

CHANGING CHARACTER AND FITNESS IN NEW YORK STATE

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Joining the legal field has many bars before it. You have to take the LSAT or, in some instances, the GRE to be admitted into a law school. You then spend three years, paying an exorbitant amount of money, in school, ending with an [average of \\$145,000 in debt](#). Then you must pass the Bar to become a licensed attorney, which, depending on where you are, have [passage rates of below 40%](#). While each of these serves as a massive obstacle to the legal profession, there is yet another: Character and Fitness assessment.

Built into the Bar admission process, Character and Fitness is billed as a way to prevent unscrupulous people from becoming lawyers and taking advantage of clients. Essentially it is meant to keep the Giulianis and Avenattis of the world from bilking people out of money. However, its basis for doing so is based on debts and prior criminal contact, with the assumption being that those in debt or who have committed any kind of crime are substantially less trustworthy.

In New York, the same Character and Fitness process is being carried out through [Section F of its Bar application form](#). In particular, Question 26 asks about prior criminal legal contact. This disproportionately bars people of color, especially Black and Brown people, who are subject to repeated unjust contact with the criminal legal system. This very question, which would not stop a Michael Cohen from becoming a barred attorney in New York, could just as easily stop a Black woman unjustly convicted of larceny from becoming an attorney. It also violates laws that prevent licensing agencies from gathering information about prior youthful offender adjudications and sealed arrest records to name only two instances of protected criminal legal history requested. Additionally, because law schools insist on asking the same question in their applications because the Bar does, it serves as a deterrent to even beginning the process of entering the legal profession.

Organizations around New York State have realized that Character and Fitness acts as this obstacle to the legal field and have taken action. On June 1, 2021, the Association of the Bar of the City of New York (“City Bar”) sent a [letter](#) to New York’s Office of Court Administration (“OCA”) asking it to address the illegal nature of Question 26 and consider reforms necessary to bring the Character and Fitness process more in line with principles of racial justice. Upon receipt and review of that letter, OCA solicited responses from stakeholders and other parties concerned with the inequity of the Character and Fitness evaluation. One of those organizations, Unlock the Bar, answered that call and sent in its own letter not only supporting the call for reforming Question 26, but also demanding the abolition of the Character and Fitness assessment of the Bar.

Unlock the Bar believes that the steps outlined in the City Bar letter are the first steps to ensuring greater access to the legal profession. However, OCA cannot stop

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there. The legal field will remain unduly inaccessible as long as the Character and Fitness process exists, and abolition of that process must be the north star. True equity cannot be achieved until the Character and Fitness assessment is abolished. You can read the Unlock the Bar letter, which goes into greater detail regarding the illegality of Question 26 and the need for abolition, below.



September 20, 2021

Via Email

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Unlock the Bar Statement on New York City Bar Association Letter Regarding Character and Fitness Violations

Your Honors:

In this moment of reckoning with racial injustice in the United States, we believe it is critical to evaluate the ways that the legal profession institutionally bars Black, Brown, and system-impacted people from engaging within it. We are Unlock the Bar—a coalition of system-impacted and allied attorneys, movement lawyers, and law students advocating in New York for a just and equitable legal profession. In the spirit of abolition, we strive to open up our legal system so that it is democratized and accessible to everyone.

Unlock the Bar
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A democratic and accessible legal system will require the legal profession to dismantle the barriers to entry set by the Character and Fitness application. New York's antiquated Character and Fitness application procedures exclude qualified applicants who have devoted time and money to law school. The looming threat of exclusion also chills protest and civil disobedience. Further, the Bar discourages applicants on the basis of the very experiences with the legal system that inform their ability to advocate even more effectively for their clients. For these reasons and more, the full discriminatory impact of the Character and Fitness process is nearly impossible to estimate. Although, due to the lack of transparency, we do not know the full extent to which Character and Fitness excludes system-impacted people from the legal profession, we do know that the exclusion happens all too often. System-impacted members of Unlock the Bar have been unfairly excluded from the legal profession by the New York State Character and Fitness process, and we constantly hear from those with similar experiences, including those who have been affected by other Character and Fitness processes across the country.

Given the necessity of a representative legal system and the damage done to communities excluded by it, democratization is long overdue. As initial steps, we implore the Office of Court Administration (OCA) to (1) Open the OCA evaluation of the letter submitted by the Association of the Bar of the City of New York ("City Bar") for public comment and cure the violations that the City Bar letter exposes; (2) Release data related to Character and Fitness; (3) Establish a working group to evaluate the necessity of Character and Fitness; (4) Hold a public hearing with Character and Fitness Committees; (5) Guarantee space to system-impacted and marginalized individuals on Character and Fitness Committees; (6) Abolish Question 26; and (7) Urge law schools to remove Character & Fitness Questions from Law School Applications.

We see each of these actions as steps towards democratizing the legal profession. However, ultimately, we fervently believe that total abolition of the Character and Fitness is necessary to the creation of a truly just and equitable legal profession in New York State. As such, in addition to the steps outlined above and discussed below, we petition the OCA to abolish the Character and Fitness Application from the licensing process. The Character and Fitness Application, an outgrowth of discriminatory and carceral logic, remains a tool to determine who "deserves" legal power. We do not believe that lawyers should be judged by their victimization by the carceral system; rather than treating aspiring legal advocates as suspects, the legal system should judge them by their ability to wield the law for collective liberation and equip them to do so. Until the legal system fully recognizes the ineffective and harmful nature of the Character and Fitness process and is prepared to abolish it, we make the following demands to bring our system closer to justice:

1. Address City Bar Letter: Open to Public Comment and Cure Violations

We ask that OCA fully adopt the recommendations of the City Bar outlined in its June 1, 2021 letter regarding Amending Question 26 of the New York Bar Application. This letter outlines reasons why Question 26 must change. The question violates § 296(16) of the Executive Law and § 380.1 of the Family Court Act, which bar licensors from requesting information about protected categories of criminal and juvenile history. City Bar has proposed language that could substantially cure the violations of these two statutes by removing requests for information about prior juvenile adjudications, youthful offender adjudications, sealed adult arrests, sealed convictions, and cases adjourned in contemplation of dismissal.

