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Bar Admission—Default on Student Loan Warrants Denial of Admission to Minnesota Bar—In re Gahan, 279 N.W.2d 826 (Minn. 1979)

CASE NOTES

Bar Admission—DEFAULT ON STUDENT LOAN WARRANTS DENIAL OF ADMISSION TO MINNESOTA BAR—*In re Gahan*, 279 N.W.2d 826 (Minn. 1979).

The Minnesota Supreme Court is authorized to prescribe qualifications for admission to the Minnesota bar,[1] and it considers attorney regulation to be within its exclusive judicial domain.[2] According to the court, the opportunity to practice law in Minnesota is not a property right protected or guaranteed by the state or federal constitutions.[3] Instead, the practice of law is considered a privilege that can be conferred on specific individuals by the court[4] and is subordinate to the court's greater obliga-

1. *See* MINN. STAT. § 481.01 (1978) (directing supreme court to adopt rules prescribing qualifications of all applicants for admission to Minnesota bar and to appoint Board of Law Examiners to administer rules and examine all applicants).

2. *See* Sharood v. Hatfield, 296 Minn. 416, 425, 210 N.W.2d 275, 280 (1973) (power to regulate practice of law inherently rests with judiciary); *In re* Daly, 291 Minn. 488, 490, 189 N.W.2d 176, 178-79 (1971) (per curiam) (formulation of professional conduct standards is responsibility of judicial branch; court vested with ultimate determination governing admission, supervision, and discipline of attorneys); *In re* Integration of Bar, 216 Minn. 195, 198-99, 12 N.W.2d 515, 517-18 (1943) (per curiam) (Minnesota constitution vests supreme court with exclusive power to make necessary rules and regulations governing the bar); *In re* Tracy, 197 Minn. 35, 44-47, 266 N.W. 88, 92-93 (per curiam), *modified per curiam*, 197 Minn. 47, 267 N.W. 142 (1936); *In re* Greathouse, 189 Minn. 51, 54, 248 N.W. 735, 737 (1933) (per curiam).

The same position has been taken by the United States Supreme Court. *See Ex parte* Secombe, 60 U.S. (19 How.) 9 (1857). The Court in *Secombe* stated, "[I]t has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed." *Id.* at 13.

The Minnesota Legislature also has recognized the courts' power to regulate the legal profession. *See* note 1 *supra*. While the judiciary's right to define and regulate the legal profession is deemed to be inherent in its power to administer justice, acts of the legislature in regulating the legal profession are considered as aiding rather than detracting from the power of the judiciary. *Cf. In re* Tracy, 197 Minn. 35, 46, 266 N.W. 88, 93 (per curiam) (Minnesota court prefers to comply with legislative will when independence of judiciary is preserved), *modified per curiam*, 197 Minn. 47, 267 N.W. 142 (1936).

3. *See, e.g., In re* Smith, 220 Minn. 197, 199, 19 N.W.2d 324, 325 (1945) ("The right to practice law is a matter of license and high privilege and is in no sense an absolute right. It is in the nature of a franchise . . . ."); *In re* Integration of Bar, 216 Minn. 195, 200, 12 N.W.2d 515, 518 (1943) (per curiam) ("The practice of law is not a property right guaranteed or protected by either the state or federal constitution."); *cf.* Bradwell v. State, 83 U.S. (16 Wall.) 130, 139 (1873) (admission to practice law not within fourteenth amendment privileges and immunities clause); *In re* Hansen, 275 N.W.2d 790, 796 (Minn. 1978) (no constitutional right to practice law in one's home state), *appeal dismissed*, 441 U.S. 938 (1979).

4. *See In re* Integration of Bar, 216 Minn. 195, 200, 12 N.W.2d 515, 518 (1943) (per

tion to further the administration of justice and protect constitutional rights. This privilege, or license, is based upon a threefold requirement of ability, character, and responsible supervision.[5] In the case of *In re Gahan*,[6] the court clarified its interpretation of the character requirement.

The issue before the *Gahan* court was whether the Board of Law Examiners properly denied an applicant admission to the Minnesota bar. The court determined that, in view of the facts of the case,[7] the applicant's

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curiam) ("The practice of law . . . . is a privilege conferred on the individual by the court to further the administration of justice.").

In cases involving bar applicants or lawyers facing disbarment proceedings, courts have accorded due process rights without clearly defining the practice of law either as a privilege or as a right. *See, e.g.*, Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). The *Schware* Court stated:

> We need not enter into a discussion whether the practice of law is a "right" or "privilege." Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace.

