

NATIONAL COMMITTEE

FOR

SEXUAL CIVIL LIBERTIES

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Dear Arthur, Tom, and Craig:

Regarding the resolution on admission to the bar, it looks as if we are sure to get some flak on the issue of its effect in cases in which the individual was arrested or convicted for crime. I think a clarification must be added to the resolution to stave off this criticism. Since neither we nor the ABA can prevent people from being arrested and convicted for solicitation or public acts, and since "criminal conduct" that has come to the attention of law enforcement authorities has always been deemed relevant to character investigations, the most we can hope for is a recommendation that such crimes not be deemed to involve moral turpitude. Generally, attorneys are only disbarred for crimes involving moral turpitude, but some states call for disbarment in the event of conviction for any crime, and others call for disbarment for any felony (whether or not it be deemed to involve moral turpitude). I think our goal should be to restrict moral turpitude to conduct involving lack of consent or a partner below the age of legal consent. The resolution could be amended to read:

"Resolved: That the sexual orientation or sexual conduct of an applicant for admission to the Bar or of a member of the Bar should not be a proper subject for investigation, denial of admission, or any disciplinary action by the Bars of the several states or of any state or federal court, provided that such sexual conduct occurs in private with other consenting persons of the age of legal consent. Denial of admission or disciplinary action is not precluded in the event of arrest for or conviction of a crime, but crimes of a sexual nature should not be deemed to involve moral turpitude unless a sex act was attempted or performed with a nonconsenting adult, or was solicited, attempted, or performed with a person below the age of legal consent whom the accused could not reasonably have believed to be above the age of legal consent. Sexual orientation, as used in this resolution, includes heterosexuality, homosexuality, and ambisexuality."

I think this wording would preclude Bar action in the great majority of cases of solicitation and public lewdness, as well as the virtually nonexistent arrests and prosecutions for private adult consensual behavior. Let me have your reactions before I suggest this proposed change to the AALS committee.

Sincerely,

Walter

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