Evaluating the character and fitness of applicants for admission to the practice of law is an integral part of the bar admissions process in every U.S. jurisdiction. The National Conference of Bar Examiners has a long history of assisting the jurisdictions in this critical step of the admissions process. NCBE began providing character and fitness investigation services to jurisdictions in the 1930s, some 40 years prior to the introduction of the Multistate Bar Examination in 1972. Despite this history, many readers of this publication might not be familiar with NCBE’s investigation services. This article provides an overview of our current investigation services and considers a possible future direction for the character and fitness process and how NCBE could support that direction for all jurisdictions.

NCBE’s Investigation Services

NCBE performs background investigations on behalf of bar admission authorities but plays no role in deciding whether applicants possess the requisite character and fitness for admission; that is left to the jurisdictions to decide. The 23 staff members in NCBE’s Investigations Department perform investigations for 29 jurisdictions, processing more than 10,000 character and fitness applications annually. A jurisdiction may elect to have NCBE perform investigations for all categories of its applicants (examination, motion, transferred UBE, law student registrants, in-house counsel, foreign-educated, foreign-licensed, foreign legal consultants) or only some categories.

As part of each investigation, NCBE sends inquiries to the appropriate sources to verify information disclosed by the applicant in the character and fitness application, including inquiries related to the following:

- criminal charges and arrests
- employment and military service
- university and law school attendance and degrees conferred
- professional licenses held
- disciplinary actions by bar authorities and other professional licensing authorities, educational institutions, and employers
- civil and criminal proceedings
- financial responsibility
- fitness to practice law
- professional and personal references

Our investigation goes beyond simply verifying information provided by the applicant. We conduct analysis to detect inconsistencies and to discover undisclosed information. Additionally, our inquiries request sources to provide any information relevant
to the applicant’s character and fitness to practice law. For example, our employment inquiry requests verification of dates of employment and position held but also specifically asks the employer to comment on the applicant’s character and fitness.

The report produced by NCBE includes copies of all responses to the inquiry letters, as well as an overall summary of the results of the investigation. NCBE notes in the summary any responses that might raise concern about the applicant’s character and fitness so that jurisdictions can efficiently review reports and determine whether any concerns warrant greater scrutiny by the jurisdiction. Every jurisdiction applies its own standards in evaluating the character and fitness of applicants, so it is for the jurisdiction to decide if it wishes to follow up directly with the applicant or other sources regarding any information contained in NCBE’s report. NCBE’s role is to ensure a complete report while leaving all substantive decisions to the jurisdictions.

**NCBE’s Online Character Report Application**

More than 20 years ago, NCBE developed a character and fitness application form that has become “the standard”—adopted in whole by many jurisdictions and adopted in part or liberally copied by the remaining jurisdictions, even if they do not use our investigation services. In 2003, NCBE converted its application from paper to online format. NCBE’s online Character Report Application can be used by any jurisdiction, regardless of whether it uses our investigation services. Conversely, we perform investigations for some jurisdictions that use their own online applications rather than NCBE’s. Use of an online application, whether ours or the jurisdiction’s, allows NCBE to download and import the application data (i.e., the applicant’s answers) into our case management system, thereby eliminating the need for manual entry of the information. Similarly, jurisdictions that use NCBE’s online application can download the application data into their own databases.

NCBE’s online application features a robust error-checking logic, which ensures that all questions are answered and prevents gaps in date-specific information, such as educational, employment, and residence history. Jurisdictions may ask NCBE to customize the application by suppressing certain questions or by adding certain questions specific to the jurisdiction. In addition, the wording of questions (but not the data fields) may be customized for a jurisdiction, although we encourage use of the standard application’s wording. To the extent that all jurisdictions agree upon a common set of information as being relevant to determining character and fitness, and collect that information in a consistent way, the process is less confusing for applicants and for their law schools that may advise them about the process. Further, uniformity simplifies maintenance of the online application software by NCBE’s Information Technology Department.

Once an applicant has completed NCBE’s online application, he or she can save it as a PDF file and print the application for jurisdictions that wish to receive it in paper format. In all instances, the Authorization and Release Form of the application must be printed, executed, and submitted by mail.

**The Online Verification Process**

NCBE has made the process of conducting investigations more efficient through the use of technology. For example, we use an Online Verification process that allows bar admission authorities and law schools to respond electronically to our investigation inquiries by logging in to our secure website. Designated individuals at the bar admission offices and law schools receive notification by email when an inquiry has been posted for their response. The responses are recorded automatically in our case management system, eliminating the need for
manual entry by staff, and eliminating the delay associated with the use of mail. For personal references and other one-time sources contacted during an investigation, we email a single-use web link to provide authenticated access so that the source can respond to a specific inquiry electronically without requiring login credentials for our secure website.