Id. at 239 n.5. In Smith v. State Bd. of Medical Examiners, 140 Iowa 66, 117 N.W. 1116 (1908), the court stated:

> Whether the right to practice medicine be classed as a property right, strictly speaking, or as a mere privilege, it is not material; for, whichever name be given it, it is a valuable right which cannot be taken away without due process of law, the essential elements of which are notice and opportunity to defend.

Id. at 69, 117 N.W. at 1117.

Although courts may differ as to their use of the term "right" or "privilege" when discussing the regulation of the legal profession, apparently they are in substantial agreement that procedural due process rights must be accorded to each bar applicant or attorney facing disbarment. *See generally* Baird v. State Bar, 401 U.S. 1, 8 (1971) ("The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character."); Gardner v. Conway, 234 Minn. 468, 478, 48 N.W.2d 788, 795 (1951) (franchise or privilege); note 3 *supra* and accompanying text.

5. *See* Gardner v. Conway, 234 Minn. 468, 478, 48 N.W.2d 788, 795 (1951) ("[P]ublic welfare is safeguarded not merely by limiting law practice to individuals who are possessed of the requisite ability and character, but also by the further requirement that such practitioners shall thenceforth be officers of the court and subject to its supervision."); *cf.* Kephart, *Unauthorized Practice of Law*, 40 DICK. L. REV. 225, 226 (1936) ("No member of the bar comes to the profession easily. . . . A lawyer must be of good moral character. He must have the requisite educational qualifications and skill. There are other obligations that must be met.").

6. 279 N.W.2d 826 (Minn. 1979).

7. The circumstances of the case may be summarized as follows: The applicant was a graduate of the University of San Francisco Law School. As of the time of his graduation, the applicant had obtained approximately $14,000 in federally insured student loans. Subsequent to his admission to the California bar, the applicant was employed by two California law firms at annual salaries of $15,000 and $18,000, respectively. Between these jobs, the applicant was unemployed for two months. During this period of unemployment, the applicant filed a petition for voluntary bankruptcy in federal district court. The applicant was single, had never been married, and had no dependents. Immediately prior to filing his petition for bankruptcy, the applicant mortgaged his 1959 Jaguar auto-

default on certain federally insured student loans and his subsequent discharge of those loans in a bankruptcy proceeding showed a flagrant disregard for the rights of others.[8] The court held that the applicant's actions evidenced a lack of good moral character and accordingly affirmed the decision of the Board of Law Examiners.[9]

The *Gahan* court's decision focused upon the second basic requirement for admission to the Minnesota bar—good moral character.[10] The primary purpose of the character requirement is the protection of a lawyer's clients.[11] Although the good-moral-character requirement typically has

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mobile to a friend for a loan of $2,500. This money was deposited in accounts that were exempt from the trustee in bankruptcy under California law. A separate $1,600 debt was also scheduled in the bankruptcy petition, but was reinstated prior to the bankruptcy proceeding and subsequently was paid in full. Due to the above transactions, the sole debt discharged by bankruptcy was the $14,000 in federally insured student loans. *See id.* at 827-28.

8. *See id.* at 831. The issue of whether a bar applicant who has discharged student loans in bankruptcy should be admitted to practice law has been considered in at least one other jurisdiction. *See* note 33 *infra*.

9. 279 N.W.2d at 832.

10. Good moral character is a prerequisite to the practice of law in every state. *See* Comment, *Bar Examinations: Good Moral Character, and Political Inquiry*, 1970 WIS. L. REV. 471, 472. Although investigation of an applicant's good moral character generally involves letters of reference and information regarding the person's background, some states additionally require an interview. *See id.* at 472-73.

11. *Cf.* Schware v. Board of Bar Examiners, 353 U.S. 232, 248 (1957) (Frankfurter, J., concurring) (legal profession "has long had a vital interest . . . in determining the fitness, and above all the moral fitness, of those who are certified to be entrusted with the fate of clients").

Protection of the public is the purpose of bar admission requirements. *See, e.g.*, Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975) ("the states have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners"); *In re* Peterson, 274 N.W.2d 922, 925 (Minn. 1979) (term "moral character" used in professional context relates to capacity to serve public in the practice of law); *In re* Daly, 291 Minn. 488, 490, 189 N.W.2d 176, 178 (1971) (per curiam) ("lawyers . . . must be subject to strict regulation with respect to admission to practice and to the performance of professional services, as well as to public accountability"); Gardner v. Conway, 234 Minn. 468, 478, 48 N.W.2d 788, 795 (1951) ("The protection of the public, as the purpose of confining law practice to a licensed bar . . . is of vital importance today." Professional standards are for safeguarding the public interest.); Cowern v. Nelson, 207 Minn. 642, 647, 290 N.W. 795, 797 (1940) ("It is the duty of this court so to regulate the practice of law . . . in order to protect primarily the interest of the public . . . ."); *cf. In re* Hansen, 275 N.W.2d 790, 792-93 (Minn. 1978) ("[T]he state can regulate admission as long as such regulation is reasonably related to its interest in a competent bar."), *appeal dismissed*, 441 U.S. 938 (1979); *In re* Estate of Peterson, 230 Minn. 478, 486, 42 N.W.2d 59, 64 (1950) (statute prohibiting will drafting by unlicensed practioner "penalizes a certain act by members of one class for the protection of the members of another class").

