



PRESS RELEASE

**New York State
Unified Court System**

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Date: March 16, 2023

Presiding Justices of NY's Appellate Division Announce Changes to Question 26 of Bar Admission Questionnaire

NEW YORK—The Presiding Justices of the Appellate Division—Hon. Rolando T. Acosta, Hon. Hector D. LaSalle, Hon. Elizabeth A. Garry and Hon. Gerald J. Whalen—jointly announce that after thorough consideration of the recommendations of a statewide committee of appellate justices and key staff, the four Departments of the Appellate Division have amended Question 26 of the Bar Admission Questionnaire to better promote equity and fairness in the character and fitness interview process.

Prior to this change, Question 26 required prospective lawyers to disclose all criminal justice system involvement, regardless of the outcome or seriousness of the offense, except for parking tickets and certain traffic violations.

Under the new Question 26, bar applicants will not be required to disclose (1) matters that were adjudicated in a juvenile delinquency proceeding in Family Court or through other equivalent noncriminal proceedings and (2) citations, tickets, arrests, and other encounters with law enforcement that did not result in formal criminal charges or an indictment, trial, conviction, or guilty plea.

By this change, the Appellate Division seeks to advance the diversity of the bar by reducing the possible chilling effect the previous Question 26 had on law school applicants due to the disproportionate rates of policing and prosecution experienced in communities of color. The four Departments engaged in a lengthy deliberative process hoping to strike a balance between this and other valid concerns on one side and the

need to ensure the integrity of the legal profession and to protect the public from attorney misconduct on the other.

Lawyers serve in positions of profound public and private trust, as officers of the courts, responsible for speaking truthfully, acting ethically and advocating to the best of their abilities on behalf of their clients, while keeping their confidences. Given this unique role, the Appellate Division decided that a measured inquiry into not just convictions but also formal charges is appropriate. For example, victims of sex crimes are often reluctant to proceed, resulting in dismissed charges, and youthful offender adjudications may involve conduct, such as felony identity theft, that is particularly relevant to an applicant's fitness to serve as an attorney.

Answers to Question 26 are kept strictly confidential, and, as the updated preamble to the question reaffirms, the mere fact that an applicant's past includes any interactions with law enforcement is not, by itself, a basis for denying admission to the bar.

The character and fitness process remains a holistic assessment aimed, first and foremost, at properly vetting candidates. The Appellate Division believes that the new Question 26 will make the bar application a more just and welcoming process that encourages all aspiring lawyers to apply to serve as part of this vital profession. The Presiding Justices would like to thank the New York State and City Bar Associations for promoting public dialogue regarding this issue and providing extremely helpful insight and analysis that informed the Departments' collaborative decision-making process.

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**JOINT ORDER OF THE DEPARTMENTS OF THE NEW YORK STATE
SUPREME COURT, APPELLATE DIVISION**

Upon consideration and review by the Judicial Departments of the Appellate Division of the New York State Supreme Court, pursuant to the authority vested in them pursuant to Judiciary Law § 90(1) and the Rules of both the Court of Appeals and the Appellate Division relating to the admission of attorneys, the question on Interactions with Law Enforcement (Question 26) on the Application for Admission to Practice as an Attorney and Counselor at Law in the State of New York will be amended, effective April 3, 2023, as follows (deletions in strikethrough, additions underlined):

F. Interactions with Law Enforcement

The Appellate Division of the Supreme Court and its Committee on Character and Fitness have a statutorily imposed obligation to carefully investigate the character and fitness of every applicant seeking admission to the practice of law in New York (see CPLR 9404; Judiciary Law § 90 [1] [a]; Rules of App Div, 1st Dept [22 NYCRR] § 636.10; Rules of App Div, 2d Dept [22 NYCRR] § 711.3; Rules of App Div, 3d Dept [22 NYCRR] § 840.5; Rules of App Div, 4th Dept [22 NYCRR] § 1040.1). The information requested here is considered in furtherance of that obligation; like all information disclosed in this application, it is treated confidentially (see Judiciary Law § 90 [10]). ~~An applicant may be denied admission where the applicant's past conduct demonstrates that the applicant does not possess the character and general fitness requisite for an attorney and counselor at law.~~ The mere fact that an applicant's past includes ~~an arrest, conviction, involvement in juvenile delinquency or youthful offender proceedings or other~~ interactions with law enforcement is not, by itself, a basis on which an applicant is denied admission. Nevertheless, the burden of proving that an applicant possesses the requisite character and fitness to practice law is borne by the applicant. ~~Candor throughout the admission process is required of all applicants, and even convictions that have been expunged should be disclosed in response to this question.~~ Please provide a statement setting forth the facts underlying any incident disclosed here; if police and court records are deemed necessary following review of your application, they will be requested at that time. ~~26. Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody,~~

26. Are you a defendant in a pending criminal matter, or have you, at any age, unless specifically excluded below, been charged with, indicted for, tried for, convicted or tried of or, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any? In your response to this question, disclose any matter in which you were adjudicated a youthful offender or received an equivalent adjudication in another jurisdiction.

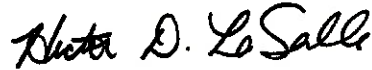
Do NOT report:

- (a) any matter in which you were adjudicated a juvenile delinquency or youthful offender proceeding? delinquent in Family Court or other noncriminal proceeding;
- (b) any citation, ticket or arrest that did not result in criminal charges or an indictment, trial, conviction or guilty plea;

- (c) vehicle and traffic violations matters that occurred more than ~~ten~~10 years before the filing of this application ~~need not be reported, except~~ EXCEPT alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. ~~Do not report; or~~
- (d) parking violations.



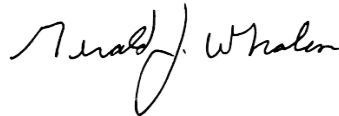
Hon. Rolando T. Acosta
Presiding Justice
Appellate Division, First Department



Hon. Hector D. LaSalle
Presiding Justice
Appellate Division, Second Department



Hon. Elizabeth A. Garry
Presiding Justice
Appellate Division, Third Department



Hon. Gerald J. Whalen
Presiding Justice
Appellate Division, Fourth Department

Dated: March 17, 2023