

**Meeting of the Fitness Task Force of the
Oregon State Board of Bar Examiners
January 30, 2019
Oregon State Bar Center – McKenzie Room
Call-in: 1-888-737-5834 Passcode: 459868**

Open Session Agenda

Meeting will begin at 3:00 p.m. Items on the agenda will not necessarily be discussed in the order shown.

Wednesday, January 30, 2018, 3:00 p.m.

1. Call to Order/Finalization of Agenda

- A. Roll of Attendees
- B. Introductions
- C. Discuss additions to the Agenda
- D. Report by the Chair [Justice Kistler]

2. Charges

- A. Review letter from Chair Wong Exhibit 1

3. Discussions related to Charges

- A. Discuss the two charges from the BBX
- B. Discuss workflow preferences for both charges
- C. Discuss establishing sub-Committees for each charge
- D. Assign follow-up tasks/sub-committees/work

4. Discussions related to Staff Support and Materials

- A. Review current application for the Oregon State Bar Exhibit 2
- B. Review relevant current Rules for Admission Exhibit 3
- C. Review current statutes governing admissions Exhibit 4
- D. Review Essential Eligibility Requirements material from other bars Exhibit 5
- E. Review C&F questions related to mental health from other bars Exhibit 6
- F. Task Force Website Exhibit 7
- G. Discuss role of Admissions/Bar Staff
- H. Set Next Meeting

Exhibit 1

MEMORANDUM

Oregon State Board of Bar Examiners

To: Dr. Mark Baskerville; Elizabeth Davis; David Elkanich; Bob Joondeph; Justice Rives Kistler; Richard Kolbell, Ph. D.; Cassandra McLeod-Skinner; Patricia Nation; Vanessa Nordyke; Joanna Perini-Abbott; Jonathan Puente; Doug Querin; Hon. Kelly Skye; Michael Slauson; and Eleanor Wallace.

From: Caroline Wong

Date: December 11, 2018

Re: Fitness Review Task Force

Thank you for agreeing to serve on the Oregon State Board of Bar Examiners (BBX) Fitness Review Task Force (Task Force). Justice Rives Kistler has agreed to chair the Task Force. Troy Wood is the OSB's liaison to the Task Force. The following is intended to give context to the creation of the Task Force, stress the importance of your work and provide guidance to your efforts.

The BBX's primary purpose is to safeguard the public by ensuring that bar applicants admitted to practice law in Oregon possess the requisite learning and ability, and character and fitness to practice law. Pursuant to Oregon Revised Statute (ORS) 9.210, the Oregon Supreme Court appoints members to the BBX to carry out the admissions functions of the Oregon State Bar (OSB), and authorizes the BBX to conduct bar examinations and to investigate the character and fitness of bar applicants. ORS 9.220(2) requires an applicant to demonstrate being of good moral character and fit to practice law.

The Oregon Supreme Court's Rules for Admission of Attorneys (RFA) 1.05(4) defines "Fit to practice law" or "fitness" as an applicant demonstrating a level of conduct, mental health, judgment, and diligence that will result in adequate representation of the best interests of clients, including participation in the legal process according to the Oregon Rules of Professional Conduct.

Given the importance of mental health to fitness, the BBX recognizes that the constantly evolving scientific understanding of the brain and its processes has resulted in increasingly effective methodologies and treatments for conditions that otherwise might impact fitness. When applied, they allow impacted persons to fulfill their potential. The challenge is in seeking and receiving appropriate care.

In the spring of 2014, the Dave Nee Foundation funded a multi-school study of law student alcohol and substance use, as well as mental health concerns and help-seeking attitudes among law students (the Nee Study). The results of the Nee Study were published in the Autumn 2016 publication of the Journal of Legal Education. The Nee Study found that up to one-third of respondents reported frequent binge drinking, misuse of drugs or mental health challenges. The study also suggested that a significant majority of those law students most in need of help were reluctant to seek it.

In 2016, the American Bar Association (ABA) and Hazelden Betty Ford Foundation published a study of nearly 13,000 currently practicing lawyers nationwide (the Hazelden Study). The Hazelden Study found that between 21 and 36 percent of participants qualified as problem drinkers and up to 28 percent had some level of depression, anxiety or other issue related to stress. The Hazelden Study found that younger lawyers experience the highest rates of problem drinking and depression. Up to 25% of young lawyers were categorized as being at risk for alcoholism. The percentage of lawyers affected by the conditions considered by the Hazelden Study are at least three times higher than the general American population.

Several recent studies have shown a reticence on the part of bar applicants to seeking treatment for mental health issues out of a concern that doing so will result in a denial of admission due to their condition. In reality, the number of applicants that are ultimately denied admission for any reason is a very small number. Of those who receive closer scrutiny, it is most typically triggered by the person's criminal, employment, or financial issues. And, with the option of conditional admission, those few with recent concerning behaviors who are already on a trajectory of recovery and treatment have a pathway to licensure. These studies illustrate a need for education about the realities of the admissions process. One means of combatting misperceptions about a negative connection between receiving treatment and achieving admission is by publishing each year the reasons for denials and quantifying how few applicants are actually denied admission relative to the total number of applicants. Of equal relevance, the admissions process should emphasize the importance of seeking treatment as early as possible, whether it relates to mental health or substance use issues, in order to minimize the impact any untreated condition might have on the future ability to practice of law. A third consideration is examining the manner in which any inquiry into mental health or substance use issues during the application process is framed.

In August 2017, the ABA published the report of the National Task Force on Lawyer Well-Being (the ABA Report). The ABA Report identified the necessity for the legal profession to take action on law student and lawyer well-being and made specific recommendations to certain stakeholders and gatekeepers. The following recommendations aimed at admissions departments were intended to promote law student well-being:

1. Re-Evaluate Bar Application Inquiries about Mental Health History;
2. Adopt Essential Eligibility Admission Requirements;
3. Adopt a Rule for Conditional Admission to Practice Law with Specific Requirements and Conditions; and
4. Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.

In October 2017, the Oregon Council on Legal Education and Admissions to the Bar (OCLEAB) reviewed and discussed the Nee Study, the Hazelden Study and the ABA Report. The participants in OCLEAB also reviewed and discussed the success of the BBX's conditional admission program. Following the 2017 OCLEAB, The BBX determined that no changes were required to its conditional admission program and made minor changes to bar application questions about mental health history.

Later in 2018, the BBX determined that an independent body should re-evaluate the bar application inquiries about mental health and substance use and the screening of these fitness issues. It was also contemplated that the development of essential eligibility admission requirements might help shape these inquiries or, at least, help future applicants understand the abilities needed to become a licensed lawyer in the State of Oregon. In September 2018, after discussing the scope of a task force's charge, the BBX voted to create a task force, and empowered the BBX Chair to appoint its members and formulate the charges for the task force to consider, based upon that discussion.

