

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 professional  
6 duties owed to them. An Applicant whose record manifests a significant deficiency in  
7 honesty, trustworthiness, diligence, or reliability shall be denied admission. The  
8 Applicant has the burden of proof to establish by clear and convincing evidence her or his  
9 fitness to practice law. Applicants must be approved by the Character and Fitness  
10 Committee prior to sitting for the Bar Examination. At any time before being admitted to  
11 the Bar, the Character and Fitness Committee may withdraw or modify its approval.

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

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

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

23 (b)(3) After an investigative interview has been conducted, the Applicant shall be notified  
24 regarding whether or not she or he has been approved to sit for the Bar Examination.  
25 Applicants who are not approved will be notified regarding those areas that are of  
26 concern to the Committee. An Applicant seeking review of the decision must request a  
27 formal hearing within ten calendar days of notice of the Committee's decision. The  
28 request must be made in writing and provided to the Deputy General Counsel. The  
29 hearing will be conducted in accordance with Rule 14-708(c).

30 (b)(4) The Committee may determine that an Applicant must take corrective action  
31 before approval of her or his application can be granted. The Applicant shall be notified  
32 in writing of the action required. No later than 30 days prior to the date of the Bar  
33 Examination, the Applicant must provide written documentation to the Deputy General  
34 Counsel proving that the required corrective action has been completed.

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

- 40 (b)(4)(B) The exam must be taken within the next two scheduled Bar Examinations. An  
41 Applicant is entitled to one transfer only.
- 42 (b)(4)(C) The application of an Applicant who neither takes corrective action nor requests  
43 a transfer shall be considered withdrawn.
- 44 (c) Formal hearing; ~~Applicant's request~~. In matters where the Character and Fitness  
45 Committee decides to convene or an Applicant so requests, the Character and Fitness  
46 Committee shall hold a formal hearing. The formal hearing shall be a closed proceeding  
47 and may be scheduled whether or not preceded by an investigative interview.
- 48 (c)(1) A formal hearing shall be attended by no fewer than three Character and Fitness  
49 Committee members. Five calendar days before the hearing, the Applicant and the  
50 Committee must provide a list of witnesses and a copy of any exhibits to be offered into  
51 evidence. If an Applicant chooses to submit a written statement, it must also be filed five  
52 calendar days before the hearing.
- 53 (c)(2) Written notice of the formal hearing shall be given at least ten calendar days before  
54 the hearing. Notice shall be sent to the Applicant at the address in the application. The  
55 notice shall include a statement of the preliminary factual matters of concern. The matters  
56 inquired into at the hearing are not limited to those identified in the notice, but may  
57 include any concerns relevant to making a determination regarding the Applicant's  
58 character and fitness.
- 59 (c)(3) The formal hearing will have a complete stenographic record made by a certified  
60 court reporter or an electronic record made by means acceptable in the courts of Utah. All  
61 testimony shall be taken under oath. Although no formal rules of evidence or civil  
62 procedure will apply, an Applicant has the right to counsel, the right to cross-examine  
63 witnesses, the right to examine the evidence and the right to present witnesses and  
64 documentary evidence. An Applicant is entitled to make reasonable use of the Bar's  
65 subpoena powers to compel attendance of witnesses and to adduce relevant evidence  
66 relating to matters adverse to the applicant.
- 67 (c)(4) Written findings of fact and conclusions of law shall be issued no later than 45  
68 calendar days after the formal hearing and any subsequent inquiries have been concluded.  
69 In computing the period of time, the last day of the period shall be included, unless it is a  
70 Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of  
71 the next day that is not a Saturday, Sunday, or a legal holiday. "Legal holiday" includes  
72 days designated as holidays by the state or federal governments.
- 73 (d) Factors related to character and fitness. In addition to the standards set forth in Rules  
74 14-708(a), and 14-708(f) and Rule 14-71708(g) if applicable, the Character and Fitness  
75 Committee may use the following factors to decide whether an Applicant possesses the  
76 requisite character and fitness to practice law:
- 77 (d)(1) the Applicant's lack of candor;

