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Wm. Hedges Robinson Jr.

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THE COLORADO CHARACTER INVESTIGATION OF APPLICANTS TO THE BAR

By WM. HEDGES ROBINSON, JR.

*of the Denver Bar, Chairman of the Legal Education
and Admissions Committee*

What are adequate safeguards for the character investigation of applicants to the bar, and does Colorado employ them?

To answer this question, a determination must first be made of the phrase "adequate safeguards." This determination has been made for us in a report of the American Bar Association¹ and the National Conference of Bar Examiners. The basic essentials of this system are²:

1. The work of character investigation should be assigned to separate committees in order to relieve the law examining board of this additional duty.

2. Registration at the beginning of law study should be required of all students studying in the state, and the character examination, including a personal appearance before the committee or a member, should be conducted at the time of registration, as well as before the bar examination.

3. The candidates should be required to file a complete questionnaire and inquiries should be directed by the committee to all his references and past business connections.

4. Publication of the names of the candidates should be made.

5. The application and questionnaire should be filed in sufficient time to permit a period of at least 90 days for investigation before examination. At the same time the character interview and investigation should be completed and action taken by the time the examination is held. It is important that the investigation should be made before the examination, because it is easier to reject a person of doubtful character before the examination than after.

I.

THE STUDENT APPLICANT

Before determining whether the Colorado procedure measures up to these minimum standards, it should be pointed out that there are two different types of applicants, namely the student

¹ See 63 A.B.A. 176 (1938) where the proposals are set forth in full.

² 18 The Bar Examiner 205 (1949).

and the attorney. The standards proposed in this first portion of this discussion are limited to the student applicant.

1. *The Separate Morals Committee.* The rules of the Colorado Supreme Court provide³:

A character committee is hereby constituted consisting of five members of the bar, each of at least five years' standing. The members of said committee shall be appointed by the Supreme Court and hold office for a term of five years and until the appointment of their successors. Said committee shall be known as 'The Bar Committee' and its duty shall be to pass upon the ethical and moral qualities of all applicants for admission to the bar.

In this respect Colorado complies fully with the recommendation for a separate committee to handle the law examination and the character investigation.

2. *Registration and Examination of Law Students.* There is no registration provided in the Colorado system for prospective law students. The only official state registration occurs at the time application is made to take the bar examination. Since the application may be filed as late as thirty days, and cannot be filed more than sixty days prior to the examination⁴ and there are over one hundred applicants per examination, the character study of each candidate is perfunctory in Colorado. Under the Rules lists of prospective candidates are sent to the Clerk of the Supreme Court, the Clerk of the District Court in each County, and the Secretary of the Colorado Bar Association ten days *after* each examination.⁵ Few lawyers actually see these lists, and a substantial majority of the lawyers do not realize the lists are available. These lists are not published in any bar publication. The Colorado law schools of their own volition require applications to be filed by all candidates for admission. These applications range from a perfunctory name and address sheet to a fairly detailed questionnaire. However, where the questionnaire form is used, the general college admissions board, and not the law school, sees and acts upon the application, the emphasis in this case being upon educational requirements rather than moral standards.

The registration system used in Colorado does not contemplate any personal appearance before any examining committee until the time of the bar examination itself.⁶ Consequently, the morals examination, crowded into a very limited period, at the law examination, is ineffective. Moreover, it would seem to be

³ Rule 201 R.C.P. Colo.

⁴ Rule 203 R.C.P. Colo.

⁵ Rule 218 R.C.P. Colo.

⁶ Rule 216 R.C.P. Colo. provides that the committee shall "personally interview" each applicant at the time of bar examination.

physically impossible to inquire into the ethics and morals of approximately 150 applicants in the time now allotted for that purpose. To each group that appears before the committee one of the members delivers a lecture on ethics in an effort to impress the applicants with the high standards of the Bar and wisdom of abiding by these standards. The bar committee believes these lectures have been most effective. The present procedure is to call the applicants into one of the rooms in the Capitol Building in groups of ten each. Certain general questions are asked of all of them and then each member of the Committee who has the file before him interrogates two of the ten applicants. The examination requires the entire day.

Thus Colorado fails to meet this standard adequately. It does not have a registration of law students at the beginning of study. It does not conduct a character examination nor hold an interview with the student at the time of the application. It does not conduct an examination of the applicant prior to the bar examination; it does hold a "personal interview" with the applicant as a part of the examination.