The Task Force is appointed to examine the following two topics by reviewing other jurisdictions' treatment of them, identifying and developing a compilation of best practices based upon that review, and making recommendations to the BBX:

1. Essential Eligibility Requirements. The ABA Report recommends the adoption of essential eligibility requirements. Approximately 14 jurisdictions have such provisions in place. The ABA Report recommends requirements that affirmatively state the abilities needed to become a licensed lawyer. Their purpose is to provide the framework for determining whether an individual has the required abilities, with or without reasonable accommodations. The report opines that these requirements will help the applicant, the admissions authority, and the medical expert understand what is needed to demonstrate fitness to practice law.
2. Bar Application Fitness Inquiries. Oregon, consistent with a majority of states, utilizes the NCBE's model application questions that screen for fitness issues on its application. A few have moved away from asking any questions related to mental health or behavioral conditions. These jurisdictions have adopted a more resource intensive approach to investigate and screen the backgrounds of each bar applicant.

Ideally, the BBX would like to receive a written report and recommendations from the Task Force in time for the BBX's September 2019 Board Meeting. This will provide sufficient time for the BBX to present the Task Force's recommendations to the OCLEAB in October 2019.

If you have any questions, please contact Troy Wood at twood@osbar.org or 503-431-6310.

Exhibit 2

February 2019 Bar Examination Application

GENERAL INSTRUCTIONS

- If space is insufficient for any answer, type your answer in a separate word processing document, print, and attach that sheet to this application
- Err on the side of over-disclosure
- Answer every question. If a question is not applicable to you, answer the question "Not Applicable"
- Include **one (1)** notarized original of the Affidavit and Authorization Form (Page 15)
- Provide the full number, street name, city, state and zip code for each address.
- If an answer to any question changes before your admission, you are obligated to update your application. (See #3 of Affidavit and Authorization Form (Page 15))
- Complete all the forms required
- Sign all the forms requiring your signature (in presence of Notary where indicated)
- No exceptions to the filing deadlines will be granted. **Timely filing deadline is 11/15/2018; late filing deadline is 12/15/2018.**
- If you withdraw in accordance with Rule 4.10(7), you will receive a partial refund.
- It is an applicant's duty to obtain and provide the information requested (Rule 4.25).

SECTION 1	Personal Information	
1	Full Legal Name: _____	Social Security Number: _____
2	Mailing Address: _____ _____	Primary Phone Number: _____ Cell Phone Number: _____
3	NCBE Number (8 digits): N _____ Go to www.ncbex.org/ncbe-number to create an NCBE account and request an NCBE Number. Your unique NCBE Number will be used to identify your scores whenever you take the Multistate Bar Examination (MBE) or the Multistate Professional Responsibility Examination (MPRE). Use the NCBE Account Lookup to determine if you already have an NCBE Number.	Date of Birth: _____ Place of Birth: _____
4	Email Address: _____ <i>(Failure to include may result in your not receiving important notices regarding the Bar exam)</i>	Male <input type="radio"/> Female <input type="radio"/> X <input type="radio"/>

16	Specify each application you have made to practice law in any jurisdiction (other than Oregon):				
	Application By:	State or Country	Date Applied	Date of Admission	If Not Admitted, State the Reason(s)
	<input type="checkbox"/> Examination <input type="checkbox"/> Reciprocity <input type="checkbox"/> On Motion <input type="checkbox"/> Other				
	<input type="checkbox"/> Examination <input type="checkbox"/> Reciprocity <input type="checkbox"/> On Motion <input type="checkbox"/> Other				
	<input type="checkbox"/> Examination <input type="checkbox"/> Reciprocity <input type="checkbox"/> On Motion <input type="checkbox"/> Other				
17	Have you ever previously been admitted to practice law in Oregon under any other rule, such as House Counsel or Law Teacher? Yes <input type="radio"/> No <input type="radio"/> If yes, please provide your Bar #: _____				
	<div style="display: flex; justify-content: space-between;"> <div style="background-color: black; color: white; padding: 5px;">SECTION 3</div> <div>Questions Regarding Character and Fitness</div> </div>				
	18	If, in connection with any application you made for admission to practice law in any other state, territory or country you were requested to give any information regarding character and fitness beyond completing that jurisdiction's standard application for admission, explain what occurred:			

19	<p>List your current and previous five employers and state the dates you were employed by them. Include intern/externships and volunteer work. List your supervisor, if applicable, and indicate if that person is no longer employed there. Provide the full and correct name, address, city, state and zip code for each address. <i>If a company is no longer in business, indicate so, next to its last known address. Please type the address in the shaded boxes of the 6 blank character and fitness statements provided with this application.</i></p>	
	<p>Name and Complete Address:</p>	<p>Occupation / Position:</p> <p>Period of Employment:</p> <p>Reason for Leaving:</p>
	<p>Name and Complete Address:</p>	<p>Occupation / Position:</p> <p>Period of Employment:</p> <p>Reason for Leaving:</p>
	<p>Name and Complete Address:</p>	<p>Occupation / Position:</p> <p>Period of Employment:</p> <p>Reason for Leaving:</p>
	<p>Name and Complete Address:</p>	<p>Occupation / Position:</p> <p>Period of Employment:</p> <p>Reason for Leaving:</p>
	<p>Name and Complete Address:</p>	<p>Occupation / Position:</p> <p>Period of Employment:</p> <p>Reason for Leaving:</p>
	<p>Name and Complete Address:</p>	<p>Occupation / Position:</p> <p>Period of Employment:</p> <p>Reason for Leaving:</p>

20	<p>List five (5) responsible people who are in a position to attest to your character and fitness to practice law. There are no statements for these references. <u>The Board of Bar examiners will contact these references as needed.</u></p> <p><i>(1) Your acquaintance with the people listed should be more than casual and of substantial duration. (2) Do not list more than one law teacher and one current bar applicant.</i></p> <p><i>(3) Do not list any former supervisors listed in Question 20 unless the supervisor is no longer working at that place of employment.</i></p> <p><i>(4) Do not list any Justice of the Oregon Supreme Court.</i></p>	
	<p>Name and Complete Address:</p> <p>Phone #:</p> <p>Email:</p>	<p>Nature and Length of Acquaintance:</p>
	<p>Name and Complete Address:</p> <p>Phone #:</p> <p>Email:</p>	<p>Nature and Length of Acquaintance:</p>
	<p>Name and Complete Address:</p> <p>Phone #:</p> <p>Email:</p>	<p>Nature and Length of Acquaintance:</p>
	<p>Name and Complete Address:</p> <p>Phone #:</p> <p>Email:</p>	<p>Nature and Length of Acquaintance:</p>
	<p>Name and Complete Address:</p> <p>Phone #:</p> <p>Email:</p>	<p>Nature and Length of Acquaintance:</p>

