

2013

We Are Who We Admit: The Need to Harmonize Law School Admission and Professionalism Process with Bar Admission Standards

Timothy P. Chinaris

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31 Miss. C. L. Rev. 43 (2012-2013)

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WE ARE WHO WE ADMIT: THE NEED TO HARMONIZE LAW SCHOOL ADMISSION AND PROFESSIONALISM PROCESSES WITH BAR ADMISSION STANDARDS

*Timothy P. Chinaris**

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* Associate Dean for Academic Affairs, Associate Dean for Information Resources, & Professor of Law, Faulkner University, Jones School of Law.

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I. INTRODUCTION

The practice of law has long been esteemed as an honored profession. In recent years, however, concerns about the declining level of professionalism among lawyers have threatened to diminish that status in the eyes of the public and within the profession itself. During this time, law schools have graduated prospective lawyers in ever-increasing numbers. Not every law school graduate goes on to be admitted to the bar, but almost every admitted lawyer is a law school graduate. Have law schools contributed to the perceived decline in lawyer professionalism by failing to adequately screen their applicants or to train their students? While it is difficult to definitively answer that question, this much is certain: By virtue of their position in the bar admission pipeline, law schools do have a unique opportunity to assess the level of character and fitness that those who end up as bar applicants possess and to help shape the professionalism of their students during their attendance at law school.

This Article argues that there is a need for many law schools to examine their admission processes and make changes designed to ensure that the qualities considered most closely by bar admission authorities are highly valued in law school admission decisions. At the same time, law schools should tailor their student behavior codes and related enforcement mechanisms to better prepare students to practice professionally upon admission to the bar.

Law schools fill distinct but related roles with respect to the professionalism of their applicants, students, and graduates. At various stages in the life cycle of a student, the law school acts as gatekeeper, developer, and evaluator of professionalism. A law school considers its applicants' level of professionalism as part of the law school admission process, endeavors to instill attributes of professionalism in its students as part of the law school experience, addresses misconduct that may occur during the law school years, and provides an evaluation to state bar examiners regarding their graduates' character as part of the bar admission process.

While in recent years, strides have been made in these areas, it is clear that there is much room for continued improvement. This can be demonstrated by comparing the character and fitness related questions on the application for admission to a state bar with the admissions applications used by law schools within that state. This Article compares the questions on the Application for Admission to The Florida Bar¹ with the admissions

1. The Florida Bar, with more than 90,000 members, is among the largest state bars in the United States. For comparative statistics on state bar membership, see, e.g., National Lawyer Population by State (2011), ABA Mkt. Research Dep't, http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_count_by_state_20012011_1.authcheckdam.pdf.

applications used by the eleven current Florida law schools.² The comparison reveals a wide disparity between the level of character the Florida Board of Bar Examiners expects of lawyers and what law schools expect of their entering students. A number of key areas that are inquired about in great detail by the bar examiners are not even mentioned on most law school applications. Additionally, law school applications often do not adequately inform prospective law students of the gravity of character and fitness issues. Law schools and admissions authorities should consider how they can work together more closely to ensure that law school applicants understand the nature of the bar admission process and fully appreciate the fact that admission to the bar requires them to comport themselves in a professional manner.

Law schools have opportunities to instruct their students in professionalism and to act in a disciplinary or remedial fashion when a student's conduct falls short of the school's standards. Most law schools offer only one required course in ethics and professionalism, and few offer substantial additional electives in this area. The concept of offering "pervasive," curriculum-wide instruction in ethics and professionalism is often discussed but has proven difficult to implement for reasons that include faculty resistance, insufficient student exposure to these areas during their first year, and a lack of context-based instruction in these subjects.

A study of Florida law school student honor and conduct codes was performed in preparing this Article, and the results call for changes in the way law schools respond to and keep records of student misconduct. Law school codes should more closely model the conduct codes that govern lawyers after they are admitted to the bar. The codes should cover more than just academic offenses. The use of informal and remedial measures, rather than strictly punitive responses, should be expanded. Wider publication of conduct code proceedings (consistent with privacy requirements), and perhaps the adoption of an advisory opinion process, should also be explored.

Law school deans are asked by bar admission authorities to certify the character and fitness of graduates. A review of the dean's certification form used by Florida bar examiners, when considered in conjunction with the information that law schools ask for on their admission applications and the records that law schools keep regarding conduct code matters, indicates that Florida law schools may not be providing the bar examiners with complete and consistent input in this important area.

Finally, most states have essentially delegated the oversight of law school professionalism to the American Bar Association ("ABA") and its

2. The eleven law schools located in Florida are: Ave Maria School of Law ("Ave Maria"); Barry University Dwayne O. Andreas School of Law ("Barry"); Florida Coastal School of Law ("Florida Coastal"); Florida International University College of Law ("Florida International"); Florida State University College of Law ("Florida State"); Nova Southeastern University Shepard Broad Law Center ("Nova Southeastern"); Saint Thomas University School of Law ("St. Thomas"); Stetson University College of Law ("Stetson"); University of Florida Levin College of Law ("Florida"); and University of Miami School of Law ("Miami"). Thomas M. Cooley School of Law has announced plans to open a campus in Tampa in 2012.

law school approval process. Although the ABA standards provide a basic foundation for ethics and professionalism education, the widely-perceived lapses in lawyer professionalism may call for more demanding requirements. It is time for state supreme courts, boards of bar examiners, and law schools to work together to identify and implement additional criteria for bar admission that would increase the likelihood that new lawyers possess the level of professionalism needed in today's legal environment.

Part II of this Article sets the stage for discussion of the relevant issues. Part III examines the various professionalism-related roles fulfilled by law schools. Law schools act as "gatekeepers" by determining which applicants will be permitted to enter law school. Law schools are "developers" of professionalism because they provide education and programming aimed at increasing awareness and enhancing professional conduct among admitted students. In their "developer" role, law schools also address instances of unprofessional student behavior through the processes established by their various student behavior codes. In their role as "evaluator" of student professionalism, law schools certify to bar admission authorities whether their graduates are of sufficient character and fitness to be considered for bar admission. Part IV discusses how bar admission standards as adopted by the state supreme court may be used to encourage law schools to increase the emphasis placed on professionalism.

II. THE LEGAL PROFESSION LOOKS LIKE THOSE WHOM IT ADMITS

Like other states, Florida's judiciary and organized bar have long viewed practicing law as a privilege and, indeed, as a high calling. Lawyers occupy unique positions of trust and responsibility, not only on behalf of their clients but for their fellow bar members and the public as a whole. The efficient and effective administration of justice for all citizens depends on lawyers carrying out their duties with integrity and professionalism. In its opinion approving the creation of the unified Florida Bar, the Supreme Court of Florida noted that "bench and bar have a responsibility to support the honor and dignity of the profession and to improve both the law and the administration of justice."³

Over the years, economic pressures and societal changes have led some to question the commitment of the organized bar and individual lawyers to the ideals of professionalism.⁴ Determined to address these concerns, in 1996 the Florida Supreme Court established the Supreme Court Commission on Professionalism ("Commission") and the Florida Bar Center for Professionalism.⁵ The Commission is charged with planning

3. *In re Fla. State Bar Ass'n*, 40 So. 2d 902, 909 (Fla. 1949).

4. See, e.g., *A National Action Plan on Lawyer Conduct and Professionalism*, CONF. OF CHIEF JUSTICES (1999), <http://ccj.ncsc.dni.us/natlplan/NatlActionPlan.html>; ABA Comm'n on Professionalism, "... In the Spirit of Public Service:" *A Blueprint for the Rekindling of Lawyer Professionalism* (1986), reprinted in 112 F.R.D. 243 (1987).

5. See *History of the Center, THE FLA. BAR*, <http://www.floridabar.org/tfb/TFBProfess.nsf/840090c16eedaf0085256b61000928dc/b803316486780f9185256b2f006ccd95?OpenDocument> (last visited May 5, 2012). In May 2005, the Florida Bar Board of Governors adopted a resolution renaming the Center

programs for and promoting professionalism among the bar, the judiciary, and the law schools in Florida. The Commission's mission statement is: "To promote the fundamental ideals and values of the justice system within the legal system, and to instill those ideals of character, competence, and commitment in all those persons serving therein."⁶

While programs such as those sponsored by the Commission may help improve the professionalism of those who are already part of the "system"—that is, those who have been admitted to the bar or admitted to law school—they completely fail to address what should be a major concern: the character and fitness of those persons who successfully apply to law school. The legal profession's character as a whole necessarily depends on the character of those who are admitted to its ranks. That character, in turn, is largely dependent on the character of those persons admitted to law school. Consequently, this Article posits that it is time for law schools to pay closer attention to the character and fitness of those whom it admits to study law, and for the schools to devote greater efforts toward strengthening the character and fitness of its students in preparation for their entry into the legal profession.

In order to accomplish these objectives, it is helpful to first explore the roles that law schools play in assessing and developing the professionalism-related qualities of their applicants and students.

III. LAW SCHOOL PROFESSIONALISM PROCESSES AND ACTIVITIES

A. *The Three Professionalism-Related Roles of Law Schools: Gatekeeper, Developer, and Evaluator*

Law schools are in a unique position to both evaluate and influence the level of professionalism demonstrated by their applicants, students, and graduates. The law school considers applicants' degree of professionalism as part of the law school admission process, endeavors to instill attributes of professionalism in students as part of the law school experience, addresses professional misconduct that may occur during the law school years, and provides an evaluation to the state bar examiners regarding their graduates' character as part of the bar admission process. Thus at various stages in the life cycles of their students the law school plays three different and critically important roles with respect to students' professionalism: gatekeeper; developer; and evaluator.

A law school acts as a "gatekeeper" by deciding which applicants it will admit to the study of law. In this role, the law school is called upon to determine whether an applicant has the appropriate level of character and

the "Henry Latimer Center for Professionalism" in honor of the late Henry Latimer, a distinguished lawyer, judge, and member of the Board of Governors. See *Resolution Renaming the Center for Professionalism*, THE FLA. BAR, <http://www.floridabar.org/tfb/TFBProfess.nsf/840090c16eedaf0085256b6100928dc/bfb4b384dc1168b785256fff006bfb52?OpenDocument> (last visited May 5, 2012).

6. *Center for Professionalism: Mission*, THE FLA. BAR, <http://www.floridabar.org/tfb/TFBProfess.nsf/840090c16eedaf0085256b61000928dc/5ab35ca3ba009cde85256da50077ee27?OpenDocument> (last visited Apr. 6, 2012).

fitness for admission to the school. It is commonly believed that a lawyer's level of professionalism is related to his or her character and fitness to practice law. An applicant is offered admission only if he or she meets the school's character and fitness threshold.

A law school acts as a "developer" of professionalism in two ways. First, all law schools require their students to receive instruction in professional ethics.⁷ Many schools also consciously attempt to provide some or all of their students with training in professionalism.⁸ Second, all law schools maintain some type of code that governs the behavior of their students. Breaches of these codes often constitute unprofessional conduct. When such misconduct occurs, the law school has the opportunity to provide disciplinary action or corrective instruction to help raise the offender's level of professionalism.

A law school acts as an "evaluator" by certifying to bar admission authorities that its graduates possess sufficient character and fitness to qualify them to sit for the bar exam or join the ranks of the legal profession. Typically this certification is done through a form signed by the law school's dean and is based on the dean's personal knowledge or on records kept by the law school.

Each of these roles provides law schools with opportunities to influence the level of professionalism that their students and graduates will possess. How effective the law schools are in performing these responsibilities directly affects the members of the public who interact with the lawyers produced by these academic institutions.

A review of the way that law schools currently perform these roles demonstrates that substantial progress can be made on these fronts.

B. Gatekeeper—Factoring Professionalism into Admission Decisions

1. Overview of the Law School Admissions Process

A law school acts as a "gatekeeper" by deciding which applicants it will admit to the study of law. Law school faculty and administrators do not necessarily embrace this "gatekeeper" role.⁹ Nevertheless, it is a fact that in virtually every United States jurisdiction, a person will not be admitted to practice law unless he or she has graduated from a law school.¹⁰ In

7. This is mandated by Standard 302(a)(5) of the ABA Standards for Approval of Law Schools, which provides: "A law school shall require that each student receive substantial instruction in: . . . the history, goals, structure, values, rules and responsibilities of the legal profession and its members." *2011-2012 Standards and Rules of Procedure for Approval of Law Schools*, ABA 20, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_standards_chapter_3_authcheckdam.pdf. For more information on how law schools carry out this responsibility, see discussion *infra* Part III.C.

