

1       **Rule 14-708. Character and fitness.**

2       (a) Standard of character and fitness. An attorney's conduct should conform to the  
3 requirements of the law, both in professional service to clients and in the attorney's  
4 business and personal affairs. An attorney should be one whose record of conduct  
5 justifies the trust of clients, adversaries, courts, and others with respect to the  
6 professional duties owed to them. An Aapplicant whose record manifests a significant  
7 deficiency in honesty, trustworthiness, diligence, or reliability shall be denied admission.  
8 The Aapplicant has the burden of proof to establish by clear and convincing evidence  
9 heris or hiser fitness to practice law. Applicants must be approved by the Character and  
10 Fitness Committee prior to sitting for the Bar Examination. At any time before being  
11 admitted to the Bar, the Character and Fitness Committee may withdraw or modify its  
12 approval.

13       (b) Investigative process; investigative interview. Investigations into the character  
14 and fitness of Aapplicants may be informal, but shall be thorough, with the object of  
15 ascertaining the truth.

16       (b)(1) The Character and Fitness Committee may conduct an investigation and may  
17 act with or without requiring a personal appearance by an Aapplicant.

18       (b)(2) At the discretion of the Character and Fitness Committee, an Aapplicant may  
19 be required to attend an investigative interview conducted by one or more members of  
20 the Committee. The investigative interview shall be informal but the Aapplicant shall  
21 have the right to counsel and shall be notified in writing of the general factual areas of  
22 inquiry. Documentary evidence may be provided as part of the investigation, but no  
23 witnesses will be permitted to appear during the interview. The interview shall be a  
24 closed proceeding.

25       (b)(3) After an investigative interview has been conducted, the Aapplicant shall be  
26 notified regarding whether or not she or she has been approved to sit for the Bar  
27 Examination. Applicants who are not approved will be notified regarding those areas  
28 that are of concern to the Committee. An Aapplicant seeking review of the decision  
29 must request a formal hearing within ten calendar days of notice of the Committee's  
30 decision. The request must be made in writing and provided to the Deputy General  
31 Counsel.

32 (b)(4) The Committee may determine that an Aapplicant must take corrective action  
33 before approval of heris or hiser application can be granted. The applicant shall be  
34 notified in writing of the action required. No later than 30 days prior to the date of the  
35 Bar Examination, the Aapplicant must provide written documentation to the Ddeputy  
36 Ggeneral Counsel proving that the required corrective action has been completed.

37 (b)(4)(A) If the documentation is not provided as required within 30 days prior to the  
38 Bar Examination, the Aapplicant must, instead, submit to the Ddeputy Ggeneral  
39 Counsel, a written request to transfer, including the payment of the prescribed transfer  
40 fee. The request must specify when the corrective action will be completed and which  
41 future examination the Aapplicant plans to take.

42 (b)(4)(B) The exam must be taken within the next two scheduled Bar Examinations.  
43 An Aapplicant is entitled to one transfer only.

44 (b)(4)(C) The application of an Aapplicant who neither takes corrective action nor  
45 requests a transfer shall be considered withdrawn.

46 (c) Formal hearing; Aapplicant's request. In matters where the Character and Fitness  
47 Committee decides to convene or an Aapplicant so requests, the Character and Fitness  
48 Committee shall hold a formal hearing. The formal hearing shall be a closed proceeding  
49 and may be scheduled whether or not preceded by an investigative interview.

50 (c)(1) A formal hearing shall be attended by no fewer than three Character and  
51 Fitness Committee members. Five calendar days before the hearing, the Aapplicant and  
52 the Committee must provide a list of witnesses and a copy of any exhibits to be offered  
53 into evidence. If an Aapplicant chooses to submit a written statement, it must also be  
54 filed five calendar days before the hearing.

