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Casenotes: Bar Admissions — Applicant's Failure to Fully Disclose Armed Robbery Conviction Deemed Insufficient to Deny Admission to Bar upon Demonstration of Good Moral Character. In re Application of G.L.S., 292 Md. 378, 439 A.2d 1107 (1982)

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BAR ADMISSIONS — APPLICANT'S FAILURE TO FULLY DISCLOSE ARMED ROBBERY CONVICTION DEEMED INSUFFICIENT TO DENY ADMISSION TO BAR UPON DEMONSTRATION OF GOOD MORAL CHARACTER. *In Re Application of G.L.S.*, 292 Md. 378, 439 A.2d 1107 (1982).

Fourteen years prior to applying for admission to the Bar of Maryland, G.L.S. was convicted of armed robbery.<sup>1</sup> Three years after his release from prison, G.L.S. received an undergraduate degree and decided to pursue a career in law. In response to law school application questions regarding any prior criminal record, G.L.S. fully disclosed his conviction and was admitted.<sup>2</sup> Following his graduation from law school, G.L.S. applied for admission to the Bar of Maryland. Included in the bar application were questions regarding G.L.S.'s criminal record which were nearly identical to those contained in his law school application. On the bar application, however, G.L.S. failed to provide complete information about his conviction.<sup>3</sup> Nonetheless, the character committee found his answers adequate and made a recommendation to the State Board of Law Examiners that G.L.S. be admitted to the bar.<sup>4</sup> When asked by the board to explain the incomplete disclosure of his criminal record, G.L.S. stated that he was "in a hurry" when filling out the application.<sup>5</sup> Although the board termed G.L.S.'s explanation "unpersuasive," it recommended his admission to the Court of Appeals of Maryland.<sup>6</sup> In *In re Application of G.L.S.*,<sup>7</sup> the court of appeals, over a vehement dissent,<sup>8</sup> ordered G.L.S.'s admission, holding that he presented sufficient evidence of rehabilitation and demonstrated adequate candor to establish his good moral character.<sup>9</sup>

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1. *In re Application of G.L.S.*, 292 Md. 378, 379, 439 A.2d 1107, 1108 (1982). During his incarceration, G.L.S. was classified as a "management problem" and was repeatedly transferred between penal institutions. *Id.* Although eligible for parole after serving three years, G.L.S. was not released until he had served six. *Id.* at 379, 401, 439 A.2d at 1108, 1119 (Digges, J., dissenting).

2. *Id.* at 379-81, 439 A.2d at 1108-09.

3. Question 5 of the character questionnaire requires the listing of every "residence, address and place" where the applicant has lived within the last ten years. In response, G.L.S. listed his residences between 1974 and 1980 but failed to provide any information regarding his incarceration during 1970-74. *Id.* at 381-82, 439 A.2d at 1109. Question 11 of the character questionnaire stated:

The following is a complete record of all criminal proceedings (including traffic violations other than an occasional parking violation) to which I am or have ever been a party: (If 'None' so state)

Date	Court	Nature of Proceedings	Disposition
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In response, under the heading Date the applicant placed "11/67" and under the heading Court the applicant placed "U.S. District Ct. for the District of Maryland." Under the headings Nature of Proceedings and Disposition the applicant provided no information. *Id.* at 383, 439 A.2d at 1110.

4. *Id.*

5. *Id.* at 383-84, 439 A.2d at 1110.

6. *Id.* at 389-92, 439 A.2d at 1113-14.

7. 292 Md. 378, 439 A.2d 1107 (1982).

8. See *infra* text accompanying notes 37-41.

9. *In re Application of G.L.S.*, 292 Md. 378, 398, 439 A.2d 1107, 1118 (1982).

Every state has attorney licensing regulations which require bar candidates to demonstrate good moral character in addition to academic competency.<sup>10</sup> A determination of good moral character requires a balancing of the state interest in protecting the public from unscrupulous attorneys<sup>11</sup> with an applicant's interest in pursuing his legal career.<sup>12</sup> Although states are free to define good moral character, the United States Supreme Court in *Schwartz v. Board of Bar Examiners*<sup>13</sup> imposed limitations by refusing to permit states to exclude a person from the bar for reasons that contravene due process and by requiring that the state's good moral character qualifications have a rational nexus with the applicant's fitness to practice law.

