

## October 2020 Bar Exam takers – Welcome to the Bar

If the Florida Bar Exam moves forward on October 13th, (which I hope that all the pieces fall together, and it is successful), I would like to welcome you into our exclusive club of Florida Lawyers. But I would like to apologize for the period of hazing that you have undergone because of our initiation rites. The rigor of the investigation of your character and fitness and the memorization of voluminous knowledge that you will never use does not even parallel the normal Greek Life rites of memorizing the Greek Alphabet or the motto on the side of a Budweiser can. In addition, there is no way to mentally prepare for the *examinus interruptus* on three different occasions. I hope that the harm that you have suffered because of lost opportunities, jobs, familial time, health care, and increased debt can be repaired in time. However, once you do get on the other side of the door, you should not easily forget the frustration that you have felt for months and the fact that your legitimate needs were ignored by the profession in which you have chosen to be a part. You should take this frustration and demand change.

### **Time to Change the Florida Bar Admission Process from a Hazing Ritual into Collaborative Process.**

The current bar admission process is a hazing ritual. Florida Law prohibits hazing, which is defined “as any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student for purposes including, but not limited to:... (b) Admission into any organization operating under the sanction of a postsecondary institution;” § 1006.63, Fla. Stat. Such actions include, but are not limited to

any activity that would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or other forced activity that could adversely affect the mental health or dignity of the student.

Of course, the Florida Bar is not operating under the sanction of a Florida law school, but as a profession, from the law school, to the bench and the bar, we have ignored the very real statistics that in 2019, over 62% of new lawyers stated that they have suffered from anxiety or depression or both, and 36% of those self-medicated with alcohol.<sup>1</sup> The issues with mental illness and substance abuse are substantially similar for law students.<sup>2</sup>

The purpose of the Florida Board of Bar Examiners is to both certify the technical competence of those admitted, but, more importantly, to protect the public and to safeguard the judicial system. It would seem that as a matter of common sense that the public would be better protected, and our judicial system would be safeguarded by ameliorating the stressors of

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<sup>1</sup> Found at <https://www-media.floridabar.org/uploads/2019/04/Young-Lawyers-Division-Mental-Health-Wellness-Survey-Report-Final.pdf> (last accessed on May 6, 2019)

<sup>2</sup> Jerome Organ, David Jaffe & Katherine Bender, Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns, 66 J. Legal Educ., Autumn 2016, at 128-134

these applicants instead of exacerbating these conditions. Our current path, especially with the Florida Bar's class of COVID-19, will lead to a mental health crisis in the profession, and a danger to the public.

### **The Florida Board of Bar Examiners Must be a Catalyst to Encourage Behaviors that Protect the Public and to Safeguard the Judicial System.**

The Florida Board of Bar Examiners is the least transparent branch of Florida government, and it demands full disclosure and candor from all applicants to review under its confidential guidelines. There are no bounds on the investigation of the Board of Bar Examiners if they believe that such information is relevant to the character and fitness of the applicant. Furthermore, there is no accountability for the actions or rationale of the Board of Bar Examiners.

The primary reason for this power is the lack of transparency. The Board of Bar Examiners contends that, pursuant to its own rule, 1-61, that all information maintained in the discharge of its duties is fully confidential. This includes all of its policies and procedures, reports, guidelines, and materials. As such, while there are guidelines for investigations, and specific guidance as to certain behavioral issues, such guidelines are not open to the public. Further, it appears that the decisions of the board of bar examiners are all subjective, as there are no reports published regarding their findings. Notwithstanding decades of actions from the Florida Board of Bar Examiners, there are no statistics on the success of their screening functions, recidivism rates, or any method to determine their success in protecting the public or safeguarding the profession.

Most recently, Disability Independence Group filed a comment to the new attempts of the Florida Board of Bar Examiners to change their rules to permit them to engage in [wholesale evaluations of mental illness our history of substance abuse](#). Our [comment](#) highlighted how the ABA and many jurisdictions have required that the mental condition or history of substance abuse must be related to otherwise disqualifying conduct, or it will run astray of the requirements of the ADA and will dissuade applicants from receiving assistance. The Board of Bar Examiners [response](#) to our comment was their assurances how their present confidential policies and procedures are compliant with its interpretation of the law, and how the Board of Bar Examiners has the right to review a treating doctor's treatment of any mental disorder or substance abuse issue.

The importance of having transparency is to promote behaviors that are encouraged. The gotcha mentality of a secret police force should be changed. What type of treatment is expected for driving under the influence? If you have a bankruptcy, how do you demonstrate responsibility? If you had a mental breakdown because of a death in the family, what type of treatment should you get? If you had an issue with candor, what type of volunteer work would be acceptable? How can appropriate behaviors be encouraged so the person can become a valued member of the profession?

The importance of having accountability of the Florida Board of Bar Examiners is paramount. It was unprecedented for Chief Justice Canady to apologize to applicants for the

failures of administering the Bar Exam. However, all provisions of the government must be commended for their successes and accountable for their failures. In order to determine the failure in the process, to ensure that this does not reoccur, the examination of how it occurred is important. Furthermore, with decades of actions by the Florida Board of Bar Examiners, it is difficult to understand how there is a lack of empirical data regarding the success of their screening function, (both substantive knowledge and character and fitness) or correlation with their approval of an applicant and the later discipline that is done related that attorney in the future.

### **The Appropriate Function of the Florida Board of Bar Examiners**

The Florida Board of Bar Examiners and law schools should work in tandem to ensure the success and admission of future applicants. To view the Board of Bar Examiners as only a screening mechanism is an abdication of their role to protect the public and safeguard the profession. There is no question that working with law schools would facilitate collecting information and certifying disability accommodations, but more importantly, would encourage wellness and behaviors expected of members of the profession.

### **The Role of the Florida Bar Class of COVID-19**

Once you get in, its as much your Florida Bar as it is my Florida Bar. Get involved in the Young Lawyers Division, and for me, get involved in the Animal Law Section. Don't accept that the Florida Board of Bar Examiners is not part of the Florida Bar, and therefore you cannot do anything. File a petition. Demand change. Its your profession.