55 (c)(2) Written notice of the formal hearing shall be given at least ten calendar days  
56 before the hearing. Notice shall be sent to the Aapplicant at the address in the  
57 application. The notice shall include a statement of the preliminary factual matters of  
58 concern. The matters inquired into at the hearing are not limited to those identified in the  
59 notice, but may include any concerns relevant to making a determination regarding the  
60 Aapplicant's character and fitness.

61 (c)(3) The formal hearing will have a complete stenographic record made by a  
62 certified court reporter or an electronic record made by means acceptable in the courts

63 of Utah. All testimony shall be taken under oath. Although no formal rules of evidence or  
64 civil procedure will apply, an [Applicant](#) has the right to counsel, the right to cross-  
65 examine witnesses, the right to examine the evidence and the right to present witnesses  
66 and documentary evidence. An [Applicant](#) is entitled to make reasonable use of the  
67 Bar's subpoena powers to compel attendance of witnesses and to adduce relevant  
68 evidence relating to matters adverse to the applicant.

69 (c)(4) Written findings of fact and conclusions of law shall be issued no later than 45  
70 calendar days after the formal hearing and any subsequent inquiries have been  
71 concluded.

72 (d) Factors related to character and fitness. In addition to the standards set forth in  
73 Rules 14-708(a), and 14-708(f) and Rule 14-708(g) if applicable, the Character and  
74 Fitness Committee may use the following factors to decide whether an [Applicant](#)  
75 possesses the requisite character and fitness to practice law:

76 (d)(1) the [Applicant's](#) lack of candor;

77 (d)(2) unlawful conduct;

78 (d)(3) academic misconduct;

79 (d)(4) making of false or misleading statements, including omissions;

80 (d)(5) misconduct in employment;

81 (d)(6) acts involving dishonesty, fraud, deceit or misrepresentation;

82 (d)(7) abuse of legal process;

83 (d)(8) neglect of financial responsibilities;

84 (d)(9) neglect of professional obligations;

85 (d)(10) violation of a court order;

86 (d)(11) evidence of mental or emotional instability;

87 (d)(12) evidence of drug or alcohol dependency;

88 (d)(13) denial of admission to the bar in another jurisdiction on character and fitness  
89 grounds;

90 (d)(14) past or pending disciplinary action by a lawyer disciplinary agency or other  
91 professional disciplinary agency of any jurisdiction; and

92 (d)(15) other conduct bearing upon character or fitness to practice law.

93 (e) Assigning weight and significance to prior conduct. In making a determination as  
94 to the requisite character and fitness, the following factors should be considered in  
95 assigning weight and significance to prior conduct:

96 (e)(1) age at the time of conduct;

97 (e)(2) recency of the conduct;

98 (e)(3) reliability of the information concerning the conduct;

99 (e)(4) seriousness of the conduct;

100 (e)(5) factors underlying the conduct;

101 (e)(6) cumulative effect of conduct or information;

102 (e)(7) evidence of rehabilitation;

103 (e)(8) positive social contributions since the conduct;

104 (e)(9) candor in the admissions process; and

105 (e)(10) materiality of any omission or misrepresentations.

106 (f) Criminal conduct; parole, probation and supervised release.

107 (f)(1) Where criminal charges are pending, an [Applicant's](#) character and fitness  
108 review may be held in abeyance until the matter has been resolved by the court in  
109 question.

110 (f)(2) An [Applicant](#) convicted of a misdemeanor offense or who has entered a plea  
111 in abeyance to any criminal offense may be asked to appear before members of the  
112 Character and Fitness Committee for an investigation interview or a formal hearing. In  
113 determining whether the [Applicant](#) is of good character, the Committee will consider  
114 the nature and seriousness of the criminal conduct resulting in the conviction(s),  
115 mitigating and aggravating factors including completion of terms and conditions of any  
116 sentence imposed, payment of restitution if applicable, and demonstration of clearly  
117 proven rehabilitation.