- 78 (d)(2) unlawful conduct;
- 79 (d)(3) academic misconduct;
- 80 (d)(4) making of false or misleading statements, including omissions;
- 81 (d)(5) misconduct in employment;
- 82 (d)(6) acts involving dishonesty, fraud, deceit or misrepresentation;
- 83 (d)(7) abuse of legal process;
- 84 (d)(8) neglect of financial responsibilities;
- 85 (d)(9) neglect of professional obligations;
- 86 (d)(10) violation of a court order;
- 87 (d)(11) evidence of mental or emotional instability;
- 88 (d)(12) evidence of drug or alcohol dependency;
- 89 (d)(13) lack of diligence or reliability;
- 90 (d)(14) lack of civility;
- 91 (d)(15~~3~~) denial of admission to the bar in another jurisdiction on character and fitness  
92 grounds;
- 93 (d)(16~~4~~) past or pending disciplinary action by a lawyer disciplinary agency or other  
94 professional disciplinary agency of any jurisdiction; and
- 95 (d)(17~~5~~) other conduct bearing upon character or fitness to practice law.
- 96 (e) Assigning weight and significance to prior conduct. In making a determination as to  
97 the requisite character and fitness, the following factors should be considered in assigning  
98 weight and significance to prior conduct:
- 99 (e)(1) age at the time of conduct;
- 100 (e)(2) recency of the conduct;
- 101 (e)(3) reliability of the information concerning the conduct;
- 102 (e)(4) seriousness of the conduct;

- 103 (e)(5) factors underlying the conduct;
- 104 (e)(6) cumulative effect of conduct or information;
- 105 (e)(7) evidence of rehabilitation;
- 106 (e)(8) positive social contributions since the conduct;
- 107 (e)(9) candor in the admissions process; ~~and~~
- 108 (e)(10) materiality of any omission or misrepresentations; and
- 109 (e)(11) acceptance of responsibility for past conduct.-
- 110 (f) ~~Criminal conduct; parole, probation and supervised release~~ Civil, criminal, or  
111 disciplinary charges.
- 112 (f)(1) Where bar complaints, civil cases, or criminal charges are pending, an Applicant's  
113 character and fitness review may be held in abeyance until the matter has been resolved  
114 by the authority~~court~~ in question.
- 115 (f)(2) An Applicant convicted of a misdemeanor offense or who has entered a plea in  
116 abeyance to any criminal offense may be asked to appear before members of the  
117 Character and Fitness Committee for an investigation interview or a formal hearing. In  
118 determining whether the Applicant is of good character, the Committee will consider the  
119 nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating  
120 and aggravating factors including completion of terms and conditions of any sentence  
121 imposed, payment of restitution if applicable, and demonstration of clearly proven  
122 rehabilitation.
- 123 (f)(3) A rebuttable presumption exists against admission of an Applicant convicted of a  
124 felony offense. For purposes of this rule, a conviction includes entry of a nolo contendere  
125 (no contest) plea. An Applicant who has been convicted of a felony offense is not eligible  
126 to apply for admission until after the date of completion of any sentence, term of  
127 probation or term of parole or supervised release, whichever occurred last. Upon an  
128 Applicant's eligibility, a formal hearing ~~as set forth in this article before members of the~~  
129 ~~Character and Fitness Committee may~~ will be held as set forth in Rule 14-708(c). Factors  
130 to be considered by the Committee include, but are not limited to, the nature and  
131 seriousness of the criminal conduct resulting in the conviction(s), mitigating and  
132 aggravating factors including completion of terms and conditions of a sentence imposed  
133 and demonstration of clearly proven rehabilitation.
- 134 (g) Review.
- 135 ~~(g) Disbarred Attorneys.-~~

136 ~~(g)(1) A Disbarred Attorney Applicant must undergo a formal hearing as set forth in Rule~~  
137 ~~14-708(e). A Disbarred Attorney Applicant has the burden of proving rehabilitation by~~  
138 ~~clear and convincing evidence. No Applicant may take the Bar Examination prior to~~  
139 ~~being approved by the Character and Fitness Committee as provided in Rule 14-708(a).~~  
140 ~~In addition to the requirements set forth in Rule 14-717 and in conjunction with the~~  
141 ~~application, an Applicant under this rule must:~~

142 ~~(g)(1)(A) provide a comprehensive written explanation of the circumstances surrounding~~  
143 ~~her or his disbarment or resignation;~~

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

147 ~~(g)(1)(C) provide a comprehensive written account of conduct evidencing rehabilitation.~~

148 ~~(g)(2) To prove rehabilitation, the Applicant must demonstrate the following:~~

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

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

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

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

157 ~~(g)(2)(E) lack of malice toward those who instituted the original proceeding against the~~  
158 ~~Applicant;~~