**The Case Status Report and the Investigation Summary Report**

We also utilize technology to communicate more efficiently with the jurisdictions through our secure website. A jurisdiction can log in and use the Case Status Report program to check the status of all its pending investigations. Case Status Reports are available for viewing in PDF format and are also available as Excel files for data import into the jurisdiction’s database. When investigations are completed, we deliver the Investigation Summary Report to the jurisdiction electronically through the Case Viewer program on our secure website.  

The Investigation Summary Report—which is a summary of responses received to the investigation inquiries, with the actual responses and any supplemental documentation supplied with the responses attached to the report—is delivered in PDF format to enable the jurisdiction to print the report or transmit it electronically to board or committee members. Further, the summary report (but not the actual responses or supplemental documentation) is provided in a data file format to allow the jurisdiction to import it into its own database.

**Supplemental Reports**

Jurisdictions that use NCBE’s investigation services also participate in what we call the “supplemental program,” whereby a prior investigation report prepared by NCBE is reused and any new or changed information is added to the report. All jurisdictions that use NCBE’s investigation services allow for supplemental reports within their own jurisdiction, such as when an applicant fails the exam and is required to submit another character application for a future exam in that jurisdiction. Most jurisdictions that use our investigation services also accept supplemental reports prepared for other jurisdictions. For example, if an applicant requests that NCBE prepare a character report for Jurisdiction A and subsequently requests that we prepare a character report for Jurisdiction B, the report we prepared for Jurisdiction A will be used for Jurisdiction B and supplemented with any new or changed information. The supplemental program eliminates the need for NCBE to re-verify historic information that hasn’t changed, such as educational, employment, and residence history, and this allows NCBE to complete supplemental reports more quickly. Further, it eliminates the burden on the sources contacted during the investigation to respond again with the same information that was submitted during the original investigation. Finally, because the fee NCBE charges for a supplemental report is less than the fee for a full report, the supplemental program reduces the cost to the applicant or the jurisdiction that is paying for the service.

**The Cross-Reference Service**

NCBE also hosts the Cross-Reference service, through which a jurisdiction may request a report listing the other jurisdictions to which an applicant has previously submitted an application for any type of admission or registration. The jurisdiction receives a Cross-Reference report that lists, by applicant, all matches or the absence of matches. By requesting a Cross-Reference report, jurisdictions can discover whether applicants have failed to disclose applications made to other jurisdictions. This can be important, because undisclosed prior applications might reveal adverse information, such as a prior negative determination on the applicant’s character and fitness by another jurisdiction.
The Cross-Reference database is populated with the applicant records submitted by jurisdictions when they request a Cross-Reference report. Thus, the Cross-Reference service is most useful when all jurisdictions participate consistently and regularly. NCBE recommends that jurisdictions request a Cross-Reference report on a monthly or other regular basis as a routine part of the jurisdiction’s character and fitness investigations process. NCBE requests a Cross-Reference report as part of all investigations it performs, and we follow up on any undisclosed applications. For jurisdictions that do not use NCBE’s investigation services, it is up to the jurisdiction that requests the report to follow up on any undisclosed applications.

Improvements Under Way

NCBE has developed several Application Programming Interface (API) solutions to enable jurisdictions to have programmatic access to data. An API is a software-to-software interface that allows software applications to talk to each other without user intervention. For jurisdictions that use NCBE’s investigation services, we offer APIs that provide access to case status information and completed investigation summary reports. Additionally, for jurisdictions that use NCBE’s online application (whether or not those jurisdictions also use NCBE’s investigation services), we offer an API to provide access to the electronic application data.

NCBE is also in the process of redesigning its online Character Report Application. One of the goals of the redesign is to provide a more intuitive user experience for applicants. Context-specific help is being added within the application itself to address frequently asked questions about the information sought in an effort to reduce support inquiries from applicants. A “fee wizard” is being added to reduce the incidence of applicants submitting an incorrect fee amount. We will begin accepting online payment of the application fee by credit card, and applicants will be able to upload supporting documentation and records with their applications, as well as amend their applications online.

Once we have added the capability for applicants to pay the application fee online and upload supporting documentation, NCBE will be positioned to go paperless and accept entirely electronic filing of character applications. The last steps necessary for achieving completely paperless filing will be to accept electronic signatures and electronic notarization. (NCBE will accommodate those jurisdictions that still wish to receive signatures in hard copy.) Last but not least, we are improving and streamlining the process by which applicants transfer information from one application to another for those who apply to more than one jurisdiction or reapply in the same jurisdiction.

In addition to the improvements to our online application, we are enhancing the Online Verification process and single-use web links to enable the people responding electronically to our investigation inquiries to also upload supplemental documentation with their responses.

