

**Rule 14-708. Character and fitness.***Effective: 9/1/2020*

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

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

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

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

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

~~(b)~~(4) Corrective action. The Committee may determine that an Applicant must take corrective action before approval of ~~her or his~~the Applicant's application can be granted. The Applicant ~~shall~~will be notified in writing of the action required. The Applicant must provide written documentation to the Deputy General Counsel proving that the required corrective action has been completed by the deadline specified by the Character and Fitness Committee.

~~(b)~~(4)(A) If the documentation is not provided as required by the date specified by the Character and Fitness Committee, the Applicant must, instead, submit to the Deputy General Counsel, a written request to transfer, including the payment of the prescribed transfer fee.

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

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

47 ~~(b)(4)(A)~~(iii) An Applicant is entitled to one transfer only.

48 ~~(b)(4)(A)~~(iv) The application of an Applicant who neither takes corrective action  
49 nor requests a transfer ~~shall~~will 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~~must hold a formal hearing.  
52 The formal hearing ~~shall~~will be a closed proceeding and may be scheduled whether or not  
53 preceded by an investigative interview.

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

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

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

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

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

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

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

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

- 105 ~~(e)~~(1) age at the time of conduct;
- 106 ~~(e)~~(2) recency of the conduct;
- 107 ~~(e)~~(3) reliability of the information concerning the conduct;
- 108 ~~(e)~~(4) seriousness of the conduct;
- 109 ~~(e)~~(5) factors underlying the conduct;
- 110 ~~(e)~~(6) cumulative effect of conduct or information;
- 111 ~~(e)~~(7) evidence of rehabilitation;
- 112 ~~(e)~~(8) positive social contributions since the conduct;
- 113 ~~(e)~~(9) candor in the admissions process;
- 114 ~~(e)~~(10) materiality of any omission or misrepresentations; and

115 ~~(e)~~(11) acceptance of responsibility for past conduct.

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

117 ~~(f)~~(1) Where bar complaints, civil cases, or criminal charges are pending, the Deputy  
118 General Counsel or the Committee may hold an Applicant's character and fitness review  
119 ~~may be held~~ in abeyance until the matter has been resolved by the authority in question.

120 (2) The Committee considers defaulted debt obligations and debt subject to collections as  
121 reflecting poorly on an Applicant's character and fitness. In reviewing the financial  
122 situation of an Applicant, the Committee will consider, among other things, whether the  
123 Applicant is currently and actively engaged in a payment plan and the circumstances  
124 leading to the debt and its subsequent default.

125 ~~(f)~~(32) An Applicant convicted of a misdemeanor offense or who has entered a plea in  
126 abeyance to any criminal offense may be asked to appear before members of the Character  
127 and Fitness Committee for an investigation interview or a formal hearing. In determining  
128 whether the Applicant is of good character, the Committee will consider the nature and  
129 seriousness of the criminal conduct resulting in the conviction(s), mitigating and  
130 aggravating factors including completion of terms and conditions of any sentence imposed,  
131 payment of restitution if applicable, and demonstration of clearly proven rehabilitation.

132 ~~(f)~~(43) A rebuttable presumption exists against admission of an Applicant convicted of a  
133 felony offense. For purposes of this rule, a conviction includes entry of a nolo contendere  
134 (no contest) plea. An Applicant who has been convicted of a felony offense is not eligible  
135 to apply for admission until after the date of completion of any sentence, term of probation  
136 or term of parole or supervised release, whichever occurred last. Upon an Applicant's  
137 eligibility, a formal hearing may be held as set forth in Rule 14-708(c). Factors to be  
138 considered by the Committee include, but are not limited to, the nature and seriousness of  
139 the criminal conduct resulting in the conviction(s), mitigating and aggravating factors  
140 including completion of terms and conditions of a sentence imposed and demonstration of  
141 clearly proven rehabilitation.

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

144 (h) Reapplication. Reapplication after denial in a character and fitness determination may not be  
145 made prior to one year from the date of the final decision (including the appellate decision, if  
146 applicable), unless a different time period is specified in the final decision. If just cause exists, the  
147 Character and Fitness Committee may require an Applicant to wait up to three years from the date  
148 of the final decision to reapply. If a reapplication period longer than one year is set for a ~~Disbarred~~  
149 Delicensed Attorney, then the time period is subject to approval by the district court hearing the  
150 petition for reinstatement. See Rule ~~14-525~~11-591.

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