3. *The Questionnaire.* There is a written application for the candidate in Colorado. The questionnaire is not very extensive. It makes no serious attempt to evaluate and inspect the moral character of the applicant. Its stress seems to be more on the educational and residential requirements than on morals. The committee seems to rely at present on the affidavits furnished by the applicant. Little, if any, inquiry is made by the committee of or about each applicant either prior to or at the time of the examination unless almost by chance some danger signal is raised concerning the applicant.

In this connection, the rules provide ⁷:

Every applicant shall accompany his application with an examination fee, which shall be \$35.00 for applicants in classes A and B and \$10.00 for applicants in classes C and D, and shall attach thereto his own affidavit that he is a citizen of the United States, that he believes in the form of government thereof and has never been disloyal thereto, that he is over the age of 21 years (giving his age), that he is a resident of Colorado (giving his address), that he has never been convicted of a felony, and that if admitted it is his intention to begin the practice of law within this state, or the teaching of law in an approved law school in Colorado, within three months from the date of his admission and to make the same his permanent and usual occupation.

Proof of such (moral and ethical) qualifications of applicants in classes C and D shall be by three affidavits;

⁷ Rules 204 and 210, R.C.P. Colo.

one of an instructor in the law school attended by applicant; one of a member of the bar in good standing known personally to some member of the bar committee; and one of a person chosen by applicant.

These character affidavits should not replace a personal examination by the committee into the moral history and attitude of the applicant; and particularly when the registration does not occur until after the law examination.

It should be obvious that a character investigation should be conducted early. There have been recent instances where applicants with criminal records have attended and graduated from law schools in Colorado because no investigation was made of the student's past. Not only should it be the duty of the character committee to require registration with it at the time of law school study, but admission to law school should be entirely controlled by the faculty of the law school under rules which require an extensive case history to be filed by the law student.⁸

4. *Publication of Names of Candidates.* Publication of the candidates' names in a limited sense occurs in Colorado, chiefly by posting. But widespread publication of these names does not occur. The Rule provides⁹ that the clerks of the designated courts shall keep the list posted for thirty days, and "furnish them to newspapers as may be requested."

5. *Time of Filing.* As previously pointed out the application can be filed as late as thirty days before the examination. This is much too short a period, particularly in the case of out of state applicants.

As mentioned previously, the time interval is too short to permit any real investigation of the applicant. Of course, the argument can be made that due to the extreme length of time between the dates of the examination and the announcement of the grades, there is ample time for investigation. The argument can be made, but it overlooks two vices; first, no such examination is adequately made, partly because of the affidavits of character and partly because of a naive assumption that we all know each other in Colorado; and secondly there is such undue stress on the law examination that the feeling exists that a person who passes the law examination with a good grade should be given the benefit of the doubt and admission refused only in the clearest case of lack of character.

6. *Conclusion.* We thus conclude that the safeguards erected in Colorado for character investigation are inadequate. The separate character committee is highly commendable. It should, however, be given investigative powers including the right to hold

⁸ Florida requires each applicant to be fingerprinted and these prints are sent to the F.B.I. for report; 18 Bar Exam. 171, 10/49.

⁹ Rule 218 R.C.P. Colo.

hearings and subpoena witnesses; it should be furnished with an adequate expense account; and it should be allowed adequate time for investigation and review of all applicants.

The questionnaire should be revised and made more extensive, and should be filed by the applicant at least 90 days prior to the examination. Personal interviews with applicants should occur prior to and not at the time of the bar examination.

Registration should be required by the state committee of all law students in the state. Publication of applicants' names should be made in at least one newspaper of statewide circulation at least four weeks prior to the bar examination, and also in *Dicta*.

Colorado should adopt the practice now in effect in several states of calling upon the local bar association to investigate each applicant from its region; and no applicant from Colorado should be permitted to qualify until he has been approved by the local association.

II.

THE ATTORNEY APPLICANT

1. *The Character Committee.* While the character committee theoretically functions the same with respect to the attorney as to the student applicant, the practice deviates from theory. The secretary of the committee is the investigating agent of the committee. Obviously he has neither the resources, contacts or sources of information that are available to the National Conference of Bar Examiners. This comment is made without in any way reflecting upon the capability and work done by the present secretary.