21	<p>If your answer to any of the portions of this question is "YES," attach a separate sheet of paper with a detailed explanation of the circumstances that required you give an affirmative answer to that portion of the question. If the information you provide is not sufficiently complete and detailed, your application will be delayed until you provide the necessary additional information. If your explanation refers to a court case or administrative proceeding, give the number and sufficient information so that the Board of Bar Examiners can locate the record:</p>		
		YES	NO
	<p>a. Have you ever been dropped, suspended, investigated, expelled, disciplined or subjected to a disciplinary inquiry or proceeding by any college or law school for any cause whatsoever?</p>	<input type="radio"/>	<input type="radio"/>
	<p>b. Have you ever been discharged or asked to resign from employment? If yes, explain and provide the date, circumstances, and name, address, phone number and email address of employer, as well as the name and title of individual making such request if other than the listed employer (attach supplemental sheet)</p>	<input type="radio"/>	<input type="radio"/>
	<p>c. Have you ever been a party to any civil proceeding, including any bankruptcy or administrative proceeding?</p>	<input type="radio"/>	<input type="radio"/>
	<p>d. Have you ever been charged with fraud or dishonesty in any civil proceeding?</p>	<input type="radio"/>	<input type="radio"/>
	<p>e. Have you had more than five checks dishonored because of insufficient funds during the past three years?</p>	<input type="radio"/>	<input type="radio"/>
	<p>f. Have you ever had a check for more than \$100 dishonored because of insufficient funds?</p>	<input type="radio"/>	<input type="radio"/>
	<p>g. Do you now have any loans, accounts, judgments or financial obligations of any nature, including child support payments and student loans, past due for payment more than 60 days?</p>	<input type="radio"/>	<input type="radio"/>
	<p>h. Has any surety on any bond on which you were the principal or obligor been required to pay any money on your behalf?</p>	<input type="radio"/>	<input type="radio"/>
	<p>i. Have you ever been denied a bond, had a bond revoked, or had anyone seek to recover upon or cancel a bond?</p>	<input type="radio"/>	<input type="radio"/>
	<p>j. Including any matters that may have been expunged, except expunged juvenile matters, have you ever been cited, arrested, charged or convicted of a criminal offense? If yes, provide the information on the following page.</p>	<input type="radio"/>	<input type="radio"/>
<p>k. In the last five years, have you been cited for any civil (non-criminal) infractions such as speeding, and/or other minor traffic violations? If yes, provide the information on the following page. You may exclude parking tickets.</p>	<input type="radio"/>	<input type="radio"/>	

Complete one line for each citation, charge, arrest or conviction, whether stemming from the same facts or not. Continue on an additional sheet, if necessary, and attach relevant documentation.

	Date	Location of Incident	Court	Basic allegation of charges	Disposition
EXAMPLE	12/19/92	Portland, OR	Multnomah Cty	DUI	Dismissed
1.					
2.					
3.					
4.					

21 — Continued		YES	NO
	l. Have you ever been charged with contempt of court?	<input type="radio"/>	<input type="radio"/>
	m. Have you ever been accused of dishonesty in connection with employment?	<input type="radio"/>	<input type="radio"/>
	n. Have you ever applied for a license, other than as an attorney at law, the procurement of which required proof of "good moral character" (i.e., CPA, patent agent, notary public, real estate broker, physician, nurse)?	<input type="radio"/>	<input type="radio"/>
	o. Has any proceeding ever been instituted to declare you an incompetent person, an insane person or a mentally diseased person?	<input type="radio"/>	<input type="radio"/>
	p. Have you ever been disciplined, discharged, or resigned in lieu of termination from employment for the use of a controlled substance or alcohol?	<input type="radio"/>	<input type="radio"/>
	q. Have you or anyone you have worked with ever been charged with the unauthorized practice of law?	<input type="radio"/>	<input type="radio"/>
	r. Have you or anyone you have worked with ever been sanctioned, censured, reprimanded, disciplined, suspended, disqualified or disbarred as a member of any profession or as a practitioner before any administrative agency?	<input type="radio"/>	<input type="radio"/>
	s. Have you ever been suspended or removed from public office because of conduct reflecting adversely upon your character?	<input type="radio"/>	<input type="radio"/>
	t. Have you ever been subject to any disciplinary action in connection with military service?	<input type="radio"/>	<input type="radio"/>
	u. Has anyone to your knowledge, ever complained to your law school or other supervising body in connection with your conduct under a student practice or legal intern rule?	<input type="radio"/>	<input type="radio"/>
	v. Is there any additional information with respect to possible misconduct or lack of moral qualification or general fitness on your part that is not otherwise disclosed by your answers to questions in this application? If yes, explain	<input type="radio"/>	<input type="radio"/>

22	<p>Through this application, the Oregon State Board of Bar Examiners makes inquiry about circumstances that may affect an applicant's ability to meet the professional responsibilities of a lawyer. This information is treated confidentially and will be disclosed only pursuant to Rule for Admission 2.15. The purpose of such inquiries is to determine the current fitness of an applicant to practice law. The mere fact of treatment, monitoring, or participation in a support group is not, in itself, a basis on which admission is denied. The Oregon State Board of Bar Examiners routinely recommends admission for individuals who demonstrate personal responsibility and maturity in dealing with fitness issues. The Oregon State Board of Bar Examiners encourages applicants who may benefit from assistance to seek it.</p> <p>The Oregon State Board of Bar Examiners may, on occasion, recommend denial for applicants whose ability to function is impaired in a manner relevant to the practice of law at the time that the licensing decision is made, or to applicants who demonstrate a lack of candor by their responses. This is consistent with the public purpose that underlies the licensing responsibilities assigned to the Oregon State Board of Bar Examiners. Furthermore, the burden for demonstrating character and fitness to practice law is placed upon the applicant.</p> <p>The Oregon State Board of Bar Examiners does not seek information that is reasonably characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, and grief counseling. The Oregon State Board of Bar Examiners does not seek medical records as part of this initial application. If medical records are required to assist in any admissions decisions, they will be requested at a later point in time. It is not necessary to include information related to a request for special accommodations unless it is also relevant to an affirmative response to one of the questions in this Section 22.</p> <p>If your answer to any of the portions of this question is "YES," attach a separate sheet of paper with a detailed explanation of the circumstances that required you to give an affirmative answer to that portion of the question:</p>	YES	NO
	<p>a. Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner?</p>	<input type="radio"/>	<input type="radio"/>
	<p>b. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that affects your ability to practice law in a competent, ethical, and professional manner?</p>	<input type="radio"/>	<input type="radio"/>
	<p>c. If your answer to Question 22(b) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p>	<input type="radio"/>	<input type="radio"/>
	<p>d. Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<input type="radio"/>	<input type="radio"/>

**IN THE SUPREME COURT OF THE STATE OF OREGON
EMPLOYMENT CHARACTER AND FITNESS STATEMENT**

****Employer References – Please answer the questions below and mail back in the return envelope provided. If unable to complete this form, please make a note of this and return the form anyway.****

In the Matter of the Application of:

_____ (PRINT TYPE YOUR NAME HERE)

[_____]
[_____]
[_____]
[_____]

Position: _____

Employed from: _____ **to** _____

Supervisor: _____

1. My name is: _____

2. My occupation is: _____

2. I am a member in good standing of the Bar of : (if none, write none)

3. I have been acquainted with the applicant for _____ years under the following circumstances:

4. Do you believe the applicant to be trustworthy? ☐ YES ☐ NO
(If you answer NO, provide a short summary of details)

5. Please check yes or no. If your answer to any is YES, provide a short summary. To your knowledge has the applicant:

☐ YES ☐ NO been accused of a violation of the honor code or student conduct code, warned, placed on scholastic or disciplinary probation, suspended, requested or advised to discontinue studies, dropped, expelled, or requested to resign or otherwise subject to discipline for academic or personal conduct reasons by any educational institution?

