A Critical Review Culminating in Practical Bar Examination Application Techniques in Regards to the "Good Moral Character Requirement"—In re Majorek, 244 Neb. 595, 508 N.W.2d 275 (1993)

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I. INTRODUCTION

"Morality is simply the attitude we adopt toward people whom we personally dislike."

-Oscar Wilde

Although we would not normally equate the analysis of the upper echelons of the justice system with so simple an element as whether the court personally likes those who come to be judged before it, the methods used to determine admission to the bar might be characterized so crudely. The testing for good moral character does not equate with the objective balancing that is expected to take place in legal proceedings of the United States. Due to the inexactness of defining such a term as "morality," when it is applied to determine whether an applicant to the bar is suitable, the court may as well be applying a standard based on whether everyone personally likes the applicant.

Every state requires good moral character on the part of those applying for admission to practice law. Yet the standard remains to be administered in an unpredictable way and rests on unsubstantiated and implausible factual assumptions. The line that has been drawn—the requirement that applicants prove their good moral character to be admitted to the bar—is, standing alone, extremely imprecise and "unusually ambiguous." It can be defined in an almost unlimited number of ways, for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. It is easily adapted to fit personal views and predilections [and] can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

In November 1993, the Nebraska Supreme Court was once again presented the opportunity to deflate the good moral character requirement of the Nebraska State Bar. In *In re Majorek*, the court instead decided to uphold the requirement under the auspices of its responsibility to adopt and implement systems designed to protect the public interest and safeguard the justice system. This Note will examine the validity of the court's justifications in *Majorek* for continuing to

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4. *Id.*
5. *Id.*
7. *Id.* at 596, 508 N.W.2d at 277. See Ne. Ct. R. Admis. Att'y app. A.
apply the good moral character requirement, noting the conflicts that arise when applying an archaic standard in a contemporary context.

Part II begins with an historical discussion of the good moral character requirement, including the reasons for its continued application, the traditional categories under which to deny applications under the good moral character umbrella, and tests that jurisdictions try to apply to measure an applicant's good moral character. Part III provides a discussion of the Majorek opinion itself, presenting the relevant facts against the backdrop of the State of Nebraska's goals of protecting the public from morally deficient individuals wanting to practice law and helping those applicants who continue to deny their afflictions to face their problems and seek the proper medical or psychological treatment.

Part IV analyzes the court's approach to applying the good moral character requirement to Majorek from a "rational connection" perspective. It then presents the effects of being denied admission so as to make future applicants aware of the serious consequences that can develop by not competently completing the bar application. Part IV ends with the practical information all applicants are searching for: How do I complete the application to sit for the bar exam so I can be confident that I have successfully fulfilled all of the Commission's requirements and at the same time make the process go as smoothly as possible? Part V concludes the Note with a brief prediction about the future of the good moral character requirement in Nebraska and throughout the United States.

II. BACKGROUND

The State of Nebraska utilizes a process similar to most states for determining whether an applicant is qualified to sit for the bar examination.

Each applicant must file with the secretary of the bar Commission a written request for admission and a personal affidavit as to the applicant's age, residence, and time and place of study and degree, or admission and period of practice in courts of record in another state, the District of Columbia, or a territory, together with the certificates or affidavits of at least two citizens of good standing in the community where the applicant resides. . . .

The Commission either approves the application or makes a recommendation that the applicant be denied. The Nebraska Supreme Court is then the sole decisionmaker on the applicant's qualifications.

8. NE. CT. R. ADMS. ATT'y 2.
9. In re Majorek, 244 Neb. 595, 603, 508 N.W.2d 275, 281 (1993)(citing NEB. CONST. art. II, § 1, and art. V, §§ 1 and 25; State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302 (1942); State ex rel. Wright v. Hinckle, 137 Neb. 735, 291 N.W. 68 (1940)).
Among the requirements the applicant must meet, Rule 2 requires an applicant to show that he or she is of "good moral character."10

The history of the good moral character requirement across the United States holds true for Nebraska as well. Reasons for the good moral character requirement are the protection of the public, the welfare of the applicant, and the protection of the bar's image and the profession. Unfortunately, the requirement has also historically been used to limit the access of select groups to the privileges and powers which only lawyers enjoy. Substantively, these reasons have more concretely become categories by which to deny applications. For example, denials usually fall into the categories of political belief or conduct, misconduct in the bar admissions process, prior illegal conduct, financial malfeasance, and mental or emotional instability. Finally, jurisdictions have attempted to measure good moral character by numerous tests. These include a relationship test, the professional responsibility rules, and analysis of an applicant's rehabilitation.

A. Nebraska State Bar Application Process

Four months before the dreaded bar examination day arrives, soon to be Nebraska and Creighton law school graduates file applications to sit for the Nebraska Bar Examination.11 Upon receipt of approximately 250 applications,12 the Admissions Clerk13 reviews each application and determines whether further investigation is needed based on the presence of any abnormalities. These "red flags" may range from internal inconsistencies within the application packet itself, to answers to the application questions that have been concealed or corrected with typographer's correction fluid.14 Even a squeaky clean application, one representing an applicant with a spotless record, may be viewed as a red flag because past observations by the Commission have proven that such virtuous people do not often exist.15

10. NE. Ct. R. ADM'L. ATT'Y 2; In re Majorek, 244 Neb. 595, 596, 508 N.W.2d 275, 277 (1993).
11. February examination applications are due November 1, and the July applications are due April 1. Late applications will not be accepted. Nebraska State Bar Commission Application for Examination, Instructions to Applicants.
12. This number represents the July registration. Approximately 75 applications are submitted for the February registration. Telephone Interview with Jim Henshaw, Admissions Clerk, Nebraska State Bar Commission (Oct. 25, 1994).
13. Mr. Jim Henshaw currently holds this position for the Nebraska State Bar Commission. He has been employed in this role since approximately March 1985. His office is located within the Nebraska State Bar Commission at 635 South 14 St., Lincoln, Nebraska, 68501.
15. These procedures are relatively new, having been adopted in 1991. In the past, the Commission primarily relied on what the law schools relayed to it. Interview with Jim Henshaw, supra note 14.
Upon the observation of a red flag, the Admissions Clerk holds the application over for a committee meeting of the Nebraska State Bar Commission which decides what further investigation is necessary. Character and fitness issues disclosed on the application or otherwise discovered will result in such applicant’s file being designated Category I, II, or III.16 When an application is designated in one of the foregoing categories, certain standard investigation procedures are then instituted.17 The Commission attempts to perform the complete investigation and notify the applicant within two and one half months of application so as to allow the applicant to sit for the exam she wants.

If the outcome of the committee is a denial to sit for the particular exam, the individual is notified about the denial and recommended to seek treatment for whatever problem has caused the requisite lack of good moral character. At any time within thirty days of the denial letter from the Commission, the applicant may appeal to the Commissioner. If the Commissioner also determines that the applicant is not qualified, the applicant then has thirty days to appeal to the Nebraska Supreme Court.18 The court reviews the issue de novo on the record before the Commission.19 If the court adopts the Commission’s recommendation,20 the denied but determined applicant must wait until the next registration period and in the interim continue to rehabilitate

16. The Nebraska State Bar Commission designates applications as Category I, II, or III based on the types of problems indicated. For example, one or more felony arrests falls under Category I, while three to five traffic violations in the past five years qualifies as Category III. Nebraska State Bar Commission Character and Fitness Investigation Policy.