Looking Ahead to the Future

There has been an uptick in the number of applicants who are applying to multiple jurisdictions, reflecting the increase in multijurisdictional practice. On the testing side of the admissions process, jurisdictions are increasingly recognizing the value of the Uniform Bar Examination and the benefit of portable scores. Perhaps it is time to consider a centralized character and fitness screening service to eliminate duplication of effort by jurisdictions and bring portability and more uniformity to the character and fitness side of the process.

How might centralized screening work? It would be much like our supplemental program
described above, but it would be available to all jurisdictions, including those that do not use our full investigation services. Applicants would submit core information and pay a fee to NCBE for verification. NCBE would make this verified core information available to any jurisdiction upon request by an applicant. Core information is historic information that, once verified, does not need to be re-verified because it does not change, such as educational, employment, and residence history, and civil and criminal cases previously disposed. The sources that verify core information would be instructed that the information will become part of the applicant’s permanent personal record and reported by NCBE to any jurisdictions to which the applicant applies for admission; therefore, the source should contact NCBE if any information is discovered that would change the source’s original response. For instance, if a former employer learns after the applicant’s employment ended that the applicant embezzled, the employer would contact NCBE to amend its original response. NCBE would correct the core record and notify any jurisdictions that had previously received the record.

With centralized screening, jurisdictions would continue to independently exercise their authority to make decisions about applicants’ character and fitness. NCBE would continue to offer its full investigation services that would supplement the core information for those jurisdictions that don’t perform their own investigations. Further, jurisdictions that do not use NCBE’s full investigation services would continue to perform their own separate supplemental investigations of information beyond the core information covered by the centralized screening (e.g., verification of current employment or good standing with bar authorities).

What would be the benefits of centralized screening? It would streamline the admissions process by eliminating unnecessary duplication of effort by applicants to supply the core information to multiple jurisdictions and by the jurisdictions to verify the information. Jurisdictions could instead focus their time and resources on verifying new information and digging deeper into the records of applicants who present the most serious concerns. Centralized screening would also reduce the burden on the sources of core information, such as law schools and employers, to repeatedly confirm the same information for different jurisdictions. Bringing greater uniformity to the information requested by jurisdictions and allowing portability of that information would simplify and speed up the admissions process to the benefit of jurisdictions and applicants.

However the character and fitness screening process progresses in the future, NCBE remains committed to providing investigation services to jurisdictions in an efficient, collaborative manner. Our online Character Report Application, Online Verification process, and supplemental program were developed to facilitate that goal, and we continually strive for ways to enhance the character and fitness screening process for jurisdictions and their applicants.

Notes

1. Processing time averages 100 days from the date NCBE receives the application to the date NCBE reports the results of its investigation to the jurisdiction.

2. Available records indicate that a “new questionnaire” that aligns closely with the current Request for Preparation of Character Report was approved in 1994.

3. Applicants access the online application by logging in to their NCBE Accounts on NCBE’s website. (NCBE Accounts provide a portal for applicants to securely access various services provided by NCBE in addition to the online application, such as MPRE registration, score services, and Online Practice Examinations for the MBE and MPRE.)

4. Twenty-eight jurisdictions currently use our online application; two of those jurisdictions do not use our investigation services.

5. NCBE maintains a restricted, secure website with password-protected access limited to bar admission administrators, their designated staff, and other authorized users. NCBE uses this secure website to deliver to jurisdictions services and information related to testing, investigations, and events.
6. Not all jurisdictions take advantage of the technological benefits of the Case Viewer program, so NCBE currently prints and mails Investigation Summary Reports to those jurisdictions that choose not to receive them electronically.

7. To qualify for a supplemental report, the original report must have been completed by NCBE less than four years before the date of the request to prepare the supplemental report.

8. To request a Cross-Reference report, jurisdictions log in to NCBE’s secure website and upload a file containing the following data for each individual who submitted an application to the jurisdiction: applicant first, middle, and last names; AKAs (names “also known as”), if any; date of birth; date of application; NCBE Number; and Social Security number, if available. (The NCBE Number, introduced in 2012, serves as a unique identifier in lieu of a Social Security number for scores and other admission-related purposes.)

9. Applicants may pay the fee by credit card now, but they must submit their credit card information in paper format, and staff members enter the payment information manually.

10. Currently, supporting documentation is mailed in paper format and scanned by NCBE to convert it to electronic format.

11. With the new online Character Report Application, NCBE will maintain and date-stamp the original application data. Any amendments will also be date-stamped and added to the application data file but will not overwrite the original data so that there is a clear record of what changes were made and when.

12. Electronic signatures are already widely used for contracts, tax documents, banking forms, and insurance documents. Electronic notarization is not yet as widely used or as easily implemented, but its adoption is worth monitoring.

13. As of the date this article is being written, 28 jurisdictions have adopted the Uniform Bar Examination.

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