The case law discussing the good moral character requirement provides no definitive answer as to what conduct will satisfy the standard.<sup>14</sup> Because each determination is made on a case-by-case basis, the decisions are marked with inconsistencies<sup>15</sup> rendering it difficult to

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10. J. Mavity, *State Rules Governing Admission to the Bar: Comparisons and Comments*, BAR ADMISSION RULES AND STUDENT PRACTICE RULES 8 (F. Klein ed. 1978). The procedures by which states determine good moral character are fairly uniform. The ultimate responsibility for bar admissions usually resides with the highest court of the state. Note, *Admission to the Bar Following Conviction for Refusal of Induction*, 78 YALE L.J. 1352, 1353 (1969).

In most states, the highest court delegates its administrative and investigative functions to a state board of law examiners. Special Project, *Admission to the Bar: A Constitutional Analysis*, 34 VAND. L. REV. 655, 664-65 (1981). Some states also permit these boards to delegate authority regarding character investigation to a committee on character. J. Mavity, *State Rules Governing Admission to the Bar: Comparisons and Comments*, BAR ADMISSION RULES AND STUDENT PRACTICE RULES 42 (F. Klein ed. 1978).

Maryland has a State Board of Law Examiners, MD. ANN. CODE art. 10, § 2 (1976 & Supp. 1982), and eight character committees, one per judicial circuit. RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND, Rule 4. The board's function is to report its opinion of the applicant's good moral character to the court of appeals, based on their examination and the report of the committee below. Although the board's recommendations are entitled to "great weight," the court of appeals makes its own independent evaluation of the applicant's moral character. *In re Application of Allan S.*, 282 Md. 683, 690-91, 387 A.2d 271, 276 (1978).

11. Note, *Admission to the Bar Following Conviction for Refusal of Induction*, 78 YALE L.J. 1352, 1355-62 (1969).
12. Special Project, *Admission to the Bar: A Constitutional Analysis*, 34 VAND. L. REV. 655, 666-69 (1981).
13. 353 U.S. 232, 238-39 (1957).
14. Indeed, even commentators have been unable to agree on what type of conduct is relevant. Some commentators have questioned the good moral character requirement as being too broad, W. GELLHORN, *INDIVIDUAL FREEDOM AND GOVERNMENTAL RESTRAINTS* 151 (1956) (standard should not embrace the applicant's general morals, but rather should examine conduct relevant to legal profession), too narrow, Adkins, *What Doth the Board Require of Thee?* 28 MD. L. REV. 103, 109 (1968) (examination should include inquiry into applicant's psychological fitness to practice law), and too vague, Cahn, *Authority and Responsibility*, 51 COLUM. L. REV. 838, 850 (1951) (ascertainment of good moral character is not a proper judicial function since it requires judgment without benefit of rules).
15. J. Mavity, *State Rules Governing Admission to the Bar: Comparisons and Com-*

predict whether an applicant possesses the requisite good moral character. In a majority of states a criminal record, although highly relevant, is not determinative of an applicant's bad moral character.<sup>16</sup> In contrast, a small minority of jurisdictions provide for the mandatory exclusion of convicted felons from the bar.<sup>17</sup> In the majority of states, an applicant may also be denied admission for criminal conduct which does not result in a criminal conviction.<sup>18</sup> Even a pardon is not conclusive proof of an applicant's good moral character.<sup>19</sup>

The Court of Appeals of Maryland, in its few published opinions,<sup>20</sup> has developed criteria for evaluating the moral character of an applicant who has committed criminal conduct. Throughout the application process an applicant bears the burden of proving his good moral character.<sup>21</sup> Although a prior conviction is not conclusive, its existence increases the applicant's burden of proof.<sup>22</sup> Factors which the court has deemed relevant to the evaluation are the existence of a pattern of offenses,<sup>23</sup> and the time elapsed between the applicant's last offense and his application to the bar.<sup>24</sup> In addition, the court has emphasized that

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*ments*, BAR ADMISSION RULES AND STUDENT PRACTICE RULES 50-52 (F. Klein ed. 1978).

