

A GUIDE FOR LAW STUDENTS CONSIDERING NONVIOLENT CIVIL DISOBEDIENCE

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We do not believe that petitioner's participation in [nonviolent civil disobedience] can be characterized as involving moral turpitude. If we were to deny to every person who has engaged in a “sit-in” or other form of non-violent civil disobedience, and who has been convicted therefor, the right to enter a licensed profession, we would deprive the community of the services of many highly qualified persons of the highest moral courage. This should not be done.

Hallinan v. Comm. of Bar Exam 'rs, 65 Cal. 2d 447, 462 (1966).

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.

Martin Luther King, Jr., LETTER FROM BIRMINGHAM JAIL (1963).

What is nonviolent civil disobedience?

Nonviolent civil disobedience is the refusal to comply with certain laws as a peaceful form of protest. It can involve actions such as noncompliance with police orders, intentional flouting of traffic laws, and trespass to property. For additional background information regarding nonviolent civil disobedience, consult this [legal briefing](#) from the Center for Constitutional Rights.¹

What should I think about in considering whether or not to participate in nonviolent civil disobedience?

As candidates for bar admission, law students who participate in nonviolent civil disobedience take on certain risks that members of the general public do not, including the possibility of an adverse character and fitness determination or delayed admission to

1. Bill Quigley, *Legal Briefing for People Considering Non-Violent Civil Disobedience*, CTR. FOR CONST'L RIGHTS, <https://ccrjustice.org/sites/default/files/assets/Legal%20Briefing%20for%20CD%20NSM.pdf> (last visited Apr. 18, 2017).

the bar. The following guide is intended to help law students make informed decisions about whether or not to participate in nonviolent civil disobedience.

Potential Charges

First, a law student considering whether to participate in nonviolent civil disobedience should assess what exactly she might be charged with. Common nonviolent civil disobedience charges include disorderly conduct or disturbing the peace (both violations—not crimes—in many states), criminal trespass, obstructing governmental administration, public nuisance, and resisting arrest. Charges may also be associated with failing to comply with a parade permit or using a sound-amplifying device without a permit.

Second, students should also evaluate the severity of the charges they will face. Depending on the jurisdiction and the nature of the action, the conduct involved in nonviolent civil disobedience could be considered a violation, a misdemeanor, or a felony. Generally, protester charges will be at the misdemeanor level, but could potentially involve felony charges, depending on what happens at the event—for example, if a police officer claims she is injured, or if other unforeseen issues arise. The charges—and the ensuing risks—may rise significantly if the civil disobedience involves violence, including resisting arrest.

In some jurisdictions, a felony conviction is an automatic bar to admission to practice law.² In others, an applicant found guilty of a felony must overcome a rebuttable presumption of bad moral character and fitness.³ Consult the National Conference of Bar

2. As of April 2017, the jurisdictions where a felony conviction bars an applicant from admission were: Kansas, Mississippi (except manslaughter or a violation of the Internal Revenue Code), Texas, and the Northern Mariana Islands. Nat'l Conf. of Bar Exam'rs, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2017 at 5-6, chart 2 (supplemental remarks), <http://www.ncbex.org/pubs/bar-admissions-guide/2017/index.html>.

3. In Connecticut, a felony conviction creates a rebuttable presumption of a lack of good moral character. In Florida, a felony conviction is not an automatic bar, but the applicant must provide satisfactory evidence of good moral character. In both Florida and Georgia, a restoration of civil rights is necessary. In Illinois, a person with a felony conviction must receive a character and fitness certification before she is permitted to sit for the bar exam. In Indiana, an applicant with a felony conviction has the burden to overcome prima facie evidence of the lack of good moral character. Kansas, Missouri and Texas require a five-year period after the date of successful completion of a sentence or period of probation. In Montana, an applicant found guilty of a felony has a presumption of bad moral character and fitness until she completes her sentence or period of probation. In Ohio, an applicant convicted of a felony must meet specific conditions and undergo

Examiners' [2017 Bar Admission Guide](#) for additional information about particular states' requirements.⁴

Third, students should consider whether they might face state or federal charges. For most acts of nonviolent civil disobedience, local—not federal—law enforcement will be involved. Federal charges are possible if, for instance, the contemplated action takes place in an area subject to federal jurisdiction, which extends to national parks, American Indian reservations, federal courts and federal buildings such as immigration buildings, and all federal land. Federal charges can and have been brought against activists for their larger political work, but that is unlikely for a single act of nonviolent civil disobedience.

Students should also save all documents they receive relating to an arrest.

Legal Representation

Any group engaging in nonviolent civil disobedience should arrange for legal representation well in advance. Numerous organizations, including the National Lawyers Guild (NLG), have mass defense committees that serve as a good point of first contact. Before deciding to engage in nonviolent civil disobedience, law students should consult with lawyers about the potential charges and risks, as well as to obtain more information about arrest and prosecution logistics, since they vary by jurisdiction.