17. The Nebraska State Bar Commission’s Character and Fitness Investigation Policy, although only providing guidelines and not non-discretionary procedures, does provide an individual with a sense of what to expect when applying. For example, an individual with questions regarding a past Driving While Intoxicated charge, whether feeling relieved or anxious upon discovering such knowledge, can examine the Investigation Policy and see that an alcohol-related driving violation in the past five years is designated as a Category I type problem (usually) and a full investigation will be required. At a minimum the committee will require, *inter alia*, an applicant’s full narrative explanation regarding the incident, complete court, medical, or other official records, possible chemical dependency evaluation, confidential questionnaires from references and employers, and telephone interviews in its investigation. Knowing such details allows an applicant to provide the Admissions Clerk with more complete answers, possibly allowing the Admissions Clerk to determine that his first impressions of the presence of a red flag may not have been warranted.

18. See supra note 9 and accompanying text.

19. It is important to note that these types of cases do not usually go to argument or culminate in an opinion from the Nebraska Supreme Court. *In re Majorek* is an oddity among character proceedings. No official explanation has been offered for the court's unlikely change of procedure in this case.

20. This could read, "When the court adopts the Commission's recommendation," but the official procedure reads "if."
herself. Further application must be filed directly in the Nebraska Supreme Court unless the applicant was otherwise instructed by the court.

B. Reasons for the Good Moral Character Requirement

"Virtually everyone would agree that some applicants ought to be denied admission to the bar for reasons unrelated to their technical legal skills."21 However, notwithstanding the agreement, the appropriate methods to deny admission continue to be debated. In fact, "[a]lmost every problem in the regulation of the legal profession is subject to conflicting analyses."22 "Controlling admission to the bar, for example, is seen by one group as the manipulation of supply to maximize the income of already entrenched practitioners, [while] [o]thers will argue [it is] the need to protect the public from unqualified or unscrupulous practitioners whose skill the lay person will be unable to evaluate."23 The legal profession is not alone in this conflict.24

1. Protection of the Public Interest

The protection of the public and safeguard of justice seem to be the best justifications for the good moral character requirement.25 It is believed better to prevent future problems caused by the immoral applicant's irresponsibility by denying admission, than seek to remedy the problem after it occurs and the attorney victimizes a client.26 "The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys."27 "An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them."28 Nebraska maintains in its rules for admission

22. Baude, supra note 2, at 656.
23. Id.
24. An interesting discrepancy exists between the requirements imposed on lawyers compared to those imposed on medical doctors. Patients are hardly any more able to judge the technical skills of their family physicians than those of their family attorneys. However, although traditionally doctors have been screened for good moral character in the same way as lawyers, the standard is changing rapidly because of debate within the medical profession. Id. at 652-53.
26. In re W. Gahan, 279 N.W.2d 826, 831 (Minn. 1979)(applicant's flagrant disregard of student loan repayment reflects adversely on his commitment to the rights of others).
28. Id. para. 4 (Standard).
of attorneys that the attorney licensing process is incomplete if only testing for minimal competence is undertaken. The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the practice of law.

Nebraska bases its protection of the public on a list of ten instances of relevant conduct, the discovery of any one of which will be treated as cause for further inquiry by the Commission. In other words, the following forms of conduct are red flags of character and fitness as these elements relate to the practice of law: a.) misconduct in employment; b.) acts involving dishonesty, fraud, deceit, or misrepresentation; c.) abuse of legal process, including the filing of vexatious lawsuits; d.) neglect of financial responsibilities; e.) neglect of professional obligations; f.) violation of an order of a court, including child support orders; g.) evidence of mental or emotional instability; h.) evidence of drug or alcohol dependence or abuse; i.) denial of admission to the bar in another jurisdiction on character and fitness grounds; and j.) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

The good moral character requirement is highly ineffective in protecting the public. Seasoned attorneys are frequently subjected to disciplinary matters but only after the public has been harmed.

29. Id. para. 1 (Purpose); In re Majorek, 244 Neb. 595, 596-97, 508 N.W.2d 275, 277 (1993) (citing Ne. Ct. R. Admis. Atty).
30. Ne. Ct. R. Admis. Atty app. A, para. 1 (Purpose). Upon closer examination, the phrase "as those elements relate to the practice of law" leaves a lot to be desired in most situations of denials of bar admission applicants. See infra text accompanying notes 87-91.
32. In response to comments concerning the legality of the broad-sweeping questions about mental and behavioral health treatment history, the Nebraska State Bar Commission voted to revise its questions regarding history of mental illness on March 24, 1995. Although removing the questions entirely would have been the better solution, the revised questions are a substantial improvement. Other states have struck down the questions as a violation of privacy. See In re Frickey, 515 N.W.2d 741 (Minn. 1994). Most recently, Florida bar admission requirements that applicants disclose any treatment or medication taken for nervous, mental, or emotional condition and waive confidentiality as to such treatment were held actionable under Title II of Americans with Disabilities Act. Ellen S. v. Florida Bd. of Bar Examiners, 859 F. Supp. 1489 (S.D. Fla. 1994). See also Clark v. Virginia Bd. of Bar Examiners, 861 F. Supp. 512 (E.D. Va. 1994); In re Underwood, 1993 WL 649283 (Me. 1993).
33. This includes law schools.
35. Twenty-five disciplinary sanctions were imposed against Nebraska attorneys in 1993 out of the 158 formal complaints filed by clients. Sixty-five percent of the complaints were filed against attorneys with 11 or more years of practice, while only 14 percent were filed against attorneys with five or less years experience. Nebraska State Bar Commission 1993 Disciplinary Report.
Careful empirical studies have shown that the current effect of regulation has not been to protect the public so much as to ensure the spoils of victory to those who control the politics of the bar.\textsuperscript{36} What is touted as consumer protection—the admission process—is just a cleverly disguised guild arrangement.\textsuperscript{37} The connection between the ethics of the bar and the rule of law is largely a rationalization.\textsuperscript{38} "The result is a world in which the poor have no lawyers, ordinary people have lawyers who are better at getting business than doing it, and the powerful have lawyers who feel bad about their effectiveness in augmenting that power."\textsuperscript{39}

\textbf{2. In the Best Interests of the Applicant}

The Nebraska State Bar Commission professes another altruistic reason for the continued use of the good moral character requirement. The requirement is justified as a method available to the bar to assist individuals who are having difficulties facing their afflictions. The bar, however, stresses it is not attempting to prevent anyone from becoming an attorney in Nebraska.\textsuperscript{40} It also is not trying to banish anyone from getting help. The admissions program is simply trying to help each individual seek the treatment that she needs.