8. See *infra* Part III.C.

9. See, e.g., Barry R. Vickrey, *Are We Gatekeepers?*, 34 U. TOL. L. REV. 179 (2002).

10. Seven jurisdictions (California, Maine, New York, Vermont, Virginia, Washington, and Wyoming) permit bar admission applicants to study in a law office in lieu of attending all or a portion of law school (often referred to as "reading law"), five jurisdictions (California, District of Columbia, Minnesota, New Mexico, and Oregon) permit applicants to study law through a correspondence course, and six jurisdictions (California, District of Columbia, Minnesota, New Mexico, Oregon, and Vermont)

the role of “gatekeeper,” the law school is called upon to determine who enters, and thus who ultimately may graduate from, law school.

A faculty committee typically makes law school admission decisions. Although the admissions committee may consist exclusively of faculty members, it includes or involves non-faculty representatives such as the director of the school’s admissions office. The committee establishes the procedures by which applications will be solicited, reviewed, and evaluated. The admissions decision may be based upon criteria such as undergraduate grade point average (“UGA”), score on the Law School Admission Test (“LSAT”), undergraduate major, residency, work or personal experience, race, gender, and age.

The admissions committee often establishes criteria for presumptive approval or denial of applications. Applicants satisfying these criteria are administratively admitted or denied by the admissions office staff. For example, a school may have “bright-line” minimum standards for LSAT score or UGA, and applicants not possessing these qualifications will be denied admission by the staff without being considered by the committee. Applicants not falling within the administrative decision ranges, or applicants who would otherwise be presumptively admitted but for the presence of a character and fitness issue, are considered by the admissions committee. Some schools conduct personal interviews of at least some applicants, but this practice seems to be declining. Most admissions decisions are based on a paper record supplied largely by the applicant in response to the law school’s application form.

2. Current Use of Professionalism-Related Data in Admissions Decisions

All law schools consider an applicant’s character and fitness as part of the admissions process.¹¹ Character and fitness determinations are based

permit applicants to study law online. See *Comprehensive Guide to Bar Admission Requirements 2012*, NAT’L CONF. OF BAR EXAM’RS & ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR 8–9, http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf. It seems that relatively few persons use these non-law school options. Only seven of the 16,373 applicants who passed the California Bar Examination from February 2008 through February 2011 “read law” rather than attending and graduating from law school. See *Bar Examination Statistics*, STATE BAR OF CAL., <http://admissions.calbar.ca.gov/Examinations/Statistics.aspx#statsGBX> (last visited Apr. 6, 2012). Similarly, only twenty-five of the 12,981 persons who passed the Virginia Bar Examination from February 2000 to July 2009 “read law” rather than going to law school. See *Law Reader Memorandum*, VA. BD. OF BAR EXAM’RS (Mar. 3, 2006), <http://www.vbbe.state.va.us/reader/readermemo.html> (last visited Apr. 6, 2012).

11. This appears to be required by ABA Standard 501(b), which states: “A law school shall not admit applicants who do not appear capable of satisfactorily completing its educational program *and being admitted to the bar.*” ABA, *supra* note 7, at 37 (emphasis added), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_standards_chapter_5_authcheckdam.pdf. Of course, character and fitness qualifications are part of every state bar admission process.

on the information available to the law school during the application process.¹² This professionalism-related information, however, comes almost exclusively from applicants' responses to questions on the application form.¹³ No law school routinely conducts criminal background checks of applicants.¹⁴ One Florida law school application does state that the school reserves the right to conduct a criminal background check.¹⁵

Appropriate character is critical for both aspiring lawyers and the public. It is a fundamental element of lawyer professionalism. Consequently, it seems logical that, in addition to informing law school admissions decisions, law school applications would be used to further at least two bar admission-related objectives: (1) alerting law school applicants to the importance that bar examiners place on character and fitness issues, including informing applicants that answers given on their law school applications are likely to be seen by bar admission authorities; and (2) preparing applicants for bar admission inquiries by asking for information similar to the type that will be demanded by bar admission authorities. A review of Florida law school applications, however, leads to the conclusion that neither of these objectives is being accomplished to a significant degree.

There is great disparity among law schools concerning the character and fitness questions asked on admission applications. This is demonstrated by the comparative analysis of Florida law school applications that was performed in preparing this Article. In conducting this analysis, the character and fitness questions asked by the Florida Board of Bar Examiners on the current Florida Bar Admission Application were first identified. Then, the academic year 2008-2009 application forms for each of the eleven law schools located in Florida were carefully reviewed. The law school application questions were compared with the character and fitness questions

12. The ABA Standards provide law schools with wide latitude regarding what to consider in making its admission-related character and fitness determinations. Standard 504(b) provides: "The law school may, to the extent it deems appropriate, adopt such tests, questionnaires, or required references as the proper admission authorities may find useful and relevant, in determining the character, fitness or other qualifications of the applicants to the law school." *Id.* at 39.

13. The accuracy of this self-reporting can be seriously questioned, if the experience of the University of Iowa School of Law is representative. Linda McGuire, *Lawyering or Lying? When Law School Applicants Hide Their Criminal Histories and Other Misconduct*, 45 S. TEX. L. REV. 709, 710 (2004). During a three-year period in which new law students were offered a partial "amnesty" for misrepresenting criminal histories and past misconduct on their law school applications, a total of fifty-nine students came forward and admitted the misrepresentations and omissions. *Id.* at 711. This represented between 7.6 and 10 percent of each of the three entering classes. *Id.*

14. See Darby Dickerson, *Background Checks in the University Admissions Process: An Overview of Legal and Policy Considerations*, 34 J.C. & U.L. 419, 450 (2008). Although such checks are neither required nor prohibited by the ABA Standards, law schools generally rely on applicant self-disclosure in the application process. *Id.* Other professional schools seem more willing to use background checks. "The trend in medical schools is to conduct background checks. Currently about 25% of all medical schools require criminal background checks on admitted applicants." *Id.* at 444 (footnote omitted). Some nursing and pharmacy schools also conduct criminal background checks. *Id.* at 447-48.

15. St. Thomas. At least one out-of-state law school, Thomas Cooley School of Law in Michigan, states in its admission application that it reserves the right to conduct a background check. *Id.* at 450 n.227.

asked on the Florida Bar Admission Application. The results of this analysis are summarized below.

- a. *Law school applications do not effectively alert applicants to the importance of character and fitness issues or inform them that their law school applications are likely to be reviewed by bar examiners.*

Demonstrating satisfactory character and fitness are extremely important aspects of the bar admission process. The Florida Supreme Court has stated that “[t]ruthfulness and candor are the most important qualifications for Bar membership.”¹⁶ On the Florida Bar Admission Application, seventeen of the thirty questions (56.7%) concern the applicant’s character and fitness.¹⁷ There is a good chance, however, that a prospective law student who reads a Florida law school application would not realize the high degree of emphasis placed on character and fitness by the bar admission authorities.

Law school applications often state that an applicant’s answers must be true and complete, but many applications do not clearly alert applicants to the importance that their character and fitness answers will have to the bar examiners. Two of the eleven Florida law school applications do not mention this at all.¹⁸ Five others indicate this only in an indirect fashion.¹⁹ Just four of the eleven law school applications expressly emphasize that character and fitness issues are important to the bar admission authorities.²⁰

Similarly, most law school applications do not indicate that bar examiners are likely to review a copy of that application when the prospective student applies for admission to the bar. Only four of the eleven law school applications unambiguously state that the law school application will be or could be reviewed by the bar examiners.²¹ Three others hint at this possibility,²² while four law school applications do not mention this possibility at all.²³ This state of affairs is not unique to Florida.²⁴

Basic fairness and the principles of full disclosure advocated by the legal profession demand that law schools do a better job of explaining to

16. Fla. Bd. of Bar Exam’rs re M.B.S., 955 So. 2d 504, 509 (Fla. 2007).

17. These include all or part of questions 9 (educational misconduct), 12 (employment), 13 (military service), 14 (financial responsibility), 15 (financial responsibility), 16 (civil litigation, financial responsibility), 17 (civil or criminal proceedings), 18 (financial responsibility), 19 (criminal proceedings), 20 (criminal proceedings), 21 (vehicular responsibility), 22 (vehicular responsibility), 23 (criminal proceedings), 24 (business and professional licensure), 25 (substance abuse), 26 (mental health), and 30 (unauthorized practice of law).

18. Florida A&M and Florida Coastal.

19. Barry, Florida, Florida International, Nova Southeastern, and St. Thomas.

20. Ave Maria, FSU, Miami, and Stetson.

21. Florida, Miami, Nova Southeastern, and St. Thomas.

22. Florida International, Florida State, and Stetson.

23. Ave Maria, Barry, Florida A&M, and Florida Coastal.

24. See, e.g., John S. Dzienkowski, *Character and Fitness Inquiries in Law School Applications*, 45 S. TEX. L. REV. 921 (2004) (reviewing applications used by nine Texas law schools and the top twenty law schools as ranked by U.S. NEWS & WORLD REPORT in March 2003).

applicants the importance placed on their character and fitness qualifications not only by the schools but ultimately by bar admission authorities. The case for clearer disclosure becomes even more compelling when the high cost of law school and the average student debt load are considered.

- b. Law school applications do not effectively prepare applicants for bar admission inquiries because in key respects they fail to ask for information similar to that required by bar examiners.*

The Florida Bar Admission Application asks character and fitness related questions in ten general areas: academic misconduct; employment experience (including discharge and non-hiring information); military service (including discharge information); financial responsibility (including debts, bankruptcy, and taxes); involvement in civil litigation (including personal and business litigation, and unauthorized practice of law activity); involvement in criminal proceedings; vehicular responsibility (including DUIs and traffic citations); business and professional licensure and discipline; substance dependency and abuse; and mental health.

In several of these areas, the law school applications closely track the information requested on the bar application. In other areas of importance to the bar examiners, however, there are few—if any—relevant questions on most law school applications.

- i. Academic Misconduct*

The Florida Bar Admission Application is phrased broadly to include not only disciplinary action taken against the applicant but whether the applicant has even been “accused” of academic misconduct or student code conduct violations.

All of the law school applications request information about academic sanctions. Only six of the eleven law school applications, however, specifically ask about accusations or charges.²⁵

- ii. Employment Experience (including discharge and non-hiring information)*

The Florida Bar Admission Application asks about discharges, suspensions, and requests to resign from employment, as well as denials of employment based on questions of background or character.

None of the law school applications are as detailed as the bar application. Only two of the eleven ask about an applicant’s reasons for leaving prior employment.²⁶ Eight inquire about at least some past employment experience, without seeking information about the applicant’s reasons for

25. Florida State, Florida A&M, Florida Coastal, Nova Southeastern, St. Thomas, and Stetson.

26. Ave Maria (past three years) and Stetson (past ten years).

leaving.²⁷ One law school does not ask about prior employment experience at all.²⁸ None of the law school applications ask about denial of employment for character-based reasons.

iii. Military Service (including discharge information)

The Florida Bar Admission Application seeks information about an applicant's military service history, including whether charges were made against the applicant, and whether he or she received other than an honorable discharge.

Four law school applications ask about both military service and the type of discharge received by the applicant.²⁹ Five inquire about military service but not about the type of discharge.³⁰ Two do not ask any questions about military service.³¹ Only one law school asks about the applicant's disciplinary record in the military.³²

iv. Financial Responsibility (including debts, bankruptcy, and taxes)

The Florida Bar Admission Application asks a number of detailed questions about an applicant's financial responsibility. "Financial irresponsibility" is considered conduct that may disqualify an applicant from admission to the bar.³³ The Supreme Court of Florida repeatedly has indicated that financial irresponsibility is a serious matter, particularly in the area of failure to honor child support obligations.³⁴

Despite the significance of evidence of financial irresponsibility, *none* of the eleven Florida law schools ask any questions about financial responsibility issues on their applications. One law school has a question that asks applicants, after they have been admitted to the school, to notify the school of any arrests, legal proceedings, or bankruptcies that have occurred.³⁵ The failure of law schools to inform applicants of the high level of importance of financial responsibility is inexcusable, particularly in view of the high educational debt load assumed by many law students.

v. Involvement in Civil Litigation (including personal and business litigation, and unauthorized practice of law activity)

The Florida Bar Admission Application inquires about an applicant's involvement in civil litigation in any capacity, including both personal and

27. Barry, Florida A&M, Florida Coastal, Florida International, Florida State, Miami, Nova Southeastern, and St. Thomas.

28. Florida.

29. Ave Maria, Florida, Florida Coastal, and Stetson.

30. Barry, Florida A&M, Florida International, Nova Southeastern, and St. Thomas.

31. Florida State and Miami.

32. Stetson.

33. FLA. BAR ADMISSIONS R. 3-11(g).

34. *See, e.g.*, Fla. Bd. of Bar Exam'rs re Chavez, 894 So.2d 1, 5 (Fla. 2004); Fla. Bd. of Bar Exam'rs re J.A.B., 762 So. 2d 518, 520 (Fla. 2000); Fla. Bd. of Bar Exam'rs re M.A.R., 755 So. 2d 89, 91 (Fla. 2000); Fla. Bd. of Bar Exam'rs re E.R.M., 630 So. 2d 1046, 1047-48 (Fla. 1994).