It has also been suggested, however, that close scrutiny of bar applicants through tougher bar entry requirements is a way of reducing or limiting the number of lawyers entering the practice of law. *See Today's Law School Graduates Better Trained, but There Are Too*

been defined in terms of honesty, veracity, and the absence of conduct manifesting moral turpitude,[12] the *Gahan* court questioned the applicant's character in the context of his personal financial integrity. The Minnesota court was concerned solely with the applicant's handling of personal finances. No allegations of professional financial misconduct were made. The court reasoned, however, that the applicant's disregard of the repayment responsibility on federally insured student loans was an indication of his lack of commitment to the rights of other students[13] and creditors.[14] This irresponsibility, in turn, was seen as reflecting adversely on the applicant's fitness for the practice of law.[15] Because the good-

Many, 64 A.B.A.J. 192, 193 (1978). In a random telephone poll of 602 American Bar Association members, conducted by Cambridge Opinion Studies Division of Quayle, Plesser, & Co. during the last week of August, 1977, three general solutions were offered as a means of reducing or limiting the number of lawyers entering the practice—raise law school admission standards, impose tougher bar entry requirements, and leave entrance into the profession to supply and demand. A small percentage of the individuals polled suggested that the moral character standards for entry into law schools be raised in order to limit the number of attorneys. *See id.*

12. The California Supreme Court has defined "good moral character" in terms of an absence of proven conduct or acts that historically have been considered as manifestations of moral turpitude. *See* Hallinan v. Committee of Bar Examiners, 65 Cal. 2d 447, 452, 421 P.2d 76, 81, 55 Cal. Rptr. 228, 233 (1966). The California court defined "moral turpitude" as "everything done contrary to justice, honesty, modesty, or good morals" and as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary, to the accepted and customary rule of right and duty between man and man." *Id.* at 452 n.4, 421 P.2d at 81 n.4, 55 Cal. Rptr. at 233 n.4.

Indiana has defined the term as including, but not limited to, "the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, and of the laws of this state and of the United States, and a respect for the rights of other persons and things, and the judical process." IND. R. FOR ADMISSION TO BAR & DISCIPLINE OF ATTORNEYS 13(IV)(A). In an early Wisconsin decision, the court stated that the words "good moral character" are general in application but include all elements essential to make up such character, among these being "common honesty and veracity, especially in all professional intercourse." *In re* O—, 73 Wis. 602, 618, 42 N.W. 221, 225 (1889).

13. A lack of commitment to the rights of other students was demonstrated by the applicant's failure to repay his student loans because "repayment provides stability to the student loan program and guarantees the continuance of the program for future student needs." 279 N.W.2d at 831.

14. *Id.* In response to a question of the Board of Law Examiners as to whether there was any moral or social obligation or responsibility with regard to repayment of the loans, the applicant answered, "I guess if I felt that there was a moral obligation to repay them, I would have repaid them." Brief of the Minnesota State Board of Law Examiners at 4.

15. *See* 279 N.W.2d at 832. The Minnesota bar admission rules state the general requirements for admission to the bar:

> No person shall be admitted to practice law who has not established to the satisfaction of the State Board of Law Examiners:
> (1) That he is at least 18 years of age;
> (2) That he is a person of good moral character;*
> (3) That he is a resident of this state; or maintains an office in this state; or

moral-character requirement is a subjective standard, it is susceptible to several types of constitutional attack.

The *Gahan* court addressed the possible constitutional conflict between the court's exercise of control over admission to legal practice in Minnesota and the free operation of federal bankruptcy law[16] within limits imposed by the supremacy clause.[17] The supremacy clause provides that the Constitution of the United States, together with federal laws enacted pursuant to the Constitution, are the supreme law of the land and that conflicting state laws must yield to the supremacy of federal law.[18] Because one of the primary purposes of bankruptcy law is to give an individual a "fresh start" in life free from the oppressive weight of financial indebtedness,[19] the court examined the supremacy clause question of

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has designated the Clerk of the Supreme Court as his agent for the service of process for all purposes;

(4) That he has graduated from an approved law school; * *

(5) That he has passed a written examination.

