

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
16 act 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
24 notified regarding whether or not she or he has been approved to sit for the Bar
25 Examination. Applicants who are not approved will be notified regarding those areas that
26 are of concern to the Committee. An Applicant seeking review of the decision must
27 request a formal hearing within ten calendar days of notice of the Committee's decision.
28 The 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
36 Bar 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.
41 An Applicant is entitled to one transfer only.

42 (b)(4)(C) The application of an Applicant who neither takes corrective action nor
43 requests 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
49 Fitness Committee members. Five calendar days before the hearing, the Applicant and
50 the Committee must provide a list of witnesses and a copy of any exhibits to be offered
51 into evidence. If an Applicant chooses to submit a written statement, it must also be filed
52 five calendar days before the hearing.

53 (c)(2) Written notice of the formal hearing shall be given at least ten calendar days
54 before the hearing. Notice shall be sent to the Applicant at the address in the application.
55 The notice shall include a statement of the preliminary factual matters of concern. The
56 matters inquired into at the hearing are not limited to those identified in the notice, but
57 may 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
60 certified court reporter or an electronic record made by means acceptable in the courts of
61 Utah. All testimony shall be taken under oath. Although no formal rules of evidence or
62 civil procedure will apply, an Applicant has the right to counsel, the right to cross-
63 examine witnesses, the right to examine the evidence and the right to present witnesses
64 and 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
74 Rules 14-708(a), and 14-708(f) and Rule 14-71708(g) if applicable, the Character and
75 Fitness Committee may use the following factors to decide whether an Applicant
76 possesses the 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
97 to the requisite character and fitness, the following factors should be considered in
98 assigning 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
113 Applicant's character and fitness review may be held in abeyance until the matter has
114 been resolved 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
124 a felony offense. For purposes of this rule, a conviction includes entry of a nolo
125 contendere (no contest) plea. An Applicant who has been convicted of a felony offense is
126 not eligible to apply for admission until after the date of completion of any sentence, term
127 of 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~~
137 ~~Rule 14-708(c). A Disbarred Attorney Applicant has the burden of proving rehabilitation~~
138 ~~by 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~~
143 ~~surrounding her or his disbarment or resignation;~~

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

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

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

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

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

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

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

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

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

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

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

167 ~~(h) Review of decision of Character and Fitness Committee; Applicant's request. An~~
168 ~~Applicant may request a review of a formal hearing decision. has the right to have the~~

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

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

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

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

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

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

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

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

205 ~~(i)(2) An appeal petition shall be filed with the Supreme Court 30 calendar days after~~
206 ~~the record of the proceedings has been filed with the Supreme Court. The appeal petition~~

207 shall state the name of the petitioner and shall designate the Bar as the respondent. The
208 appeal petition must contain the following:

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

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

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

213 (i)(2)(D) a certificate reflecting service of the appeal petition upon the General
214 Counsel.

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

218 (i)(4) Format of appeal and response petitions. Except by permission of the Supreme
219 Court, the appeal petition and the Bar's response petition shall not exceed 25 double-
220 spaced pages, each. These documents shall be typewritten on 8 ½ inches by 11 inches
221 paper. The text, including footnotes, shall be in type no smaller than ten characters per
222 inch for monospaced typeface and 13 point or larger for proportionally spaced typeface.
223 An original and six copies of the appeal petition and the response petition shall be filed
224 with the clerk of the Supreme Court.

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

228 (h) Reapplication. Reapplication after denial in a character and fitness determination
229 may not be made prior to one year from the date of the final decision (including the
230 appellate decision, if applicable), unless a different time period is specified in the final
231 decision. If just cause exists, the Character and Fitness Committee may require an
232 Applicant to wait up to three years from the date of the final decision to reapply. If a
233 reapplication period longer than one year is set for a Disbarred Attorney, then the time
234 period is subject to approval by the district court hearing the petition for reinstatement.
235 See Rule 14-525.