35. Barry.

business activity and unauthorized practice of law incidents. Only one of the eleven Florida law schools asks even a single question about an applicant's civil litigation activities.³⁶

vi. Involvement in Criminal Proceedings

As would be expected, the Florida Bar Admission Application asks extremely detailed questions regarding an applicant's past or present involvement with the criminal justice system. The questions are phrased broadly to include not only convictions but also arrests, detentions, notices to appear, and even informal accusations of felonies. The bar application clearly specifies, in bold print, that even matters that were sealed or expunged must be disclosed.

All eleven law schools ask about convictions of all but minor traffic matters (typically defined as not involving DUI and resolved with a fine of no more than \$200.00). One school asks only about "convictions."³⁷ Three other schools ask only about charges and convictions—but not about arrests, detentions, and accusations.³⁸

Regarding expunged and sealed matters, two schools do not mention these at all in their admission applications.³⁹ Only three schools expressly ask about or require disclosure of expunged or sealed matters.⁴⁰ On the other hand, seven of the eleven schools expressly state that an applicant is not required to answer "yes" to questions if the records have been expunged or sealed.⁴¹ Each of these seven schools, however, does recommend that applicants make disclosure.

vii. Vehicular Responsibility (including DUIs and traffic citations)

The Florida Bar Admission Application includes several questions relating to what might be termed vehicular responsibility. These questions ask about: accusations, detentions, and arrests for driving under the influence of alcohol or drugs; other traffic violations that resulted in a fine of \$200.00 or more, jail time, or license suspension or revocation; or any traffic warnings, citations, or arrests within the past three years (other than parking tickets).

None of the law school application admissions are as comprehensive as the bar admission application in the area of vehicular responsibility. No school asks about traffic citations with a fine of less than \$200.00, regardless of the number of citations or when they occurred. Two schools ask no questions that specifically mention vehicular offenses, even DUI.⁴² It would appear that on these applications, traffic offenses would have to be

36. St. Thomas. The Florida experience on this issue is similar to that of the Texas law schools and the top twenty law schools. See Dzienkowski, *supra* note 24.

37. Ave Maria.

38. Florida, Florida International, and Miami.

39. Barry and St. Thomas.

40. Ave Maria, Florida Coastal, and Nova Southeastern.

41. Florida, Florida A&M, Florida International, Florida State, Miami, and Stetson.

42. Ave Maria and Florida Coastal.

reported only if they fell within the questions relating to criminal proceedings. The other nine schools expressly mention some traffic offenses in their questions relating to criminal proceedings.

viii. Business and Professional Licensure and Discipline

The Florida Bar Admission Application asks a series of questions regarding an applicant's status with relation to business or professional licensure. It asks whether such a license was ever held, applied for and denied (or withdrawn), suspended, or revoked. It asks whether a license holder was ever the subject of disciplinary complaints, charges, or sanctions.

One of the eleven law school admission applications asks whether the applicant has ever been the subject of disciplinary action with respect to any professional license held.⁴³ A second school asks a similar question but broadens it to include professional or occupational licenses.⁴⁴ None of the other nine schools asks about this subject at all.

ix. Substance Dependency & Abuse and Mental Health

Substance abuse and mental-health troubles among lawyers present tremendous problems not only for those suffering from those problems but for their clients, the public, and the lawyer disciplinary system. For example, it has been estimated that anywhere from fifty to eighty percent of all disciplinary cases involve substance abuse.⁴⁵

The Florida Bar Admission Application recognizes the significance that substance abuse and mental health issues can have with respect to character and fitness. The application specifically asks whether, within the past ten years, the applicant has been addicted to or dependent on intoxicants. Similarly, the application asks detailed questions about the applicant's mental health treatment and condition.

In sharp and shocking contrast, none of the eleven Florida law school applications ask even one question about a prospective student's substance dependency or mental health.⁴⁶

3. Opportunities for Improvement

Character and fitness qualifications are a significant part of the bar admission process. Prospective students who are contemplating entering

43. Stetson.

44. Florida A&M.

45. See, e.g., ASS'N. OF AM. L. SCHOOLS, *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 36 (1994) (50–70% of discipline cases involve substance abuse); *Report to the House of Delegates Resolution 121*, ABA YOUNG LAWYERS DIV. COMM. ON IMPAIRED ATTORNEYS (1995), http://apps.americanbar.org/legalservices/colap/downloads/resolution_121_mcle.pdf (60–80% of lawyer discipline cases are result of addiction).

46. It may be noted that most of the applications do ask about criminal convictions for DUI offenses. See *supra* notes 3–41 and accompanying text. The answers to those questions perhaps could be read as providing some indirect information regarding substance dependency. The Florida experience is similar to that of the Texas law schools and the top twenty law schools. See Dzienkowski, *supra* note 24.

law school should be apprised of this as they consider investing three years of their lives and a substantial amount of money in preparing to enter the legal profession.⁴⁷ Law school applications, however, do a poor job of alerting prospective students to the importance of character and fitness.

This deficiency is one that could, and should, be corrected. Law schools should be encouraged to develop a standardized statement that will be included on each admission application. In clear language this statement should inform applicants of at least three important facts: (1) possessing appropriate character and fitness is a major component of their package of qualifications for admission to the bar; (2) the burden is on the applicant to prove that he or she has a sufficient level of character and fitness;⁴⁸ and (3) the bar admissions authorities may review the applicant's law school applications in making its character and fitness determination. If law schools are unable or unwilling to agree on the inclusion and wording of such an explanatory statement, the American Bar Association should consider amending its Standards for Approval of Law Schools to require such a statement. Alternatively, state supreme courts, which typically govern the admission to practice of law in the states, could promulgate such a statement and require its inclusion in the admission applications used by law schools in their states.⁴⁹ For example, the Supreme Court of Florida has the constitutional authority to regulate admission to the practice of law in Florida and could require the Florida schools to place such a statement on Florida law school admissions applications.⁵⁰

The issue of whether character and fitness questions on law school admission applications should mirror the questions asked on a state bar admission application presents more difficulty. Nevertheless, there are cogent reasons why the character and fitness questions on law school applications should more closely track, if not be identical to, the related questions on the bar admission application. For example, assume that a law school applicant truthfully answers the school's questions concerning the applicant's criminal history. As noted above, these questions may be less specific and more lenient than those on the bar admission application. A year or two later, the same individual truthfully answers the criminal history questions on the bar application. Because of the stricter, more specific

47. The average law student graduates with a significant amount of debt. See, e.g., Leigh Jones, *A Grim Verdict Awaits Law Grads*, NAT'L L.J. (Oct. 20, 2008), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202425360862&slreturn=1> (stating that average law student graduates with about \$73,000 in educational debt). According to an ABA study from 2003, about twenty-five percent of law students graduate with more than \$100,000 of debt. *Lifting the Burden: Law Student Debt as a Barrier to Public Service*, ABA COMM'N ON LOAN REPAYMENT AND FORGIVENESS, 24 (2003), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/lrap/lrapfinalreport.authcheckdam.pdf>.

48. See, e.g., FLA. BAR ADMISSIONS R. 2-12. Other state bars have similar rules.

49. A state supreme court has regulatory authority over bar admissions in its state. See *infra* note 168.

50. "The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." FLA. CONST. art. V, § 15.

wording of the bar application questions, the applicant may have a legitimate reason to worry that the bar admission authorities will suspect him or her of misrepresentation—even though the applicant did his or her best to truthfully answer the differently-worded questions on the respective applications.⁵¹

One law dean who recognized the inconsistency between character and fitness questions asked by law schools and bar admission authorities has observed that, “[g]iven the sensitivity of character information, questions that seek the same information but with different wording may create a trap for the applicant.”⁵² In addition to seeking to harmonize the questions on the two applications, that dean’s school instituted a requirement that its students annually update the answers to the character-related questions on their law school application. This provides the students an opportunity to answer the questions with the benefit of their law school training and the heightened appreciation of lawyers’ professional responsibilities that is gained through the law school experience.⁵³

Law school faculty and administrators often point out that law schools exist to do more than just prepare graduates for admission to the bar. While this certainly is true, it is also clear that a large majority of students who attend law school intend to go into law practice. This fact alone warrants requesting or requiring law schools to base their admission decisions on criteria similar to those used by bar examiners in evaluating an applicant’s character and fitness. At a minimum, it is apparent that the disconnect between character-related experiences examined in the law school admission process and those considered by the bar examiners demands serious attention and positive action.

Law schools and bar admission authorities should work together to ensure that law school applicants fully understand the nature of the bar admission process and, just as importantly, that they fully appreciate the fact that admission to the bar requires that they comport themselves in a professional manner for the benefit of themselves, their clients, and everyone associated with our legal system.

C. Developer—Enhancing Professionalism Through Curricular and Programmatic Modifications; Effectively Addressing Unprofessional Student Conduct

During their law school experience students are expected to make the transition from a layperson untrained in the law to an aspiring member of the legal profession who is ready to pass the bar examination and begin

51. See Elizabeth Gepford McCulley, *School of Sharks? Bar Fitness Requirements of Good Moral Character and the Role of Law Schools*, 14 GEO. J. LEGAL ETHICS 839, 853 (2001). This problem is compounded because, as the author also observed, “[i]t is doubtful that a law school applicant understands the requirement of candor and disclosure without a clear statement by the law school requiring disclosure.” *Id.* at 854.

52. Vickrey, *supra* note 9, at 180.

53. *Id.*

practicing. Law graduates are expected to understand the importance of professionalism principles and effectively apply them in their daily activities. But beyond teaching their students the basics of “the law,” what do law schools do in order to inculcate in their students the principles of professionalism that are so highly valued in practice?

A review of law school programs reveals a wide variety of approaches, from simply teaching the law, to sophisticated programs specifically designed to instill professionalism principles. This portion of the Article highlights some of the existing professionalism-related programs and offers suggestions for developing effective new strategies, programs, and curricular enhancements.

Well-designed professionalism activities can raise students’ awareness and help them model and absorb principles of professionalism. Despite a law school’s best efforts, however, there will always be some students whose behavior falls short of the expected standards. When that happens, the law school has a “teachable moment” opportunity to correct misconduct and encourage professional behavior in the future. Focusing on Florida law schools, Part III.C.2 reviews the current use of law school student honor and conduct codes and suggests how those codes could better be used to achieve the goal of developing professional law school graduates.

1. Enhancing Professionalism Through Curricular and Programmatic Modifications

ABA Standard 302(a)(5) requires that each student receive instruction in “the history, goals, structure, values, rules and responsibilities of the legal profession and its members.” Most law schools satisfy this standard through the teaching of a course in what often is called “professional responsibility.” In recent years, a number of law schools have begun to expand their efforts beyond this required course in professional responsibility (which covers primarily legal ethics) by striving to provide specific training in professionalism. Recognizing that these activities are of more than merely academic interest and that the success of law schools’ programs in this area can have a far-reaching impact on the legal profession and the public, ABA Interpretation 302-6 states: “A law school should involve members of the bench and bar in the instruction required by Standard 302(a)(5).”

Law schools’ awareness of the importance of professionalism instruction and activities seems to be growing. Professionalism is becoming more of a priority for these schools. Despite the progress made in this area, however, significant challenges and opportunities remain.

a. *Current Programs and Curricula*

The ABA Standards mandate that law schools provide instruction in only a few specific areas. One of these areas is professional responsibility.⁵⁴ This requirement was adopted in response to public concerns about the ethics of members of the legal profession that arose in the post-Water-gate era.⁵⁵

Although the ABA Standards require instruction in professional responsibility, they do not direct how that instruction is to be given or how much of it is considered sufficient. Most law schools choose to satisfy ABA Standard 302(a)(5) through a two or three-credit survey course.⁵⁶ In 1985 data indicated that 75 percent of law schools required a two-credit course in professional responsibility and 16 percent required a three-credit course.⁵⁷ By 1996, many schools had increased their coverage of the topic somewhat: forty-four percent of law schools required a single two-credit course, with twenty-three percent requiring a single three-credit course.⁵⁸ Another eleven percent had required offerings that varied in length from two to three credits, depending on things like instructor and specific course focus.⁵⁹ A 2009 survey showed that the trend toward devoting more class hours to professional responsibility instruction has continued: fifty-eight percent of schools required a three-credit professional responsibility course, while twenty-two percent required a two-credit course.⁶⁰ An even higher percentage of Florida law schools, ninety-one percent, require a three-credit course.⁶¹

At most law schools, the required professional responsibility course is taught to upper division students. It is unusual to see the required course offered to first-year students.⁶² Only one Florida law school places it in the first-year curriculum.⁶³

54. ABA, *supra* note 7.

55. See, e.g., Carrie Menkel-Meadow, *A Tribute to Robert F. Drinan, S.J.: A Deeply Ethical Man*, 95 GEO. L.J. 1713, 1715 (2007).

