Entering Law Students’ Ethical Stigma:
A Proposal to Introduce the MPRE Along with the LSAT

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This Note advocates that Multistate Professional Responsibility Exam should be introduced as a law school admission requirement because many prospective law students lack the importance of law school disclosure. This Note explains that early intervention of MPRE will undoubtedly provide awareness and concern of good moral character and the importance of law school disclosure before they get too late in the process.

I. THE CURRENT APPROACH

In the United States, academics and legal scholars have not much challenged the current approach of law school disclosure and the Multistate Professional Responsibility Exam (MPRE). These entities seemed to be assumed and understood that the current path might be an appropriate norm. Therefore, the prevailing assumption entices us to jump directly to the central question of “how” and “why” the current approach is not a better approach.¹ Understanding deleterious effect of the current approach starts with the American Bar Association’s (ABA) Model Rules. ABA rules require “an applicant to the bar or a lawyer in connection with a bar admission application or connection with a disciplinary matter, shall not make (1) . . . a false statement of material fact; or (2) fail to disclose a fact necessary

¹ See discussion infra parts II, III.
This rule extends mostly to those persons who are seeking admission to the bar who fail to admit any past disciplinary action or conduct that in their bar application.\(^3\)

The Model Rule, thus, represents an ambitious ethical foundation to admit or disclose any past or present acts, events or conduct that may raise some suspicion to the bar character and fitness committee.\(^4\) Therefore, law students character and fitness process starts well before the students are being admitted into the law schools.\(^5\) Ironically, the entering law students are mostly unaware of mandatory disclosure of character and fitness.\(^6\)

Under the current practice, however, all prospective law students must take the Law School Admission Test (LSAT), which tests applicants’ ability, before being admitted to law schools.\(^7\) The purpose of the LSAT is to determine whether students have the essential fundamental skills to become successful lawyers.\(^8\) One can reasonably say that the LSAT score determines prospective law students analytical reasoning, logical reasoning, and


\(^3\) Id.

\(^4\) See id.; See Deborah L. Rhode, Moral Character as a Professional Credential, 94 Yale L.J. 491, 521 (1985) [hereinafter Rhode] (describing that “Although the vast majority of schools are interested in adult (88%) or juvenile (81%) crimes and university disciplinary actions (81%), there is less consensus as to the relevance of physical and psychiatric problems (61%), arrests (14%) and charges (15%), pre-college academic discipline (41%), military offenses (55%), and personal references that speak to character issues (45%)”).

\(^5\) See, e.g., Russell McClain, Helping Our Students Reach Their Full Potentials, The Insidious Consequences of Ignoring Stereotype Threat, 17 Rutgers Race L. Rev., (2016) (describing that “[a]fter students are admitted, law school provides fertile ground within which stereotype threat can flourish.”); Susan Saab Fotley, Law Students Admission and Ethics – Rethinking Character and Fitness Inquiries, 45 S. Texas L. Rev. 983, 987 (2004) (“I typically read to students the bar application warning on full disclosure to underscore the fact that lack of candor during the admissions process reflects adversely on their fitness to practice.”).

\(^6\) See id.; See also Elizabeth G. McCully, School of Sharks? Bar Fitness Requirements of Good Moral Character and The Role of Law Schools, 14 Geo. J. Legal Ethics 839, 868 (2001).

\(^7\) Gutter v. Bollinger, 539 U.S. 306, 315 (2003) (“In reviewing an applicant’s file, admissions officials must consider the applicant’s undergraduate grade point average (GPA) and Law School Admission Test (LSAT) score because they are important (if imperfect) predictors of academic success in law school”).

\(^8\) See id.
reading comprehension skills. In short, law students’ lawyering abilities are measured based on LSAT. Besides the LSAT, many law schools also consider other variables “like the enthusiasm of the recommenders, the quality of the undergraduate institution, the standard of the applicant’s essay, residency, leadership and work experience, unique talents or interests, and the areas and difficulty of undergraduate course selection.”