But the fact remains that a specialist in this field such as the National Conference is, cannot help but be better equipped and with wider contacts than a single state agency. Colorado should employ the Conference to make this investigation. If the fee required of attorney applicants is at present insufficient to pay the charge of \$50 per investigation, than it should be raised to meet this cost. The Conference handles these investigations for thirty-six states, the District of Columbia, Hawaii and Guam, and these jurisdictions simply increased the cost to the applicant to permit this service. It might be mentioned that the fee for admission on motion or by comity is as high as \$250 in one or two states; and in many of them it is \$75 to \$100.

We have been advised that in times past character investigations have not been required of certain applicants; or if made have been made only to comply with the working of the rule and not the spirit. No applicant, however estimable, should escape a character investigation. Generally the worst scoundrels can furnish the best affidavits.

2. *Registration of Applicant.* The rules¹⁰ divide attorney applicants into four classes. They are:

A. Those who, not then being citizens of Colorado, have been admitted outside of this state (by the highest court of the jurisdiction having such power) and have practiced there eight years of the ten years immediately preceding application here, comprise class A.

B. Those who, not then being citizens of Colorado, have been admitted outside this state (by the highest court of the jurisdiction having such power and under requirements equal to ours) and have practiced there three years of the five years immediately preceding application here, or taught for such period in an approved law school, comprise class B.

Class C. Those who have been admitted outside this state, but do not belong to either class A or class B, comprise class C.

D. Residents of Colorado who have not been admitted to any state, comprise class D.

We may ignore class C, as these applicants are treated for all practical purposes, as students.

The application requires the attorney applicant to state his loyalty to the government and lack of conviction of a felony (Rule 204, R. C. P.) just as is required of student applicants. There is no provision made for fingerprinting although three states now require it upon registration. There is no specific time for filing, and no time requirement upon the committee with respect to action upon these applications. "Personal interviews" of each applicant are required under Rule 216 by a member of the committee.

3. *The Questionnaire.* The registration forms inadequately stress moral and ethical considerations and do not provide for fingerprinting. Accompanying these forms is an affidavit concerning length and place of residence and practice, and the facts concerning any "disbarment" proceeding "instituted" against applicant.¹¹ Also "proof of the moral and ethical qualifications of applicant in classes A and B shall be made by three affidavits"—one by a member from the bar of the community where the applicant last practised, one by a business man there, and one by a member of the bar personally known to a member of the character committee.

4. *Publication.* No publication or posting of the applicant's name is made. Almost without exception, admission of the attorney is made without notice to anyone except members of the character committee.

¹⁰ Rule 202 R.C.P. Colo.

¹¹ Rule 205 R.C.P. Colo.

5. *Investigation of Applicant.* The present method of investigation in Colorado of attorney applicants has been previously discussed. Affidavits are a grossly inadequate substitution for a thorough investigation.

6. *Conclusion.* Colorado adheres only sketchily to adequate safeguards with respect to attorney applicants. It provides inadequate character investigation and registration. It makes no pretense of publicity concerning applicants in this class. It does not use the facilities of the National Conference of Bar Examiners.

IF NOT THE STATE BAR EXAMINATION— WHAT?

By GORDON JOHNSTON

*of the Denver Bar; Dean of the College of Law,
University of Denver*

It is fairly open to question whether we in Colorado have yet evolved the best of all possible methods of determining who shall be admitted to the sometimes dubious privilege of practicing law in our colorful confines. We have I am sure done very well; it is certainly not the purpose of this paper to suggest any grave shortcomings in our present rules and procedures concerning admissions. The legal education and admissions committee of the State Bar Association which is responsible for this issue of *Dicta* has directed me to report upon procedures for admitting bar applicants, different from those now in effect in Colorado, that have been proposed and may merit study.

THE DIPLOMA PRIVILEGE

The unpleasant task of weeding out the unfit among those who, for reasons good or entirely perverse, desire to be lawyers, has never rested solely upon the collectively broad shoulders of the bar examiners. We teachers in the law schools catch it first. The dean is the meanest man of all, for he must in the first instance decide who shall be admitted to the study of law and upon whom the door shall be closed—closed with as gentle a bang as possible, for the sake of public relations, but closed nonetheless firmly. The process of student selection has been bettered in recent times, though it is no more uniform in our Colorado schools than in law schools throughout the nation. In general, an applicant must now have a pre-legal scholastic average above that which suffices for a baccalaureate degree; he must face the discouragement of a personal interview with a dean who, pleasant fellow though he may be at home, adopts a chilling "show me" attitude toward the intending registrant; he is urged to take an aptitude