

IN RE HAMM: FROM BEHIND BARS TO THE ARIZONA BAR?

Flynn P. Carey

BACKGROUND

Five years after graduating from law school, James Hamm filed for admission to the Arizona State Bar.¹ As an applicant for admission, Hamm was rather unique—he had a conviction for first-degree murder, stemming from a 1974 drug deal and robbery.² This conviction, along with other concerns, led the Arizona Supreme Court to deny his admission to the Arizona State Bar, finding that Hamm “failed to meet his burden of proving that he is of good moral character.”³

Hamm was convicted of the murder of Willard Morley and Zane Staples, which occurred on September 7, 1974.⁴ Separated from his wife and child, and selling and using marijuana, Hamm described his situation as a “series of personal and social failures.”⁵ On September 6th, Hamm met Morley and Staples, two college students who wanted to purchase marijuana.⁶ After Hamm was unable to obtain the marijuana, Hamm and his accomplices decided to rob the students instead.⁷

Hamm and one of his two accomplices accompanied Morley and Staples as they drove out to the edge of Tucson.⁸ When Hamm sensed that the men were becoming suspicious, Hamm shot Morley in the back of the head.⁹ As Staples attempted to escape, Hamm shot him in the back.¹⁰ Then, Hamm once again shot

1. *In re Hamm*, 123 P.3d 652, 655 (Ariz. 2005).
2. *Id.* at 654.
3. *Id.* at 662.
4. *Id.* at 654.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* At the time Hamm shot him, Staples was already wounded by Hamm’s accomplice. *Id.*

Morley.¹¹ Hamm was eventually arrested, pled guilty to one count of first-degree murder, and received a sentence of life in prison with no possibility of parole for twenty-five years.¹²

In the opinion rejecting Hamm's application to the Arizona Bar, the court readily acknowledged that Hamm undertook a series of steps to rehabilitate and improve himself once imprisoned.¹³ He received computer training, completed certificates in yoga and meditation, studied philosophy and psychology, and received a bachelor's degree from Northern Arizona University.¹⁴ Eventually, Hamm received more responsibility and freedom and required less supervision.¹⁵ In 1989, the Governor commuted Hamm's sentence, and Hamm was released on parole in 1992.¹⁶ Hamm received a law degree from Arizona State University after his release.¹⁷ In 1999, Hamm passed the bar examination.¹⁸ In 2001, Hamm was granted an absolute discharge of his conviction.¹⁹

In 2004, Hamm filed a Character and Fitness Report with the Committee on Character and Fitness.²⁰ After a hearing, the Committee found that Hamm failed to meet the burden of demonstrating good moral character and recommended that his application be denied.²¹ Four key areas of concern shaped the Committee's decision: (1) Hamm's criminal conduct; (2) omissions in his application; (3) Hamm's failure to pay child support; and (4) Hamm's mental and emotional instability.²²

I. ARIZONA LAW REGARDING CHARACTER AND FITNESS APPEALS

Under Rule 36(g) of the Arizona Rules of the Supreme Court, an applicant "aggrieved by any decision" of the Committee on Character and Fitness may petition the Arizona Supreme Court for review.²³ The applicant for admission to the bar bears the burden of establishing good moral character.²⁴ If the applicant has a conviction for a violent crime, the Committee must at least hold an informal

-
11. *Id.*
 12. *Id.* at 654–55.
 13. *Id.* at 655.
 14. *Id.*
 15. *Id.*
 16. *Id.*
 17. *Id.*
 18. *Id.*
 19. *Id.*
 20. *Id.*
 21. *Id.* at 657.

22. *Id.* In the opinion, the court does not explain or analyze the question of mental or emotional instability in a separate section, as it does with Hamm's criminal conduct and application omissions. The court does express some concern, however, about Hamm's ability to practice law in light of possible plagiarism. *See id.* at 661.

23. ARIZ. SUP. CT. R. 36(g) (2006).

24. *Hamm*, 123 P.3d at 655; *see also* ARIZ. SUP. CT. R. 36(b)(3)–(4) (containing a detailed list of factors the Committee should consider when evaluating an applicant's criminal history or "other relevant conduct," including the applicant's age and experience at the time of the conduct, the seriousness of the conduct, and evidence of rehabilitation).

hearing.²⁵ If three or more Committee members do not recommend admitting the applicant, a formal hearing is held.²⁶ After the formal hearing, if the Committee decides that the applicant has not met the burden, it has an affirmative duty not to recommend the applicant.²⁷

