



Murderers (and Certain Others) Need Not Apply

As I write this (in January), the James Hamm file in the Arizona Supreme Court has recently become public. We now know that the Court's Committee on Character and Fitness has recommended denial of Hamm's application for admission to the State Bar of Arizona. And I can now tell you of the actions taken by the Board of Governors before and since on this important matter.

If you are unaware of this saga, or its essential facts, the Committee found that in 1974 Hamm shot and killed two would-be marijuana buyers in the desert near Tucson. Rather than a drug deal gone bad in an instant, as Hamm later characterized it, the murders were pre-meditated. The day before, Hamm and his accomplices, who had no drugs to sell, planned to rob the buyers and kill them. When the buyers became suspicious en route to the buy, Hamm shot the driver in the back of the head, twice, and the other victim as he tried to escape the car. He pled guilty to first-degree murder and was sentenced to life in prison. In 1989, the governor commuted Hamm's sentence. He was admitted to law school in 1993, graduated in 1997, and passed the bar exam in 1999. Almost five years later, Hamm applied for admission to practice.

Upon learning of Hamm's pending application, I am proud to say the Board of Governors took swift and decisive action. Although the State Bar had no defined role in the proceedings before the Committee on Character and Fitness, the Board felt compelled to act. A letter was sent to the Committee last May expressing the Board's strong belief that Hamm "should not be admitted to practice law in Arizona under any circumstances" for these reasons:

- The publicly known facts of Mr. Hamm's case are incompatible with the professional standards we require of all lawyers. The Bar would seek to disbar any lawyer who committed such acts, and the Bar would actively oppose the reinstatement of any attorney involved in such conduct.
- The ability to practice law is a privilege. The Board believes Mr. Hamm permanently relinquished the privilege to be an officer of the court the moment he murdered another person.

The Committee subsequently recommended that Hamm not be admitted to practice.


The Committee's decision is not the end of this story. Hamm has since petitioned the Court for review. Therefore, the Board has directed bar counsel to file an *amicus* brief in opposition.

In my view, a bright line must be drawn. And that line cannot be crossed by Hamm or others whose mere admission to

practice would disgrace the Court and the Bar and erode public confidence. If such persons cannot hold various other jobs (e.g., police officer, real estate sales, casino dealer) or join the military, fight and die for our country, it would be absurd to allow them to practice law and be trusted with the problems, money or lives of clients. Hamm argues that the Committee's duty is to protect the public only from persons unfit to practice law, "not to protect the profession from criticism." But fostering the public's trust in every component of our legal system is crucial to respect for law in our society.

Beyond the Hamm case, changes to the Court's rules and the Bar's role in the admissions and reinstatement processes are imminent. A Special Task Force on Admissions and Reinstatements is comprised of representatives of the Discipline Commission, the Committee on Character and Fitness, and Supreme Court staff, as well as the Chief Bar Counsel, Executive Director and President of the State Bar. That Task Force has drafted amendments to the pertinent Supreme Court rules. After much deliberation as to how to best protect the public, the Task Force recommended several significant revisions:

- Applicants for admission or reinstatement who have been "convicted of a misdemeanor involving a serious crime or of any felony" shall be presumptively disqualified.
- The applicant's burden of proof is increased from a preponderance of the evidence to clear and convincing evidence.
- The names of applicants for admission may be published for comment.
- State Bar counsel will have a formal advocacy role in the process.

Finally, if any good can possibly come from the cold-blooded murder of two young men, may it be that we in Arizona have resolved that only those of the highest moral character need apply to practice law here. 

In my view, a bright line must be drawn, one that cannot be crossed by those whose admission to practice would disgrace the Court and the Bar and erode public confidence.