56. See PROFESSIONALISM COMM. OF THE ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM 40 (1996) [hereinafter *Professionalism Report*]. Some law schools, however, actually have chosen to satisfy the ABA Standard through approaches that require little or no coursework of students. For a description of some of these minimalist approaches, see Roger C. Cramton & Susan P. Koniak, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 147 (1996). In a 1996 survey, six percent of law schools reported that they have no required professional responsibility course. *Professionalism Report* at 41.

57. ABA CENTER FOR PROF'L RESPONSIBILITY, A SURVEY ON THE TEACHING OF PROF'L RESPONSIBILITY 3 (1986).

58. *Professionalism Report*, *supra* note 56, at 40–41.

59. *Id.*

60. Andrew M. Perlman, Margaret Raymond, & Laurel S. Terry, *A Survey of Professional Responsibility Courses at American Law Schools in 2009*, LEGAL ETHICS FORUM 2, <http://www.legalethicsforum.com/files/pr-survey-results-final.pdf> (last visited May 5, 2012).

61. Ave Maria, Barry, Florida, Florida Coastal, Florida International, Florida State, Miami, Nova Southeastern, St. Thomas, and Stetson require a three-credit course in professional responsibility. Florida A&M requires a two credit professional responsibility course.

62. In a 1996 survey, fourteen percent of law schools reported requiring an ethics or professional component for credit in the first year. *Professionalism Report*, *supra* note 56, at 40.

63. Florida.

The level of coverage of professionalism issues in these required courses varies. It is not always extensive. More than half of the professional responsibility teachers who responded to a 2009 survey reported that they covered professionalism for fewer than two hours of class time or not at all.⁶⁴

Recognizing that covering ethics and professionalism in a single required course is difficult, if not impossible,⁶⁵ some law schools have decided to do more. A few offer upper-division courses that cover ethics and professionalism issues.⁶⁶ Many cover these issues in their elective clinical or practicum courses. It appears, however, that a majority of law schools do not offer an advanced course in professional responsibility.⁶⁷

Florida law schools mirror the national experience. It appears that only one Florida law school has more than one required ethics course.⁶⁸ Several Florida schools do offer upper-division elective courses in ethics or professionalism.⁶⁹

It has become apparent to many, however, that one required survey course, even augmented with an elective or two, cannot adequately address all of the important concepts that should be covered in preparing students for law practice. One innovative way that some law schools address ethics and professionalism outside of courses devoted specifically to those topics is through what has been called the “pervasive” or “infusion” method.⁷⁰ This method attempts to introduce elements of ethics and professionalism in courses throughout the curriculum, from first semester of first year through graduation. The method’s premise is that these important issues arise in all areas of law practice, and that it is artificial and ultimately ineffective to consign discussion of them to a single course. As one commentator stated: “Legal ethics deserve[] discussion in all substantive areas because [they] arise[] in all substantive areas. Faculty who decline, explicitly or implicitly, to address ethical issues encourage future practitioners to

64. Perlman, Raymond, and Terry, *supra* note 60, at 4. Specifically, 6.3% did not cover professionalism at all, 48.4% spent fewer than two hours of class time on professionalism, and 45.3% spent more than two hours of class time on professionalism.

65. See *Professionalism Report*, *supra* note 56, at 14–15 (“virtually impossible” to achieve goals underlying ABA Standard 302(a)(5), including professionalism instruction, in a single course).

66. Notre Dame, for example, requires a second ethics course. *Report on a Survey of Law School Professionalism Programs*, ABA STANDING COMM. ON PROFESSIONALISM 62–63 (2006), http://www.americanbar.org/content/dam/aba/migrated/cpr/reports/LawSchool_ProfSurvey.authcheckdam.pdf.

67. Perlman, Raymond, and Terry, *supra* note 60, at 2. Among the survey respondents, 42% stated that their law schools do not offer an advanced course in professional responsibility, and another 10% stated that they were unsure whether such courses were offered. As all of the respondents teach professional responsibility at their law schools, it can be assumed that if they are unaware of such courses, it was because no such courses are offered.

68. In addition to the professional responsibility survey course, Ave Maria requires an upper-division course entitled “Law, Ethics, and Public Policy.”

69. For example, Barry offers “Advanced Ethics,” Florida Coastal offers “Practical Professionalism,” Florida State University offers “Criminal Justice Ethics,” and Stetson offers “Ethics and the Practice of Criminal Law.”

70. See generally Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992).

do the same.”⁷¹ Implementing a pervasive approach has been made easier due to the availability of some standardized materials.⁷² Nevertheless, it appears that this approach has not been widely practiced by law schools.⁷³

Some schools have determined to meet the challenge of instilling professionalism in their students by developing special activities or programs. Many schools present a component devoted to professionalism during first-year orientation. A number of schools have a lecture series in which distinguished members of the bench and bar share their experience and insights. Some require a specific number of hours in attendance at professionalism programs.⁷⁴ Sometimes a coursework component accompanies these lectures.⁷⁵

Other schools employ interactive programs to build professionalism awareness. One school has a series of first-year workshops that include an exercise in drafting a professionalism commitment statement, followed by a formal ceremony attended by local lawyers and judges.⁷⁶ Another school has incoming students read a book relevant to legal professionalism that is discussed in small groups at orientation, and then builds on this foundation with monthly professionalism sessions.⁷⁷ At another school, students are divided into sixteen-member “law offices” for a series of first and second-year courses that include professionalism exercises.⁷⁸

Several programs carry students’ professionalism-related learning experiences out of the law school and into the community. One program functions as a special-purpose clinic that provides free legal services to members of the public who have filed grievances against lawyers.⁷⁹ Another program pairs students with respected local lawyers and judges. These professionals act as mentors for the students and engage in various lawyering and judicial activities with them.⁸⁰ Recently, one law school substantially changed its curricular structure in a fundamental departure from

71. Deborah L. Rhode, *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, 58 LAW & CONTEMP. PROBS. 139, 140 (1995).

72. Ethics and professionalism materials specifically designed for use in a number of subject areas are available in DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVERSIVE METHOD (2d ed. 1998).

73. While almost two-thirds of law schools responding to a 1996 survey indicated that they had adopted a pervasive approach, this commitment seems to be “honored in the breach” rather than strictly observed. The pervasive approach was not mandatory for a vast majority of these schools, and only twelve percent (16 of 131 schools responding to the survey) described a monitoring system for enforcing the pervasive program. *Professionalism Report*, *supra* note 56, at 42. For a discussion of the resistance to adopting the pervasive approach, see *infra* Part III.C.2.

74. For example, Florida Coastal requires students to attend six hours of “Continuing Professionalism Education” credit events while in law school. For more information on Florida Coastal’s policy, visit <http://www.fcsl.edu/sites/fcsl.edu/files/professionalism-policies.pdf> (last visited Apr. 6, 2012).

75. See, e.g., ABA, *supra* note 66, at 57, 84 (describing Campbell’s First-Year Professionalism Development Program).

76. See *id.* at 85 (describing Southern Illinois’ Professional Development Workshop Series for first-year students).

77. *Id.* at 85–86 (describing Wake Forest’s Professionalism Program).

78. *Id.* at 72 (describing William & Mary’s Legal Skills Program).

79. *Id.* at 83–84 (describing Yale’s Lawyering Ethics Clinic).

80. *Id.* at 86–87 (describing University of St. Thomas’ Mentor Externship).

traditional legal education methods.⁸¹ The third year now consists entirely of practical skills training, presented through a mix of practicum courses that simulate legal practice environments, legal clinics, and internships.⁸² Interwoven with these experiences is a yearlong professionalism program that includes participation from judges and practicing lawyers.⁸³

b. Obstacles to Development of New Professionalism Activities and Curricula Enhancements

Despite encouraging evidence of progress by law schools in the area of professionalism-related courses and programs, there is much room for improvement. Current activities have limitations that should be addressed through change to and expansion of existing programs, as well as the adoption of creative new initiatives.

There are challenges to the achievement of these goals. Three of the significant challenges are: (1) law school faculty resist adopting and using the pervasive method and other innovative approaches; (2) students have insufficient exposure to ethics and professionalism issues during their first year of law school; and (3) there is a lack of context-based ethics and professionalism training. These challenges, along with possible remedial responses, are discussed below.

i. Law faculty resist adopting and using the pervasive method and other innovative approaches.

Although law schools often claim to use a pervasive or infusion approach to teaching ethics and professionalism, the reality is that relatively few consistently put this approach into practice.⁸⁴ Faculty resistance, which may be based in part on a lack of relevant teaching materials, seems to be the primary reason for this.

The faculty sets law school academic programs and priorities.⁸⁵ Faculty members play the primary role in hiring and tenure decisions. Change comes slowly at many schools, particularly those that have established faculties with a large percentage of tenured members. Faculty members may resist practicing an infusion approach on a number of grounds. Class time is finite, and adding a discussion of ethics or professionalism takes away time that otherwise would be spent on the principles of property law, contracts, business associations, or whatever subject the professor

81. See Message from Dean Rod Smolla, *Washington and Lee's New Third Year of Law School*, <http://law.wlu.edu/deptimages/The%20New%20Third%20Year/ThirdYearProgramCommunicationsDocumentfinal.pdf> (last visited Apr. 6, 2012).

82. *Id.*

83. *Id.*

84. See *supra* note 73.

85. ABA, *supra* note 7, at 13. ABA Standard 205(b) provides: "The dean and faculty shall formulate and administer the educational program of the law school, including curriculum; methods of instruction; admissions; and academic standards for retention, advancement, and graduation of students; and shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of the faculty." *Id.*

teaches. Mandating the coverage of certain material (i.e., professionalism) in courses primarily focused on different subject matter can raise faculty members' concerns about infringements on their academic freedom.⁸⁶ Some faculty members may not believe themselves particularly qualified to provide professional responsibility instruction in their classes, especially if they have limited practice experience.⁸⁷ Perhaps most discouraging of all, some faculty members may not view teaching professionalism as the responsibility of law schools and believe that the responsibility is better left to the practicing bar members who hire their graduates.

In addition to faculty resistance, teaching professionalism using the pervasive method is made more difficult by the relative scarcity of relevant teaching materials.⁸⁸ A review of forty-four leading casebooks in core curricular areas revealed that professional responsibility coverage was limited to only 2.5% of the pages.⁸⁹ Similarly, one is hard-pressed to locate a current, comprehensive list of relevant audio-visual materials (such as clips from popular films) that could be used in teaching ethics and professionalism.

There are some possible solutions to these challenges. Resistance among faculty can be lowered if leaders in the academy, such as the American Association of Law Schools, would take a stronger stand in support of professional responsibility instruction through the pervasive method. On a broader front, the ABA Standards and their Interpretations could be amended to require that schools adopt and use the pervasive method.

The very real problem of the scarcity of useful teaching materials can be effectively addressed. If ethics and professionalism are to be infused in most courses, the practical reality is that it must be made easier for professors to do it. This can be done through the cooperative efforts of interested law schools and professors. For example, in states such as Florida, which has several law schools, volunteers from the various law schools could form committees that would review the leading textbooks in major areas of the curriculum and develop outlines, readings, problems, and instructor guides to facilitate understanding and discussion. The goal would be to create "plug-in" modules that could be used at specific points throughout the texts. Going further, these committees could put together multimedia materials such as filmed vignettes and (in compliance with copyright laws) movie clips that could be "plugged in" to the substantive courses and used

86. Dennis Turner, *Infusing Ethical, Moral, and Religious Values into a Law School Curriculum: A Modest Proposal*, 24 U. DAYTON L. REV. 283, 294 (1999).

87. Rhode, *supra* note 71, at 150.

88. See Marjorie L. Girth, *Facing Ethical Issues with Law Students in an Adversary Context*, 21 GA. ST. U. L. REV. 593, 597 (2005); Turner, *supra* note 86, at 295.

