

CHARACTER

By

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The elections are just completed as I write this column, except for a certain recount. Whether or not you are pleased with particular outcomes, it is difficult to be pleased with the tone of much of the campaigning we have witnessed. Yes, negative or attack ads too often are effective and thus likely will remain a staple of elections in the future. That's arguably fair as to a candidate's record on the issues. The personal character attacks, however, launched by candidates and "pundits" on both sides, distressed me greatly. It's true that we've seen it before in recent elections, but it seemed to reach new heights this year. Has an analysis of "character" ever been so prominent in an election before?

That is not to say that good character and sound judgment are unimportant in an elected official. For all the detailed policy proposals and promises put forth by a candidate to deal with current known issues, it is the ability to adapt and handle the myriad unknown and unforeseen issues that will arise that will define a politician's success. Character and judgment will certainly matter when making those decisions, perhaps more than a predetermined policy position. Many politicians also are lawyers. Do the same character issues apply to lawyers?

Character in Professional Regulation

A lawyer's character plays an integral role principally at two points in the professional regulation scheme: in bar admissions and reinstatement following suspension or disbarment.

Indeed, we specifically "test" for it as part of the bar admissions process, which all lawyers have had to go through. The American Heritage Dictionary's relevant definition of character is "moral or ethical strength; integrity." The Rules for Admission to the Bar define good character and fitness more narrowly to mean "traits, including honesty, trustworthiness, diligence and reliability that are relevant to and have a rational connection with the applicant's present fitness to practice law." [Ftn 1](#) Applicants are required to provide affidavits as to their good character and, if initially turned down on character grounds, are entitled to attempt to establish their good character at a hearing before the Board of Law Examiners. [Ftn 2](#)

The Minnesota Supreme Court holds that an attorney must show a "moral change" in order to be

reinstated and that evidence of good character must be even stronger than for original admission.[Ftn 3](#)

While this standard is in line with the dictionary definition of character, Lawyers Board panels and the Court also will look for the same more objective indicators of character as does the Board of Law Examiners.

Somewhat ironically, once a lawyer is admitted, the discipline system does not remove that lawyer for a general lack of or loss of the good character required for admission. General evidence of having a bad character is not sufficient to deprive an attorney, once admitted, of her license. Nor does the Director's Office routinely offer adverse character evidence in a disciplinary proceeding to counter evidence of good character offered by a respondent attorney.

To lose a license, an attorney must be found to have committed specific acts of misconduct,[Ftn 4](#) either of a very serious nature or repeated acts that may include prior or lesser misconduct. Multiple acts of misconduct may indicate a lack of honesty, trustworthiness or integrity, *i.e.*, a lack of character. The rules themselves, however, no longer allow for discipline of conduct involving "moral turpitude" or of unspecified acts that may adversely reflect on an attorney's fitness to practice law.[Ftn 5](#)

An argument even can be made that while character is essential to be admitted, it is not essential to the successful practice of law, if we define success only as "victories" or in financial terms. We all likely know or have dealt with lawyers we consider to be of questionable character who are quite successful. Even leadership positions can be ruthlessly obtained without good character. Sadly, bullying or delaying tactics may be the only way some lawyers can succeed. What is sadder is when quality lawyers who should not need to bully or delay in order to succeed nevertheless choose to practice law in that manner.

Actions Speak Louder

For the vast majority of lawyers, character far more affects the details of everyday life and law practice, rather than being at issue in a disciplinary proceeding. The myriad of small daily decisions about how we comport ourselves, usually made without reflection, perhaps best reveals a person's true character. For character is truly a concept for which the saying "actions speak louder than words" was intended. We recognize good character through the positive deeds of a person just as we impose professional discipline for personal misdeeds. Knowing what is right is insufficient; doing what is right is what's important, especially in the face of adversity or where an easy compromise of character could relieve an immediate problem.

Most leaders in the legal field advocate for an increase in professionalism and civility in the practice of law. Courts should demand it of us, and we should demand it of each other. But concepts such as character and professionalism are difficult to regulate. So the Rules of Professional Conduct are unlikely to return to a time when a lack of character was more directly susceptible of resulting in a disciplinary action, for the discipline system in Minnesota has inalterably left that period behind. That does not mean, however, that all attempts at improving the "character" of the legal profession should end as well.

We seek character in our elected officials. As lawyers, we shouldn't wait until we run for office to start exhibiting it.

Notes

1 Rule 2A(6), Minnesota Rules for Admission to the Bar.

2 Rule 15, Minnesota Rules for Admission to the Bar.

3 See, *In re Reinstatement of Mose*, 754 N.W.2d 357, 360-61 (Minn. 2008).

4 Acts of misconduct may include acts of omission, such as the failure to maintain trust account books and records or a failure to supervise.

5 As once was permitted by DR 1-102(A)(3) and (6), Minnesota Code of Professional Responsibility. The Code was replaced by the Minnesota Rules of Professional Conduct in 1985.