For example, approximately 30-50\% of problems that require professional discipline are alcohol or drug related.\textsuperscript{41} One of the largest problems the Drug and Alcohol Committee of the Nebraska State Bar Commission encounters is people denying chemical dependency problems. These observations are the reason why "alcohol-related episode" is listed as a type of problem under \textit{each} Category in the Character and Fitness Investigation Policy. The Commission believes it is its duty not only to protect the public, but also to support its individual members in achieving mental wellness before allowing them to enter a very stressful occupation.\textsuperscript{42}

\begin{enumerate}
\item \textsuperscript{36} Baude, supra note 2, at 648 (citing e.g., Deborah L. Rhode, \textit{The Delivery of Legal Services by Non-Lawyers}, 4 Geo. J. Legal Ethics 209 (1990); Deborah L. Rhode, \textit{Why the ABA Bothers: A Functional Perspective on Professional Codes}, 59 Tex. L. Rev. 689 (1981)).
\item \textsuperscript{37} \textit{Id.} See also Duncan Kennedy, \textit{Legal Education As Training For Hierarchy, in The Politics of Law: A Progressive Critique} 38 (David Kairys ed., 2d ed. 1990).
\item \textsuperscript{38} Baude, supra note 2, at 648.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Interview with Jim Henshaw, supra note 14.
\item \textsuperscript{41} Thirty to 50\% of disciplinary matters reaching the Nebraska Supreme Court for sanctions are drug or alcohol related. Telephone Interview with Dennis G. Carlson, Counsel for Discipline, Nebraska State Bar Association (Oct. 25, 1994).
\item \textsuperscript{42} A practical example related to alcohol abuse may be helpful to better understand the Commission's philosophy. Suppose an applicant's record reflects a minor in possession charge which occurred when the applicant was age fifteen. Due to the remoteness in time and absence of any other alcohol related infractions up to the
3. **Protection of the Bar's Image and the Profession**

Scholarly discussion on regulatory requirements for good moral character has really only been generated in the last 20 years. With this discussion has come numerous analogies and allegations about the true reason for the bar continuing to apply such an arbitrary standard. The purpose for protecting the bar is simple: lawyers need the bar to vouch for their integrity. The good moral character requirement is a justification for lawyers' privileges to a public whose common nature has become distrust. Lawyers must have good moral character if as in the words of the Preamble to the American Bar Association's *Model Rules of Professional Conduct*, lawyers are committed to "cultivate knowledge of the law beyond its use for client[s], . . . to improve the law . . . and to exemplify the legal profession's ideals of public service."

The protection of the bar's image then becomes more than just simple "ethics"—it becomes marketing. And if it is marketing, then it becomes difficult to use it as the basis for denying an applicant admission to the bar. Permitting public image of the profession to be the sole reason for denying bar admission does not adhere to the "relationship requirement" between an applicant's illegal conduct and her fitness to practice law.

Present, the Commission probably would not be overly concerned and would, therefore, grant the applicant's request to sit for the exam (assuming everything else is also satisfactory). However, if the applicant's record shows minor possession charges at ages fifteen, sixteen, and eighteen (the person must not have gotten caught while she was seventeen), and driving under the influence charges at ages nineteen and twenty-one, the Commission would likely conclude that this individual has a drinking problem and would request her to get an alcohol evaluation. The Commission would allow the applicant to choose where the evaluation is to be performed. Based on the outcome of the evaluation (which even if favorable to the applicant is not necessarily conclusive) the applicant could be denied admission to take the bar exam and be encouraged to seek treatment. It goes without saying that no other infractions may occur between the Commission's suggestion to seek treatment and the applicant's reapplication to sit for the exam. Assuming this individual ever becomes an attorney in Nebraska, it is very likely that she would be required to participate in the newly founded "Mentor Program." This program allows the applicant-now-attorney to be paired with an attorney from the drug and alcohol committee who will keep a watchful eye for any signs of relapse. Once again, the Nebraska State Bar Commission stresses the sole purpose of this would be to help the individual seek proper treatment. Interview with Jim Henshaw, supra note 14.

44. As one commentator has stated it: Like a drug smuggler allowing on-site inspection or a contractor being bonded, the lawyer has the bar to vouch for her integrity. *Id.* at 650.
45. *Id.* (citing *MODEL RULES OF PROFESSIONAL CONDUCT* pmbl. (1994)). This justification holds true for Nebraska as well, regardless of the fact that it has not adopted the *Model Rules of Professional Conduct*.
46. McChrystal, *supra* note 21, at 88 n.91 (emphasis added).
In our culture of *L.A. Law* watchers, people who think about legal careers do not at some formative psychological moment abandon their hopes because they realize that lawyers have high standards of moral character.\(^47\) Clients do not form these misconceptions either. We only fool ourselves by believing that the public feels more confident because screening for good moral character is in place to protect them. Realizing that the gateway for admission is vague and mysterious, the public is hardly utilizing our services because the profession presents itself as a highly introspective body. More and more, clients see lawyers as "people," not angelic bodies.\(^48\) The bar does more harm than good when telling the "real" public what the profession thinks a "T.V." public wants to hear. It is useless for the bar to continue to soundoff phrases such as, "[we will] eliminat[e] the diseased dogs before they inflict their first bite."\(^49\)

The public does not want the same old lip service; it simply wants any person who becomes an attorney to work honestly in the best interests of the client. And when infractions occur, the public expects punishment to be fair. In the prevailing distrustful attitude toward the legal profession, this often results in a call for severe punishment of attorneys who abuse their power. The unfortunate reality is the public observes too many seasoned attorneys experiencing what amounts to a slap on the wrist at the expense of the client.\(^50\) Denying admission on the basis of morality will not significantly change the public's perception of the bar. Significant change will only come about when disciplinary proceedings concentrate on appropriate punishment instead of meting out punishment that is just severe enough to convince the public we are policing ourselves sufficiently.

4. **Limiting Access to Privileges and Powers**

The good moral character requirement's origin sheds a dark shadow over the legal profession. Among sociologists and historians of the legal profession, it is commonly believed that the character and fitness restriction was aimed at keeping the American bar as Anglo-

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\(^48\) In law school, students are told to learn to "think like lawyers." Maybe, instead, we should concentrate on "thinking like caring individuals" so as to not forget that we are only human too.

\(^49\) Donald T. Weckstein, *Recent Developments in the Character and Fitness Qualifications for the Practice of Law: The Law School Role; The Political Dissident*, 40 BAR EXAM. 17, 23 (1971).

\(^50\) See *State ex rel. NSBA v. Veith*, 238 Neb. 239, 251-52, 470 N.W.2d 549, 558 (1991)("The correlation between the decline of public confidence in the legal profession and the trend toward lighter attorney discipline sanctions is no coincidence.").
Saxon as possible.51 The system did not want mavericks in the legal ranks, so denials had the effect of eliminating groups of applicants based on race, gender, politics, and economic worth.52

Whether the good moral character requirement has the effect of precluding certain groups of people today is difficult to prove because of the limited number of applicants that are actually denied.53 However, if we assume in the contemporary world of numerous civil rights watchdogs that this historical purpose is no longer occurring, then we should be able to conclude that the requirement is anachronistically hanging around. The most efficient thing to do with obsolete procedures is to make a mental note of why they were good or bad (so future generations do not make the same mistake) and discard them.

Maybe the real point of the requirement is that it deters some definable subset of people, which virtually everyone would agree should not be lawyers, from even beginning the study of law.54 The scoundrels, radicals, and the like do not waste their time and money investing in law school because they know they will be denied an opportunity to take the bar exam.55 This reason for keeping the good moral character requirement, however, also falls short because even an "undesirable" would still have some incentive to invest in law school because there are other things one can do with a law degree.56

C. Categories of Substantive Reasons to Deny Applications

The good moral character requirement historically has been divided into five areas in which an applicant's conduct may be placed. If for no other reason than to allow commentators and courts to discuss denied applicants in groups of similar immorality, the justifications for denying an applicant admission generally fall into one of the following categories.