89. Deborah L. Rhode, *The Professional Responsibility of Professors*, 51 J. LEGAL EDUC. 158, 164-65 (2001). The review covered books in civil procedure, contracts, constitutional law, corporations, criminal law, criminal procedure, evidence, family law, property, tax, and torts. It can safely be assumed that only a fraction of these pages dealt with professionalism, as opposed to ethics. *Id.* at n.31.

with accompanying instructor guides. An easily accessed central digital depository of these resources could be maintained by an interested law school or by a state bar organization.⁹⁰

One point concerning the pervasive method should be noted. To effectively teach professionalism, the pervasive method must be combined with other tools such as dedicated ethics courses and other initiatives such as those described above. Covering short professionalism segments in a number of different courses can give students the sense that ethics and professionalism issues arise across the practice spectrum, but the segments are not a substitute for the extensive coverage and intensive study of the subject that can be accomplished only in a course devoted to the topic.⁹¹ Additionally, having dedicated programs and courses demonstrates to students the importance of ethics and professionalism.⁹²

- ii. Students have insufficient exposure to ethics and professionalism issues during their first year.

Most of the subjects tested on the bar examination are taught during the first year of law school. Legal research and writing skills, which are critical to all lawyers, are taught during the first year. During the critical first year, students are taught to “think like a lawyer.” Yet training in ethics and professionalism often are notably absent during the first year.⁹³

Failure to significantly focus on professional responsibility during the formative first year sends the wrong message to students—and faculty.⁹⁴ This problem can be remedied in several ways. The required professional responsibility course could be taught in the first year.⁹⁵ Other professionalism programs and activities can be offered at orientation and throughout the first year. Using the pervasive method of ethics and professionalism instruction would place a significant amount of relevant coverage in first year courses. These solutions, however, can be implemented only with faculty support. That necessary support can be encouraged by state supreme courts⁹⁶ or through the ABA accreditation process.

90. In Florida, for example, the Florida Bar Henry Latimer Center for Professionalism could perform this function.

91. See, e.g., Cramton & Koniak, *supra* note 56, at 168; Carrie Menkel-Meadow & Richard H. Sander, *The ‘Infusion’ Method at UCLA: Teaching Ethics Pervasively*, 58 LAW & CONTEMP. PROBS. 129, 135 (1995); see also Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L. J. 719, 735 (1998).

92. Failure to treat ethics and professionalism on a par with other subjects can give students the false impression that they are unimportant. See generally Timothy P. Chinaris, *Ethics as Law: High-Impact Teaching of Legal Ethics*, LAW.COM (Mar. 2, 2001), <http://www.law.com/jsp/article.jsp?id=900005523699>.

93. See *supra* notes 62–63.

94. On the value of first-year instruction in professional responsibility issues, see, e.g., Cramton & Koniak, *supra* note 56, at 166; Menkel-Meadow & Sander, *supra* note 91, at 136; Rhode, *supra* note 71, at 144 (“raising ethical issues at the outset of law school can also have significant symbolic value.”).

95. As noted, one Florida law school currently does this. See *supra* note 63.

96. See *infra* Part IV.

- iii. There is a lack of context-based ethics and professionalism training.

In law practice, professionalism issues do not arise in a vacuum. They arise in a specific context, whether it is in a criminal defense practice, a family law dispute, the representation of an elderly client, or a confrontation with an obstreperous opposing counsel. Context is crucial to understanding ethics and applying principles of professionalism.

In the typical law school curriculum, however, professionalism training is not placed in a practical context. It may be covered in a one-size-fits-all survey course, where most of the time is spent discussing the ABA Model Rules of Professional Conduct—rules that many have suggested are more appropriate for a large-firm civil practice than for other settings such as solo practice, criminal defense, and in-house corporate representation.⁹⁷ The failure to place the study of professional responsibility issues in a meaningful context can be a source of dissatisfaction and frustration for many students.⁹⁸

Law schools routinely offer different “tracks” of study to students interested in different aspects of the law: litigation; transactional practice; public interest; and international practice, to name just a few. Professionalism and ethics training could be similarly tracked by offering courses that present the necessary subject matter in a specific context. For example, conflicts of interest and confidentiality principles, as well as effective ways of dealing with difficult clients, often can be taught more effectively by focusing on a specific type of practice area—especially if the students are particularly interested in the underlying practice area. Although some law schools already do this, most do not. They should be encouraged to explore and adopt this approach.⁹⁹

Involving respected judges and lawyers in professional training can be an effective method of placing professionalism principles in a practical context. This can provide students with role models and at the same time can help forge closer relationships between the law schools and the legal profession, which the ABA Standards encourage.¹⁰⁰

97. One commentator has noted that “[a]lthough much of the professional responsibility literature [and instruction] focuses on large firm practice, that does not reflect the national reality of where the majority of lawyers work for the substantial portion of their careers—in small firm settings.” Judith L. Maute, *Lawyering in the 21st Century: A Capstone Course on the Law and Ethics of Lawyering*, 51 ST. LOUIS U. L.J. 1291, 1294 (2007).

98. See Robert Granfield & Thomas Koenig, *It’s Hard to be a Human Being and a Lawyer’: Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 508–10 (2003).

99. See, e.g., Maute, *supra* note 97, at 1291 (noting “boutique courses” offered by various law schools that include Legal Ethics of Civil Litigation, Ethics in Criminal Defense and Prosecution of Criminal Cases, Ethics Issues Arising in Business Transactional Practice, and Comparative International Legal Ethics); Bruce A. Green, *Less Is More: Teaching Legal Ethics in Context*, 39 WM. & MARY L. REV. 357, 370–77 (1998) (discussing contextual ethics courses offered at Fordham). Although these courses are “ethics” courses, the principle of teaching professionalism in a specific, real-world context applies with equal force.

100. See ABA, *supra* note 7, at 22. Interpretation 302-6 provides: “A law school should involve members of the bench and bar in the instruction required by Standard 302(a)(5).” *Id.*

2. *Effectively Addressing Unprofessional Student Conduct*

Law schools have opportunities through their admission processes to select students whose character and fitness appear compatible with what is required of members of the legal profession. During the law school years, schools have the opportunity to instill attributes of professionalism in their students, most of whom ultimately will become graduates and lawyers. Importantly, law schools also are called upon to address misconduct on the part of some students. When misconduct occurs, it presents a law school with the chance to educate and remediate the offender, to discipline the offender where appropriate, to educate the rest of the student body regarding appropriate conduct, and to identify character and fitness issues that may be of interest to bar admission authorities.

The primary vehicle through which a law school establishes the parameters of acceptable student behavior and addresses incidents of misconduct is a code (or codes) of conduct. These codes are known by various names. The most common names appear to be “honor code” or “conduct code.”¹⁰¹ Generally speaking, honor codes typically address academic conduct, such as examination protocol, unauthorized assistance on assignments, and plagiarism. Conduct codes ordinarily address non-academic conduct matters. Some law schools combine academic and non-academic conduct issues into a single code. This Article will generically refer to the codes as “behavior codes.”

Behavior codes have both educational and regulatory aspects. Codes educate students about appropriate, ethical conduct for law students.¹⁰² Additionally, codes reinforce the principles of conduct that are essential for lawyers.¹⁰³ It has been said that a code serves to “instill in students the notion that those entering their respective professions must be persons of integrity and must follow codes of professional conduct.”¹⁰⁴ Behavior codes serve an important regulatory function by providing for consequences in the event that a student breaches the code.¹⁰⁵

Historically the educational and regulatory aspects of behavior codes have been viewed as distinct functions with little interrelation. Such a view is at odds with recent trends in the lawyer regulation arena. Over the past fifteen years or so, the legal profession has recognized that the interests of the public and of lawyers can best be served by a regulatory system that

101. Regarding names used for student codes and their meanings, see Steven K. Berenson, *What Should Law School Student Conduct Codes Do?*, 38 AKRON L. REV. 803, 808–10 (2005).

102. See Sarah Ann Bassler, *Public Access to Law School Honor Code Proceedings*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 207, 211 (2001).

103. *Id.*

104. Kimberly C. Carlos, *The Future of Law School Honor Codes: Guidelines for Creating and Implementing Effective Honor Codes*, 65 UMKC L. REV. 937, 941 (1997).

105. See Bassler, *supra* note 102, at 212.

embraces flexibility and alternative approaches to the traditional disciplinary sanctions of reprimand, suspension, and disbarment. These alternative techniques often are referred to as “diversion.”¹⁰⁶ Proponents of the use of diversion, which include the American Bar Association and the Conference of Chief Justices, have posited that not all violations of the lawyer conduct rules warrant traditional “punishment.”¹⁰⁷ Rather, some violators are not intentional wrongdoers and should be diverted out of the traditional discipline system so that they can benefit by remedial efforts such as focused educational programs, law office management assistance, lawyer assistance programs, or mediation or arbitration programs. Members of the public benefit from successful diversion efforts because more competent and professional lawyers will serve society. The legal profession gains because the limited resources of the discipline system can be used more effectively by diverting candidates for remediation, thus allowing serious violations to be more swiftly and effectively prosecuted.¹⁰⁸

Similar benefits may be obtained if more law schools used diversion-type methods to respond to student misconduct. Having these additional “tools” in the tool kit of law school administrators could allow them to address relatively minor code breaches in a manner that helps correct the problem before it escalates into something more serious. This is advantageous to the student, the school, and ultimately to the bar examiners and the student’s future clients. Of course, the fact that a complaint against a student was resolved through diversion rather than punishment may be relevant to the bar admission authorities and should be reported to them as part of the student’s record.¹⁰⁹

A review of the behavior codes currently in place at Florida law schools suggests that most of the schools could be improved in order to more effectively infuse aspects of professionalism development and reporting into their codes and enforcement mechanisms.¹¹⁰ The results of this review are discussed below.

a. Current Status and Use of Law School Behavior Codes

The behavior codes employed by Florida law schools vary widely, from a 157-word honor code at one school to lengthy, multi-page honor and conduct codes used by several others. The codes were reviewed with the following questions in mind:

106. One commentator who has substantial experience working with these techniques has described diversion as “assistance rather than reprimands.” Diane M. Ellis, *A Decade of Diversion: Empirical Evidence that Alternative Discipline is Working for Arizona Lawyers*, 52 EMORY L.J. 1221 (2003).

107. See, e.g., ABA COMM’N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, LAWYER REGULATION FOR A NEW CENTURY, Recommendation 4 (1992), available at http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report.html (last visited May 5, 2012); Conference of Chief Justices, *supra* note 4.

108. Beneficial results achieved in Arizona through the use of diversion are discussed in Ellis, *supra* note 106.

109. See *infra* Part III.D.

110. The Florida law schools appear to be representative of law schools around the country. See generally Carlos, *supra* note 104.

- Does the code cover academic as well as non-academic conduct?
- Is existence of, and the importance of compliance with, the code emphasized to students?
- Does the code reference or require compliance with the Rules of Professional Conduct that are applicable to lawyers?
- Does the code require students to report misconduct on the part of fellow students?
- Does the code provide for informal resolutions of complaints?
- Does the code provide for diversion-type remedial options in addition to disciplinary sanctions for violations?
- Are the outcomes of code proceedings made available to the law school community as an educational tool?
- Several questions were considered with respect to the reporting of code proceedings to bar admission authorities:¹¹¹
- Are records kept of all complaints?
- What records are kept of dispositions of complaints?
- Do the records cover informal dispositions?
- Who keeps the records?
- How are the records used in connection with certification of students' character and fitness to bar admission authorities?

i. Scope of Conduct Covered by Behavior Codes

Lawyers are subject to ethical standards that apply in all aspects of their professional lives, not just in the courtroom or in meetings with clients.¹¹² Furthermore, lawyers are subject to discipline for ethical misconduct not connected with their practice of law.¹¹³ Because law students are training to enter the legal profession, it would seem logical that law schools' behavior codes should apply at least to all law school-related conduct, whether academic or non-academic in nature. This is not the case, however, at every Florida law school. Two Florida law schools have just a single code that covers only academic conduct.¹¹⁴ Three other law schools have a single code covering both academic and non-academic conduct.¹¹⁵ Additionally, two other schools have separate codes covering academic and

111. See *infra* Part III.D.

112. See, e.g., ABA, MODEL R. OF PROF'L CONDUCT, Preamble ¶ 5 (2006); FLA. R. OF PROF'L CONDUCT Preamble (2012).

113. See, e.g., Fla. Bar v. Baker, 810 So. 2d 876 (Fla. 2002); Fla. Bar v. Corbin, 540 So. 2d 105 (Fla. 1989).

114. Barry and St. Thomas.

115. Ave Maria, Miami, and Nova Southeastern.

non-academic conduct.¹¹⁶ At the four state law schools, students are subject to a law school code governing only academic conduct and a university code governing non-academic conduct.¹¹⁷

ii. Making Students Aware of Behavior Codes

Lawyers are regularly reminded of the existence and importance of the rules governing their conduct. In order to become a member of The Florida Bar, for example, new lawyers must execute the Oath of Admission.¹¹⁸ Upon being admitted, lawyers must attend the “Practicing with Professionalism” program, which emphasizes ethical and professional behavior.¹¹⁹ Throughout their careers, Florida lawyers must complete continuing legal education programs that have components on ethics and professionalism.¹²⁰

In view of these obligations, it is important that law schools work to inculcate a spirit of professionalism into the aspiring lawyers who are their students. Calling new students’ attention to the existence and significance of behavior codes is a key part of this effort. Simply posting the codes on the law school website is not enough. Many law schools hand out copies of their codes at orientation sessions held for entering students. This is a valuable first step, but more may be needed to emphasize to students that behavior codes will be an important part of their educational and professional lives. Meaningful time should be devoted to discussing the content of the behavior code, including the meaning of key terms, the process through which the code is enforced, and the bar admission consequences of violations.