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

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

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

165 ~~(h) Review of decision of Character and Fitness Committee; Applicant's request. An~~  
166 ~~Applicant may request a review of a formal hearing decision. has the right to have the~~  
167 ~~Board review a decision made after a formal hearing as set forth in this article. A decision~~  
168 ~~after a formal hearing is a prerequisite to Board review. The review will be conducted in~~

169 ~~accordance with Rule 14-715. An Applicant must file a written request for Board review~~  
170 ~~with the Deputy General Counsel within ten calendar days of the date of notice of the~~  
171 ~~Character and Fitness Committee decision. A panel of three Board members will review~~  
172 ~~the decision. The review shall be a closed proceeding and will be limited to consideration~~  
173 ~~of the record produced in the formal hearing including a certified copy of the transcript of~~  
174 ~~the formal hearing, the Applicant's memorandum, if any, and the Bar's responsive~~  
175 ~~memorandum, if any. An Applicant's appearance at the Board review will be permitted~~  
176 ~~only if the review panel deems it necessary.~~

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

183 ~~(h)(2) The decision of the Character and Fitness Committee shall be affirmed if there is~~  
184 ~~substantial and credible evidence to support it. To meet her or his burden of proof, the~~  
185 ~~Applicant must cite to the record and show that the evidence did not support the decision.~~

186 ~~(h)(3) Payment of transcript. An Applicant is responsible for paying for and obtaining a~~  
187 ~~duly certified copy of the transcript of the formal hearing proceedings or other electronic~~  
188 ~~record copy as described in Rule 14-708(c)(3).~~

189 ~~(h)(4) Harmless error. An Applicant must demonstrate that any errors of law, fact or~~  
190 ~~procedure formed a basis for denial or approval. Harmless error does not constitute a~~  
191 ~~basis to set aside the decision.~~

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

194 ~~(i) Supreme Court appeal. Within 30 calendar days after the date of the decision of the~~  
195 ~~Board panel, the Applicant may appeal to the Supreme Court by filing a written notice of~~  
196 ~~appeal with the clerk of the Supreme Court and the general counsel. At the time of filing~~  
197 ~~the notice of appeal, the Applicant shall pay the prescribed filing fee to the clerk of the~~  
198 ~~Supreme Court. The clerk will not accept a notice of appeal unless the filing fee is paid.~~

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

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

- 206 ~~(i)(2)(A) a statement of the issues presented and the relief sought;~~
- 207 ~~(i)(2)(B) a statement of the facts necessary to an understanding of the issues presented by~~  
208 ~~the appeal;~~
- 209 ~~(i)(2)(C) the legal argument supporting the petitioner's request; and~~
- 210 ~~(i)(2)(D) a certificate reflecting service of the appeal petition upon the General Counsel.~~
- 211 ~~(i)(3) Within 30 calendar days after service of the appeal petition on the Bar, the Bar, as~~  
212 ~~respondent, shall file its response with the clerk of the Supreme Court. At the time of~~  
213 ~~filing, a copy of the response shall be served upon the petitioner.~~
- 214 ~~(i)(4) Format of appeal and response petitions. Except by permission of the Supreme~~  
215 ~~Court, the appeal petition and the Bar's response petition shall not exceed 25 double-~~  
216 ~~spaced pages, each. These documents shall be typewritten on 8 ½ inches by 11 inches~~  
217 ~~paper. The text, including footnotes, shall be in type no smaller than ten characters per~~  
218 ~~inch for monospaced typeface and 13 point or larger for proportionally spaced typeface.~~  
219 ~~An original and six copies of the appeal petition and the response petition shall be filed~~  
220 ~~with the clerk of the Supreme Court.~~
- 221 ~~(i)(5) The clerk of the Supreme Court will notify the parties if any additional briefing or~~  
222 ~~oral argument is permitted. Upon entry of the Supreme Court's decision, the clerk shall~~  
223 ~~give notice of the decision.~~
- 224 ~~(h)~~ Reapplication. Reapplication after denial in a character and fitness determination  
225 may not be made prior to one year from the date of the final decision (including the  
226 appellate decision, if applicable), unless a different time period is specified in the final  
227 decision. If just cause exists, the Character and Fitness Committee may require an  
228 Applicant to wait up to three years from the date of the final decision to reapply. If a  
229 reapplication period longer than one year is set for a Disbarred Attorney, then the time  
230 period is subject to approval by the district court hearing the petition for reinstatement.  
231 See Rule 14-525.