On the other hand, Professional Responsibility (course) is taken mostly after the first year of law school and also considered an upper-level course in many law schools. The course provides knowledge of the law governing the conduct of lawyers and the disciplinary rules of professional conduct as outlined in the ABA Model Rules of Professional Conduct, the Code of Judicial Conduct, case laws, and procedural and evidentiary rules. The Multistate Professional Responsibility Exam (MPRE) is the test of the course taught in the law schools. Although the MPRE is administered three times per year, the vast majority of law students take the MPRE in their third year of law school or before taking their bar examination. However, the problem with the current practice is the law school disclosure, which the MPRE and the course emphasize and weave on.

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9 Id.
13 Id.
14 See id.

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II. BURDEN ON AN APPLICANT: “FAIL TO DISCLOSE NECESSARY FACTS”

All states require that an applicant for admission to the bar be of good character. Character and fitness, however, is a two-step process. Character denotes that law school applicants must candidly disclose all past acts, events, or anything that may raise a red flag on their good moral or ethical character.\(^{17}\) The disclosure must be done when candidates apply to law school through their law school application. Additionally, candidates must disclose any acts or events that might occur while the candidates are in a law school. This two-part test requires that a law student must disclose any past, adverse events or acts that the candidate might have encountered through his/her birth to his/her journey to the law school. In the second part of the test, the test requires candidates to disclose to the state board of bar examiners of any past act or event when they apply for attorney licensing application.

Moral character is more an objective criterion while the ethical character is more formal and subjective criteria. Traditionally, moral character is “construed to include offenses concerning adultery and comparable offenses that have no specific connection to the fitness for the practice of law.”\(^{18}\) A moral character may also include violence, dishonesty, breach of trust, or serious interference with the administration of justice.\(^{19}\) For example, the national conference of bar examiners asks for "have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?\(^{20}\) Another question asks "within the last five years, have you

\(^{17}\) See supra discussion part I; See infra text and accompanying notes 19-23.

\(^{18}\) Dzienskowski, supra note 2, at 103, comment 2.

\(^{19}\) Id.

exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?\textsuperscript{21} Some of the other examples include

(1) Have you ever had a complaint or action (including, but not limited to, challenges of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?
(2) Have you ever been cited for, arrested for, charged with, or convicted of any alcohol or drug-related traffic violation other than an offense that was resolved in juvenile court?
(3) Have you ever been cited for, arrested for, charged with, or convicted of any alcohol or drug-related traffic violation other than an offense that was resolved in juvenile court?
(4) Have you ever been cited for, arrested for, charged with, or convicted of any violation of any law other than a case that was resolved in juvenile court?
(5) Have you ever been filed a petition for bankruptcy?
(6) Have you ever had a credit or charged account revoked?
(7) Have you ever defaulted on any other debts?
(8) Have you any indebtedness of $500 or more (including, credits cards, charge accounts, and student loans) that have been more than 90 days past due within the past three years?\textsuperscript{22}

In the context of law school disclosure and bar character and fitness, “fitness” denotes that the bar authorities review the information provided by bar applicants, law schools, and other sources relating to an applicant's academic history, criminal background, employment, and financial history, and mental and physical health providers, and recommenders.\textsuperscript{23} The character and fitness committee uses this information to determine whether the applicant possesses the requisite "character and fitness" to practice law.\textsuperscript{24} The most popular notion is that past misconduct provides a prediction of the applicant’s future behavior that may jeopardize an applicant’s chances to practice law.\textsuperscript{25} For example, one court said that when applicants do not admit until their final semester of law school, then

\textsuperscript{21} Id
\textsuperscript{22} Id.
\textsuperscript{23} LEVIN, infra note 48, at 785.
\textsuperscript{24} See id.
\textsuperscript{25} Id.
their late disclosure do weigh against them.\textsuperscript{26} Put it in another way. For example, if law schools and the bar examiners require disclosure in their application, then the entering law students must be well exposed to the course and should have tested their knowledge and familiarity of the course before they enter the law school because it is prime factor of what they are required to implement along the way -- that is the disclosure.