Three Florida law schools require that their entering students sign the behavior code.¹²¹ The solemnity of signing the document, particularly in a formal setting, can reinforce the importance of adherence to the code.¹²² Schools should consider taking these additional steps not just for entering students, but also at the beginning of each new school year for all students.

iii. Reference in Behavior Codes to Lawyers’ Ethical Standards

Behavior codes are a part of a law school’s infrastructure for teaching ethics to students.¹²³ A law school code based on, and perhaps incorporating the content of, the state’s Rules of Professional Conduct can be a practical tool that helps teach those standards to students. The American Bar

116. Florida Coastal and Stetson.

117. Florida, Florida A&M, Florida International, and Florida State.

118. The Oath is available on the website of The Florida Bar’s Henry Latimer Center for Professionalism, <http://www.floridabar.org/tfb/TFBProfess.nsf/basic+review/04E9EB581538255A85256B2F006CCD7D?OpenDocument> (last visited Apr. 6, 2012).

119. See FLA. BAR R. 6-12.3(a)(1) (2012).

120. See FLA. BAR R. 6-10.1(a) (2012).

121. Ave Maria, Barry, and Stetson.

122. See Carlos, *supra* note 104, at 953 (discussing the value of signing an “honor pledge”).

123. Berenson, *supra* note 101, at 804.

Association Commission on Professionalism has urged law schools to consider modeling their behavior codes after the rules of ethics applicable to lawyers.¹²⁴

Only four of the eleven Florida law schools, however, specify that their behavior codes are violated by conduct that would be considered a violation of the Florida Rules of Professional Conduct.¹²⁵ Of these four schools, one of them applies this standard only to violations related to academic matters.¹²⁶

iv. Requirement to Report Others' Misconduct

Lawyers generally are required to report misconduct on the part of other lawyers to the disciplinary authorities.¹²⁷ This obligation is not intuitive on the part of many lawyers and, in fact, is considered unpleasant or even repugnant by some. Nevertheless, such a duty for lawyers is said to further several important objectives. The legal profession is largely self-regulating, and so a duty to report misconduct is a necessary component of the regulatory system. The confidential nature of much law practice means that required reporting often may be the only method by which certain violations would become known to regulatory authorities. The duty to report is also thought to enhance the image of the legal profession in the eyes of the public, and perhaps to promote professionalism within the profession itself.¹²⁸

Some of these justifications for a reporting rule militate in favor of including within law school behavior codes a requirement that students report misconduct on the part of fellow students (often referred to as a "non-toleration" clause). A significant additional reason for having a non-toleration clause is to familiarize students with the standard that will be expected of them upon admission to the bar.

Seven of the eleven Florida law schools have behavior codes that include a non-toleration clause.¹²⁹

A related issue concerns whether complaints about other students' misconduct may be made orally or anonymously. Six law schools require that complaints be made in writing.¹³⁰ Three of these six schools require that the complaint be signed,¹³¹ and one of those schools additionally requires an affirmation that the complaint is being made in good faith.¹³²

124. ABA, *supra* note 4, at 269–70 (1986).

125. Ave Maria, Barry, Miami, and Stetson.

126. Barry.

127. ABA MODEL R. OF PROF'L CONDUCT R. 8.3 (2006), FLA. R. OF PROF'L CONDUCT R. 4-8.3.

128. Arthur F. Greenbaum, *The Attorney's Duty to Report Professional Misconduct: A Roadmap for Reform*, 16 GEO. J. LEGAL ETHICS 259, 264 (2003).

129. Ave Maria, Barry, Florida, Florida A&M, Florida Coastal, Nova Southeastern, and Stetson.

130. Barry, Florida A&M, Florida Coastal, Miami, Nova Southeastern, and St. Thomas.

131. Florida A&M, Florida Coastal, and Miami.

132. Miami.

v. Provisions for Informal Resolution of Complaints

Some law school codes authorize the appropriate authorities (usually law school administrators) to resolve behavior code complaints informally, without going through the formal procedures that provide for notice, hearing, and appeal. Because identifying and encouraging professional behavior is not simply a matter of passing and mechanically enforcing black-and-white rules, some flexibility in the handling of complaints is desirable.¹³³

Six of the eleven Florida schools provide for informal disposition under their law school behavior codes.¹³⁴ One other law school provides for informal dispositions under the university's conduct code.¹³⁵

vi. Availability of Diversion-Type Remedial Options

Sometimes actions that violate a behavior code result from inadvertence, neglect, or misunderstanding rather than intentional misconduct. Additionally, some violations may be triggered by factors such as stress, illness, or substance abuse problems on the part of the violator. The legal profession has begun to recognize that these types of situations can be dealt with more effectively by "diverting" the offending lawyer out of the traditional disciplinary system and into a program designed to address the specific problem such as law office management training or a lawyers' assistance program that helps combat substance abuse.¹³⁶

In contrast, most Florida law schools' behavior codes provide only for what might be considered disciplinary or punitive sanctions and do not provide for remedial options. Eight of the eleven schools fail to provide for remedial, diversion-type methods.¹³⁷ The codes of three schools do provide for remedial options. One law school's code refers to the list of sanctions included in the university's conduct code, which specifies that sanctions could include "educational requirements."¹³⁸ Another law

133. While having the flexibility to informally deal with some lower-level complaints through an informal resolution process may be desirable, the question of whether these informal resolutions should be reported to bar admission authorities raises other issues. *See infra* Part III.D.

134. Barry, Florida A&M, Florida Coastal, Florida International, Miami, and Stetson.

135. Florida.

136. In Florida, the availability of these diversionary options is codified in FLA. BAR ADMISSIONS R. 3-5.3.

137. Ave Maria, Barry, Florida A&M, Florida Coastal, Florida International, Florida State, Miami, and St. Thomas. It may be noted that two of these eight schools provides for remedial options in their university conduct code (Florida International and Florida State). Some of these schools provide in their law school codes for some flexibility in imposing sanctions, but these are referred to as other appropriate "sanctions" (Florida Coastal) or "penalties" (Barry) rather than as true remedial measures. Interestingly, St. Thomas has a code provision stating that with the agreement of the guilty student that student may be "required to undertake public discussion of his or her act in the interest of educating and deterring others" (not themselves).

138. University of Florida Regulation 6C1-4.016(3)(i) states: "Education Requirements—A student is required to complete a specified educational sanction related to the violation committed. Such educational requirements include completion of a seminar, report, alcohol or drug assessment or counseling." FLA. ADMIN. CODE R. 6C1-4.016.

school's code specifies that sanctions could include "counseling intervention."¹³⁹ The codes of another law school specify that sanctions include "counseling or referral to the Student Assistance Program."¹⁴⁰

vii. Publishing Results of Behavior Code Proceedings

Behavior code enforcement proceedings and their outcomes can serve important educational functions for students other than those who are the subject of the proceedings. Practicing lawyers often say that one of the most widely-read sections of bar publications is the report of discipline imposed on lawyers. Learning about these disciplinary actions helps other lawyers understand what is and is not considered misconduct under the Rules of Professional Conduct. Similarly, law schools' publication of sanctions imposed on students for behavior code violations helps other students better understand what is expected of them and aids them in conforming their conduct to established norms.

Five law schools provide for publication within the law school community of the outcome of code enforcement proceedings resulting in the imposition of sanctions.¹⁴¹ The code provisions authorizing publication typically specify that student-identifying information be kept confidential.

Another way in which lawyers learn whether certain conduct is ethical or unethical is through bar advisory ethics opinions, both published and informal. The Florida Bar publishes formal advisory opinions for the benefit of its membership as a whole.¹⁴² Additionally, individual bar members can obtain personalized, informal oral advisory opinions by calling the Ethics Hotline.¹⁴³ Each of these mechanisms has an important educational function that helps foster professional behavior.

Similarly, it would seem valuable for law schools to consider establishing an advisory opinion process whereby students who are uncertain about the propriety of specific conduct can obtain a reading on the matter *before* engaging in the conduct. The advisory opinion process could be confidential, with a summary of the opinion publicized for the benefit of the law school community.

None of the Florida law schools' behavior codes provides for advisory opinions.

139. Nova Southeastern Code of Student Conduct and Academic Responsibility Section E.12. states: "Counseling Intervention: When extreme behavior indicates that counseling may be beneficial, the student may be referred to counseling." NOVA SE. UNIV., 2011-2012 STUDENT HANDBOOK 29, available at <http://www.nova.edu/studentaffairs/forms/ustudenthandbook.pdf>.

140. Stetson has this provision in both its Academic Honor Code and Code of Student Professionalism and Conduct.

141. Florida Coastal, Miami, Nova Southeastern, St. Thomas, and Stetson.

142. See *Florida Bar Procedures for Ruling on Questions of Ethics*, THE FLA. BAR., <http://www.floridabar.org/tfb/TFBETOpin.nsf/ca2dcdaa853ef7b885256728004f87db/7b6858c726e19c8a85256b2f006ca50b?OpenDocument> (last visited Apr. 6, 2012).

143. The Ethics Hotline is described on The Florida Bar's website. *The Florida Bar Ethics Hotline*, THE FLA. BAR., <http://www.floridabar.org/tfb/TFBETOpin.nsf/ca2dcdaa853ef7b885256728004f87db/93ef72ee39a1d7fb85256b2f006cc837?OpenDocument> (last visited Apr. 6, 2012).

b. Improving Approaches to Addressing Unprofessional Behavior

How effectively law schools identify and respond to unprofessional behavior by law students can have significant consequences for the student, the bar admission authorities, the legal profession, and the public. Law schools have the opportunity—and, it can be argued, the responsibility—to educate students (most of whom are future lawyers) about the meaning and importance of professionalism. The content of behavior codes, and how breaches of those codes are addressed, are key components of this endeavor. Below are some suggestions for consideration as law schools continue working to improve their approaches to addressing unprofessional behavior.

Law schools should place a great deal of emphasis on the need for students to understand and comply with behavior codes. This should begin at new student orientation, where senior faculty or administrators explain the purpose and terms of the code, the method for reporting possible misconduct, the procedure used to address violations, and the fact that violations will be reported to and considered by bar admission authorities. A formal signing ceremony, similar to the swearing in ceremony for newly admitted lawyers, would underscore the gravity of the obligations that the students are undertaking. Furthermore, the formal recognition of professionalism obligations should not be limited to first year students. Law schools should consider having second and third-year students renew their pledges to abide by the code.

The content of a law school's behavior code also deserves attention. A code that references or incorporates some or all of the Rules of Professional Conduct serves a valuable educational function and also helps familiarize students with the professional duties that they soon will be assuming. Like lawyer ethics codes, it should be clear that a law school behavior code applies to conduct that occurs in the classroom as well as to conduct that is not strictly academic-related.

Law schools should provide for flexibility in how potential breaches of behavior codes are addressed. Although most code proceedings will be initiated by the filing of a complaint by a student or faculty member, a school's administration should have the ability to *sua sponte* open an investigation in appropriate situations. Informal resolution of complaints should be available and encouraged for minor transgressions. Schools also should add diversion-type remedial options to their codes. These could include counseling, substance abuse evaluation, educational components, and similar programs. It is important, however, that informal and remedial options not be used as a means of hiding unflattering student conduct from the bar admission authorities. Law schools should talk with the relevant bar admissions authorities to determine what records should be kept of these incidents and whether, or how, they should ultimately be reported to the bar examiners.

It is important that students be aware of behavior code proceedings that occur in the law school. Publication of code proceedings that result in

the imposition of sanctions should be the norm. This may be done through email messages to the student body, announcements on bulletin boards, or posting on the school's internal website. Of course, all such publication must be in compliance with educational confidentiality requirements.¹⁴⁴

Law schools also should consider establishing a mechanism through which students who are unsure of the propriety of their contemplated conduct may obtain an advisory opinion concerning whether the conduct complies with the behavior code. This would encourage students to ask before engaging in potentially problematic conduct. Publication of the advisory opinions (in a manner consistent with confidentiality requirements) also would serve a useful educational function.