When a Rule 36(g) petition is submitted by an aggrieved applicant, the Arizona Supreme Court will review the Committee's findings and make an independent assessment of the applicant's character.²⁸ This *de novo* review of the applicant's case is not limited to addressing legal questions; the court serves as the trier of both law and fact.²⁹ While the key issue in such cases is the character of the applicant at the time of the court's examination, past conduct is important because "the Court must determine what past bad acts reveal about an applicant's current character."³⁰

The first-degree murder conviction in *Hamm* represents an extreme on the criminal conduct spectrum.³¹ The court has examined other criminal activity and the impact upon an applicant's admission to the bar and appeal from a disbarment order. For instance, in one case, a bar applicant admitted to selling marijuana and failing to pay taxes upon the proceeds from those drug sales.³² Even though the applicant was not convicted of these crimes when he applied for admission, the court denied admission because the applicant's disclosure of the criminal acts came in "slow steps," less than a year before the character and fitness evaluation.³³

II. ANALYSIS OF HAMM'S PETITION

The court began its analysis with Hamm's first-degree murder conviction.³⁴ The court treated the existence of a criminal record as imposing a burden to show rehabilitation, which "becomes greater as past unlawful conduct becomes more serious."³⁵ In regard to the weight of the burden on Hamm, the

25. *Hamm*, 123 P.3d at 656; *see also* ARIZ. SUP. CT. R. 36(e).

26. *Hamm*, 123 P.3d at 656. The Character and Fitness Committee must be composed of at least eleven members. ARIZ. SUP. CT. R. 33(a). A formal hearing consists of "at least a majority of the members of the Committee." ARIZ. SUP. CT. R. 36(f)(3).

27. *Hamm*, 123 P.3d at 656 (citing *In re Courtney*, 319 P.2d 991, 993 (Ariz. 1957) ("In this it has no discretion; if the members entertain any reservations . . . it should not make a favorable recommendation to this court.")).

28. *Id.* ("The ultimate decision in this difficult matter rests with the Supreme Court.") (quoting *In re Kiser*, 487 P.2d 393, 394 (Ariz. 1971)).

29. *Id.*; *see also In re Heaney*, 476 P.2d 846, 848 (Ariz. 1970) (noting that "the courts have inherent power to determine what persons may be admitted to the Bar").

30. *Hamm*, 123 P.3d at 657; *see also In re Greenberg*, 614 P.2d 832, 834 (Ariz. 1980) ("[I]t is [the applicant's] moral character as of now with which we are concerned.").

31. *Hamm*, 123 P.3d at 657 ("[N]o more serious criminal conducts exists" than first-degree murder, for which "society reserves its harshest punishment.").

32. *Greenberg*, 614 P.2d at 834; *see also In re Goldman*, 602 P.2d 486, 489 (Ariz. 1979) (finding grounds for disbarment because applicant's actions demonstrated sufficient facts to support a felony conviction, even though applicant was *not* convicted of a felony).

33. *Greenberg*, 614 P.2d at 834.

34. *Hamm*, 123 P.3d at 657.

35. *Id.* at 658.

court stated that certain “extremely damning” past conduct could potentially make it impossible for an application to demonstrate rehabilitation.³⁶

In examining whether Hamm met the burden, the court considered the extent to which he accepted responsibility for his crimes.³⁷ The court expressed concern that even though Hamm took responsibility, he failed to fully acknowledge his role in the murders.³⁸ The court noted that Hamm placed much of the responsibility on his accomplice, and failed to take responsibility for his role in Staples’ death, the fleeing victim whom Hamm shot.³⁹ Furthermore, Hamm stated that his intent was to rob the victims, but Hamm shot both victims before attempting to rob them.⁴⁰ Hamm also proceeded to shoot the victims multiple times after they were incapacitated.⁴¹ Hamm’s failure to accept responsibility cut against his years of rehabilitation. The court stated: “Were rehabilitation the only showing Hamm must make to establish good moral character, we would weight those factors tending to show rehabilitation against those tending to show a lack thereof.”⁴² However, the court held that good moral character is established independent of rehabilitation,⁴³ and Hamm did not meet his burden in relation to the conviction.⁴⁴

Next, the court examined Hamm’s failure to pay child support. Soon after the initial separation from his wife, Hamm was arrested for failing to pay child support.⁴⁵ However, Hamm did not begin paying any of his child support obligation until twenty-nine years later, when he began the bar admission process.⁴⁶ Hamm offered a series of explanations for his actions, including that he never received a divorce decree, and that he believed his son was adopted by his ex-wife’s new husband.⁴⁷ The court stated that these explanations were unpersuasive because as Hamm became more sophisticated about the law, he should have known about his obligation.⁴⁸ The court dismissed the argument that he was unable to pay while incarcerated because Hamm admitted that he received around \$100 per month while detained.⁴⁹

36. *Id.* (quoting *In re Matthews*, 462 A.2d 165, 176 (N.J. 1983)). The court noted that it was unaware of an instance in any jurisdiction in which an applicant with a first-degree murder conviction was admitted to law practice. *Id.* at 657.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 659.