\textbf{III. CHALLENGES WITH THE CURRENT APPROACH}

Many entering students, however, lack the knowledge of law school disclosure, especially, the diverse students,\textsuperscript{27} or educated international students, or foreign-trained lawyers. One scholar suggested a “curriculum reform, urging law schools to expand their international law offerings and professors to adopt a pervasive pedagogy by adding international law perspectives to their substantive courses.”\textsuperscript{28} However, such sweeping objective requires introducing international law courses after students being admitted to law schools. On the other hand, the introduction of international classes does not address the knowledge needed for law school disclosure.\textsuperscript{29} The purpose of this Note is not to weigh the current regime of administering the MPRE, but to weigh in one of the most compelling reasons to include the MPRE administration along with the LSAT.\textsuperscript{30} Such an attempt will likely foster an early intervention of implementing professional responsibility course associated

\textsuperscript{26} In Re Application of Silva, 685 N.W. 2d 592, 598 (Nebraska 2003) (stating that although the applicant’s prior conviction occurred a number of years previous to the bar applicant’s request for admission, he failed to disclose in his law school application).

\textsuperscript{27} See Bollinger, 539 U.S. at 329 (stating that law school may assemble “a class that is both exceptionally academically qualified and broadly diverse,” the Law School seeks to “enroll a ‘critical mass’ of minority students.”). For this discussion, “diverse and ethnic students” means students who are born in a foreign country and later moved to the United States. These students culturally, socio-economic, and language competency wise significantly differ from the United States students body.

\textsuperscript{28} Mary C Daly, \textit{The Ethical Implications of the Globalization of the Legal Profession; A challenge to the Teaching of Professional Responsibility in the Twenty-First Century}, 21\ FORDHAM INT’L L. J. 1239, 1242 (1998) (citation omitted).

\textsuperscript{29} See id.

\textsuperscript{30} See supra/infra text and accompanying notes 32-48.
with the law school disclosure and overall responsibility of prospective lawyers towards the bar and society in general.

Then what are character and fitness? Why is important? The Supreme Court of the United States has articulated that “[t]he term ‘good moral character’ has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However, the term, by itself, is unusually ambiguous.” The Court also noted that the good moral character “can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer.” Simply speaking, one core component of the earliest childhood lesson is that one must speak the truth to your parents. Likewise, the ABA and the state bars expect that the prospective law students must speak the truth in their character and fitness questionnaire while applying for a law school admission. Similarly, one of the requirements for admission to the bar is a demonstration of good moral character and fitness.

Interestingly, most law students are not exposed to the course well until the second or third year of their law school curriculum. Additionally, some states’ bar examiners, however, provide an exception for the MPRE if students can earn C or better in their law

32 Konigsberg, 353 U.S. at 263.
33 See supra text and accompanying notes 19-23.
34 See id; Michael C. Wallace, Sr., Moral Character and Fitness Means More than Just a Passing Score to the Board of Law Examiners, 7 Charlotte L. Rev. 157, 162 (2016) (“The exact meaning of good moral character and fitness is a mystery . . . Nevertheless, determining moral character and fitness is within the purview of the Boards, and . . . may vary from member to member as they assess an applicant's past and anticipated behavior.”).
35 M. Ann Miller, Learning from Our Elders: Teaching Professional Responsibility in an Elder Law Settings, 2 T. M. Cooley J. of Prac. & Clinical L., 59, 62 (1998) (“Professional responsibility is frequently viewed by students as one of the lighter courses in a law school curriculum. One way to underscore the importance of this subject area is to help students begin to apply the rules learned in a traditional classroom setting which allows them to recognize how difficult it may be to adhere to these rules in a practical setting”).

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school’s course. But many state bar examiners still require taking MPRE, as a precondition, for the bar admission. Some state bar examiners do not need to pass the MPRE exam at all before taking the bar exam. Since there is no such rule that all law students must take the MPRE in their first years of law schools, students are free to take the MPRE at their convenience.