* Character traits that are relevant to a determination of good moral character must have a rational connection with the applicant's present fitness or capacity to practice law, and accordingly must relate to the State's legitimate interest in protecting prospective clients and the system of justice.

* * An approved law school is a law school that is provisionally or fully approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association.

MINN. R. ADMISSION TO THE BAR II.

16. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. I, § 101, 92 Stat. 2549 *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS; *see* 279 N.W.2d at 828. The bankruptcy law states in part:

> [A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act . . . .

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. I, § 101, 92 Stat. 2549, 2593 (to be codified in 11 U.S.C. § 525), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS.

17. U.S. CONST. art. VI, para. 2; *see* 279 N.W.2d at 828-29.

18. *See* U.S. CONST. art. VI, para. 2; *cf., e.g.*, United States v. Antelope, 430 U.S. 641, 650 & n.13 (1977) (persons charged with crimes on federal enclaves cannot demand application of more lenient state law because such a rule would be inconsistent with supremacy clause); Florida v. Mellon, 273 U.S. 12, 17 (1927) (because of supremacy clause, state has no power to prohibit imposition of federal inheritance tax); Hill v. Harding, 107 U.S. 631, 633-35 (1883) (reversing judgment of Illinois Supreme Court that denied stay of proceedings to which defendant was entitled under federal Bankrupt Act because of supremacy of federal law); McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 435 (1819) (because of supremacy clause, state cannot impede operation of laws enacted by Congress to execute general governmental powers).

19. *See, e.g.*, Lines v. Frederick, 400 U.S. 18, 19 (1970) (per curiam) (basic purpose of bankruptcy law is "to give the debtor a 'new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt' ") (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)). Additional purposes of the federal bankruptcy law include bringing about an equitable distribution of the bankrupt's estate,

whether its ruling would have the practical effect of hindering applicants adjudged bankrupt from making a "fresh start." While prevented from pursuing a legal career in Minnesota, the applicant was not barred from practicing his profession in the states where he had been admitted to practice.[20]

At one time, an express articulation of policy not in conflict with federal bankruptcy law would save a statute from a supremacy clause attack.[21] This position was overruled by the United States Supreme Court in *Perez v. Campbell*.[22] When determining the validity of a state law, the

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see, e.g., Kothe v. R.C. Taylor Trust, 280 U.S. 224, 227 (1930), and rehabilitating the debtor to be motivated to lead a full and productive economic life. *See, e.g.*, Bostwick v. United States, 521 F.2d 741, 746 (8th Cir. 1975).

20. The applicant already had been admitted to practice law in California and Wisconsin at the time he applied for admission to the Minnesota bar. *See* 279 N.W.2d at 827.

21. *See, e.g.*, Kesler v. Department of Pub. Safety, 369 U.S. 153, 173-74 (1962) (motor vehicle law that prohibited restoration of bankrupt's driver's license because of bankrupt's failure to satisfy personal injury judgment held constitutional under supremacy clause), *overruled in part in two separate cases*, Swift & Co. v. Wickham, 382 U.S. 111, 116 (1965) (other grounds), Perez v. Campbell, 402 U.S. 637, 652 (1971) (by implication); Reitz v. Mealey, 314 U.S. 33, 42 (1941) (Douglas, J., dissenting) ("[T]he bankrupt was deprived of his license by reason of a statute which conflicts with the Bankruptcy Act [and] we should strike down the [statute] . . . ."), *overruled*, Perez v. Campbell, 402 U.S. 637, 652 (1971).

22. 420 U.S. 637 (1971) (motor vehicle law that denied a driver's license because of unpaid judgment, even though judgment was discharged in bankruptcy, conflicts with bankruptcy law and violates supremacy clause).

The Bankruptcy Reform Act of 1978 effectively codifies the result of *Perez*. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. I, § 101, 92 Stat. 2549, 2593 (to be codified in 11 U.S.C. § 525), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS; S. REP. NO. 95-989, 95th Cong., 2d Sess. 81, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 5787, 5867. According to the legislative history found in the report of the Senate Committee on the Judiciary:

> The prohibition extends only to discrimination or other action based solely on the basis of the bankruptcy, on the basis of insolvency before or during bankruptcy prior to a determination of discharge, or on the basis of nonpayment of a debt discharged in the bankruptcy case (the *Perez* situation). It does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of [other requirements], if applied nondiscriminatorily.