43. *Id.*

44. *Id.*

45. *Id.* at 658.

46. *Id.*

47. *Id.* at 659.

48. *Id.* “Hamm’s failure to meet his parental obligation for nearly thirty years makes it more difficult for him to make the required extraordinary showing that he has conducted himself as a man ordinarily would, should, or does.” *Id.* at 660 (quoting *In re Walker*, 539 P.2d 891, 895 (Ariz. 1975)).

49. *Id.* at 659 n.6.

The court next examined Hamm's failure to disclose and adequately explain a domestic violence incident in 1996.⁵⁰ The police intervened, but neither Hamm nor his wife were arrested.⁵¹ Question twenty-five on the character fitness document requires that the applicant describe any event in which he or she has "been served with a criminal summons, *questioned*, arrested, taken into custody, indicted, charged with, tried for, pleaded guilty to or been convicted of, or ever been the *subject of an investigation concerning the violation of, any felony or misdemeanor*["]."⁵² The court again noted Hamm's relative sophistication with the law, finding that his explanation "strain[ed] credulity" and "[Hamm] must have known that the incident would be of interest to the Committee."⁵³

Finally, the court examined a question of Hamm's fitness to practice law. Hamm began his Rule 36(g) petition to the court with a few lines that closely tracked the language of *Konisberg v. State Bar*,⁵⁴ a United States Supreme Court case.⁵⁵ When asked about the use of the quote without proper attribution, Hamm stated, "[A]ny eloquence that might be found in the Petition does not derive from any prior case decided in any jurisdiction, but rather from the gradual development of his own potential through study, reflection, and devotion to the duty created by his commission of murder."⁵⁶ The court held that Hamm's avoidance of the issue cut against a finding of good moral character, because it meant that he either failed to acknowledge his mistake, or that he did not feel he had made one.⁵⁷

Asserting again that the court would not impose a per se rule of nonadmission for applicants involved in serious criminal activity, the court nonetheless held that demonstrating good moral character in the face of serious criminal activity might be a "a near impossibility."⁵⁸ The court passed on deciding that question, however.

CONCLUSION

In closing, the court found that because of Hamm's criminal conduct, his failure to respond completely and accurately to both the Committee and the court, and the years of nonpayment of child support, Hamm had not satisfied the burden

50. *Id.* at 660.

51. *Id.*

52. *Id.* at 661 n.9 (quoting ARIZONA STATE BAR ASS'N, CHARACTER REPORT 11, available at <http://www.supreme.state.az.us/admis/pdf/Character%20Report%20804.pdf> (emphasis added)).

53. *Id.* at 661.

54. 353 U.S. 252 (1957).

55. *Hamm*, 123 P.3d at 661.

56. *Id.*

57. *Id.* ("In either case, his actions here do not assist him in making the requisite showing of good moral character."). Hamm also raised a due process claim regarding the prejudice of two members of the Committee, both of whom recused themselves. The court found that, overall, Hamm was given "ample opportunity to be heard through hearings and written arguments." *Id.* at 662.

58. *Id.*

required to prove good moral character, and therefore, the court denied his application for admission.⁵⁹

While the court noted that a murder conviction was not a *per se* permanent disqualification, it seems unlikely that any showing of rehabilitation could truly tip the scales in favor of the applicant. Besides the murder conviction, other concerns, including Hamm's failure to pay child support, factored into the ultimate decision to decline his application. The other concerns cloud the questions of whether a murder conviction acts, in practice, as a complete bar to admission, and whether any murderer can ever truly be found rehabilitated to the point that he may practice law.

The character and fitness examination of an applicant is rigorous. The threshold set by both the Committee on Character and Fitness and the Arizona Supreme Court is a high one. The Committee looks for hallmarks of a good lawyer, including the ability to make ethical (and legal) choices, the strength to take responsibility for past wrongs, and dedication to the truth. While Hamm's transformation from prison inmate to bar applicant is nothing short of inspiring, it remains to be seen whether an individual convicted of murder can ever be admitted to practice law in Arizona.

59. *Id.*