Most importantly, many law schools require submitting written materials before its’ consideration of admission. However, many law school applications do not ask character and fitness questions like any state bar examiners character and fitness questionnaire. Then it boils down to the question that how the entering student know what to disclose and what not to? Since these inquiries are open-ended questions, entering students, require having a thorough knowledge of ethics rules. Additionally, students can learn the nuances of law school disclosures can only if students get sufficient exposure to professional responsibility course before being admitted to the law schools. It is likely that entering

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37 See id.
39 Paul T. Hayden, Putting Ethics to the (National Standardize) Test: Tracing the Origin of the MPRE, 71 Fordham L. Rev. 1299, 1306 (2003) (“the MPRE provides a much narrower assessment. At a minimum, the existence of the MPRE probably guarantees that the doctrine of professional responsibility will be taught in a separate course at most law schools”).
40 See supra text and accompanying note 27.
41 Linda McGuire, Lawyerly or Lying? When Law School Applicants Hide Their Criminal Histories and Misrepresentations, 45 S. Tex. L. Rev. 709, 725 (2004). (“Should We Ask About Criminal and Other Unfavorable History? If We Do Not Ask, They Cannot Lie”).
42 Leslie C. Levin, The MPRE Reconsidered, 86 Ky. L. J. 395, 400-01 (1997-98) (“[A]s a practical matter the current MPRE does no more than insure that bar applicants acquire and display some knowledge of the model professional responsibility . . . This familiarization with model rules is a job that is usually performed by law schools and it is a job they perform tolerably well.” (citation omitted)).
law students and foreign-trained lawyers may lack knowledge of the course. Additionally, any foreign country ethics rules may or may not be like those modeled by the ABA. Besides, the delayed disclosure by these applicants may be a problem for admission to the bar in the United States.

Similarly, some applicants may be ashamed and humiliated by being forced to provide details of the events they want to forget. Some applicants may not know where their act or omission will lead in the feature if they do not disclose. Because “disclosure” is a far-reaching term and require to understand the professional responsibility rules, comments, and case laws. If students do not disclose until a couple of years from their admission into the law schools, then that may cause some embarrassments, processing delays, and “no license” due to their lack of good moral character and fitness in their bar application process. The hidden truth of “not knowing” is the primary cause of the delay and is a significant flaw in the current approach.

43 See infra text and accompanying note 48.
44 See infra part IV;
45 Id.; See Bollinger, 539 U.S. at 333 ("Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, . . . ");
46 See, e.g., In re Converse, 602 N.W. 2d 500, 510 (Neb. 1999) (holding that the applicant lacked his good moral character because of his general turbulent and intemperate disposition); Matter of Moore, 303 S.E. 2d 810, 816-17 (N.C. 1983) (holding that applicant's threatening and belligerent statements within five years prior to the time of the petition was a reasonable basis from which the board could determine that the applicant did not possess the moral character necessary to stand for examination); Matter of Ronwin, 680 P. 2d 107, 118 (Ariz. 1983) (holding that the applicant did not establish that he was mentally fit to practice law, and manifestations of improper conduct included the filing of unwarranted legal actions against numerous individuals connected with the applicant's "unhappy experience" in applying for admission to the Arizona Bar).
47 Leslie C. Levin, The Folly of Expecting Evil: Reconsidering the Bar’s Character and Fitness Requirements, 2014 B.Y.U. L. Rev., 775, 785 (2014) [hereinafter Levin] ("The inquiry occurs 'too early' because it occurs before applicants have encountered the situational pressures of practice. It is “too late” because it occurs after applicants have invested thousands of dollars (now often more than $100,000) in their legal education, making it harder for bar authorities to deny admission to applicants who have invested three years in law school and have often incurred substantial student loan debt.” (citing Rhode, supra note 5, at 515).
IV. A PROPOSAL

When focusing on the balancing approach, the introduction of administering the MPRE as a pre-law benefit all the odd against the current regime. These benefits will be substantial because early administration of the MPRE will promote better understanding, will help to break down the pros and cons of non-disclosure, and will enable to understand the character and fitness better. These benefits are “important and laudable,” because fewer students will jeopardize by non-disclosure stigma, “more ethical lawyers the society will get, and simply more enlightening and interesting professionalism will flourish” when the students have the highest possible notion of good moral character and fitness.