☐ YES ☐ NO been a party to legal or administrative proceedings?

☐ YES ☐ NO been charged with, arrested for or convicted of any traffic or criminal offense?

☐ YES ☐ NO been accused of a violation of trust?

☐ YES ☐ NO been denied admission to the Bar of any other state?

☐ YES ☐ NO had a pattern of unexcused absences from school or work?

☐ YES ☐ NO demonstrated violent or disruptive behavior?

☐ YES ☐ NO been addicted to or dependent upon the use of narcotics, drugs or intoxicating beverages within the past 10 years?

☐ YES ☐ NO been hospitalized during the past 10 years for treatment of any of the following: schizophrenia or other psychotic disorder; bipolar or major depressive mood disorder; drug or alcohol abuse; impulse control disorder, including kleptomania, pyromania, explosive disorder, pathological or compulsive gambling; or paraphilia such as pedophilia, exhibitionism or voyeurism that could impair or limit the ability to practice law in a competent and professional manner?

☐ YES ☐ NO had a mental health condition that currently impairs or limits their ability to practice law in a competent and professional manner?

☐ YES ☐ NO been delinquent in any financial obligations?

6. I am _____ / I am not _____ able to give factual, accurate, and reliable appraisal of the applicant's moral character and general fitness to practice law. If not, why not?

7. I believe: (check one)

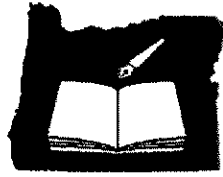
☐ The applicant is qualified by general fitness and good moral character to practice law and I make this statement without reservation.

☐ The applicant is qualified by general fitness and good moral character to practice law, but I am aware of facts set forth concerning the applicant's background, history, experience, or activities which may have a bearing on this question and should be brought to the attention of the examining authorities.

☐ The applicant is not qualified to practice law for the reasons set forth (attach a separate sheet)

Signature: _____ **Date:** _____

Exhibit 3



Oregon State
Board of
Bar Examiners

SUPREME COURT OF THE
STATE OF OREGON

RULES

FOR

ADMISSION OF ATTORNEYS

REVISED NOVEMBER 1, 2018



Oregon State
Board of
Bar Examiners

OREGON STATE BOARD OF BAR EXAMINERS

16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, Oregon 97281-1935

E-Mail: admissions@osbar.org

Telephone: 503.620.0222
Exts. 310, 364 & 419

Toll Free In-State:
1.800.452.8260
Exts. 310, 364 & 419

DEFINITIONS

1.05 Definitions

As used in these Rules for Admission of Attorneys, unless the context requires otherwise:

- (1) "Active practice of law" or "actively engaged in the practice of law" means law-related professional activities, if performed in a jurisdiction in which the applicant is admitted or in a jurisdiction that affirmatively permits such activity by an attorney not admitted in that jurisdiction.

(a) The active practice of law includes:

- (i) representation of one or more clients in the private practice of law;
- (ii) service as an attorney with a local, state, territorial or federal agency or court, including military service;
- (iii) teaching at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
- (iv) service as a judge in a federal, state, territorial or local court of record;
- (v) service as a judicial clerk; or
- (vi) service as a house counsel to a corporation or other business entity.

(b) The active practice of law does not include work that is performed in advance of bar admission in any jurisdiction or work that, as undertaken, constitutes the unauthorized practice of law in the jurisdiction in which it is performed or in the jurisdiction in which the clients receiving the unauthorized services are located.

- (2) "Board" means the Oregon Board of Bar Examiners.
- (3) "Court" means the Oregon Supreme Court.
- (4) "Fit to practice law" or "fitness" means an applicant demonstrates a level of conduct, mental health, judgment, and diligence that will result in adequate representation of the best interests of clients, including participation in the legal process according to the Oregon Rules of Professional Conduct.
- (5) "Foreign law consultant" means an individual who is licensed to practice law

in a foreign jurisdiction, as defined in ORS 9.242, and is authorized to advise on the law of that foreign jurisdiction pursuant to Rule 12.05.

- (6) "Good moral character" is given the same meaning as contained in ORS 9.220(2)(b).
- (7) "Military service" means extended active service in the armed forces of the United States or deployment with the National Guard.
- (8) "Substantially and continuously engaged in the practice of law" means at least 1,000 hours of work per annum in law-related professional activities specified in Rule 1.05(1), uninterrupted by periods of other employment or unemployment. An applicant whose practice of law was interrupted by military service may exclude the time spent in such service in determining whether his or her practice has been continuous or has been within the time periods specified in Rules 3.05, 8.10(5) or 15.05.

FILING DOCUMENTS WITH THE BOARD

1.10 Filing

- (1) Any document required to be filed with the Board under the Rules for Admission of Attorneys shall be delivered in person to the Oregon Board of Bar Examiners, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail to the Board, P. O. Box 231935, Tigard, Oregon 97281-1935.
- (2) Delivery by mail shall be complete when the documents are mailed on or before the due date by first class mail through the United States Postal Service.
- (3) If filing is not done as provided in subsection (1) of this rule, the filing shall not be timely unless the pleading or document is actually received by the Board within the time fixed for filing.

1.15 Citation

- (1) These rules may be cited as "RFA___."

QUALIFICATIONS OF APPLICANTS

3.05 Qualifications of Applicants

Prior to taking the bar examination in Oregon the applicant must show that the applicant will be at least 18 years of age at the time of admission to the practice of law and meet the requirements of either section (1), (2) or (3):

- (1) The applicant is a graduate of a law school approved by the American Bar Association, earning a Juris Doctor degree or Bachelor of Law (LL.B.) degree.
- (2) The applicant is a graduate of a law school in the United States, earning a Juris Doctor degree or Bachelor of Law (LL.B.) degree, and
 - (a) Has been admitted to practice before the highest tribunal of another state, the District of Columbia, or federal territory, where the requirements for admission are substantially equivalent to those of this state; and
 - (b) Has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the taking of the examination.
- (3) The applicant is a graduate of a law school in a foreign jurisdiction, as defined in ORS 9.242(2). In such case, the applicant shall have the burden of proving:
 - (a) That the requirements for admission to practice are substantially equivalent to those of this state;
 - (b) That the applicant is currently admitted to practice law in a foreign jurisdiction where the Common Law of England exists as a basis of its jurisprudence; and
 - (c) That the applicant is a graduate of a law school equivalent to a law school approved by the American Bar Association. The Board shall evaluate whether the applicant's law school meets this above requirement. To assist in this determination, the Board may require that the applicant's law school education be evaluated by a commercial evaluator of the Board's choosing at the applicant's expense.
- (4) An applicant may be allowed to sit for the examination prior to earning a Juris Doctor degree or Bachelor of Law (LL.B.) degree if the applicant:

- (a) is currently enrolled in a law school approved by the American Bar Association;
 - (b) is expected to earn a Juris Doctor degree or Bachelor of Law (LL.B) degree within 120 days of sitting for the examination;
 - (c) has satisfied all graduation requirements to earn a Juris Doctor degree or Bachelor of Law (LL.B.) degree except law school coursework that can be completed during the applicant's post examination final semester (or quarter);
 - (d) will not be actively engaged in more than two semester hours (or quarter hour equivalent) of law school course work other than bar examination preparation courses during the month prior to the examination and the month the examination is held; and
 - (e) has submitted timely a properly signed Affidavit for Examination on the form provided by the Oregon State Bar, certifying that the applicant is academically prepared to take the examination.
- (5) No applicant shall be recommended to practice law until an applicant has earned a Juris Doctor degree or Bachelor of Law (LL.B.) degree and submitted Certificate of Graduation. If an applicant qualifying under Rule 3.05(4) to take the examination does not complete degree requirements within 120 days of sitting for the examination and has not filed an Affidavit for Waiver of the 120 Days Requirement, all parts of the examination, including the applicant's scores, shall be void for purposes of being admitted to practice law in Oregon and the applicant's examination scores shall not be disclosed for any purpose.
- (6) Paragraph (4) of this rule shall be effective for examinations beginning February, 2016 and thereafter.

