority with evidence of a history of personal honesty and integrity, ethical behavior, adherence to the law and rules and regulations connected to the applicant’s personal life, employment, and education.

The character and fitness questionnaire provides background information relating to where the applicant has lived, worked, been educated, whether the applicant has been charged or convicted of any crimes, including serious traffic infractions or violations, whether the applicant has been disciplined or found guilty of an honor code violation, discharged by an employer or asked to resign, failed to pay bills, student loans, or taxes, had

a judgment filed against him or her, filed for bankruptcy, failed to pay child or spousal support, had his or her driver's license revoked or suspended, been in the military, been a member of any other profession and been disciplined, been subject to civil litigation, or demonstrated conduct that would call into question the ability to practice law in a competent, ethical and professional manner. An applicant must provide a recent credit report and DMV transcript. Most importantly, an applicant must not omit any of the information sought by the admitting authority, thereby raising a nondisclosure issue. In this regard, the law school application of the applicant is often reviewed and the responses compared to the responses on the questionnaire. Annually, thirty to forty hearings are held in Richmond for applicants that have a history of negative behavior that would be considered disqualifying.

LAW SCHOOL INVOLVEMENT IN THE CHARACTER AND FITNESS PROCESS

Law schools should take a proactive role in communicating and educating law students regarding the criteria to satisfy character and fitness requirements for licensure. An applicant's negative behavior, before and during law school, is likely to affect the decision of the Board of regarding licensure. Too often, the role of the law school is reactive, only getting involved after the Board has intervened before licensure. Consider the following recommendations and proposals:

(1) Law schools should consider, if not already in place, having a particular faculty member or administrator responsible for advice and guidance regarding character and fitness issues. This approach has several advantages. First, the person will have expertise concerning the subject, especially what issues are important to the admitting authority, and what isolated events of negative behavior (e.g., a past due account or parking ticket, an isolated speeding ticket, or a misdemeanor over five years ago) are not relevant or material to the admitting process. Knowledge of the character and fitness screening process and requirements and communicating this information to students will result in more successful applications.

(2) In the 1L year, law schools should, emphasize through oral, written, electronic, classroom or other means, the importance of personal behavior with respect to, among other things, compliance with the law, the honor code, debt management, and substance abuse. During the 1L year, there should be a there be a regular special presentation by a member of the Board or the Character and Fitness Committee explaining the process and requirements of character and fitness screening. This presentation could come as part of the Professionalism for Law Students program.

(3) There has recently been a focus on a lawyers' well-being, physical and mental. Law students should avail themselves with the information and resources that are available for counseling and treatment. The Board commends those individuals who have demonstrated personal responsibility and maturity in dealing with health issues and the Board encourages applicants who may benefit from treatment to seek it. Seeking treatment does not result in a denial of licensure. The Character and Fitness Committee and the Board regularly use, with great success, the resources the *Virginia Judges and Lawyers' Assistance Program*, formerly *Lawyers Helping Lawyers*. The program offers screening, lawyer to lawyer/student mentoring, and referrals to treatment facilities. The program is confidential and enjoys tremendous rehabilitation success, including licensure.

(4) It is particularly important for each student's law school application to be complete and accurate and to provide details regarding the time, place, and facts underlying any negative behavior required to be disclosed. Where it is discovered that there is a variance or discrepancy between a law school application and the character and fitness questionnaire, especially in regard to criminal and traffic charges and convictions, resulting in an omission of material information to the law school, the Board will seriously scrutinize such a situation.

In this regard, material omissions or failure to disclose on a law school application may result in denial or delay in licensure.

Although the admission policies of law schools vary, it is recommended that law schools encourage students to amend their law school application, as needed, to report any negative behavior occurring prior to law school that was omitted on the law school application. The same pertains to negative behavior while enrolled- such behavior must be disclosed on the questionnaire, and the law school cannot assist the student if it has no knowledge of such behavior. Negative behavior during law school is considered more serious than prior negative behavior. Law schools should communicate this standard to students. Law schools should advise students that negative behavior occurring during law school, which would meet the criteria for disclosure on the law school application, should be reported to the law school.

Law schools should scrutinize the decision to admit an applicant with a felony conviction, or a cumulative and repetitive record of convictions over a significant time period. While not a bar to licensure, the Board requires significant rehabilitation, and a denial or delay of licensure often results from a felony conviction. If an applicant with a felony conviction is admitted, guidance from the law school relative to the requirements for rehabilitation should be provided. A felony conviction requires an automatic hearing before the Character and Fitness Committee and automatic review by the Board.

(5) A serious honor code violation by an applicant while in law school will result in an automatic hearing before the Character and Fitness Committee and automatic review by the Board. Such violations (and any resulting sanctions) vary greatly from law school to law school, ranging from administrative error (e.g., failure to follow exam instructions), to inadvertent plagiarism (e.g., failure to attribute), to intentional cheating (e.g., collaboration where an advantage is gained).

Law schools should review and consider revising their honor code rules, procedures, discipline, and sanctions, in light of the effect of honor code violations on licensure.

(6) Law schools should specifically educate their students on the criteria for rehabilitation. *See Rules*, Section III(E). A negative past can only be overcome by rehabilitation. For a serious negative record, greater rehabilitation is required. In this regard, the formula I have observed that can successfully lead to licensure is “time plus rehabilitation = redemption (licensure).” The law school can significantly assist in the rehabilitation process. How? Counsel the student to accept responsibility and express remorse for past behavior, to perform significant community and civic service, to conduct himself/herself in an exemplary manner, and provide proof (corroborated by recommendations and reference letters) of the student’s good standing in the community and intent to conduct oneself in an exemplary fashion in the future.