52. Evidence of keeping mavericks out of the system as a possible reason for the good moral character requirement is present still today. See Lubetzky v. State Bar of Cal., 815 P.2d 341 (Cal. 1991)(applicant spoke out regularly against bar); In re Rose, 55 U.S.L.W. 3114 (U.S. 1986)(stubbornness was both the root of his problem and what saved him). Appropriately, Mr. Lubetzky now represents other applicants who are denied admission on the basis of morality. See In re Lapin, 1993 WL 45077 (Cal. Bar Ct. 1993).
53. The Admissions Clerk in Nebraska only "catches" about one or two a year but believes the current system is worth it. Interview with Jim Henshaw, supra note 14.
54. Baude, supra note 2, at 653.
55. Id. Instead they fund political campaigns. Id.
56. Id. One could teach or work in a business related career, for example. Id. See GARY A. MUNNEKE & WILLIAM D. HENSLEE, NONLEGAL CAREERS FOR LAWYERS (3d ed. 1994).
Applicants have been considered lacking in good moral character because of their political beliefs and conduct. A typical case is the infamous *In re Anastaplo*,\(^{57}\) in which an applicant was denied admission to the Illinois bar because of his refusal on first amendment grounds to answer questions concerning membership in the Communist Party. The questions were triggered by Anastaplo's support of the right of revolution against an oppressive government, a right asserted in the Declaration of Independence. This category is still important today since civil disobedience, although approved of by Thoreau, Ghandi, Plato, and Aristotle, may raise a red flag on an applicant's record.

Misconduct in the bar admissions process is the second category for an applicant's immoral behavior. The underlying theory of this category is that an individual who does not take care in filling out her application is not likely to exhibit any greater care when representing clients.\(^{58}\) More specifically, the lack of candor, implicit in false, misleading, or evasive answers to bar application questions, fails to show maturity and professional discipline necessary to prove good moral character.\(^{59}\) This category boils down to the bars' concerns to protect the public.

Prior illegal conduct is the third type of red flag behavior that often causes denials of admission to the bar. It ranges from the extreme cases of embezzlement\(^{60}\) to the simple experimental behavior of teenage youth resulting in minor in possession charges.\(^{61}\) Little concrete guidance as to when past illegal conduct will block admission lies within the extreme cases, however. "[A] person whose illegal act is malum prohibitum is considered less morally culpable than one whose illegal act is malum in se, while conduct in violation of civil law is generally considered less morally repugnant than conduct in violation of criminal law."\(^{62}\) Acquittal or dismissal of criminal charges does not preclude consideration of the conduct either.\(^{63}\) Nebraska seems to be


\(^{59}\) *In re Majorek*, 244 Neb. 595, 604, 508 N.W.2d 275, 281 (1993); *In re Legg*, 386 S.E.2d 174, 183 (N.C. 1984).

\(^{60}\) Sins against money are given extraordinary weight in the Commission's analysis due to the fiduciary obligations to which attorneys are entrusted.

\(^{61}\) See supra note 42.

\(^{62}\) McChrystal, supra note 21, at 89.

\(^{63}\) *In re Majorek*, 244 Neb. 595, 601, 508 N.W.2d 275, 279 (1993)(reciting question from bar exam, "You must disclose each [violation of law] even though charges may not have been formally brought against you or they were dismissed or you were acquitted or adjudication was withheld or a conviction was reversed, set aside or vacated or the record sealed or expunged.").
stricter in this category when compared to other states that have admitted criminal applicants with serious records to practice law.64

Financial malfeasance is a separate category. The admissions committees and courts are very cautious when it comes to the financial integrity of an applicant. Again, this can range from embezzlement,65 to failing to file tax returns,66 to writing insufficient funds checks.67 However, it is important to remember that ethical behavior is heavily influenced by context. Although this is a specific and separate category, moral character is not a unitary phenomenon.68 For example, "[o]ne who fails to file tax returns is no more or less likely to abuse children than another who makes large charitable contributions."69

The final category is mental or emotional instability. The practice of law is not a stress-free pursuit,70 and a history of past abnormal behavior is a sure way for an applicant's record to be closely scrutinized.71 The argument is that the public wants emotionally stable and mentally confident attorneys working for them. This reason, however, applies to every profession. The only groups in society being forced to waive confidentiality to their past psychological care are people who want to wield the legal pen and those who want to purchase

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64. The District of Columbia recently admitted three new applicants, each of which had been convicted of voluntary manslaughter, attempted armed robbery, and narcotics convictions, respectively. In re Manville, 538 A.2d 1128 (D.C. 1988); Three New Lawyers, WASH. POST, Apr. 16, 1988, OP-ED, at A24. See generally Leonard W. Copeland, Admission and Reinstatement of Felons to the Bar, 91 W. VA. L. REV. 451, 477 (1988-89). Nebraska has allowed only one applicant with a past felony record who had also been incarcerated to be admitted to the bar. However, the applicant received a pardon from the governor before he was admitted. Interview with Jim Henshaw, supra note 14.


66. E.g., In re H.H.S., 373 So.2d 890 (Fla. 1979).


68. Baude, supra note 2, at 655.

69. Id. To be fair, the admissions committees probably are not worrying that the applicant will abuse children clients; instead they are concerned that similar financial problems will occur when the future attorney is tempted by a client's money. However, why would someone who has failed to file a tax return or has written an insufficient-funds check be any more likely to be tempted by a client's money than someone who makes large charitable contributions?

70. In re Majorek, 244 Neb. 595, 605, 508 N.W.2d 275, 282 (1993).

71. One sign of abnormal behavior that receives special attention is evidence of an applicant's filing of scurrilous petitions in the past or making of disparaging remarks about the local bar. Lubetzky v. State Bar of Cal., 815 P.2d 341 (Cal. 1991). This writer queries, "Am I revealing 'abnormal behavior' by critically analyzing the admissions process of my future bar?" Only time will tell.
firearms.\textsuperscript{72} Does the state supreme court or a bar admissions committee function within its area of expertise when it plays the role of psychologist? The past records of both are not very good. Women, for example, were once considered to not possess the mental strength to take the bar.\textsuperscript{73}

The courts and the commissions do not have the psychological training to determine whose rehabilitation is working and whose is not. It is also important to realize that expert witnesses on aberrant behavior are not brought into these proceedings to testify. In the typical case, only the applicant's counselor submits an affidavit in regards to the progress that the applicant has made, and the court then decides.\textsuperscript{74}

\textbf{D. Tests to Determine Good Moral Character}

Hard and fast rules do not apply to the requirement that has been described as possessing "shadowy rather than precise bounds."\textsuperscript{75} As discussed earlier, ethical behavior is heavily influenced by context, and the fact is that in reviewing an application for admission to the bar, the decision as to an applicant's good moral character must be made on an ad hoc basis.\textsuperscript{76} The Nebraska Supreme Court observed in a disciplinary proceeding against a district court judge that "any effort to design the appropriate discipline in this matter by comparing it with that imposed in any case by any other jurisdiction is of limited value."\textsuperscript{77}

In the absence of any effective psychometrically-sound device to assist in determining good moral character, an applicant's moral character is ordinarily assessed through information gathered from

\textsuperscript{72} Fortunately the gun shopper only has to wait two to five days for approval. See \textsc{Neb. Rev. Stat.} §§ 69-2401 to -2426 (Cum. Supp. 1994) regarding application process for gun purchases.

\textsuperscript{73} \textit{E.g.}, \textit{In re Goodell}, 39 Wis. 232, 245 (1875).

