

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

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

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

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

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

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

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

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

40 (b)(4)(A)(i) An Applicant who must sit for the Bar Examination must specify which of the next  
41 two scheduled Bar Examinations the Applicant intends to take.

42 (b)(4)(A)(ii) An Applicant who is not required to sit for the Bar Examination does not need to  
43 transfer unless her or his application is due to be closed under Rule 14-707(g). If an Applicant  
44 transfers to prevent closure of her or his application under Rule 14-707(g), closure will be  
45 postponed for one year.

46 (b)(4)(~~AB~~)(iii) ~~The exam must be taken within the next two scheduled Bar Examinations.~~ An  
47 Applicant is entitled to one transfer only.

48 (b)(4)(~~AE~~)(iv) The application of an Applicant who neither takes corrective action nor requests a  
49 transfer shall be considered withdrawn.

50 (c) Formal hearing. In matters where the Character and Fitness Committee decides to convene or  
51 an Applicant so requests, the Character and Fitness Committee shall hold a formal hearing. The  
52 formal hearing shall be a closed proceeding and may be scheduled whether or not preceded by an  
53 investigative interview.

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

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

64 (c)(3) The formal hearing will have a complete stenographic record made by a certified court  
65 reporter or an electronic record made by means acceptable in the courts of Utah. All testimony  
66 shall be taken under oath. Although no formal rules of evidence or civil procedure will apply, an  
67 Applicant has the right to counsel, the right to cross-examine witnesses, the right to examine the  
68 evidence and the right to present witnesses and documentary evidence. An Applicant is entitled  
69 to make reasonable use of the Bar's subpoena powers to compel attendance of witnesses and to  
70 adduce relevant evidence relating to matters adverse to the applicant.

71 (c)(4) Written findings of fact and conclusions of law shall be issued no later than 45 calendar  
72 days after the formal hearing and any subsequent inquiries have been concluded. In computing  
73 the period of time, the last day of the period shall be included, unless it is a Saturday, a Sunday,  
74 or a legal holiday, in which event the period extends until the end of the next day that is not a  
75 Saturday, Sunday, or a legal holiday. "Legal holiday" includes days designated as holidays by  
76 the state or federal governments.

77 (d) Factors related to character and fitness. In addition to the standards set forth in Rules 14-  
78 708(a), and 14-708(f) and Rule 14-717 if applicable, the Character and Fitness Committee may  
79 use the following factors to decide whether an Applicant possesses the requisite character and  
80 fitness to practice law:

81 (d)(1) the Applicant's lack of candor;

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

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

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

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

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

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

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

108 (e)(7) evidence of rehabilitation;

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

110 (e)(9) candor in the admissions process;

111 (e)(10) materiality of any omission or misrepresentations; and

112 (e)(11) acceptance of responsibility for past conduct.

113 (f) Civil, criminal, or disciplinary charges.

114 (f)(1) Where bar complaints, civil cases, or criminal charges are pending, an Applicant's  
115 character and fitness review may be held in abeyance until the matter has been resolved by the  
116 authority in question.

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

124 (f)(3) A rebuttable presumption exists against admission of an Applicant convicted of a felony  
125 offense. For purposes of this rule, a conviction includes entry of a nolo contendere (no contest)  
126 plea. An Applicant who has been convicted of a felony offense is not eligible to apply for  
127 admission until after the date of completion of any sentence, term of probation or term of parole  
128 or supervised release, whichever occurred last. Upon an Applicant's eligibility, a formal hearing  
129 may be held as set forth in Rule 14-708(c). Factors to be considered by the Committee include,  
130 but are not limited to, the nature and seriousness of the criminal conduct resulting in the  
131 conviction(s), mitigating and aggravating factors including completion of terms and conditions  
132 of a sentence imposed and demonstration of clearly proven rehabilitation.

133 (g) Review. An Applicant may request a review of a formal hearing decision. The review will be  
134 conducted in accordance with Rule 14-715.

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

142 Effective Date May 1, 2016