RFA 3.05 - Affidavit A
Oregon State Bar – Admissions Department
Affidavit for Examination

Last Name First Name Middle Name _____
Month/Year of Exam

Law School

Law School Address

Pursuant to Rule 3.05(4), Rules of Admission, I certify that my law school is accredited by the American Bar Association and that I meet the following examination requirements:

1. I am currently enrolled as a student in good standing;
2. I expect to earn a Juris Doctor Degree or Bachelor of Law (LL.B.) degree within 120 days of sitting for the examination;
3. I will satisfy all graduation requirements to earn a Juris Doctor degree or Bachelor of Law (LL.B.) degree except law school course work that can be completed during my post examination final semester (or quarter);
4. I will not be actively engaged in more than two semester hours (or quarter hour equivalent) of law school course work other than bar examination preparation courses during the month prior to the examination and the month the examination is held; and
5. I have been determined by my law school to be academically prepared to take the examination.

NOTE: *If after you file this form you no longer meet the above stated requirements, you must within 10 days of the date you no longer qualify submit written notification to the Oregon State Bar – Admissions Department and your law school.*

Signature of Applicant

Sworn to and subscribed before me this the ____ day of _____, Year _____.

Notary Public Name _____
Commission Expires

Name and Title of Dean or Designee _____
Signature of Dean or Designee

RFA 3.05 - Affidavit B
Oregon State Bar – Admissions Department
Affidavit for Waiver of the 120 Day Requirement

Last Name First Name Middle Name _____
Month/Year of Exam

Law School

Law School Address

Pursuant to Rule 3.05(4), Rules of Admission, I certify that my law school is accredited by the American Bar Association and that I am unable to earn a Juris Doctor Degree or Bachelor of Law (L.L.B) degree within 120 days of sitting for the examination due to the following extraordinary circumstances:

Attach supporting documents, e.g., evidence of major illness, family emergency, etc., to support waiver request.

Signature of Applicant

Date

Sworn to and subscribed before me this the ____ day of _____, Year _____.

Notary Public Name

Commission Expires

Waiver: ____ Granted Juris Doctor Degree or Bachelor of Law (L.L.B) degree must be earned within ____ (no more than 120) days of the date of this Waiver.

____ Denied

Name and Title of Dean or Designee

Signature of Dean or Designee

3.10 Conviction of Crime

An applicant shall not be eligible for admission to the Bar after having been convicted of a crime, the commission of which would have led to disbarment in all the circumstances present, had the person been an Oregon attorney at the time of conviction.

3.15 Discipline in Another Jurisdiction

- (1) An attorney who is not in good standing for disciplinary reasons in any other jurisdiction in which the attorney was licensed to practice shall not be eligible for admission:
 - (b) If the attorney was disbarred or resigned in lieu of disciplinary action in the other jurisdiction; or
 - (c) If the attorney was not disbarred and did not resign in lieu of disciplinary action, until the attorney is eligible to apply for reinstatement or readmission after the disciplinary action in the other jurisdiction.
- (2) Notwithstanding subsection (1)(a), an attorney who was disbarred in another jurisdiction or who resigned in lieu of disciplinary action in the other jurisdiction may apply for admission to the Bar in Oregon if the attorney can show that the attorney's conduct that led to the disbarment or resignation would not have led to disbarment in Oregon.

4.15 Contents of Application

- 1) Each application shall be on a form prescribed by the Board and must contain or be accompanied by:
 - a) An executed release and authorization to obtain:
 - i) the applicant's motor vehicle driving record;
 - ii) the applicant's college and law school files and records;
 - iii) credit information concerning the applicant;
 - iv) the applicant's disciplinary history and status in any other jurisdiction.
- 2) No later than the 15th day before the first day of the examination, each applicant must file one copy of a certificate of graduation, on a form prescribed by the Board, or other evidence satisfactory to the Board that the applicant is a graduate of a law school prescribed by Rule 3.05 (1), (2) or (3).
 - (1) Prior to admission:
 - (a) Each applicant who has been admitted to practice before the highest tribunal of another state, the District of Columbia, a federal territory, or a foreign country must file one copy of a certificate of good standing.
 - (b) The certificate of good standing shall state:
 - (i) the date of the applicant's admission to the practice of law;
 - (ii) whether the applicant is entitled to engage in the practice of law;
 - (iii) whether the applicant is a member of the bar in good standing; and
 - (iv) whether there is now pending, or ever has been, any complaint, grievance, disciplinary proceeding or disciplinary action against the applicant, and, if any appear, the status thereof, the nature of the charge or charges, the full facts including the disposition thereof, the nature of the final judgment, order or decree, if any, rendered therein and the name and address of the person or body in possession of the record thereof.

- (c) The certificate of good standing shall be submitted by the proper licensing body in the given jurisdiction

CHARACTER AND FITNESS

6.05 Investigation of Applicant's Moral Character and Fitness to Practice Law

- (1) The Board is authorized to conduct investigations and to convene evidentiary hearings for the purpose of determining whether applicants possess the good moral character and fitness to practice law prescribed by ORS 9.220(2) and these Rules.
- (2) The Board may, prior to an evidentiary hearing described in 9.05, request an applicant to appear before members of the Board as part of the Board's investigation.
- (3) The Board may, as necessary, issue subpoenas to secure information material to the Board's inquiry.
- (4) The Board may recommend that the Supreme Court deny admission to an applicant who has failed to comply with Rule 4.25 or who has refused to provide the Board with information material to the Board's inquiry regarding the applicant's good moral character and fitness to practice law. A recommendation that the Supreme Court deny admission under this subsection shall not be subject to an evidentiary hearing under Rule 9.
- (5) If the Board is not satisfied that the applicant has demonstrated that he or she has the good moral character and fitness to practice law, the Board shall provide the applicant with written notice of the Board's determination. The Board shall mail the notice by certified mail. The notice shall describe the Board's basis for its determination and shall advise the applicant of the opportunity to seek an evidentiary hearing pursuant to Rule 9.01.

6.10 List of Applicants; Publication

Prior to each examination, or 45 days prior to admission, the Board shall cause the names of all applicants to be published online in the Oregon State Bar Bulletin or other publication as approved by the Court.