\textsuperscript{74} In Nebraska, upon the discovery of a red flag, the Commission requires the applicant to waive confidentiality so that three selected pieces of evidence can be obtained from the medical file. The psychologist (or whomever it may be that provided care to the applicant) must tell the Commission: 1) what tests were run; 2) what type of treatment was undertaken; and 3) in the doctor's expert opinion, if the applicant is competent to practice law. Interview with Jim Henshaw, \textit{supra} note 14.


\textsuperscript{76} \textit{In re Greenberg}, 614 P.2d 832 (Ariz. 1980).

\textsuperscript{77} \textit{In re Kneifl}, 217 Neb. 472, 485, 351 N.W.2d 693, 700 (1984). Perhaps the court is reluctant to compare the case it is currently deciding to past cases for analysis because a case could possibly always be found in another jurisdiction where an applicant with more terrible prior illegal conduct and less candor about it was not denied admission. \textit{See, e.g.}, \textit{Reese v. Board of Comm'rs}, 379 So.2d 564 (Ala. 1980)(applicant established his good moral character even though thirteen additional brushes with the law failed to be disclosed on application).
applications and questionnaires, letters of recommendation, follow-up investigations, interviews, and hearings. Even though evidence exists that the requirement no longer fulfills its screening purpose, and "[s]ubstantial and respectable voices within states, often among the officials charged with enforcement responsibility, question the value of any character screening," we still pump a fairly large amount of time and money into it. Because none of the officials are showing any strong reaction by implementing changes or abandoning the inquiry, the following assessment formulas continue to be cited in opinions.

Admissions committees and courts are constitutionally required to show that pre-admission conduct that is the basis of denying bar admission has a "rational connection with the applicant's fitness or capacity to practice law." Courts satisfy this by discussing the relationships between the specific nature of the prior conduct and the fitness to practice law, and the remoteness of the conduct to present moral character.

The idea of "fitness" (as compared to "character") evokes a different set of concerns. "Character" may have no correlation with attorney behavior, but "fitness" may have a solid relationship with attorney behavior. "We could say that an untreated alcoholic who went bankrupt,  

79. Best estimates show that about one in five hundred applicants is actually kept from the bar on grounds of moral character. Baude, supra note 2, at 649, 651 (discussing Rhode, supra note 2, at 516). Although the Nebraska State Bar Commission does not keep statistics on the number of applicants denied admission, this estimate seems consistent with the one or two applicants a year that the Nebraska Admissions Clerk estimated are denied. Interview with Jim Henshaw, supra note 14.  
80. Baude, supra note 2, at 652.  
81. The Nebraska State Bar Commission budgeted $80,220 total revenues with $131,364 total expenses for the Admissions Clerk's office in 1994. Nebraska State Bar Commission 1994 Revenue and Expense Guideline. The source of a substantial portion (over 60%) of the budgeted revenue is bar application fees.  
82. Baude, supra note 2, at 652.  
84. Bar admission authorities and courts should look to an applicant's more recent conduct. The Nebraska Rules for Admissions of Attorneys appendix A, "Use of Information," requires that the applicant's present character and fitness be determined. Evidence of four year old misconduct, however, was not too remote to prove present immoral character in Layon v. North Dakota State Bar Bd., 458 N.W.2d 501, 510 (N.D. 1990). In Pacheco v. State Bar of Cal., 741 P.2d 1138 (Cal. 1987), the bar continually for 10 years drug up an old incident of forcible, but legal, removal of a child when applicant was a private investigator instead of concentrating on applicant's tremendous rehabilitation. Accord Philip Hager, Bar's Refusal to Let Man Practice Law Voided, L.A. Times, Sept. 26, 1987, § 1, at 25. This kind of retrospective view precludes an applicant from ever demonstrating that he possesses the requisite character and fitness and, in effect, imposes a life sentence for prior wrongs committed.
good moral character is goodness and moral turpitude is

85. Baude, supra note 2, at 656.
86. "[O]ne point of common interest [among all lawyers] is the creation of an effective system . . . [to assure] . . . legal duties analogous to 'fitness.' These are the duties to keep confidences, to segregate trust funds, and to file suits before the statute of limitations runs." Id. at 657.
90. MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1986).
91. MODEL RULES OF PROFESSIONAL CONDUCT (1994).
92. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 1-102(3) note 13 (1986)(citing 58 C.J.S. Moral at 1201 (1948)).
badness,” and the applicant is left worrying whether she has been naughty or nice.94

*Model Rules of Professional Conduct* Rule 8.4 attempts to clear up the confusion caused by terms like “moral turpitude” and “illegal” and keep the conduct that should be relevant to bar proceedings as that which has a specific connection to fitness for the practice of law. Rule 8.4(b) states that it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”95 “Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in [this] category.”96 The *Model Rules* replace the old *Model Code* “moral turpitude” standard with a new standard that permits broad discretion, but requires a rational connection between the criminal act and the fitness to practice law.

No good justification exists for why the good moral character requirement has been so slow to change under the professional codes either. Although the last decade has seen enormous changes in other professional regulations of lawyers in advertising, solicitation, geographic restriction, billing practices, law firm organization, and the like,97 the good moral character requirement remains firm.

The final test delves into an analysis of the applicant’s rehabilitation subsequent to the illegal conduct.98 The applicant has the burden of establishing a prima facie showing of good moral character, which the bar admission authority may introduce evidence to rebut.99 Summing up the attitude that most courts have about rehabilitation, the Supreme Court of North Dakota in *Layon v. North Dakota State Bar Board* noted that if the applicant truly wanted to prove rehabilitation,

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94. McChrystal, *supra* note 19, at 87. Most of us can probably remember the slight angst we felt as children upon hearing seasonal renditions of *Santa Clause is Coming to Town*.
96. *Id.* Rule 8.4 cmt.
97. Baude, *supra* note 2, at 653. The question becomes: what if the regulation of lawyers stopped here, eliminating the inquiry into “character”? In ways, the regulation of lawyers would resemble the licensing of plumbers. It would be accomplished by guidelines enacted by the legislature and enforced through an ordinary agency process instead of the executive or legislative branch. *Id.* at 657. This is one of the strongest arguments for a national bar.
98. Bar admission authorities and courts should look to an applicant’s most recent conduct to determine whether rehabilitation has corrected a past unfitness. See *supra* note 84. See generally Donald M. Zupanec, *Annotation, Criminal Record as Affecting Applicant’s Moral Character For Purposes of Admission to the Bar*, 88 A.L.R.3d 192, § 6 (1978)(evidence of rehabilitation or good conduct).

In *Majorek*, the court considers a 10 year old act of writing an insufficient funds check recent because the applicant failed to disclose it on his application, thereby drawing the conduct into the present. *In re Majorek*, 244 Neb. 596, 598, 604, 608 N.W.2d 275, 278, 281 (1993).
he would have been completely honest in his application.\textsuperscript{100} The Nebraska Supreme Court agreed with this premise in \textit{Majorek}.\textsuperscript{101}

States have woven the above tests into their own versions of statutes and rules regulating the admission of attorneys. In Nebraska, a record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission.\textsuperscript{102} As stated earlier, the discovery of any one of a set list of relevant conduct is treated as cause for further inquiry by the Nebraska Bar Commission. In making the determination whether the \textit{present} character and fitness of an applicant qualify the applicant for admission, the Nebraska Court Rules for Admission of Attorneys lists the following factors to be considered in assigning weight and significance to prior conduct:

1. the applicant's \textit{age} at the time of the conduct; 2. the \textit{recency} of the conduct; 3. the reliability of the information concerning the conduct; 4. the seriousness of the conduct; 5. the factors underlying the conduct; 6. the cumulative effect of the conduct or information; 7. the evidence of \textit{rehabilitation}; 8. the applicant's positive social contributions \textit{since the conduct}; 9. the applicant's candor in the admissions process; and 10. the materiality of any omissions or misrepresentations.\textsuperscript{103}

Notice throughout this list how Nebraska has specifically emphasized certain factors such as rehabilitation and the remoteness of the conduct, which, as stated earlier, are two parts of common tests applied by admissions committees.