Costs

Students should consult with the group organizing the nonviolent civil disobedience about whether funds are available to post bail, if bail is indeed set. In addition, many states (and the federal government) have crime victim restitution statutes that may be used to charge protestors for the cost of police officers or increasing security, lost revenue, and/or damaged property.⁵

Applying for Admission to the Bar

additional review before approval. In Oregon, an applicant “shall not be eligible for admission after having been convicted of a crime, the commission of which would have led to disbarment in all the circumstances present, had the person been an Oregon attorney at the time of conviction.” In the Northern Mariana Islands and Palau, an applicant who has a felony conviction is ineligible for bar admission unless she has been granted a full pardon. NCBE, *supra* note 2, at 5-6, chart 2 (supplemental remarks).

4. *Id.*

5. See, e.g., Anna Stolley Persky, *Protestors May Pay the Price when Civil Disobedience Becomes Costly*, ABA JOURNAL (Nov. 2015), http://www.abajournal.com/magazine/article/protesters_may_pay_the_price_when_civil_disobedience_becomes_costly.

A law student who has engaged in nonviolent civil disobedience should be forthcoming with the bar examining authority in the state where she is seeking admission. Full disclosure is necessary; if the student is in her final year of law school and has already submitted a moral character application, she should update her application immediately following an arrest. Most states require applicants for bar admission to supplement their applications. Many state bar admission questionnaires require disclosure of a conviction even if it has been expunged; some states also require disclosure of arrests, even if the student who has participated in civil disobedience is merely given a ticket to appear. A nonviolent civil disobedience-related arrest could delay admission to the bar, so students should consider whether their post-graduate work would require them to be admitted by any date in particular.

A student should additionally consider the state in which she is seeking admission; according to Professor Stephen Gillers, author of *Regulation of Lawyers: Problems of Law and Ethics*, the Northeast and West Coast states are much less likely to delay or deny admission on the basis of a student's participation in nonviolent civil disobedience.⁶

Standard of Review for the Character and Fitness Determination

If any of a student's responses to the character and fitness evaluation raise concerns with the state bar admissions board, they may decide to conduct a more in-depth investigation. The board may review a student's criminal record, including any civil disobedience-related arrests. The National Conference of Bar Examiners states that a "record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission."⁷ Relevant conduct that may result in further inquiry with regard to whether a student possesses the character and fitness to practice law include unlawful conduct, abuse of legal process, neglect of professional obligations, and violation of an order of a court, among others.⁸ In assigning weight and significance to prior conduct, the bar examining authority will consider, among other factors, the applicant's age at the time of the conduct, the recency of the conduct, the seriousness of the conduct, the applicant's candor in the admissions process, and the cumulative effect of conduct or information, among other factors.⁹

Other Factors to Consider

Immigration Status

6. Email from Stephen Gillers, Elihu Root Prof. of Law, New York Univ. Sch. of Law, to Juliana Morgan-Trostle (Apr. 2, 2017) (on file with author).

7. NCBE, *supra* note 2, at viii.

8. *Id.*

9. *Id.* at ix.

A law student who is not a U.S. citizen (including a lawful permanent resident, also known as a “green-card holder”) and who is simply arrested—not even necessarily convicted—for an act of nonviolent civil disobedience (or for any criminal offense) may face immigration consequences. These students should weigh these additional risks and consult with an immigration attorney before participating in civil disobedience. Each person’s immigration status is case-specific; therefore, it is vital that a student consult with an immigration attorney prior to engaging in nonviolent civil disobedience.

Open Warrants / Criminal Record

If a student has any open warrants, outstanding or unpaid tickets or fines, is on probation or parole, missed a prior court date, or has not yet completed any portions of a sentence (including community service or paying a fine), participating in civil disobedience could result in more serious charges, bail being set, and harsher plea deals. If a student has a prior criminal record that already needs to be divulged to a bar examiner authority, an arrest for civil disobedience could appear to be a pattern of behavior and result in a more serious review of the applicant’s criminal record. Students in these situations in particular should seek legal advice before participating in any act of civil disobedience.

Background Checks for Prison Clearance

Law students should think about whether they will need to undergo background checks to receive clearance to visit clients in prison. Students should also consider whether any already-existing clearance could be revoked. Every state has different requirements; www.prisonpro.com has compiled all of them in one place.

Security Clearances

Many government employees and contractors must obtain a security clearance before they may perform their jobs. If a student ever needs a security clearance or applies for a government job—as an attorney or otherwise—she may have to disclose any arrests, including those related to nonviolent civil disobedience-related arrests. An arrest, and even a conviction, will not necessarily disqualify a person from receiving a security clearance.¹⁰ The adjudicative process is highly fact-specific and includes such considerations as the nature, extent, and seriousness of the conduct; the frequency and recency of the conduct; and the motivation for the conduct, among other factors.¹¹

10. *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, U.S. Dep’t of St. (Feb. 3, 2006), at Guideline J, <https://www.state.gov/m/ds/clearances/60321.htm>.

11. *Id.*

Employment

A student who has been arrested may be required to inform prospective or confirmed post-graduate employers. Although an individual's arrest record may not, without more, be used to take an adverse employment action, it may trigger an "inquiry into whether the conduct underlying the arrest justifies such action."¹² Some states limit employers' ability to make employment decisions on the basis of arrest and conviction records.¹³ A student should research the laws governing job applicants and criminal records in the jurisdiction where she is seeking employment.

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12. *Pre-Employment Inquiries and Arrest & Conviction*, U.S. EEOC, https://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm.

13. *Id.*