



## State Bar News January/February 2006

### Financial problems may undermine 'fitness' assessment - Those seeking Bar admission should be mindful of credit health, history

By Liz Lipton

Candidates for Bar Admission may not give a second thought about the "fitness" criterion of the process and be well-deserving of the glowing paeans attesting to their "good moral character." However, what many candidates may not realize is that a shaky credit history may temporarily derail the process.

#### Money matters

The Financial Matters/Defaults section of the Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York ([www.nybarexam.org/adminfo.htm](http://www.nybarexam.org/adminfo.htm)) includes questions about bankruptcy, unsatisfied judgments, defaulted loans, and debt for \$300 or greater, which is past due for more than 90 days.

Considering the dramatic increase of law student debt loads and other factors, the question arises: Has there been an increase in New York state applicants facing these types of issues? "I don't know," said Daniel Brennan, Principal Attorney, Appellate Division, Third Department. "To my knowledge, the four judicial departments do not keep comprehensive statistics on this," he said.

#### ALS students advised

Albany Law School students are advised several times about their financial matters and its relevance to bar admission, said Richard L.

Ludwick, MA, JD, DEd, Vice President, Enrollment Management and Student Affairs. "All students should know about the details of the financial questions; most are prepared when it's time to apply to the bar, but some are not and are surprised."

#### For some, a surprise

In fact, when Mary Campbell Gallagher, JD, PhD., President of New York City-based BarWrite, which trains students for the bar examination, spoke with one of her students – a graduate of a New York state law school – about the issue of delinquent debt and bar admission. The student was surprised to learn about the application's financial questions.

Gallagher spoke with another student who reported that his out-of-state school offered seminars on this subject. Yet a third student said she did not receive any information from her out-of-state law school, but heard about it from her friends.

In researching this issue, the following judicial departments were surveyed for their specific protocols.

#### First Department

Sarah Jo Hamilton, Esq., Secretary to the Committee on Character and Fitness, Appellate Division, First Department, said, "As a general rule, we do not want applicants to have outstanding overdue debt that they are not resolving."

Of the 3,000 annual First Department applicants, "approximately 45 to 50 have not satisfactorily addressed serious outstanding debt problems prior to the application process," Hamilton said. In most cases, applicants are able to satisfactorily resolve their problems. She added, "In the last three years, I only know of two or three cases where they were unable to resolve this issue. Their applications are still outstanding."

#### Second Department

Fred Bodoff, Executive Secretary of the Committees on Character and Fitness, Second Judicial Department, reported that "[annually] a small number of candidates disclose delinquent debt on their application, which is an issue that has to be addressed."

"These candidates usually have neglected accumulated debt and also may display, at their interview, a cavalier attitude towards repayment," he said. "If the interviewer is uncomfortable with approving the candidate, the interviewer will refer the candidate to a subcommittee."

The two-member subcommittee will hold a stenographic hearing in which they interview the candidate under oath. "At the very least, this will delay the candidate's application and this may, in some circumstances, lead to disapproval of the application," said Bodoff.

#### Third Department

The Third Department's character and fitness committee inquires about a wide variety of financial topics: They may ask for a copy of a bankruptcy petition, a bankruptcy discharge, or a credit report, said Brennan. Furthermore, "... one piece of information may lead us to ask for more information," he said.

Applicants who have not addressed serious financial issues "would be a concern obviously, and ... they might have their application at least referred to a subcommittee on character and fitness review, [which would conduct an interview with the applicant that is not transcribed], and then it would be up to the subcommittee. It is possible there could be a deferral," Brennan explained. "If the committee as a whole recommends denial of the application, then the applicant has a right to a formal transcribed hearing," he said.

#### Fourth Department

Patricia Morgan, Deputy Clerk of the Appellate Division, Fourth Department, reported, "Candidates who disclose excessive or past due debt may be referred for a hearing and, prior to certification, would be required to demonstrate that creditors have been contacted and payment arrangements have been made."

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