\section*{III. \textit{In re Majorek}\textsuperscript{104}}

\subsection*{A. Facts of the Case}

Upon graduating from the University of Nebraska College of Law in 1992, John Andrew Majorek attempted to make application to take the Nebraska bar examination.\textsuperscript{105} In responding to an inquiry on the bar application form as to whether he had been disciplined by a school, college, or university, Majorek revealed that he had been disciplined in 1991 for making personal use of student funds while attending law school. In response to another question, Majorek disclosed that on April 27, 1992, he had been charged with speeding while his operator's

\begin{itemize}
\item[100.] Layon v. North Dakota State Bar Bd., 458 N.W.2d 501, 507 (N.D. 1990). This remark came in regards to answering "no" to a question on the bar application about having ever undergone rehabilitation for mental or emotional disorders, and the court finding out from other sources that the applicant had had some treatment for gambling.
\item[101.] \textit{In re Majorek}, 244 Neb. 595, 605, 508 N.W.2d 275, 281-82 (1993).
\item[103.] Id. para. 6 (Use of Information)(emphasis added).
\item[104.] 244 Neb. 595, 508 N.W.2d 275 (1993).
\item[105.] Applications are provided by the College of Law Dean's office or can be obtained at the Nebraska State Bar Commission.
\end{itemize}
license was suspended and with providing false information to an officer. The Admissions Clerk immediately considered the financial incident a red flag and Majorek's application was held over for a Nebraska State Bar Commission committee investigation.

In investigating Majorek, the Commission discovered two matters that he had not made known. He had encountered the criminal justice system in May 1982 for writing a check on an account containing insufficient funds, and on June 25, 1991, he had been charged with taking merchandise without making payment. Majorek claimed to have no recollection of the bad check charge discovered by the Commission. He further explained that he did not mention the second act of misconduct, namely, the taking merchandise charge, because it had simply slipped his mind because he was so overloaded with work and other responsibilities that he had to complete the application at "the last moment."

As explanation for the improper use of student funds, Majorek told the Commission that due to a paralyzing stroke suffered by his father, mechanical difficulties with his automobile, and his strapped financial resources at the time, he had no choice but to "borrow" the student organization funds. As to the second revealed transgression, Majorek explained that while his license had been suspended he was "trying to refrain from driving," but due to his need to obtain forgotten class notes from his home, he panicked and gave his twin brother's name and address to the officer when he was stopped for speeding. He concluded he had made a terrible mistake, however, and within 10 minutes identified himself correctly.

Finally, Majorek explained that on the day of his arrest for theft by deception, the grocery store clerk apparently erred in charging him for only two of three items he attempted to pay for at the counter. Although he continued to maintain that he did not intend to take the merchandise without paying, he entered and successfully completed the pretrial diversion program.

Despite a number of affidavits attesting to Majorek's good character, professional counseling over a six month period, and the fac-

106. After reviewing the court files, Majorek was satisfied that he did indeed write the check in question. Furthermore, he admitted that on a couple of other occasions he had written checks that had been returned for insufficient funds. In re Majorek, 244 Neb. 595, 600, 508 N.W.2d 275, 279 (1993).
107. Id. at 601, 508 N.W.2d at 280.
108. Id. at 599, 508 N.W.2d at 278.
109. Id. at 599-600, 508 N.W.2d at 279.
110. Id. at 600, 508 N.W.2d at 279.
111. Business and political associates, a college professor and a professor at the law school the applicant attended, a former U. S. Representative, and friends all submitted affidavits attesting to Majorek's good moral character. Id. at 601-03, 508 N.W.2d at 280.
112. Majorek sought professional counseling voluntarily after the Commission recommended he undergo such counseling.
tors underlying the conduct, the Nebraska State Bar Commission recommended that he not be permitted to take the bar examination because of his failure to establish that he presently possessed the proper character and fitness to practice law. Disconcerted by the Commission’s recommendation, Majorek challenged it to the Nebraska Supreme Court.

B. Applicable Law

Nebraska Rules for Admission of Attorneys Rule 2 requires an applicant for admission to the bar to show, among other things, that the applicant is of “good moral character.” The Nebraska Supreme Court applied this rule in deciding whether Majorek possessed the proper moral character to practice law in Nebraska. That rule provides:

Each applicant must file with the secretary of the Commission a written request for admission and a personal affidavit as to the applicant's age, residence, and time and place of study and degree, or admission and period of practice in courts of record in another state, the District of Columbia, or a territory, together with the certificates or affidavits of at least two citizens of good standing in the community where the applicant resides, or formerly resided, and such other information as the Commission may require. These certificates or affidavits must show that the parties making them are well acquainted with the applicant, that the applicant is of good reputation in that community, and that they believe the applicant to be of good moral character. In case the applicant seeks admission on examination, he or she must file such request at least 6 weeks before the day set for examination, unless otherwise authorized by the Commission. If the applicant is under suspension or disbarment, the applicant will not be eligible to be admitted to take the bar examination in Nebraska.

Appendix A to said rule incorporates the purpose, investigative process, standard of character and fitness, relevant conduct, and use of information that underlie the determinations by the Commission.

C. Claims and Holding

Majorek claimed that, whatever may be said about his past conduct, he had rehabilitated himself. Furthermore, he should be permitted to take the bar examination because a year had elapsed since he first sought to take the exam and another state’s court enforced such a rule. The Nebraska Supreme Court accepted the Commission’s rec-
ommendation and ruled that Majorek be denied permission to take the bar examination until such time as the court may determine otherwise on further application filed directly in the Nebraska Supreme Court.

The court reasoned that Majorek's rehabilitation was not persuasive. The fact remained that he was less than candid on his application for admission to the bar after his turning point to rehabilitation had occurred. Because the practice of law is not a stress-free pursuit, the court was not convinced that the counseling Majorek undertook would be as successful in the future as his counselor predicted or that he had yet learned not to take on more than he could handle. Finally, the court simply considered the inability of Majorek to distinguish between what is one's own property and what is another's property to be a serious character flaw in dismissing his heavy reliance on the similarly situated applicant in Ohio.

IV. ANALYSIS

A. Rational Connections to the Practice of Law

Any qualification a state requires for admission of attorneys must have a "rational connection with the applicant's fitness or capacity to practice law." The standard of good moral character cannot be created arbitrarily or discriminatorily without violating the Due Process or Equal Protection Clauses of the Fourteenth Amendment. The court in Majorek vaguely explained the rational connections that could be made between the applicant's past conduct and his future fitness to practice law. In fact, nowhere in its opinion does the court state that it is applying the Schware test of rational connections.