We commend and support City Bar's proposed changes as an important first step in the larger movement towards completely dismantling the discriminatory structures that perpetuate oppression in the legal field. It is of paramount importance that OCA take a hard look at each of the issues City Bar has brought up in its letter and fully address all of them. In order to ensure that the legal field is as diverse as the people we serve, we must eradicate these barriers to entry. As noted below, Question 26 is used almost verbatim by law schools in their admissions processes, which serves as a major deterrent to many individuals even applying to law school.

OCA must also consider who it involves in its decision making process. Those who have been directly affected by the criminal legal system must be included in these discussions. We wholeheartedly join City Bar's call for their inclusion as a matter of increasing the equity of our profession.

Finally, in the spirit of creating a decision making process that is more equitable, Unlock the Bar believes that the actions that OCA decides to undertake regarding the City Bar letter must be subject to public comment. A public comment period will allow members of the general public, who have an enormous stake in changing the review process of those with criminal legal contact, to become aware of barriers to entry in the legal field and participate in shaping an equitable process.

2. Data Release and Transparency

To begin to work towards a more just process, the Character and Fitness committees and related officials must be transparent about the current process. We demand the release of anonymized information regarding (a) how many people's Bar applications have been rejected on the grounds of Character and Fitness; (b) the races of rejected applicants in comparison to the overall applicant pool; (c) the reasons applicants are rejected and the frequency for each reason; (d) how members of the Character and Fitness committee are selected; (e) who is on those committees; and (f) whether any of the committee members are system-impacted, and if so, how

many. If this is truly a just and inclusive process, then the Character and Fitness committees and related officials have nothing to hide. Release the data and establish a system for ongoing transparency.

3. **Working Group/Commission to Evaluate the Necessity of the Character & Fitness**

We believe that the same wisdom that led to the formation of the working group to evaluate the future of the New York State Bar Exam in 2020 should guide the formation of a working group to evaluate the future of Character and Fitness. We request that OCA organize a committee comprised of system-impacted individuals, advocacy groups and activists, movement lawyers, law students, and legal professionals of color to discuss the necessity of the Character and Fitness, and how we can ensure that we are supporting both lawyers and our own communities through affirmative resources rather than punitive and restrictive mechanisms.

4. **Hearing with Character & Fitness Committees and the Court of Appeals Officials**

Just as we believe that there should be public comment on OCA's decision-making around the City Bar letter, we also believe there should be a general public hearing, open to the broader legal, impacted, and allied community, to discuss the impact of the Character and Fitness on people's lives and the state of the legal profession in New York.

5. **Guarantee System-Impacted People Seats on the Character and Fitness Committees**

As law students and recent law school graduates, we recognize that the most important legal expertise comes from outside the classroom. System-impacted people have intimate first-hand knowledge of the law and its power. System-impacted lawyers should be guaranteed some number of spaces on the Character and Fitness committees to ensure that the exploitative processes that victimized them are not reproduced in the next generation of lawyers and that exclusive practices are not perpetuated.

6. **Abolish Question 26**

The abolition of Question 26 is a floor, not a ceiling. Question 26 is *illegal*. It is absurd and paradoxical for the legal system to use an illegal system to evaluate aspiring lawyers. Question 26's illegality lays bare the naked hypocrisy and injustice that has been exposed across the legal system and makes the promise of justice hollow. The abolition of Question 26 is not an ethical decision, but a legal necessity to eliminate the Character and Fitness committees' own liability and a minimum initial step towards a just legal system.

Question 26 has no bearing on a person's fitness to practice law. We too believe that it is important to protect the community from lawyers that engage in unscrupulous behavior.

However, it is evident (through the plethora of examples of racist, classist, sexist, ablelist, homophobic, xenophobic, and exploitative lawyers currently in the field) that the existence of this question on the Character and Fitness does not achieve that purpose. Furthermore, this question highlights that the profession is suspicious of the value that those involved with the criminal legal system bring to the profession. There is no question that people who have been touched by the law know the law the best. System-impacted people understand the law's power to subjugate just as intimately as its power to uplift. Question 26 deters people who have this important knowledge from the legal profession.

7. **Instruct Law Schools to Remove Similar Questions from Law School Applications**

All fifteen law schools across the state currently require their applicants to answer some version of Question 26, and the schools often claim that they are forced to include these questions because those same questions will be asked during the Character and Fitness process. Potential applicants see these questions and are deterred from applying to law schools, and the preparation system-impacted people undertake to answer these questions is both time-consuming and unwieldy. This creates an expansive discriminatory effect that the Character and Fitness committees can remedy by eliminating Question 26 and informing law schools they should not ask the same problematic questions.

As the future of the legal profession, we unequivocally reject the racist gatekeeping logic that birthed the Character and Fitness. We look forward to a future in which the law is accessible to everyone. We hope to work with you towards that future and encourage you to contact us at unlockthebar@gmail.com by December 20, 2021.

Respectfully,

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