118 (f)(3) A rebuttable presumption exists against admission of an [Applicant](#) convicted  
119 of a felony offense. For purposes of this rule, a conviction includes entry of a nolo  
120 contendere (no contest) plea. An [Applicant](#) who has been convicted of a felony offense  
121 is not eligible to apply for admission until after the date of completion of any sentence,  
122 term of probation or term of parole or supervised release, whichever occurred last.  
123 Upon an [Applicant's](#) eligibility, a formal hearing as set forth in this article before

124 members of the Character and Fitness Committee will be held. Factors to be considered  
125 by the Committee include, but are not limited to, the nature and seriousness of the  
126 criminal conduct resulting in the conviction(s), mitigating and aggravating factors  
127 including completion of terms and conditions of a sentence imposed and demonstration  
128 of clearly proven rehabilitation.

129 (g) Disbarred Aattorneys.

130 (g)(1) A Disbarred Aattorney Aapplicant must undergo a formal hearing as set forth  
131 in Rule 14-708(c). A Disbarred Aattorney Aapplicant has the burden of proving  
132 rehabilitation by clear and convincing evidence. No Aapplicant may take the Bar  
133 Examination prior to being approved by the Character and Fitness Committee as  
134 provided in Rule 14-708(a). In addition to the requirements set forth in Rule 14-717,~~if~~  
135 ~~applicable,~~ and in conjunction with the application, an Aapplicant under this rule must:

136 (g)(1)(A) provide a comprehensive written explanation of the circumstances  
137 surrounding ~~heris~~ or ~~hiser~~ disbarment or resignation;

138 (g)(1)(B) provide copies of all relevant documents including, but not limited to, orders  
139 containing findings of fact and conclusions of law relating to disbarment or resignation;  
140 and

141 (g)(1)(C) provide a comprehensive written account of conduct evidencing  
142 rehabilitation.

143 (g)(2) To prove rehabilitation, the Aapplicant must demonstrate the following:

144 (g)(2)(A) positive action showing rehabilitation by such things as a person's  
145 occupation, religion, or community or civic service. Merely showing that the Aapplicant  
146 is now living as and doing those things ~~s~~he or ~~s~~he should have done throughout life,  
147 although necessary to prove rehabilitation, does not prove that the individual has  
148 undertaken a useful and constructive place in society;

149 (g)(2)(B) provide evidence of strict compliance with all disciplinary and judicial  
150 orders;

151 (g)(2)(C) unimpeachable character and moral standing in the community;

152 (g)(2)(D) proof of present professional competence and knowledge;

153 (g)(2)(E) lack of malice toward those who instituted the original proceeding against  
154 the Aapplicant;

155 (g)(2)(F) personal assurances supported by corroborating evidence of a desire and  
156 intention to conduct one's self in an exemplary fashion in the future;

157 (g)(2)(G) provide evidence of treatment for and current control of any substance  
158 abuse problem and/or psychological condition, if such were factors contributing to the  
159 disbarment or resignation; and

160 (g)(2)(H) provide evidence of full restitution of funds or property where applicable.

161 (h) Review of decision of Character and Fitness Committee; Aapplicant's request. An  
162 Aapplicant has the right to have the Board review a decision made after a formal  
163 hearing as set forth in this article. A decision after a formal hearing is a prerequisite to  
164 Board review. An Aapplicant must file a written request for Board review with the  
165 Ddeputy Ggeneral Ccounsel within ten calendar days of the date of notice of the  
166 Character and Fitness Committee decision. A panel of three Board members will review  
167 the decision. The review shall be a closed proceeding and will be limited to  
168 consideration of the record produced in the formal hearing including a certified copy of  
169 the transcript of the formal hearing, the Aapplicant's memorandum, if any, and the Bar's  
170 responsive memorandum, if any. An Aapplicant's appearance at the Board review will  
171 be permitted only if the review panel deems it necessary.

172 (h)(1) Memoranda. After filing a written request for Board review, an Aapplicant may  
173 file a written memorandum identifying the Aapplicant's objections to the decision of the  
174 Character and Fitness Committee. The issues in the memorandum must be limited to  
175 matters contained in the record. The memorandum must be filed within 30 calendar  
176 days of the filing of the request for Board review. The Bar may file a response, but no  
177 reply memorandum will be permitted.