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119. Id. at 605, 508 N.W.2d at 281-82.
120. Majorek claimed the turning point came when he immediately corrected the false information he gave to the police during a traffic stop. Id. at 605, 508 N.W.2d at 281.
121. Id. at 605, 508 N.W.2d at 282. The court failed to explain how the stress in the legal profession is any different than the stress of say a medical doctor, commercial airline pilot, or corporate CEO; yet it seems to be implying that it makes a difference.
122. See supra note 117.
123. Schware v. Board of Bar Examiners, 353 U.S. 232, 239 (1957). "This passage seems to require that fitness is the constitutional standard," not moral character: Baude, supra note 2, at 656.
125. Extremely vague denials of admission to the bar may violate due process requirements. In re Berkan, 648 F.2d 1386, 1388 (1st Cir. 1981)(applicant was informed of her denial in a one-sentence letter providing no reasons).
Regarding the misappropriation of law student organization funds, the court stated that it "routinely disbar[s] attorneys who cannot distinguish between their money and that of clients." This, plus another sentence about restitution of funds not exonerating professional misconduct are the only lip service the court gave to this issue. The court seems to have assumed that the 1991 incident is itself explanatory of the court's implicit conclusion that Majorek would fall to temptation when entrusted with clients' monies. Whether or not this assumption is true, the court failed to expressly state that reason. The court makes no effort to further explain the possible rational connection, but instead, hastily jumps to recant the facts of another incident of red flag conduct (the bad check charge).

The court found it "bothersome" that Majorek wrote an insufficient-funds check ten years earlier and forgot encountering the criminal justice system. Again, however, it made no indication as to how this incident is rationally connected to fitness to practice law. Instead, it posed rhetorical questions as analysis of the situation and stated that it was not "inspire[d] [with] confidence in [Majorek's] fitness to practice law." Granted, the fiduciary role an attorney plays is not to be taken lightly. However, concluding that someone who forgot he wrote a bad check over 10 years earlier has so much potential to harm a client that he is to be barred from the practice of law because the court is not "inspired" or "comforted" is hardly a finding of a "rational connection to the practice of law."

The concealment of merchandise charge is a serious charge, but the court again fails to analyze how it is rationally connected to Majorek's fitness to practice law. If the incident could be attributed to a clerk's error, entering the diversion program could be construed as a responsible and not uncommon method of dealing with the problem. Many people, for example, simply plead guilty to traffic infractions instead of attempting to litigate even rightful claims of innocence. Majorek may have been following the same mindset.

This same analysis applies to Majorek's speeding and providing false information violations. The court does not explain what the rational connection is between the past conduct and fitness to practice law, again leaving one to speculate. If the court was trying to state that Majorek's conduct reflects disrespect or abuse of the legal system,

127. Id. at 604, 508 N.W.2d at 281.
128. Id.
129. Id. "Does the lapse of memory indicate that he did not consider the matter serious? Does it indicate that he represses unpleasant experiences and thus does not learn from them? Does the latter hypothesis explain why he has written other insufficient-funds checks?" Id.
130. Id.
131. Id.
then it should have expressed this. In proceedings such as these, the court should be very precise.

The court begins to attempt to explain the rational connection of Majorek’s misconduct in the bar application process to his fitness to practice law. It pronounces that it agrees with “courts which hold that false, misleading, or evasive answers to bar application questions may be grounds for a finding of lack of requisite character and fitness.”132 However, this is the extent of its explanation.

Within a quote from In re Allan S.,133 the court includes a sentence which states that the ultimate test is based on the fact that the profession must stand free from all suspicion.134 It follows from the court’s favorable adoption of this quote that the dominant rational connection the court was attempting to find was one between Majorek’s conduct and how the public would perceive the bar if Majorek were admitted. The court, in effect, re-punishes Majorek by denying him the license to practice law. Remember also that acquittal or dismissal of criminal charges do not preclude consideration of conduct. It follows then that in Nebraska, an applicant may be denied admission to the bar because of the connection between an applicant’s acquitted conduct but nevertheless brush with the law, and the negative effect admitting such a suspicious applicant would have on the profession’s image.

B. Ramifications of Denial

Once an applicant is denied to take the bar examination by the Nebraska Supreme Court, the applicant is in effect scarred for life. In this age of electronic tattle-tales,135 future colleagues and clients of Majorek (assuming he some day is granted admission either in Nebraska or some other state) will easily be able to read about his court declared lack of good moral character. Simply typing m-a-j-o-r-e-k as the search term in the “Allstates” database in WESTLAW or “States” (library) and “Courts” (file) in LEXIS, places In re Majorek in front of the searcher’s eyes within seconds. This will ultimately cause clients to be afraid to hire Majorek and other lawyers to cite the Nebraska Supreme Court as proof Majorek is not to be trusted.136

132. Id.
133. 387 A.2d 271, 275 (Md. 1978).
135. These are the computerized data bases that have become the basic tools of legal practice: WESTLAW® and LEXIS®. Public access to such services is becoming fairly widespread as terminals are being placed in public libraries; however, access is still limited to registered users.
Majorek also has to now make the decision whether to reapply in Nebraska by continuing to submit further applications directly to the supreme court or to find a state with less stringent requirements and hope they will overlook Nebraska's denial. Majorek might also consider one of the many other uses for a law degree not requiring bar admission such as teaching, careers in business, and the exploding field of mediation.

C. Advice for Future Applicants in Nebraska

When cases like Majorek are decided, there are some important rules that can be extracted from the opinions. Some are more subtle than others, but all are equally important in assisting the applicant to complete the application properly. Since the good moral character requirement is not going anywhere anytime soon, applicants can help themselves by being very diligent in competently completing the application. The following recommendations are hardly exhaustive as numerous methods of acquiring information for the application exist. Many applicants will be able to simply remember everything they need, for example. Depending what each applicant needs, some slight alterations may be made; but generally, answers on the bar application can be completed by consulting the following sources and one's memory.

Because the questions on the application are worded very broadly, the first rule to successful completion is REVEAL EVERYTHING. It is important to make decisions about doubtful materials in favor of disclosure. Never think to yourself, “there’s no way anybody could ever find out about this” or, “that was so long ago, no one will care.” The Nebraska Bar Commission cares! It’s philosophy is that it expects applicants to be as honest on the application as the Commission.

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137. Rhode, supra note 2, at 517.
138. See supra note 56. This also brings up an interesting question as to whether non-lawyers, who are slowly increasing their possibilities of doing more “authorised” work, should be required to be morally qualified. Presently no such regulation is being applied.
139. For example, question 14 of the Nebraska State Bar Commission Application for Examination asks, “Have you ever, either as an adult or a juvenile, been cited, arrested, charged or convicted for a violation of any law?” If you have violated any law, you must attach a copy of the arresting officer’s report, complaint, indictment, trial disposition, and sentence and appeal.
sion is honest with the applicants.140 Usually, if answers are truthful there will not be a problem.142

Obtaining the vast amounts of information and attachments can be an overwhelming task. It seems natural (at least to this writer) that one’s memory may fade with time, and an applicant may need some assistance in refreshing recollection. The easiest and most inexpensive method available to get a large amount of the data is to take advantage of the tools you have learned to use in law school.

To begin, visit the public counter of your city police department and request an Arrest Record on yourself. This will list all criminal violations including the dates and dispositions for the city. As proven by Majorek, failure to disclose a criminal violation is grounds for denial.143 The current rate for a Lincoln arrest record is only $5.00 and well worth the investment. A state arrest record is also very helpful. These can be obtained for Nebraska at the Records and Identification Intelligence Division of the State Patrol at a cost of $10.00. A downfall of collecting this data is that an applicant would have to get arrest records from every state and city in which she has lived; however, this would only be necessary if a complete failure to remember were to occur. The Federal Bureau of Investigation does provide a nationwide arrest record listing federal crimes, but an applicant has to submit a set of rolled-inked fingerprints. Local police and sheriff departments or the state patrol provide fingerprinting service, and the FBI charges a $17.00 fee to cover processing costs. It is highly recommended that instead of requesting numerous arrest records from every city and state the applicant has lived and the FBI, she should only order ones from places where she either knows a brush with the law took place and needs more information or lived a long time and simply can not remember.