6.15 Applicant Must be Recommended by a Majority of the Board

- (1) Subject to review by the Court under Rule 9.60, an applicant may not be admitted to practice law in Oregon unless at least a majority of all non-recused members of the Board considers the applicant to be qualified by

age and by the requisite moral character, fitness, learning and ability.

- (2) The Board may recommend that an applicant be
 - (a) Denied admission for failure to comply with Rule 6.05(4);
 - (b) Denied admission after an evidentiary hearing, as provided in Rule 9.55(4);
 - (c) Admitted conditionally, subject to probationary terms as specified by the Board; or
 - (d) Admitted unconditionally.
- (3) The Board may recommend specific probationary terms for admission, including, but not limited to, requiring alcohol or drug treatment, requiring medical care, requiring psychological or psychiatric care, requiring professional office practice or management counseling, requiring practice supervision, and requiring professional audits or reports. The Board may recommend persons to supervise the probation and may recommend that cooperation with such supervisors be a probationary term. The Board may recommend that violation of any probationary term be grounds for revocation of probation and immediate suspension from the practice of law. The Board may recommend a specific duration for such probationary terms.

Exhibit 4

2017 ORS 9.210¹

Board of bar examiners

• fees of applicants for admission to bar

- (1) The Supreme Court shall appoint a board of bar examiners to carry out the admissions functions of the Oregon State Bar as set forth in the bar bylaws and the rules of the Supreme Court. The composition of the board of bar examiners shall be as provided in the rules of the Supreme Court, but the board must include at least two public members.
- (2) The board shall examine applicants, investigate applicants' character and fitness and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court.
- (3) With the approval of the Supreme Court, the board may fix and collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the bar.
- (4) Applications for admission and any other material pertaining to individual applicants are confidential and may be disclosed only as provided in the rules of the Supreme Court. The board's consideration of an individual applicant's qualifications is a judicial proceeding for purposes of ORS 192.610 (Definitions for ORS 192.610 to 192.690) to 192.690 (Exceptions to ORS 192.610 to 192.690).
[Amended by 1979 c.252 §20; 1981 c.193 §6; 2015 c.122 §6]

¹ Legislative Counsel Committee, *CHAPTER 9—Attorneys; Law Libraries*, https://www.oregonlegislature.gov/bills_laws/ors/ors009.html (2017) (last accessed Mar. 30, 2018).

2017 ORS 9.220¹

General requirements for admission

An applicant for admission as attorney must apply to the Supreme Court and show that the applicant:

- (1) Is at least 18 years old, which proof may be made by the applicant's affidavit.
- (2) (a) Is a person of good moral character and fit to practice law.
 - (b) For purposes of this section and ORS 9.025 (Board of governors), 9.070 (Duties of president and president-elect), 9.110 (Board of governors to formulate rules), 9.210 (Board of bar examiners), 9.250 (Order for admission) and 9.527 (Grounds for disbarment, suspension or reprimand), the lack of "good moral character" may be established by reference to acts or conduct that reflect moral turpitude or to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice law.
- (3) Has the requisite learning and ability, which must be shown by the examination of the applicant, by the judges or under their direction. However, no rule shall establish any maximum on the number of times an applicant may apply for and take the bar examination whenever presented if the reason for refusing admission to practice law is failure to pass the bar examination. [Amended by 1973 c.827 §2; 1981 c.193 §7; 1983 c.373 §2; 1985 c.599 §1; 1991 c.726 §3; 1995 c.302 §21; 1999 c.171 §3]

¹ Legislative Counsel Committee, *CHAPTER 9—Attorneys; Law Libraries*, https://www.oregonlegislature.gov/bills_laws/ors/ors009.html (2017) (last accessed Mar. 30, 2018).

Exhibit 5

CHARACTER AND FITNESS

CHARACTER AND FITNESS STANDARDS AND GUIDELINES

Every Bar Examination, On Motion and UBE Score Transfer applicant has the burden of proving the character and fitness necessary to practice law in Colorado. Attorney Admissions and its staff, on behalf of the Colorado Supreme Court, the Board of Law Examiners, and the Character and Fitness Committee, investigate the character and fitness of each applicant to the bar. The character and fitness qualifications for admission to the Colorado bar are set out in C.R.C.P. 208.

Although the recommendation for admission is based upon an applicant's current fitness, past conduct can be an indicator of an individual's current fitness to practice. There is no single action or incident that will *per se* result in an applicant being denied admission to practice in Colorado. Every applicant is considered individually based upon the applicant's personal history and record. Attorney Admissions will look not only to the nature and seriousness of the conduct and the applicant's participation in the incident when it occurred; it also considers a variety of factors in reaching its final determination of good character and fitness.

Rule 208.1(6) outlines the following relevant conduct which shall be treated as cause for scrutiny of whether the applicant possesses the necessary character and fitness. The foregoing is inclusive of but not limited to:

- (a) Unlawful conduct;
- (b) Academic misconduct;
- (c) Misconduct in employment;
- (d) Acts involving dishonesty, fraud, deceit, or misrepresentation;
- (e) Acts that demonstrate disregard for the rights or welfare of others;
- (f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits or the raising of vexatious or frivolous defenses;
- (g) Neglect of financial responsibilities;
- (h) Neglect of professional responsibilities;
- (i) Violation of a court order, including a child support order;
- (j) Conduct evidencing current mental or emotional instability that may interfere with the ability to practice law;
- (k) Conduct evidencing current drug or alcohol dependence or abuse that may interfere with the ability to practice law;
- (l) Denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (n) Making false statements, including material omissions, on law school admission applications; or

- (o) Making false statements, including material omissions, on bar applications in this state or any other jurisdiction.

Unlawful Conduct

Attorney Admissions may inquire into arrests even if no conviction resulted. There are many reasons why arrests do not result in convictions, and many of them have no bearing on guilt or innocence. Attorney Admissions is authorized to inquire into all areas of possibly relevant misconduct. The applicant is required to disclose all incidents, and to provide supporting documentation in the form of the arresting agency's report; charging document, complaint, indictment, citation, or information; disposition or sentencing order; and substantiation of successful completion of any sentence(s) imposed. The occurrence of an acquittal or dismissal is relevant, but is not dispositive of the issue. Attorney Admissions does not assume that any arrest was due to guilty conduct on the part of the applicant. The applicant's obligation is to be completely forthright regarding all matters about which Attorney Admissions inquired.

If, at the time of the application, criminal charges are pending against the applicant, Attorney Admissions will hold the application in abeyance until these charges are completely resolved. If a conviction results in probation, deferred judgment/prosecution, suspended sentence, restitution or some other order, Attorney Admissions will not consider the application until the sentence has been served and probation completed. Attorney Admissions will then proceed to investigate the facts and circumstances that led to the criminal charges.

Making a False Statement

Dishonesty in dealings with employers, schools (including applications for admission) and authorities, including Attorney Admissions, is grounds for denial of an application. Giving false information on the application or failing to be entirely forthcoming and completely candid in the application process is a serious error which may have negative consequences for an applicant. With respect to non-disclosure on a law school application, Attorney Admissions will require at a minimum, evidence that the applicant has made full disclosure of the erroneous or omitted information to the law school administration together with the action, if any, taken by the law school.