Id. The report also states that the new section is designed to "permit further development to prohibit actions by governmental and quasi-governmental organizations that perform licensing functions, such as a State bar association . . . that can seriously affect the debtors' livelihood or fresh start . . . ." *Id. Compare* Marshall v. District of Columbia Gov't, 559 F.2d 726, 729 (D.C. Cir. 1977) (although bankruptcy law gives a new opportunity in life and a clear field for future effort unhampered by pressure and discouragement of preexisting debt, it does not wipe out the fact of prior bankruptcy) *with* Handsome v. Rutgers Univ., 445 F. Supp. 1362, 1367 (D.N.J. 1978) (withholding of plaintiff's transcripts by state university and refusing to allow her to register because of discharge of student loans in bankruptcy held a transgression upon "fresh start" policy of Bankruptcy Act violating supremacy clause) *and* Rutledge v. City of Shreveport, 387 F. Supp. 1277, 1281 (W.D. La. 1975) (police department rule subjecting policeman to dismissal for filing bankruptcy petition conflicts with federal law and supremacy clause).

Court now considers whether the challenged statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[23] Thus, the Minnesota court in *Gahan* had to determine whether its decision would be consistent with the purposes and objectives of Congress, looking both to federal bankruptcy law and to the various educational policies and programs supporting federally insured student loans.[24]

Applying the *Perez* supremacy clause standard in *Gahan*, the court noted that denial of the application for admission could not be based upon the sole ground that he filed bankruptcy or refused to reinstate the discharged debt.[25] The *Gahan* court stated that although the fact of bankruptcy could not be considered in determining the applicant's moral character, the applicant's conduct before and after the bankruptcy could be considered as evidencing his moral character concerning financial responsibilities.[26] Therefore, when the court viewed the applicant's moral character, the applicant's failure to repay his creditors was but one of several examples of his conduct.

While acknowledging the United States Supreme Court's determination that the character requirement is a "constitutionally permissible condition to bar admission, provided that the Constitution is not violated in the determination of moral character,"[27] the *Gahan* court did not specifically address possible problems arising under the fourteenth amendment. The first of these problems is whether the character requirement violates the due process doctrine of vagueness. The vagueness principle requires that the law supply notice of what conduct it prohibits.[28] Because application of the good-moral-character requirement may prevent

23. Perez v. Campbell, 402 U.S. 637, 649 (1971) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

24. For a discussion of the purposes of federal bankruptcy law, see note 19 *supra* and accompanying text. The general purposes of federally insured student loan programs have been stated as: "(1) to ensure a sufficient supply of well-trained, competent professional and technical personnel; and (2) to allow every person the fullest possible educational opportunity by making loans available to those who could not otherwise obtain a loan because of their age and lack of collateral or borrowing history." Note, *Student Loan Bankruptcies*, 1978 WASH. U.L.Q. 593, 595-96.

25. *See* 279 N.W.2d at 828-29.

26. *See id.* at 829.

27. *Id.*

28. Both the state and federal constitutions guarantee the right of every person to be free from the deprivation of "life, liberty, or property without due process of law." U.S. CONST. amends. V, XIV, § 1; MINN. CONST. art. I, § 7. Numerous cases support the principle that notice is essential to due process. *See, e.g.*, Schwartz v. First Trust Co., 236 Minn. 165, 170, 52 N.W.2d 290, 294 (1952) (adequate and proper notice is a prerequisite of due process; "the content of the notice must be reasonably calculated to fairly apprise the prospective claimant"); Juster Bros. v. Christgau, 214 Minn. 108, 119, 7 N.W.2d 501, 508 (1943) (notice universally recognized as essential to due process); Dimke v. Finke, 209 Minn. 29, 36, 295 N.W. 75, 80 (1940) (notice is essential element of due process).

individuals from practicing their chosen profession, the vagueness doctrine is applicable to bar admission standards.[29] The term "good moral character" is not subject to precise definition and is of little assistance to prospective bar applicants who wish to determine whether they meet the moral character requirement.[30] Despite the standard's lack of specificity, however, no decision has yet held that the good-moral-character requirement constitutes a denial of due process.[31] Although the term "good moral character" has not been clearly defined in Minnesota, the *Gahan* court clarified which character traits would be considered relevant to a determination of good moral character by holding that "applicants who flagrantly disregard the rights of others and default on serious financial obligations, such as student loans, are lacking in good moral character if the default is neglectful, irresponsible, and cannot be excused by a compelling hardship that is reasonably beyond the control of the applicant."[32] Circumstances that the court said might be considered as "hardships . . . include an unusual misfortune, a catastrophe, an overriding financial obligation, or unavoidable unemployment."[33]

29. *Cf.* Konigsberg v. State Bar, 353 U.S. 252, 273 (1957) ("A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal."); Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39 (1957) ("A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."); *Ex parte* Garland, 71 U.S. (4 Wall.) 333, 379 (1867) ("The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature.").

