



President's Perspective

IF THAT MOCKINGBIRD DON'T SING

By Amy Noe Dudas

PRESIDENT'S PERSPECTIVE

Last October, when Yankee¹ graced this cover, I considered the changes some states are making to our rules that seem to chip away at the core of attorney values. In doing so, I suggested that we should be open to the discussion, at least so we can save our seat at the table.

How, then, do we ensure that those granted the privilege of practicing law maintain those amorphous but crucial traits like emotional intelligence and self-awareness? How do we know that lawyers will be able to communicate tactfully (and therefore productively) with their clients, opposing counsel, and judges? Even though we have continuing education requirements to stay current in the law (and for those of us of a certain age, we've all seen that guy in the back with the Indianapolis Star spread open in front of him), how can we be sure that those who are admitted to practice really *want* to be life-long learners?

The assessment tools used to predict success as law students and as lawyers, respectively the LSAT and the bar exam, are rightfully being scrutinized and questioned as to whether they are truly equitable measures of aptitude for law school and practice. But these tools are all we have at the moment, at least in Indiana, to ensure that those of us

who aren't disadvantaged by the inequities in the educational and social systems enter the practice with a solid working comprehension of the rules of professional conduct, legal processes, sources of law, and threshold legal concepts. But how do we test for those qualities that can't really be taught but are just as important to good lawyering as regurgitating the elements of negligence?



Well, we do have the Rules of Admission to the Bar and the Discipline of Attorneys, right? Rule 13 tells us that, minimally, one must receive a J.D. from an ABA-accredited law school that includes at least two cumulative semester hours of professional responsibility instruction.² And before that new J.D. can even take the bar exam, she must *prove*

that she "possesses the requisite good moral character and fitness to practice law."³

Maybe that's how we sort the Finches⁴ from the vultures.

What many laypersons don't know (and many lawyers forget), is that we don't get to become lawyers unless our highest court deems us in possession of good moral character and fitness to practice law. Rule 12 tells us that "good moral character" includes "the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary

responsibility, and the laws of this State and of the United States, and a respect for the rights of other persons and things, and the judicial process.” “Fitness” includes “the physical and mental suitability... to practice law in Indiana.”⁵

That last part’s not vague. *At all.*

Well, keep reading. “In satisfying the requirements of good moral character and fitness, applicants should be persons whose record of conduct justifies the trust of clients, adversaries, courts, and others

with respect to the professional duties owed to them, and whose record demonstrates the qualities of honesty, trustworthiness, diligence, or reliability.”⁶

Your character and fitness interviewer was looking for evidence of crimes, cheating, lying, workplace misconduct, deception, misrepresentation, abuse of legal process, financial neglect, issues of emotional or mental instability, and unaddressed substance dependence, among other things.

That’s why the application to take the bar exam is so very, *very*, involved. You may recall that you had to disclose “with full candor of

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any facts which bear, *even remotely*, upon the question of... character and fitness..."⁷ And if you don't disclose? That's almost worse, even (maybe especially) if you just "forgot."

That's why we had to submit documentation of every single traffic citation. Because if you're twenty-six years old and have already racked up ten speeding tickets, you might be showing a disregard for the law. In fact, a history of frequent traffic infractions may be one of the *best* indicators of good moral character and fitness to practice law. After all, how fast you drive (considering the low likelihood that you'll be the one pulled over) says a lot about your propensity for following the rules when no one is watching.

So if your past conduct includes instances of multiple infractions, youthful indiscretions, or a pattern of irresponsible spending, those that scrutinize your life in consideration of whether you will be granted the privilege of taking the bar exam may very well take a moment to consider whether, deep down, you embody those nebulous traits that ensure our profession remains a noble one.⁸

We know that the practice of law, in Indiana at least, includes the giving of legal advice, interpreting and applying statutes and case law, gathering and introducing admissible evidence, examining and cross-examining witnesses, acting on behalf of others in legal negotiations, and applying techniques of advocacy in adversarial proceedings.

And the fundamental values of our identity as lawyers include, in part, those qualities that define good moral character and fitness to practice law. The traits that stand between new law school graduates

and the bar exam should remain vital as we're considering creative ways to solve the access to justice gap caused by inequitable pipelines, lawyer deserts, and the increasing cost of legal services. We must not give short shrift to the inherent values we know lawyers must have but aren't directly taught before making changes to our admissions practices and rules of conduct.

Scout reminded us that it's a sin to kill a mockingbird. Mama said she'd buy us a diamond ring if that mockingbird wouldn't sing. Perhaps the looking glass that comes next is where we pause to look back at ourselves and insist the provision of legal services maintains a commitment to those core values.

But I hear billy goats are kind of fun, too. 🐐

FOOTNOTES:

1. Also known on Instagram as "Wiener Dog Extraordinaire" @yankee_dudas
2. Ind. Admission and Discipline Rule 13(4)
3. Admis. Disc. R. 12(2)
4. Atticus or otherwise. Many thanks to Andy for many things, but today for helping me work that one out.
5. Admis. Disc. R. 12(2)
6. *Id.*
7. *Id.* (emphasis added).
8. Rule 12, Section 3 also makes it clear that those advocating the overthrow of the government by "force, violence, or other unconstitutional or illegal means" have no business practicing law in Indiana.