Neglect of Financial Responsibilities

Attorney Admissions recognizes that mishandling of client funds is a frequent and serious cause for professional discipline. While admission to the bar does not require a perfect credit record, Attorney Admissions is interested in whether applicants have dealt honestly and responsibly with their creditors, and whether they are doing so at the time of application. Responsible dealings generally include, but are not limited to, keeping in contact with the creditor, making payment arrangements, and meeting the terms of those arrangements. If the applicant currently has unpaid collections, judgments, liens, or charged off accounts, in the absence of unusual mitigating

circumstances, Attorney Admissions considers it important that the applicant demonstrate several months of payments as agreed to show a good faith effort to clear the debts. Any arrearage in child support must be paid before an applicant will be certified for admission.

Evidence of Mental Impairment

Evidence of mental impairment, including evidence of impairment due to psychiatric conditions, is one of the factors into which Attorney Admissions must inquire in determining the applicant's fitness to practice law. Attorney Admissions recognizes that the stresses of law school, as well as other life factors, frequently result in applicants seeking psychiatric or psychological counseling. The applicant should not allow the bar application process to deter them from obtaining treatment or counseling when potential benefits might accrue, and Attorney Admissions encourages them to do so. Applicants should be aware that Attorney Admissions looks favorably on applicants' self-recognition of their need for treatment and appropriate utilization of professional services.

Drug or Alcohol Dependency

Evidence of impairment due to drug or alcohol dependence or abuse is a factor that must be considered by Attorney Admissions in determining an applicant's fitness to practice law. The applicant should be prepared to provide treatment records as well as other records of incidents which were associated with any impairment. Attorney Admissions may require applicants to obtain a drug or alcohol evaluation from a licensed professional.

An applicant who has a problem with drugs or alcohol is strongly encouraged to get the counseling or treatment needed as soon as possible. If the applicant has been impaired due to chemical dependency or abuse, the applicant's recognition of the problem and the treatment record(s) will be important positive evidence of rehabilitation regardless of the seriousness of any misconduct which may have arisen from the dependency.

The Colorado Lawyer Assistance Program (COLAP) is a confidential resource available to recent law school students, graduates and licensed attorneys. COLAP may be able to assist an applicant in determining what steps can be taken to assess the current status of a condition or impairment, and if needed, to seek treatment and/or testing. See www.coloradolap.org.

Evidence of Rehabilitation

In making a determination of the character and fitness of an applicant, Attorney Admissions considers the following factors in assigning weight and significance to prior conduct. See *Rule 208.1(7)*. The foregoing is inclusive of but not limited to:

- (a) The applicant's age at the time of the conduct;
- (b) The recency of the conduct;
- (c) The reliability of the information concerning the conduct;

- (d) The seriousness of the conduct;
- (e) The underlying circumstances of the conduct;
- (f) The cumulative effect of the conduct, including its impact on others;
- (g) Documented evidence of rehabilitation;
- (h) Any positive social contributions the applicant has made after the conduct occurred;
- (i) The applicant's candor in the admissions process;
- (j) The materiality of any omissions or misrepresentations; and
- (k) Evidence of mental or emotional instability.

Evidence of rehabilitation is one of the main factors Attorney Admissions uses to determine whether past problems should lead to the denial of an application. Under Rule 208.1(8), an applicant who affirmatively asserts rehabilitation from prior misconduct which bears adversely upon the applicant's character and fitness may provide such evidence by submitting one or more of the following:

- (a) Evidence that the applicant has acknowledged the conduct was wrong and has accepted responsibility for the conduct;
- (b) Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (c) Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative, or other proceedings against the applicant;
- (d) Evidence of cooperation with the Office of Attorney Admissions investigation;
- (e) Evidence that the applicant intends to conform future conduct to the standard of character and fitness necessary to practice law in Colorado;
- (f) Evidence of restitution of funds or property, where applicable;
- (g) Evidence of positive social contributions through employment, community service, or civic service;
- (h) Evidence that the applicant is not currently engaging in misconduct;
- (i) Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law in Colorado and justifies the trust of clients, adversaries, courts and the public;
- (j) Evidence that the applicant has changed in ways that will reduce the likelihood of future misconduct; and
- (k) Other evidence that supports an assertion of rehabilitation, including medical or psychological testimony or opinion.

Merely showing that an individual is now living as and doing those things that the person should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of a positive action is appropriate for applicants for admission to the bar because service to one's community is an implied obligation of its members.

Attorney Admissions will not consider evidence or statements offered by others in support of the applicant on any issue listed above unless that person has been fully informed of the misconduct before offering the evidence or statement.

(5) Essential Eligibility Requirements. Applicants must meet all of the following essential eligibility requirements for the practice of law:

- (a) Honesty and candor with clients, lawyers, courts, regulatory authorities and others;
- (b) The ability to reason logically, recall complex factual information, and accurately analyze legal problems;
- (c) The ability to use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others;
- (d) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (e) The ability to conduct oneself with respect for and in accordance with the law;
- (f) The ability to exhibit regard for the rights and welfare of others;
- (g) The ability to comply with the Colorado Rules of Professional Conduct; state, local, and federal laws, regulations, statutes, and rules; and orders of a court or tribunal;
- (h) The ability to act diligently and reliably in fulfilling obligations to clients, lawyers, courts, and others;
- (i) The ability to be honest and use good judgment in financial dealings on behalf of oneself, clients, and others; and
- (j) The ability to comply with deadlines and time constraints.

RULE 3 BACKGROUND INVESTIGATION

3-10 Standards of an Attorney. An attorney should have a record of conduct that justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to him or her.

3-10.1 Essential Eligibility Requirements. The board considers demonstration of the following attributes to be essential for all applicants and registrants seeking admission to The Florida Bar:

- a.** knowledge of the fundamental principles of law and their application;
- b.** ability to reason logically and accurately analyze legal problems; and,
- c.** ability to and the likelihood that, in the practice of law, one will:
 - 1.** comply with deadlines;
 - 2.** communicate candidly and civilly with clients, attorneys, courts, and others;
 - 3.** conduct financial dealings in a responsible, honest, and trustworthy manner;
 - 4.** avoid acts that exhibit disregard for the rights, safety, or welfare of others,
 - 5.** avoid acts that are illegal, dishonest, fraudulent, or deceitful; and,
 - 6.** comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

3-11 Disqualifying Conduct. A record manifesting a lack of honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be cause for further inquiry before the board recommends whether the applicant or registrant possesses the character and fitness to practice law:

- a.** unlawful conduct;
- b.** academic misconduct;
- c.** making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the board;
- d.** misconduct in employment;
- e.** acts involving dishonesty, fraud, deceit, or misrepresentation;
- f.** abuse of legal process;
- g.** financial irresponsibility;
- h.** neglect of professional obligations;
- i.** violation of an order of a court;
- j.** evidence of mental or emotional instability;
- k.** evidence of drug or alcohol dependency;