Other options may be available. Law schools should engage in ongoing discussions with each other, bar admission authorities, and the bar to identify other areas in which behavior codes can be used to further the goal of graduating professional future lawyers.

D. Evaluator—Assisting Bar Admission Authorities with Character and Fitness Determinations

Law schools are called upon to assess the character and fitness of applicants when making admissions decisions. After those applicants are accepted and matriculate, law schools have opportunities to strengthen students' professionalism through teaching and programs. The schools also have the responsibility to address breaches of professionalism that occur when students violate behavior codes. But law schools also have an important, indeed indispensable, role that goes beyond assessment and instruction—they provide bar admission authorities with an evaluation of the character and fitness of their graduates.

To fulfill this evaluative role, state bar examiners typically ask law school deans to certify their graduates' character and fitness for admission to the state bar. In Florida, the Board of Bar Examiners asks each law school dean to complete a form supplied by the Bar Examiners regarding every graduate who applies for admission to The Florida Bar.

A review of the dean's certification form used by the Florida bar examiners, when considered in conjunction with the information that law schools ask for on their admission applications and the records that law schools keep regarding behavior code matters, demonstrates that law schools may not be providing the bar examiners with complete and consistent input in this important area.¹⁴⁵

144. See, e.g., Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232(g) (2006).

145. It appears that this situation is not unique to Florida. See McCulley, *supra* note 51, at 856 ("Schools vary in the type of misconduct they report, from not reporting any misconduct, to reporting all misconduct." (footnotes omitted)).

1. Current Character and Fitness Certification Requirements and Practices

When a law school graduate applies for admission to The Florida Bar, the Florida Board of Bar Examiners asks the dean of the graduate's law school to complete and sign a form titled "Certificate of Dean of Law School."¹⁴⁶ The form asks for information such as the date the applicant entered law school, the date the J.D. degree was conferred, and the applicant's class rank.

The bulk of the dean's certification form consists of questions regarding the applicant's character and fitness. Question "G" inquires generally whether the applicant is "honest" and "thorough in fulfilling obligations."¹⁴⁷ The form asks the dean to answer those questions "[f]rom the records in your office, or from your personal knowledge."¹⁴⁸ Question "H" asks more detailed questions about specific aspects of the applicant's character and fitness:

H. Please check "yes" or "no" below. If your answer is "yes," provide a short summary of details below. In responding to Item 1, you are requested to disclose any pertinent information regardless of final disposition and regardless of formal or informal expunction of such information. *To your knowledge, or do the records in your office reflect that the applicant:*

1. has ever been accused of a violation of the honor code or student conduct code, warned, placed on scholastic or disciplinary probation, suspended, requested or advised to discontinue studies, dropped, expelled, or requested to resign, or otherwise subjected to discipline for academic or personal conduct reasons by any educational institution?
2. has ever been a party to legal or administrative proceedings?
3. has ever been charged with, arrested for, or convicted of any traffic or criminal offense?
4. has ever been accused of a violation of trust?
5. has ever been denied admission to the Bar of any state?
6. has ever been addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages within the past ten years?
7. has been hospitalized during the last ten years for treatment of any of the following: schizophrenia, or

146. The certification form is available at [http://www.floridabarexam.org/public/main.nsf/Form3.PDF/\\$file/Form3.PDF](http://www.floridabarexam.org/public/main.nsf/Form3.PDF/$file/Form3.PDF).

147. *Id.*

148. *Id.*

other psychotic disorder; bipolar or major depressive mood disorder; drug or alcohol abuse; impulse control disorder, including kleptomania, pyromania, explosive disorder, pathological or compulsive gambling; or, paraphilia, such as pedophilia, exhibitionism, or voyeurism?

8. has been treated or received a diagnosis during the last 5 years for any of the following: schizophrenia, or other psychotic disorder; bipolar or major depressive mood disorder; drug or alcohol abuse; impulse control disorder, including kleptomania, pyromania, explosive disorder, pathological or compulsive gambling; or, paraphilia, such as pedophilia, exhibitionism, or voyeurism?

9. currently has a mental health condition that impairs or limits, or if left untreated could impair or limit, the ability to practice law in a competent and professional manner?

10. has ever been delinquent in any financial obligations?¹⁴⁹

At first glance these questions appear to be comprehensive and designed to provide extensive information to the bar examiners. Upon closer examination, however, the weaknesses in the dean's certification process become apparent. A law school dean is asked to provide the information based upon the *dean's personal knowledge* or from *records in the dean's office*. For a number of reasons, this approach does not square with the practicalities of a modern law school.

Today's law dean typically functions as a "CEO" of the law school enterprise, spending much of his or her time out of the office on university interaction, fundraising, goodwill visits, and professional activities. Most of the eleven Florida law schools are large, with an average of 770 students each.¹⁵⁰ Several schools have more than 1,200 students. This means that the dean will not have "personal knowledge" of—or perhaps even a nodding acquaintance with—every student.

Another practical reality is that most law school records are not kept "in the dean's office." Admissions records are kept elsewhere, such as in the student services office or the registrar's office. Records of behavior code matters, to the extent that they exist, often are kept in an associate dean's office or in another location. Of course, a law school dean can always choose to give an expansive reading to the questions on the dean's certification form and answer them based on records kept *anywhere* in the law school. A dean, however, is neither asked nor required to construe the questions in that manner.

149. *Id.* (emphasis added).

150. Data is from the Fall 2008 ABA Annual Questionnaire.

Additionally, even a dean who wishes to apply a broad construction to the character and fitness questions on the dean's certification form may have difficulty providing the bar examiners with complete and accurate information about the applicant. As outlined below, law school behavior codes vary widely in their record-keeping requirements regarding complaints and dispositions.

a. Records of Complaints Closed After Initial Investigation

Three or four of the eleven Florida law schools have behavior codes indicating that records are kept of all complaints and their dispositions.¹⁵¹ Only one of these four, however, mandates that the records be given to the dean.¹⁵² In contrast, two schools have behavior codes expressly providing that no record will be kept of complaints that are closed after an initial investigation.¹⁵³ Five of the eleven schools do not address the issue of records of complaints closed after an initial investigation.¹⁵⁴

b. Records of Informal Dispositions of Complaints

Five law schools have behavior codes directing that records be kept of informal dispositions;¹⁵⁵ two of these five specify that the records be provided to the dean.¹⁵⁶ Three of the eleven schools do not address the issue of records of informal disposition of complaints.¹⁵⁷ (The remaining three schools do not provide for informal disposition of behavior code complaints.)

c. Records of Formal Dispositions of Complaints

Eight of the eleven law schools have behavior codes mandating that written records be kept of formal dispositions of complaints.¹⁵⁸ Of these eight schools, only three specify that the records be given to or kept by the dean.¹⁵⁹ Interestingly, several of the eight schools have provisions in their behavior codes that may limit the availability of relevant information to an admissions authority. One school requires that written records be kept of guilty outcomes in honor code proceedings, while certain dispositions

151. Barry (record of all complaints given to Senior Associate Dean), Florida A&M (report of disposition given to Dean), Miami (report of complaint given to Dean of Students), and Stetson (report of disposition placed in student's file in Registrar's Office). In view of additional provisions in Miami's behavior code, however, it appears that while notice of complaints is to be given to the Dean of Students, a *written record* of the disposition is maintained only if the student is found guilty after a formal proceeding.

152. Florida A&M.

153. Florida and Florida International (with an exception allowing a student to request that a record of the complaint be noted on the student's record).

154. Ave Maria, Florida Coastal, Florida State, Nova Southeastern, and St. Thomas.

155. Barry, Florida A&M, Florida Coastal (for conduct code but not honor code violations), Florida International, and Stetson.

156. Florida A&M and Florida International.

157. Ave Maria, Florida, and Miami.

158. Barry, Florida, Florida A&M, Florida Coastal, Florida International, Miami, Nova Southeastern, and Stetson.

159. Florida A&M, Florida International, and Miami.

under the student conduct code may be purged at the student's request.¹⁶⁰ Another school provides that records of formal proceedings are kept "under lock and key" in the dean's office. Only suspension and dismissal sanctions are noted on the student's law school transcript, although lesser sanctions "may" be noted.¹⁶¹ A third school requires that the dean be given notice of the hearing panel's findings and recommendations but adds that, "No record or indications of a student's involvement as an accused in Council proceedings shall be made a part of the student's permanent file unless and until the Dean accepts the Hearing Panel's decision." Guilty findings with suspension or expulsion must be made part of the student's permanent record, while less severe sanctions and reprimands "may or may not be noted on the student's academic record at the discretion of the Dean or Dean of Students, respectively."¹⁶²

This review of record-keeping procedures associated with behavior code matters demonstrates that much potentially relevant information may escape the notice of the Florida Bar Examiners despite a dean's truthful completion of the current dean's certification form. For example, the fact that a student was accused multiple times of serious code violations, but never convicted, may be relevant to bar admission authorities. Likewise, the admission authorities may find it useful to know about all dispositions of behavior code complaints, including informal dispositions, rather than only those for which records are kept by the dean. This type of information may be relevant to Question H.1 on the dean's certification form.

Similarly, the type of questions asked on a law school's application can make it difficult for a dean to complete the dean's certification form in a manner that provides the greatest degree of assistance to the Bar Examiners. Significantly, as discussed more fully in Part III.A, many of the specific questions asked on the dean's certification form are absent from many law school admission applications. The following information about questions asked—and *not* asked—on Florida law school applications is instructive:

Only one of the eleven Florida law schools asks any questions about an applicant's questions about an applicant's involvement in civil litigation.¹⁶³ This information is relevant to Question H.2 on the dean's certification form.

Only two Florida law schools ask about an applicant's reasons for leaving prior employment.¹⁶⁴ A minority of the law schools ask for military service discharge and disciplinary information.¹⁶⁵ Only one school asks about an applicant's prior business and professional licensure.¹⁶⁶ This information is relevant to Question H.4 on the dean's certification form.

160. Florida.

161. Florida International.

162. Miami.

163. *See supra* note 36 and accompanying text.

164. *See supra* notes 26–28 and accompanying text.

165. *See supra* notes 29–32 and accompanying text.

166. *See supra* notes 43–44 and accompanying text.

None of the eleven Florida law schools ask any questions about an applicant's substance dependency or mental health.¹⁶⁷ This information is relevant to Questions H.6, H.7, H.8, and H.9 on the dean's certification form.

None of the Florida law schools ask about financial responsibility issues.¹⁶⁸ This information is relevant to Question H.10 on the dean's certification form.

2. Developing a More Effective Evaluative Process

Bar admission authorities have an enormous responsibility to the legal profession and the public in examining applicants' character and fitness to practice law. Effectively carrying out this responsibility requires that the admission authorities have as much relevant information as possible about an applicant's background. Much of this information is self-reported by the applicants themselves when they complete the bar admission application. Another valuable source of information is the law school that an applicant attended. In addition to providing corroboration for information self-reported by the applicants, information reported to the admission authorities by the law schools provides a unique and important perspective from legally trained persons who observed and interacted with the applicants during three years of law school.

Law schools should be strongly encouraged to provide relevant information to the admission authorities. Certainly, most law school personnel take their part in the bar admission process seriously. It cannot be denied, however, that legal education has become an increasingly competitive enterprise.¹⁶⁹ Any changes to the current process by which law schools certify the character and fitness of their graduates to bar admission authorities must be made with this competitive reality in mind. In Florida, for example, this means that any changes to the process should be designed to ensure that all law schools base their character and fitness certifications on the same type of data *and* that the reporting parameters are spelled out very clearly in order to minimize the possibility that a school will "creatively" interpret the bar examiners inquiry to reach a result grounded in self interest. It would also be useful if all law students were clearly informed of what the law school administration will report to the admission authorities.¹⁷⁰

As noted above, law schools vary widely in the records that they keep in connection with alleged behavior code violations. It is likely that some of the information that goes unrecorded might be of interest to the bar

167. See *supra* notes 45–46 and accompanying text.

168. See *supra* notes 33–35 and accompanying text.

169. See, e.g., Lynda Edwards, *The Rankings Czar: Law Deans Hate Bob Morse's Rankings He'd Like Their Help to Make Them Better*, 94 A.B.A. J. 38 (2008) (discussing competitive stress generated by U.S. NEWS & WORLD REPORT rankings).