Virginia law schools should consider standard policies and procedures to address character and fitness issues, from the application questions and decision to admit, to requirements to report negative behavior while in law school, to rehabilitation. Law schools should assist students by providing information regarding opportunities for rehabilitation, such as opportunities for civic and community volunteer work, available treatment and counseling options, and recommending methods for obtaining meaningful references and recommendations. A reference is given little weight unless there is an acknowledgement that the reference knows the history of the applicant that is of concern to the Board.

The matters discussed herein are not exhaustive of the character and fitness issues faced by applicants seeking admission to the Virginia bar. Law schools are uniquely situated to offer significant assistance to their students who will undergo formal character and fitness scrutiny and proceedings. This assistance can be accomplished by a more robust educational emphasis on the character and fitness process while enrolled in law school. This focus will benefit the

students when they apply for licensure and may also result in fewer hearings before the admitting authority. The cost associated for law school involvement in this process appears to be minimal. No extra classroom or books are needed: law schools can perhaps incorporate these ideas into orientation, the ethics curriculum, and a final form of communication before students apply to take the bar examination.

To accomplish the objectives discussed herein, it is recommended that a more formal ongoing relationship and communication system be established between the law schools and the Board, specifically through the annual Professionalism for Law Students Program presented by the Virginia State Bar's Section on Education of Lawyers. It is also recommended that character and fitness information be provided by those offering pre-law presentations.

In its Preamble, the Virginia Supreme Court states that "Lawyers play a vital role in the preservation of society." *Id.*, Rules of Prof. Conduct. To perform this function, a lawyer must be "competent, prompt & diligent." *Id.*, Rules of Prof. Conduct. The Board is tasked with the responsibility of identifying and licensing those applicants who can meet the required standards of character and fitness. *Rules*, Section III. For the purpose of protecting the public and safeguarding the system of justice, a license to practice law is a Privilege, not a Right. A legal education is deficient if the student does not possess the requisite character and fitness, and law schools should consider ways to provide advice and resources to address character and fitness requirements.

Regarding the future relationship of law schools and the bar admitting authority, what I have said and proposed here is better said by the Honorable Cynthia L Martin, Chair of the National Conference of Bar Examiners, in her "Letter From The Chair" in the Fall 2019 "The Bar Examiner," Volume 88, Number 3:

"Our respective lanes cannot function effectively as a path to the profession without collaboration, shared respect, shared vision, open-mindedness, and cooperation. If one lane needs a little roadwork, the others must be willing to temporarily absorb the

additional load, without viewing it as an opportunity to permanently divert traffic."



Stephen A. Isaacs, Director of Character & Fitness, Virginia Board of Bar Examiners

In addition to his general law practice, Isaacs has been the director of the Character and Fitness Committee of the Virginia Board of Bar Examiners (VBBE) since its inception in 1995, working directly with the faculty and deans of each of Virginia's law schools.

Would you like to contribute to the next newsletter?

Education Section leaders seek content that will inform Virginia lawyers and connect section members across the state:

- Topical articles that you have written
- Articles that you have read and think bear reprinting
- Cases that you would like to discuss
- CLE ideas or programs of interest
- Law School happenings



Direct submissions to the section liaison, Mallory, at mrjalston@vsb.org.



Virginia State Bar Education of Lawyers Section
Board of Governors 2019-2020

Bernadette S. Peele, Esq.
Prince William County
Attorney's Office
Chair

Sharon K. Eimer, Esq.
Office of the Public
Defender
Vice Chair

**Kevin E. Martingayle,
Esq.**
Bischoff Martingayle PC
Secretary

Kimberly A. Pierro, Esq.
Truist Bank
Immediate Past Chair

Dean Henry N. Butler
Antonin Scalia Law School, George Mason
University

Stephen A. Isaacs, Esq.
Director of Character & Fitness
Virginia Board of Bar Examiners

Hon. Elizabeth A. McClanahan
Supreme Court of Virginia
Dean, Appalachian School of Law

Dean Davison M. Douglas
College of William & Mary
Marshall-Wythe School of Law

Hon. LeRoy F. Millette, Jr.
Supreme Court of Virginia

Frank E. Telegadas, Esq.
Allianz Worldwide Partners

Dean Brant J. Hellwig
Washington and Lee University
School of Law

Hon. Jacqueline F. Ward Talevi
Roanoke County General District Court

John M. Bredehoff, Esq.
Kaufman & Canoles, P.C.

Dean Wendy Collins Perdue
University of Richmond School of Law

Dean B. Keith Faulkner
Liberty University School of Law

C. Kai Memmer, Esq.
Glenn Robinson Cathey Memmer & Skaff
PLC

Hon. David W. Lannetti
Norfolk Circuit Court

Dean Risa L. Goluboff
University of Virginia School of Law

Professor David H. Spratt, Esq.
American University,
Washington College of Law

Hon. Michael F. Urbanski
United States District Court Western District
of Virginia

Dean Mark D. Martin
Regent University School of Law

Ms. Mallory J. Ralston, Liaison
Virginia State Bar

Get involved! If you wish to serve on the Board of Governors of the Section on the Education of Lawyers or would like to learn more about available positions, please email Mallory at mralston@vsb.org.