

Supreme Court of Vermont
Office of State Court Administrator

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TO: Maida Townsend, Chair. - House Committee on Government Operations

FROM: Patricia Gabel, Esq., State Court Administrator

RE: H.443

DATE: March 14, 2017

I write to share my thoughts on H.443. The bill, which has been referred to your Committee, “proposes to provide statewide professional regulation standards for the licensure of applicants with criminal conviction histories.” I do not read the bill as applying to the regulation of the legal profession.

The bill proposes to amend chapter 57 of Title 26. Nothing in chapter 57, or any of Title 26, applies to the licensing of attorneys or to the regulation of the Bar of the Vermont Supreme Court. Rather, the statute applies to the licensed professions that are regulated by the Secretary of State’s Office of Professional Regulation.

That the bill has not been drafted to apply to the licensing of attorneys makes good sense. The regulation of the legal profession, including the licensing of attorneys, falls within the inherent and constitutional authority of the Vermont Supreme Court. See In re Morales, 2016 VT 85, ___ Vt. ___, 151 A.3d 333 (observing that Supreme Court enjoys “plenary authority over the admission of attorneys and the practice of law before the courts of Vermont”); Widschwenter v. Board of Bar Examiners, 151 Vt. 218, 219 (1989) (observing that Supreme Court retains “inherent powers governing admission to the practice of law and . . . general supervisory powers pertaining to admissions procedures” (quotation omitted)); Petition of Harrington, 134 Vt. 549, 552 (1976) (“[I]t is upon this Court that the responsibility for regulation and discipline of the legal profession falls.”); Vt. Const., ch. II, section 30.

Pursuant to its constitutional authority, the Court has adopted Rules of Admission to the Bar of the Vermont Supreme Court and rules for the licensing of attorneys.¹ The Rules of Admission

¹ The Rules of Admission are here:
<https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATED%20BBE%20Appendix%202->

create both the Board of Bar Examiners and the Character and Fitness Committee. Each is an “arm of th[e] Court.” Widschwenter, 151 Vt. at 218. In Rule 1, the Court clearly and unequivocally stated its purpose in establishing the Board of Bar Examiners and the Character & Fitness Committee:

“The public interest is best served and protected and the integrity of the Bar of the Vermont Supreme Court is best maintained when applicants for admission are fairly, impartially, and thoroughly examined as to their professional competence as attorneys, and investigated as to their moral character and fitness. The rules serve these purposes. To assist in achieving these results, the Court has established a board, known as the Board of Bar Examiners, which is responsible for examining applicants’ competence, and a committee, known as the Character and Fitness Committee, which is responsible for examining applicants’ moral character and fitness.”

The Character and Fitness Committee is governed by Rules 16-19 of the Rules of Admission. Notably, the rules do not ban from admission an applicant who has a criminal record. Over the past several years, the Committee has recommended for admission – and the Court has admitted -- several applicants who have criminal convictions in their backgrounds.² The Committee considers each application for admission on a case-by-case basis. The Committee is more interested in factors such as the length of time that has passed since the conviction, an applicant’s age at the time of the conviction, an applicant’s conduct since the conviction, and evidence of rehabilitation than in a conviction itself. Further, an applicant who is not admitted on his or her paperwork is entitled to a hearing before a panel of the Committee. The panel’s decision can be appealed to the Supreme Court and, even without an appeal, the Court can review the decision on its own motion. In short, for years, the Court has been employing a licensing process remarkably similar to the process envisioned by H.443 and that provides even greater procedural protections to applicants.³

In conclusion, I do not read H.443 as applying to the process by which the Vermont Supreme Court exercises its constitutional authority to regulate the licensing of attorneys. If the bill is intended to do so, I respectfully submit that the bill violates the Vermont Constitution by exercising power that is reserved to the Judiciary.

Thank you for your time and consideration. Of course, I am available to appear before your Committee.

cc: Denise Diehl, Committee Assistant

[16-16.pdf](#) The rules for the licensing of attorneys are in Supreme Court Administrative Order 41: <https://www.vermontjudiciary.org/LC/d-BBELibrary/AO419-12Web.pdf>

² I am not aware of a single instance in which an applicant was denied admission because of a criminal conviction. Recent decisions to deny admission have involved a common theme: disbarment in another jurisdiction.

³ See, Rules of Admission, Rules 16-19.