Visit the local Motor Vehicle Department and request a copy of your Driving Record. Remember, even speeding tickets are relevant to the bar since they may be evidence of a larger pattern.144 The driving record costs $2.00 in Nebraska but only lists violations within the state. It is again left to the applicant’s judgment if she wants to contact the Department of Motor Vehicles in each state she has lived and request a driving record. The substantial assistance and minor cost of

140. Interview with Jim Henshaw, supra note 14. This writer guesses that the honesty the bar is reflecting is that it is disclosing to the applicant as straightforwardly as possible how to answer the questions on the application.
141. Answers can not be “false, misleading, or evasive.” In re Majorek, 244 Neb. 595, 604, 508 N.W.2d 275, 281 (1993).
142. The Council of Discipline has the power to punish applicants for failing to answer questions honestly. Interview with Dennis G. Carlson, supra note 41.
144. See Dean Murphy, High Court Asked to Void Bar’s Action: Lead Foot Puts Brakes on Law Career, L.A. Times, Mar. 6, 1986, § Metro, at 1.
obtaining such forms make it very practical for most applicants no matter in how many states they have lived.

Finally, obtain a Credit Report about your financial record to assist you in being especially thorough in answering any financial questions on the application. Enormous weight is given to these questions due to the fiduciary responsibility attorneys are granted in regards to their clients' money. It can be concluded from Majorek that a single insufficient-funds check within the previous 10 years is relevant to the Commission.\(^{145}\) Failing to disclose it, even if you innocently forget, is dangerous water to tread. Credit reports can be easily obtained by choosing one of a number of agencies referenced in the yellow pages of the telephone book under "Credit Reporting." In Lincoln for example, for $15.00 an applicant can provide her name, current and five previous years addresses with zip codes, social security number, date of birth, spouse’s first name if married, and employer and quickly receive a complete credit report.

The bar application also requires you to give complete dates (month and year) and all addresses (street name and number, city, state, and zip code) of every permanent and temporary place of residence for more than one month since your eighteenth birthday.\(^{146}\) It also requires a listing of every job you have held for the ten year period immediately prior to the date of application or since the age of eighteen.\(^ {147}\) If you are having difficulty remembering these types of information, talk with family members and friends for help. Making a chronological list of each place you have lived will often trigger remembrances of employment, or vice versa.

If you are not interested in doing the leg work to acquire the information, the National Conference of Bar Examiners offers character and fitness determinations to some jurisdictions.\(^ {148}\) The fees for this or like services are often substantially higher than self-investigating. Often, however, investing in a service may start the character and fitness investigation process at an earlier point in time, allowing the applicant to remedy problem areas by seeking treatment or starting other forms of rehabilitation early.

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146. Nebraska State Bar Commission Application for Examination, question 6.
147. Id. question 7. This includes all self-employment, clerkships, internships, temporary or part-time employment, and military service.
148. For more information, contact the National Conference of Bar Examiners at: Office of Testing, 4 Twin Peaks Boulevard, San Francisco, CA 94114, or telephone (415) 731-8292, and request the brochure entitled Law Student Registration: A Guide for Law Students. You may also check with your law school or contact the bar admission authority in the jurisdiction in which you intend to practice and ask about registration and investigation for character and fitness. Unfortunately at the present time, no such services are available for Nebraska.
If you have some problem in your background that may lead to a negative character and fitness determination, it would be wise to contact the jurisdiction in which you intend to practice and discuss the problem with the appropriate individual. Jim Henshaw, Admissions Clerk, is the person to call with questions in Nebraska.\footnote{149} The matters will have to be disclosed eventually, and it makes sense to get the matter out in the open as early as possible. The Admissions Clerk will not be able to give you a definite answer, but he will provide further guidance or suggestions.

Rehabilitation, although not a quick ticket, is a solid way to prove you possess the present good moral character to practice law in Nebraska. The Commission states it is trying to help people seek treatment, so self-starting rehabilitation is bound to shed positive light on your situation. For example, the Commission will look favorably upon an applicant who has a pattern of drug or alcohol abuse in her past but has been significantly involved in community programs teaching youth the dangers of chemical dependency. Building a record of strong financial stability, whether individually or with the help of a financial planner, will also help to inspire confidence in your qualifications to practice law.

Remember, though, that the most recent incident of red flag conduct must be antecedent to the evidence of rehabilitation. Although somewhat controverted, the Commission is trying to determine present moral character; the more remote the incident of red flag conduct is, the better. Lapses in rehabilitation are strong evidence that an applicant is not rehabilitated and their existence will be acknowledged (to say the least) by the Commission.

As can be seen from the above discussion, application forms are lengthy and require a great deal of time to complete. Probably the best advice I can give applicants is to allow sufficient time to complete the application. Do not follow Majorek's example and wait until "the last moment to do it."\footnote{150} Find out the deadlines for the examination you want to sit for and allow sufficient time well in advance of the filing deadlines to complete the application and gather any accompanying materials.

Finally, if the Admissions Clerk holds your application over for a committee investigation, do not forget what you learned in your evidence course—BUILD A RECORD! Majorek was an odd case in that the Nebraska Supreme Court heard arguments and published an opinion. Most cases are reviewed de novo on the record before the Commission. It is therefore highly recommended that if you find your-

\footnote{149. See supra note 13. Mr. Henshaw is an extremely helpful individual, eager to answer questions of bar applicants, and an all around excellent resource that should not be overlooked when completing bar applications.}

\footnote{150. In re Majorek, 244 Neb. 595, 601, 508 N.W.2d 275, 280 (1993).}
self in this situation, you employ a lawyer and a stenographer to be present at all investigative proceedings. The Nebraska Supreme Court is very likely to adopt the Commission's recommendation, especially if the record does not properly reflect evidence of your true and present good moral character.

V. CONCLUSION

The good moral character requirement has lodged itself quite firmly in the admissions process and will not soon be overturned. Hopefully, as more states require first year law students to register with the jurisdiction as part of the bar admission process, better testing methods actually attempting to measure fitness instead of goodness will be implemented. If the good moral character requirement will not be abandoned, an application form must be devised so that character evaluation can be conducted with less room for error. Do not be surprised, however, that bar application fees will surely increase as changes are made.

Above all, when you are no longer an applicant and have been admitted to the practice of law, work hard to not violate any professional responsibility rules. Every violation does three harms: it victimizes a client, damages the bar and creates the illusion that even more subjective tests like the good moral character requirement are needed. Only the application of objective rules can prevent these harms. The good moral character requirement, however, fails to meet the objective standard, and its historical purposes have long been found in violation of applicant's rights. The good moral character requirement should be abandoned, and rules based on objectivity should be created to replace it.

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151. Currently the following jurisdictions require such registration by law students: Alabama, California, Illinois, Iowa, Kentucky, Maryland, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, Texas, and Virginia. National Conference of Bar Examiners, supra note 148. Law students in Nebraska should be happy to discover that Nebraska does not require such first year law student registration, although the possibility of considering such a service has not been closed.