30. In Konigsberg v. State Bar, 353 U.S. 252 (1957), the Court stated that the term "good moral character" by itself is unusually vague and "can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer." *Id.* at 263. Due to the admitted vagueness of the term, the need for clarification of the requirement has been recognized. *See, e.g., In re* Hyra, 15 N.J. 252, 253, 104 A.2d 609, 609 (1954) (per curiam) ("It is important to the applicant to know at the earliest possible date, preferably before he starts on his years of study, whether in the judgment of the court, through its character and fitness committee, he is lacking in character sufficiently to disqualify him for admission to the bar.").

31. *See* J. CLARK & C. WOLFRAM, PROFESSIONAL RESPONSIBILITY: ISSUES FOR MINNESOTA ATTORNEYS 64 (Minn. Continuing Legal Education 1976) ("the Court has never refused to uphold a disbarment or denial of admission on grounds that these standards are too vague"). *See generally In re* Ruffalo, 390 U.S. 544, 554 (White, J., concurring) ("A relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the courts would condemn the conduct for which he was removed."), *modified mem. on other grounds*, 392 U.S. 919 (1968).

32. 279 N.W.2d at 831.

33. *Id.* The court indicated that only Florida previously had considered the question whether a bar applicant's failure to repay student loans demonstrates a lack of good moral character justifying denial of admission. *See id.* at 830.

The Florida court has dealt with this issue on two occasions. *See* Florida Bd. of Bar Examiners *re* Groot, 365 So. 2d 164 (Fla. 1978) (per curiam); Florida Bd. of Bar Examiners *re* G.W.L., 364 So. 2d 454 (Fla. 1978). In *Groot* the applicant was admitted to the

The second fourteenth amendment question is whether the standard of review used by the *Gahan* court to assess the applicant's good moral character violates the equal protection clause.[34] The fourteenth amendment requires that the specific character traits scrutinized in determining good moral character must have a "rational connection with the applicant's fitness or capacity to practice law."[35] In denying the applicant admission to the Minnesota bar, the *Gahan* court determined that the applicant's handling of his personal debt was rationally connected to his fitness to practice law.[36] Although the applicant initiated the bankruptcy proceeding solely for personal reasons, the court concluded that one's personal and professional financial and ethical spheres are not mutually exclusive.[37] The failure of an applicant to satisfy normal financial

Florida bar despite his discharge of student loans in bankruptcy. *See* 365 So. 2d at 166-68. Groot was the father and legal custodian of two children from his recently terminated marriage, and unemployment forced him to prevail upon family members for loans. *See id.* at 168. He had suffered unusual misfortune and, at the time his bankruptcy petition was filed, had a valid need to devote his employment income to current and not past financial responsibilities. *See id.* The court held that Groot's conduct under these circumstances was not morally reprehensible nor indicative of unfitness for admission to the bar. *See id.* In Florida Bd. of Bar Examiners *re* G.W.L., 364 So. 2d 454 (Fla. 1978), the court denied bar admission to an applicant, stating:

> The petitioner's admittedly legal but unjustifiably precipitous action [of executing a voluntary petition for bankruptcy three days before law school graduation], initiated before he had obtained the results of the July bar examination, exhausted the job market, or given his creditors an opportunity to adjust repayment schedules, indicates a lack of the moral values upon which we have a right to insist . . . .

Id. at 459 (footnote omitted).

The Minnesota court found the contrast between these two cases instructive for determining what circumstances surrounding a bar applicant's default in bankruptcy would be considered justifiable. *See* 279 N.W.2d at 831.

34. U.S. CONST. amend. XIV, § 1. The equal protection clause of the United States Constitution is based upon the principle that all persons shall be treated alike under like circumstances and conditions, both in privileges conferred and in liabilities imposed. *See, e.g.*, Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459, 461-62 (1937) ("classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' ") (quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)); Mathison v. Minneapolis St. Ry., 126 Minn. 286, 292, 148 N.W. 71, 74 (1914) ("A classification for purposes of legislation, to be valid, 'must be based upon some reason of public policy, growing out of the condition or business of the class to which the legislation is limited.' ").

35. Schware v. Board of Bar Examiners, 353 U.S. 232, 239 (1957); *cf.* note 15 *supra* (same requirement in Minnesota bar admission rules).