16. *See, e.g.*, *Hallinan v. Committee of Bar Examiners*, 65 Cal. 2d 447, 55 Cal. Rptr. 228, 421 P.2d 76 (1966); *In re Dileo*, 307 So. 2d 362 (La. 1975); *In re Monaghan*, 126 Vt. 53, 222 A.2d 665 (1966). *See generally* Annot., 88 A.L.R.3d 192, 206-08 (1978).
17. *See, e.g.*, FLA. STAT. ANN. § 454.18 (West 1981); MISS. CODE ANN. § 73-3-41 (1973).
18. *See, e.g.*, *In re Appeal of Evinger*, 604 Okla. 44, 629 P.2d 363 (1981) (pattern of misconduct and circumstances revealing basic lack of honesty deemed sufficient to deny admission). *But see* *Schware v. Board of Bar Examiners*, 353 U.S. 232, 241 (1957) ("mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct").
19. *See, e.g.*, *Lark v. West*, 289 F.2d 898 (D.C. Cir.), *cert. denied*, 368 U.S. 865 (1961).
20. Prior to 1978 the court of appeals usually ruled upon an applicant's character in the form of an order to the State Board of Law Examiners. *But see* *Character Comm. v. Mandras*, 233 Md. 285, 190 A.2d 630 (1964). This practice was criticized because it left the character committees with little guidance, forcing them to rely upon disbarment cases in interpreting good moral character. Pines, "Fitness to Practice Law": *The Character Committee*, XI MARYLAND BAR JOURNAL 34 (Summer 1978). Since 1978, the court of appeals has delivered several published opinions regarding the good moral character requirement. *See infra* notes 24-25.
21. RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND, Rule 2(d).
22. *In re Application of Allan S.*, 282 Md. 683, 690, 387 A.2d 271, 275 (1978).
23. In denying admission to three applicants, the court stated that "thievery of a repetitive nature is indicative of a serious character flaw." *In re Application of K.B.*, 291 Md. 170, 178, 434 A.2d 541, 545 (1981) (applicant engaged in credit card fraud involving over two hundred transactions denied admission); *In re Application of G.S.*, 291 Md. 182, 187, 433 A.2d 1159, 1161 (1981) (applicant committed approximately twenty shoplifting offenses denied admission); *In re Application of David H.*, 283 Md. 632, 640, 392 A.2d 83, 88 (1978) (applicant charged with five criminal offenses denied admission). *But see In re Application of A.T.*, 286 Md. 507, 515-16, 408 A.2d 1023, 1028 (1979) (court admitted an applicant who was a pattern offender by reasoning that his conduct was attributable to his prior drug addiction rather than an inherent character flaw).
24. Generally those applicants admitted have abstained from criminal conduct longer

no moral character qualification for bar membership is more important than truthfulness and candor.<sup>25</sup>

In certain respects, *In re Application of G.L.S.*<sup>26</sup> is consistent with prior case law. The applicants who were denied admission before G.L.S. were pattern offenders,<sup>27</sup> in contrast to G.L.S. who was a one-time offender. In addition, G.L.S. had abstained from criminal conduct for fourteen years — a longer period of time than prior admittees.<sup>28</sup> In considering the seriousness of the crime, the *G.L.S.* court avoided a mechanical approach by declining to hold that the crime of armed robbery is of such a nature that it is conclusive of bad moral character.<sup>29</sup> Although G.L.S.'s crime was more serious than prior admittees,<sup>30</sup> the absence of a pattern of offenses and the lapse of a substantial period of time between the commission of the crime and his application permitted the court to conclude that he was rehabilitated.

In considering G.L.S.'s incomplete disclosure of his prior conviction, however, the court departs from precedent. In denying admission in *In re Application of K.B.*,<sup>31</sup> the court found, through an independent examination of the record, a lack of candor undetected by the board.<sup>32</sup> The *G.L.S.* court was presented with an equally obvious example of a lack of candor accompanied by the board's finding that G.L.S.'s expla-

than those denied admission. *Compare In re Application of A.T.*, 286 Md. 507, 408 A.2d 1023 (1979) (admitted thirteen years after last conviction, six years since stopped using illicit drugs) and *In re Application of Allan S.*, 282 Md. 683, 387 A.2d 271 (1978) (admitted seven years after arrest for shoplifting) with *In re Application of K.B.*, 291 Md. 170, 434 A.2d 541 (1981) (denied admission four years after mail fraud conviction) and *In re Application of David H.*, 283 Md. 632, 392 A.2d 83 (1978) (denied admission four years after theft offenses). *But see In re Application of Howard C.*, 286 Md. 244, 407 A.2d 1124 (1979) (applicant admitted four years after criminal conviction).