178 (h)(2) The decision of the Character and Fitness Committee shall be affirmed if there  
179 is substantial and credible evidence to support it. To meet ~~heris~~ or ~~hiser~~ burden of proof,  
180 the Aapplicant must cite to the record and show that the evidence did not support the  
181 decision.

182 (h)(3) Payment of transcript. An Aapplicant is responsible for paying for and  
183 obtaining a duly certified copy of the transcript of the formal hearing proceedings or  
184 other electronic record copy as described in Rule 14-708(c)(3).

185 (h)(4) Harmless error. An [A](#)pplicant must demonstrate that any errors of law, fact or  
186 procedure formed a basis for denial or approval. Harmless error does not constitute a  
187 basis to set aside the decision.

188 (h)(5) The Board panel shall issue a final written decision within 30 calendar days of  
189 completing its review.

190 (i) Supreme Court appeal. Within 30 calendar days after the date of the decision of  
191 the Board panel, the [A](#)pplicant may appeal to the Supreme Court by filing a written  
192 notice of appeal with the clerk of the Supreme Court and the general counsel. At the  
193 time of filing the notice of appeal, the [A](#)pplicant shall pay the prescribed filing fee to the  
194 clerk of the Supreme Court. The clerk will not accept a notice of appeal unless the filing  
195 fee is paid.

196 (i)(1) Record of proceeding. A record of the proceeding shall be prepared by the Bar  
197 and shall be filed with the clerk of the Supreme Court within 21 calendar days following  
198 the filing of the notice of appeal.

199 (i)(2) An appeal petition shall be filed with the Supreme Court 30 calendar days after  
200 the record of the proceedings has been filed with the Supreme Court. The appeal  
201 petition shall state the name of the petitioner and shall designate the Bar as the  
202 respondent. The appeal petition must contain the following:

203 (i)(2)(A) a statement of the issues presented and the relief sought;

204 (i)(2)(B) a statement of the facts necessary to an understanding of the issues  
205 presented by the appeal;

206 (i)(2)(C) the legal argument supporting the petitioner's request; and

207 (i)(2)(D) a certificate reflecting service of the appeal petition upon the [G](#)eneral  
208 [C](#)ounsel.

209 (i)(3) Within 30 calendar days after service of the appeal petition on the Bar, the Bar,  
210 as respondent, shall file its response with the clerk of the Supreme Court. At the time of  
211 filing, a copy of the response shall be served upon the petitioner.

212 (i)(4) Format of appeal and response petitions. Except by permission of the Supreme  
213 Court, the appeal petition and the Bar's response petition shall not exceed 25 double-  
214 spaced pages, each. These documents shall be typewritten on 8 ½ inches by 11 inches  
215 paper. The text, including footnotes, shall be in type no smaller than ten characters per

216 inch for monospaced typeface and 13-point or larger for proportionally spaced typeface.  
217 An original and six copies of the appeal petition and the response petition shall be filed  
218 with the clerk of the Supreme Court.

219 (i)(5) The clerk of the Supreme Court will notify the parties if any additional briefing  
220 or oral argument is permitted. Upon entry of the Supreme Court's decision, the clerk  
221 shall give notice of the decision.

222 (j) Reapplication. Reapplication after denial in a character and fitness determination  
223 may not be made prior to one year from the date of the final decision (including the  
224 appellate decision, if applicable), unless a different time period is specified in the final  
225 decision. If just cause exists, the Character and Fitness Committee may require an  
226 [A](#)applicant to wait up to three years from the date of the final decision to reapply. If a  
227 reapplication period longer than one year is set for a ~~Utah-D~~isbarred [A](#)attorney, the  
228 time period is subject to approval by the district court hearing the petition for  
229 reinstatement. See Rule 14-525.

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