36. *See* 279 N.W.2d at 831. The court stated that Gahan's disregard of his repayment responsibility on the student loans indicated a lack of moral commitment and that "[s]uch flagrant financial irresponsibility reflects adversely on an applicant's ability to manage financial matters and reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law." *Id.*

37. *See id.* at 829 ("Gahan's conduct prior to bankruptcy surrounding his financial responsibility and his default on the student loans may be considered to judge his moral

obligations is clearly related to the applicant's fitness to practice law.[38] The legal profession must command respect, trust, and utmost confidence from the public if it is to perform effectively.[39] A strong sense of financial obligation is a basic element of professional ethics.[40] It cannot

character."). United States Supreme Court rule 5 specifies that: "It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest court of a State, Territory, District, Commonwealth, or Possession, and *that their private and professional characters shall appear to be good.*" U.S. SUP. CT. R. 5(1) (emphasis added). *But see In re* Peterson, 274 N.W.2d 922 (Minn. 1979), in which the court drew a distinction between personal and professional moral character in considering a reinstatement petition. The *Peterson* court stated: "The responsibility of this court to formulate ethical principles and standards of professional conduct and to enforce those standards on the lawyers of this state does not give us license to make judgments as to a lawyer's personal morality, but only with regard to that lawyer's professional moral character." *Id.* at 925.

Attorney misconduct outside the sphere of the profession is also grounds for disbarment. *See, e.g., In re* Heinze, 233 Minn. 391, 394, 47 N.W.2d 123, 125 (1951) (per curiam) ("attorney may be disbarred for conduct indicative of moral unfitness, whether such conduct be relative to the profession or otherwise"); *In re* Williams, 221 Minn. 554, 560-61, 23 N.W.2d 4, 7 (1946) (per curiam) (misconduct of attorney outside profession, if indicative of moral unfitness for the profession, justifies disbarment); *In re* Waleen, 190 Minn. 13, 17, 250 N.W. 798, 800 (1933) (per curiam) (misconduct indicative of moral unfitness for profession justifies suspension of attorney, though misconduct arises out of transaction not involving attorney-client relationship), *modified per curiam*, 196 Minn. 295, 264 N.W. 802 (1936). An inquiry as to moral character is broader in scope for a bar applicant than for an attorney in a disbarment proceeding. *See In re* Stepsay, 15 Cal. 2d 71, 75, 98 P.2d 489, 491 (1940) (per curiam) ("court may properly refuse to admit an applicant . . . upon proof which would not justify an order of disbarment").

38. *See* 279 N.W.2d at 831. *See generally In re* Law Examination of 1926, 191 Wis. 359, 210 N.W. 710 (1926). According to the Wisconsin court:

> There is no field of human activity which requires a fuller realization with respect to a fiduciary relationship than that which exists between the lawyer and his client. Therefore, the law requires of a candidate for admission to the bar not only knowledge and intelligence, but also a high moral character for honesty and integrity, and without honesty and integrity the primary purpose of an attorney at law, by which he is charged to aid in the administration of justice, is liable to be frustrated. It can also be truthfully said that there exists nowhere greater temptations to deviate from the straight and narrow path than in the multiplicity of circumstances that arise in the practice of the profession. For these reasons the wisdom of requiring an applicant for admission to the bar to possess a high moral standard therefore becomes clearly apparent, and the Board of Law Examiners as an arm of the court is required to cause a minute examination to be made of the moral standard of each candidate for admission to practice.

Id. at 362-63, 210 N.W. at 711.

39. *See* Underwood, *Character and Fitness in a 1970 Context*, 39 B. EXAMINER 128, 132-33 (1970).

40. The need for attorneys to possess a high regard for their financial responsibilities cannot be stressed enough in view of the fact that a great number of disciplinary proceedings center on attorney mishandling of clients' money. *See, e.g., In re* Hanson, 258 Minn. 231, 232, 103 N.W.2d 863, 863 (1960) (per curiam) ("It is a ground for disbarment that an attorney manifest professional irresponsibility by the mishandling of a client's financial affairs, . . . or that he show a lack of absolute integrity in the handling of client's funds . . . .") (footnotes omitted); *In re* Solem, 188 Minn. 572, 574, 248 N.W. 212, 212 (1933)

be assumed with any certainty that an attorney will take greater care and responsibility with the affairs of clients than with the attorney's own business. For this reason, the approach taken by the *Gahan* court in requiring strict moral character standards to be met for admission to the Minnesota bar appears to be rationally related to the protection of future clients from an attorney's poor judgment.