170. See McCulley, *supra* note 51, at 868 (urging law schools to "define reporting procedures [to bar admission authorities] and students should be notified of any decision to report their conduct to the bar").

examiners. Compounding the problem of inconsistent and incomplete recordkeeping is the language used in the dean's certification form: it is vague at best and, at worst, allows schools to hold back information while technically appearing to comply with the bar examiners' request. Below are two suggestions that address these challenges.

First, the language on deans' certification forms should be revised to clarify or, where applicable, broaden the sources of information that law deans are to consult when completing the character and fitness certification. The form should specify that the dean's certification is based not only on the dean's personal knowledge or records kept in the dean's office, but on all information readily available to the dean or contained in law school records. One example would be: "Please base your answers to the following questions on your personal knowledge, the knowledge of law school administrators, and law school records"

Second, law schools should be urged to cooperate with each other and with the state bar admission authorities to standardize their data-gathering and record-keeping practices. Because some of the questions on the dean's certification form relate to information that is not sought on most law school admission applications, the applications should be revised to collect that data. Collecting this information should also help focus attention during the admissions process on the applicants' professionalism-related conduct.¹⁷¹ Additionally, there should be greater uniformity among law schools regarding records kept in connection with behavior code matters. Law students and the public would be well served if law schools would work with each other and with the bar admissions authorities to identify the type of information that the admissions authorities consider necessary and then establish minimum record-keeping requirements to satisfy those needs.

IV. PROFESSIONALISM-RELATED BAR ADMISSION STANDARDS

The level of professionalism pervading the legal profession as a whole necessarily depends on the degree of professionalism demonstrated by its individual members. Admitting persons whose backgrounds contain indicia of proper conduct and appropriate sensitivity to professional standards would seem to be an effective method of ensuring an adequate level of professionalism among new lawyers. Consequently, it is important that bar admission standards be designed to: (1) identify applicants whose past conduct indicates potential professionalism-related problems, such as dishonesty or financial malfeasance; (2) encourage law schools to consider professionalism in their admission decisions; and (3) encourage law schools to provide professionalism-related education and training to their students.

171. See discussion *supra* Part III.A.

State supreme courts ordinarily have jurisdiction over bar admissions standards.¹⁷² For example, as the ultimate arbiter of bar admissions in Florida, the Supreme Court of Florida has the authority to ensure that its admissions standards accomplish these objectives. The Court's role in professionalism and bar admissions is discussed below.

A. State Supreme Court Authority Over Bar Admissions

State supreme courts have primary, if not exclusive, jurisdiction over admissions to the bar. In Florida, the state constitution grants the Supreme Court of Florida exclusive authority to regulate the practice of law in this state. Article V, Section 15 of the Florida Constitution states: "The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." This authority includes the power to regulate admission to the bar.¹⁷³ In setting admissions standards, for the protection of the public the Court "has the authority to require proficiency in the law *and good moral character* before it admits an applicant to practice before the courts of this state."¹⁷⁴ Admission to the practice of law clearly is a privilege, not a right.¹⁷⁵ The Supreme Court of Florida therefore has the authority to impose reasonable requirements that must be met before an applicant is admitted to the practice of law in Florida.

B. Misplaced Reliance on the ABA Approval Process

The American Bar Association has established an extensive process through which the ABA's Council of the Section of Legal Education of the American Bar Association "approves" law schools.¹⁷⁶ Law schools that satisfy the ABA's Standards for Approval of Law Schools ("the Standards") are deemed to be ABA-approved. The ABA Standards address all areas of a law school's operation, including finances, admissions, curriculum, faculty, library resources, technology, and physical facilities.¹⁷⁷

172. In all states, the state supreme court promulgates the rules for bar admissions. In forty-two of the fifty states, the state's highest court has exclusive jurisdiction in this area. In the other eight states (Alaska, California, Maryland, Massachusetts, Michigan, Mississippi, Virginia, and Wyoming), the legislature shares a degree of authority with the high court. NAT'L CONFERENCE OF BAR EXAM'RS, *supra* note 10, at 1.

173. FLA. BAR ADMISSIONS R. 1-11.

174. Fla. Bd. of Bar Exam'rs v. G.W.L., 364 So. 2d 454, 458 (Fla. 1978) (emphasis added).

175. See, e.g., FLA. BAR R. 3-1.1 ("A license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause."); Fla. Bar v. St. Louis, 967 So. 2d 108, 121 (Fla. 2007).

176. See ABA, *supra* note 7.

177. See ABA, *supra* note 7. There are two basic stages of ABA approval. Provisional approval is a required step for all new law schools. A school is granted provisional approval when the Council of the Section of Legal Education concludes that it is in "substantial compliance" with each of the ABA Standards. After at least two but no more than five years as a provisionally approved school, the law school may apply for full approval. Full approval is granted when the Council concludes that the school is in full compliance with each of the ABA Standards.

The ABA is in many ways simply a trade association for lawyers. It has no inherent authority when it comes to a state's jurisdiction to set admission standards for its bar applicants. The ABA law school approval process has become important primarily because state supreme courts have chosen to delegate much of their bar admissions authority to the ABA. All states attach major importance to an applicant's graduation from an ABA-approved law school. Florida is no exception.¹⁷⁸

In many states, an applicant cannot be admitted to the bar unless he or she graduated from an ABA-approved law school.¹⁷⁹ Some state supreme courts, however, have concluded that some applicants may be worthy of admission even though they did not graduate from an ABA-approved law school. Most of these courts require that a graduate of a non-ABA-approved school have a significant amount of documented practice experience before being eligible for admission. Florida is among these states.¹⁸⁰

Several states have gone further and established their own procedures for approval of law schools that have not applied for or received ABA approval. These states include Alabama, California, Connecticut, Massachusetts, Michigan, and Tennessee.¹⁸¹

The ABA approval process has its shortcomings.¹⁸² Significantly, the ABA Standards contain only a few requirements that are directly aimed at promoting professionalism. Law schools must require that each student "receive substantial instruction" in "professional skills generally regarded as necessary for effective and responsible participation in the legal profession" and in "the history, goals, structure, values, rules and responsibilities of the legal profession and its members."¹⁸³ Additionally, law schools must offer "substantial opportunities" for "live client or other real life practice

178. See, e.g., Fla. Bd. of Bar Exam'rs v. Mass. Sch. of Law, 705 So. 2d 898, 899 (Fla. 1998).

179. See NAT'L CONFERENCE OF BAR EXAM'RS, *supra* note 168, at 8-9.

180. See FLA. BAR ADMISSIONS R. 4-13.1.

181. See ALA. BAR ADMISSIONS R. IV.B.2.; CAL. BAR R. 4.100 *et seq.*; CONN. R. SUPER. CT. GEN. § 2-8; MASS. R. SUP. CT. R. 3:01, § 3.1.3; MICH. BD. LAW EXAM'RS Policy Statement 2(B)(1)-3; TENN. R. SUP. CT. R. 7, § 2.03.

182. The ABA Council of the Section of Legal Education is conducting a comprehensive review of the Standards. See Memorandum from Randy Hertz, Chair, Council, ABA Section of Legal Education and Admissions to the Bar, to Deans of ABA-Approved Law Schools, University Presidents, State Supreme Court Chief Justices, Bar Examining Authorities, and Others Interested in Legal Education (Aug. 15, 2008), available at <http://www.abanet.org/legaled/committees/Standards%20Review%20documents/2008%20Comprehensive%20Review%20Memo%20for%20Web%20site.DOC>. Articles criticizing the ABA approval process include: Lloyd Cohen, *Comments on the Legal Education Cartel*, 17 J. CONTEMP. LEGAL ISSUES 25 (2008) (criticizing ABA approval process for erecting entry barriers and raising costs); E.D. Gaskins, Jr., *Professional Responsibility and Professionalism*, 17 PROF. LAW. 20 (2006) (criticizing ABA approval process for lack of mentoring program requirement); William G. Shepherd, *Scholarly Restraints ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091 (1998) (offering economic and legal analysis of approval process); Richard A. Matasar, *Perspectives on the Accreditation Process: Views from a Nontraditional School*, 45 J. LEGAL EDUC. 426 (1995) (arguing that approval process should encourage, rather than discourage, experimentation and innovation).

183. ABA, *supra* note 7.

experiences” and pro bono experiences.¹⁸⁴ The professional skills and professional responsibility requirements, however, may be satisfied by one required professional skills course and a two-hour professional ethics survey course—or even less.¹⁸⁵ The clinical requirement can be met through an externship program that is not required of every student and does not necessarily include any live client contact.¹⁸⁶

C. *Suggested Standards for State Supreme Court Consideration*

The ABA Standards and the ABA law school approval process call for only a minimum level of professionalism-related training on the part of law schools. Clearly there is room for a higher degree of professionalism awareness and training. The Supreme Court of Florida, for example, has the authority to address this deficiency by encouraging, or perhaps requiring, law schools to do more in this important area.

Several state supreme courts have decided to require that applicants for initial admission to the bar demonstrate that they completed certain ethics or professionalism courses or skills training during law school. Indiana requires that applicants have “completed in an approved school of law two cumulative semester hours of legal ethics or professional responsibility.”¹⁸⁷ New Jersey requires that applicants attain a qualifying score on the Multi-State Professional Responsibility Examination or pass “an approved course on professional ethics given by an American Bar Association-accredited law school.”¹⁸⁸

The Indiana and New Jersey bar admission requirements do not stretch beyond what is mandated by ABA Standard 302(a)(5). Ohio, however, has chosen to adopt a bar admission prerequisite that goes further. The Ohio Supreme Court requires that applicants for admission submit both of the following:

- (1) A certificate signed by the dean or associate dean of the applicant’s law school certifying that the applicant has received a law degree, has sufficient knowledge and ability to discharge the duties of an attorney at law, and has *successfully completed a course of not fewer than ten classroom hours of instruction in legal ethics*;
- (2) A certificate from a law school or a continuing legal education sponsor, certifying that the applicant has received *at least one hour of instruction on substance abuse, including causes, prevention, detection, and treatment alternatives*. Substance abuse instruction that is provided by a continuing legal education sponsor qualifies under this section only if it

184. *Id.* at 302(b)(1), (2).

185. *See id.* at INTERPRETATION 302-3; *see also supra* Part III.B.

186. *See id.* at INTERPRETATION 302-5.

187. IND. R. ADMISSION TO THE BAR & DISCIPLINE OF ATTORNEYS R. 13, § 4(C).

188. N.J. Ct. R. 1:27.

has been accredited by the Commission on Continuing Legal Education as an approved substance abuse activity under Gov. Bar R. X. (Emphasis added.)¹⁸⁹

It is time for the courts, bar examiners, and law schools to work together to identify and implement additional criteria for bar admission that would increase the likelihood that new lawyers possess the level of professionalism needed in today's legal climate. In Florida, a decision by the Supreme Court of Florida to impose additional professionalism-related requirements on bar applicants would not be without precedent. Since 1988 the Court has required all new bar admittees to complete a "Basic Skills Course Requirement" that includes instruction on "discipline, ethics, professionalism, and responsibility to the public."¹⁹⁰

V. CONCLUSION

The courts and the legal profession have accomplished much in strengthening professionalism among bar members. It is apparent, however, that some of the obstacles to reaching an even higher level of professionalism can only overcome by focusing professionalism-related efforts toward law students and the law schools that educate them.

This Article has identified a number of areas in which the activities of law schools can directly affect the professionalism of the students who will graduate to become the next generation of lawyers. Law schools fill multiple professionalism-related roles. As gatekeepers, they decide who will be admitted to law schools and what type of conduct by applicants will be considered disqualifying. As developers, they both provide professionalism instruction and regulate student conduct through the use of behavior codes. And, as evaluators, they certify the character and fitness of their graduates to bar admission authorities. In each of these areas, there are challenges to be met and improvements to be made through a cooperative effort involving all those who have a stake in the continued viability of law as an honored profession.

Finally, this Article suggests that it may be desirable to have a greater level of involvement by state supreme courts in encouraging or requiring additional professionalism-related standards for those who would become licensed to practice law in this state.

Through the methods suggested in this article and the energy and initiative of those committed to the future of the legal profession, the goal of raising the professionalism and integrity of our profession can be achieved for the benefit of bench, bar, and the public that we serve.

189. OHIO GOV'T BAR R.1, § 3(E) (emphasis added).

190. FLA. BAR R. 6-12.2(a). The Basic Skills Course Requirement was adopted by the court in *The Florida Bar re: Amendment to Rules Regulating The Florida Bar*, Rule 6-12.1 (Basic Skills Course Requirement), 524 So. 2d 634 (Fla. 1988). The Basic Skills Course Requirement regulations are found in FLA. STATE BAR R., Chapters 6-12.