This reliance upon the passage of time in considering good moral character was criticized in *In re Application of A.T.*, 286 Md. 507, 516, 408 A.2d 1023, 1038 (1979) (Smith, J., dissenting). The dissent found the court "to be of the belief that one can be said to possess good moral character if he had not violated the law lately." *Id.* (emphasis added).

25. The court relied upon the applicant's full candor in admitting Allan S., *In re Application of Allan S.*, 282 Md. 683, 689, 691-92, 387 A.2d 271, 275, 276 (1978), and the applicant's lack of candor in denying admission to K.B. *In re Application of K.B.*, 291 Md. 170, 179-81, 434 A.2d 541, 545-46 (1981). *See also* MD. CODE OF PROFESSIONAL RESPONSIBILITY DR I - 101(a) (1977).
26. 292 Md. 378, 439 A.2d 1107 (1982).
27. *See supra* note 23.
28. *See supra* note 24.
29. *In re Application of G.L.S.*, 292 Md. 378, 379, 439 A.2d 1107, 1117 (1982).
30. Five applicants' crimes involved theft. *In re Application of G.S.*, 291 Md. 182, 183, 433 A.2d 1159, 1159-60 (1981); *In re Application of Howard C.*, 286 Md. 244, 246-48, 407 A.2d 1124, 1125-26 (1979); *In re Application of A.T.*, 286 Md. 507, 509-10, 408 A.2d 1023, 1025 (1979); *In re Application of David H.*, 283 Md. 632, 633-35, 392 A.2d 83, 84-85 (1978); *In re Application of Allan S.*, 282 Md. 683, 687, 387 A.2d 271, 273-74 (1978). One applicant was convicted of mail fraud. *In re Application of K.B.*, 291 Md. 170, 172-73, 434 A.2d 541, 542 (1981).
31. 291 Md. 170, 434 A.2d. 541 (1981).
32. *Id.* at 179-80, 434 A.2d at 545-46.

nation was "unpersuasive."<sup>33</sup> Nevertheless, the court noted that G.L.S. disclosed his conviction in his law school application and ruled that he provided sufficient information in his bar application to alert the committee to the need for further inquiry.<sup>34</sup> By choosing to believe G.L.S.'s assertions that he did not intend to conceal his prior criminal activity,<sup>35</sup> the court abandons the emphasis previously placed on the applicant's candor and truthfulness.<sup>36</sup>

Judge Digges, writing for the dissent, argues that the court's failure to discipline G.L.S. for his lack of candor reduces the good moral character requirement "to a mere platitude, lacking in substance, delivered as commencement day rhetoric upon graduation from law school or bar admission ceremonies."<sup>37</sup> The dissent asserts that G.L.S.'s disclosure to the law school was insufficient to provide the board with notice of his conviction because it is the court, not the law school, which bears the ultimate responsibility for determining an applicant's good moral character.<sup>38</sup> Judge Digges concludes that the majority misconceived its duty to protect the public from unscrupulous attorneys<sup>39</sup> by comparing G.L.S.'s good deeds with his bad and rewarding him for his progress by admitting him.<sup>40</sup> The dissent correctly states that when the interests of the individual applicant and the public conflict, the individual's interest must be put aside.<sup>41</sup>

The court's tendency to engage in such a balancing process may be attributed in part to the time when the applicant's character is assessed. G.L.S. did not file for his character review until after his graduation from law school.<sup>42</sup> A determination at that time favors the applicant because the court, in attempting to protect both the interests of the individual and the public, is less likely to deny admission to an applicant after he has proven scholastic competency. The *G.L.S.* court apparently permitted this potential hardship to the applicant to cloud its view of its public duty.