The interrelationship of federal bankruptcy law, the federally insured student loan program, and Minnesota's judicially-controlled bar admission requirements had not been addressed prior to *Gahan*. It is unlikely that the Minnesota court will again face the identical question because of a recent federal bankruptcy law amendment that prohibits the discharge of educational loans during the first five years of the repayment period, except in circumstances of undue hardship.[41] While prospective bar applicants will read *Gahan* with interest, its potential for instruction and guidance in defining the term "good moral character" is mitigated by

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(per curiam) (attorney who uses client's money and fails to pay it to client can be disciplined); Southworth v. Bearnes, 88 Minn. 31, 34, 92 N.W. 466, 467 (1902) (per curiam) (attorney should be disbarred for misappropriation of client's money, "for in no other way can [the public] be protected from pecuniary losses at the hands of dishonest lawyers who prey upon their clients").

41. *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. I, § 101, 92 Stat. 2549, 2591 (to be codified in 11 U.S.C. § 523(a)(8)), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS.

It should be noted that the applicant filed his petition in bankruptcy on September 27, 1977, *see* 279 N.W.2d at 827, three days before a congressional amendment took effect that limited the discharge in bankruptcy of certain guaranteed student loans. *See* Educational Amendments of 1976, Pub. L. No. 94-482, tit. I, § 127(a), 90 Stat. 2081, 2141 (repealed 1978). The educational amendment became effective on October 1, 1976, with respect to any proceeding initiated under the bankruptcy code on or after September 30, 1977, and applied to loans granted under the Higher Education Act of 1965, 20 U.S.C. § 1071 (1976 & Supp. II 1978). *See* Educational Amendments of 1976, Pub. L. No. 94-482, tit. I, § 127, 90 Stat. 2081, 2141-42 (repealed 1978). The amendment provided:

> A debt which is a loan insured or guaranteed under the authority of this part may be released by a discharge in bankruptcy under the Bankruptcy Act only if such a discharge is granted after the five-year period (exclusive of any applicable suspension of the repayment period) beginning on the date of commencement of the repayment period of such loan, except that prior to the expiration of that five-year period, such loan may be released only if the court . . . determines that payment from future income or other wealth will impose an undue hardship on the debtor or his dependents.

Id. § 127(a), 90 Stat. 2141. This amendment was repealed by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. III, § 317, 92 Stat. 2549, 2678, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS. The 1978 Act established a broader provision in the bankruptcy code. *See id.*, tit. I, § 101, 92 Stat. 2591 (to be codified in 11 U.S.C. § 523(a)(8)). The new bankruptcy law covers loans granted under the National Defense Education Act of 1958, 20 U.S.C. § 421 (1976), and the Higher Education Act of 1965, 20 U.S.C. § 1071 (1976 & Supp. II 1978). Since the applicant's bankruptcy petition did not reveal the specific program under which his loans were guaranteed, it is unclear what portion, if any, would have been non-dischargeable had he filed his petition in bankruptcy three days later.

the inherent ambiguity and fluidity of the phrase as a bar admission term of art. Although Gahan's actions were morally reprehensible, they were legally correct. Therefore, the *Gahan* court appears to have accepted the argument of the Board of Law Examiners that "there is little question what may be disposed of legally may not be disposed of morally."[42]

The Minnesota Supreme Court has repeatedly stated that the purpose of attorney discipline is not to punish the attorney, but to guard the administration of justice and to protect the general public.[43] In light of the fact that a great number of disbarment proceedings have centered on attorney mishandling of clients' money,[44] the court's decision in *Gahan* appears to be a necessary step towards effectuating its duty to protect a lawyer's clients. Since the moral character requirement does not restrict inquiry to an individual's professional reputation, it is certainly more realistic to survey an individual's entire background in order to gain a clear and complete picture of the applicant's character. Thus, the *Gahan* decision may be deemed preventive medicine that protects would-be clients from the possibility of the applicant indulging in future irresponsible conduct.[45]

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42. Brief of the Minnesota State Board of Law Examiners at 11. The Board of Law Examiners also stated that:

> [T]he procuring of a discharge of the student loan indebtedness (and no other) with so little effort to repay or extend the same and with only temporary loss of employment, no exceptional financial or health problems and no major misfortunes, while neither illegal nor constituting action invincing [*sic*] moral turpitude, nevertheless was conduct which would cause a reasonable man to have substantial doubt concerning applicant's honesty, fairness and respect for the rights of others and for the laws of this state and nation amounting thereby to a lack of good moral character.

Id. at 13.

43. *See, e.g., In re* Peterson, 274 N.W.2d 922, 925 (Minn. 1979) (per curiam); *In re* Strand, 259 Minn. 379, 380, 107 N.W.2d 518, 519 (1961); *In re* Hanson, 258 Minn. 231, 233, 103 N.W.2d 863, 864 (1960) (per curiam).

44. *See* note 40 *supra* and accompanying text.

45. *See* 279 N.W.2d at 831.