Similar problems could be avoided in the future through amendment to the rules governing admission to the bar. The rules now per-

33. *In re Application of G.L.S.*, 292 Md. 378, 389, 439 A.2d 1107, 1113 (1982).

34. *Id.* at 397, 439 A.2d at 1117. The court's holding appears contrary to the rules concerning bar admissions which provide that "the failure of an applicant to answer any relevant question on the [character] questionnaire . . . shall justify a finding that the applicant has not met the burden of proving his good moral character." RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND, Rule 2.

35. *In re Application of G.L.S.*, 292 Md. 378, 397, 439 A.2d 1107, 1117 (1982).

36. *See supra* note 25.

37. *In re Application of G.L.S.*, 292 Md. 378, 403, 439 A.2d 1107, 1120 (1982) (Digges, J., dissenting).

38. *Id.* at 402, 439 A.2d at 1120.

39. *See Attorney Grievance Comm'n v. Lockhart*, 285 Md. 586, 597, 403 A.2d 1241, 1247 (1979).

40. *In re Application of G.L.S.*, 292 Md. 378, 404, 439 A.2d 1107, 1121 (1982) (Digges, J., dissenting).

41. *Id.*

42. *Id.* at 381, 439 A.2d at 1109.

mit an applicant to file for a determination of his moral character before enrollment in law school.<sup>43</sup> Thus, the applicant benefits from an early determination which, if unfavorable, enables him to avoid investing substantial effort and expense in the hope of obtaining bar certification. Additionally, the public benefits because candidates lacking good moral character are screened out before they complete law school, reducing the impact a legal degree may have upon the court's consideration of an applicant's moral character. Unfortunately, the Court of Appeals of Maryland has not required, and by the *G.L.S.* decision discourages, applicants from filing immediately before entry into law school. Therefore, it is suggested that the court of appeals, pursuant to its rule-making authority,<sup>44</sup> amend rule 2(b) to require applicants who have engaged in criminal conduct to file for their character determination immediately upon graduation from college or acceptance into law school, whichever is earlier. Because the court of appeals places great emphasis upon the time lapse since the applicant's last offense, early filing may appear detrimental to those applicants for whom the years spent in law school are important to the final determination of good moral character. A preliminary finding of good moral character contingent upon further rehabilitation during the law school years should resolve this problem.

*G.L.S.* does not overrule prior cases denying admission to applicants convicted of less serious crimes because each determination of good moral character is made on a case-by-case basis. However, by admitting *G.L.S.*, a convicted armed robber, the court marks the outer boundary of the good moral character requirement. The dissent warns that by admitting *G.L.S.* the court has set a trend which may, in the future, foster the admission of applicants convicted of more serious crimes.<sup>45</sup> Perhaps more importantly, the *G.L.S.* decision creates a dangerous incentive for future applicants to engage in similar partial and nondisclosures with the hope of "sliding by," thereby hindering the court's ability to obtain the necessary information. Future applicants, if detected could, like *G.L.S.*, "voluntarily" provide the court with the

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43. See RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND, Rule 2(b).

44. The Court of Appeals of Maryland is empowered to prescribe rules governing the character examination of bar applicants by ME. ANN. CODE art. 10, § 3(d) (1976 & Supp. 1982).

45. *In re Application of G.L.S.*, 292 Md. 378, 404, 439 A.2d 1107, 1121 (1982) (Digges, J., dissenting). Since the *G.L.S.* decision the court of appeals has ordered the admission of two applicants who committed criminal conduct. Upon reapplication, the court in *In re Application of David H.*, 451 A.2d 651, 657 (Md. 1982) admitted an applicant who was previously denied admission because of his repetitive criminal conduct; see also *In re Application of David H.*, 283 Md. 632, 392 A.2d 83 (1978). In *In re Application of Maria C.*, 451 A.2d 655 (Md. 1982), the court admitted a shoplifter who concealed her conviction on her 1977 law school application and in all job applications since that time. *Id.* at 655 (Smith, J., dissenting). In addition, there was some question as to whether the applicant was completely candid in disclosing her driving record on her bar application. *Id.*

information just as the apprehended shoplifter invariably offers to pay for the stolen goods. The court's failure to discipline G.L.S. demonstrates that truthfulness and candor are no longer the most important requirements for admission to the Bar of Maryland.

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