- l. denial of admission to the bar in another jurisdiction on character and fitness grounds;**
- m. disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; or**
- n. any other conduct that reflects adversely on the character or fitness of the applicant.**

3-12 Determination of Present Character. The board must determine whether the applicant or registrant has provided satisfactory evidence of good moral character. The following factors, among others, will be considered in assigning weight and significance to prior conduct:

- a. age at the time of the conduct;**
- b. recency of the conduct;**
- c. reliability of the information concerning the conduct;**
- d. seriousness of the conduct;**
- e. factors underlying the conduct;**
- f. cumulative effect of the conduct or information;**
- g. evidence of rehabilitation;**
- h. positive social contributions since the conduct;**
- i. candor in the admissions process; and,**
- j. materiality of any omissions or misrepresentations.**

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

- a. strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;**
- b. unimpeachable character and moral standing in the community;**
- c. good reputation for professional ability, where applicable;**
- d. lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;**
- e. personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;**
- f. restitution of funds or property, where applicable; and,**
- g. positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has**

undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar

RULE 201. Essential Eligibility Requirements to Practice Law. In addition to the successful completion of a degree from an Approved Law School, the successful completion of the bar examination, and not having otherwise been disqualified under Rule 210, the Applicant must meet the following essential eligibility requirements to practice law:

- (a) The ability to be honest and candid with clients, lawyers, courts, the Board and others;
- (b) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
- (c) The ability to communicate with clients, lawyers, courts and others with a high degree of organization and clarity;
- (d) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (e) The ability to conduct oneself with respect for and in accordance with the law;
- (f) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (g) The ability to comply with the requirements of the Idaho Rules of Professional Conduct, applicable state, local and federal laws, regulations, statutes and any applicable order of a court or tribunal;
- (h) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts and others;
- (i) The ability to act honestly and use good judgment in financial dealings on behalf of oneself, clients and others; and
- (j) The ability to comply with deadlines and time constraints.

RULE 202. Qualifications for Admission.

(a) **Qualifications.** Before receiving permission to take the bar examination and for admission to practice law in Idaho, the Applicant must:

- (1) Be at least eighteen years of age;
- (2) Be lawfully admitted to this country;
- (3) Have, or will have received, a juris doctorate or bachelor of laws degree or an equivalent basic law degree from an Approved Law School. Submission of a law school transcript in a form satisfactory to the Board shall be considered compliance with this Rule;
- (4) Have demonstrated the essential eligibility requirements to practice law pursuant to Rule 201 and have met all requirements in the Admission Rules; and
- (5) Be a person of good moral character.

(b) **Multistate Professional Responsibility Examination (MPRE).** Prior to taking the Idaho bar examination, or within the next two scheduled MPRE administrations after successfully completing the Idaho bar examination, the Applicant must take the MPRE and receive a minimum scaled score of 85 or such other minimum scaled score as the Board may establish.

(c) **Duty to Supplement.** All Applicants must supplement their Application with relevant character and fitness information until admitted to practice law in Idaho.

RULE 5. STANDARDS FOR ADMISSION

A. Essential Eligibility Requirements. Applicants must be able to demonstrate the following essential eligibility requirements for the practice of law:

- (1) The ability to be honest and candid with clients, lawyers, courts, the Board, and others;
- (2) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
- (3) The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
- (4) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (5) The ability to conduct oneself with respect for and in accordance with the law;
- (6) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (7) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes, and any applicable order of a court or tribunal;
- (8) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
- (9) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
- (10) The ability to comply with deadlines and time constraints.

B. Character and Fitness Standards and Investigation.

(1) **Purpose.** The purpose of the character and fitness investigation before admission to the bar is to protect the public and to safeguard the justice system.

(2) **Burden of Proof.** The applicant bears the burden of proving good character and fitness to practice law.

(3) **Relevant Conduct.** The revelation or discovery of any of the following shall be treated as cause for further inquiry before the Board determines whether the applicant possesses the character and fitness to practice law:

- (a) Unlawful conduct;
- (b) Academic misconduct;
- (c) Misconduct in employment;
- (d) Acts involving dishonesty, fraud, deceit, or misrepresentation;
- (e) Acts which demonstrate disregard for the rights or welfare of others;
- (f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits;
- (g) Neglect of financial responsibilities;
- (h) Neglect of professional obligations;
- (i) Violation of an order of a court, including child support orders;

- (j) Conduct that evidences current mental or emotional instability that may impair the ability to practice law;
- (k) Conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
- (l) Denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (n) The making of false statements, including omissions, on bar applications in this state or any other jurisdiction.

(4) Considerations. The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors shall be considered in assigning weight and significance to prior conduct:

- (a) The applicant's age at the time of the conduct;
- (b) The recency of the conduct;
- (c) The reliability of the information concerning the conduct;
- (d) The seriousness of the conduct;
- (e) The factors underlying the conduct;
- (f) The cumulative effect of the conduct or information;
- (g) The evidence of rehabilitation as defined in Rule 5B(5);
- (h) The applicant's candor in the admissions process; and
- (i) The materiality of any omissions or misrepresentations.

(5) Rehabilitation. An applicant who affirmatively asserts rehabilitation from past conduct may provide evidence of rehabilitation by submitting one or more of the following:

- (a) Evidence that the applicant has acknowledged the conduct was wrong and has accepted responsibility for the conduct;
- (b) Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (c) Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative, or other proceedings against applicant;
- (d) Evidence of cooperation with the Board's investigation;
- (e) Evidence that the applicant intends to conform future conduct to standards of good character and fitness for legal practice;
- (f) Evidence of restitution of funds or property, where applicable;
- (g) Evidence of positive social contributions through employment, community service, or civic service;
- (h) Evidence that the applicant is not currently engaged in misconduct;
- (i) Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts, and the public;

(j) Evidence that the applicant has changed in ways that will reduce the likelihood of recurrence of misconduct; or

(k) Other evidence that supports an assertion of rehabilitation.

(6) Continuing Obligation. The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the Board or the Court.

(7) Determination. With the exception of applications who have withdrawn, or have been deemed to have withdrawn, a character and fitness determination shall be made with respect to each applicant who is either a successful examinee or otherwise qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 15.

(8) Advisory Opinions.

(a) A law student may request a written advisory opinion from the Board with respect to his or her character and fitness for admission by filing a completed application for admission, a fee in the amount required under Rule 12L, two notarized affidavits as required by Rule 4B(4), and an authorization for release of information as required by Rule 4B(2).

(b) Advisory opinions will not be binding on the Board.

§ 3-112. Essential eligibility requirements for practice of law.

In addition to the admission requirements otherwise established by these rules, the essential eligibility requirements for admission to the practice of law in Nebraska are:

- (A) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
- (B) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
- (C) the ability to conduct oneself with respect for and in accordance with the law and the Nebraska Rules of Professional Conduct;
- (D) the ability to communicate clearly with clients, attorneys, courts, and others;
- (E) the ability to reason, analyze, and recall complex factual information and to integrate such information with complex legal theories;
- (F) the ability to exercise good judgment in conducting one's professional business;
- (G) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others;
- (H) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
- (I) the ability to comply with deadlines and time constraints; and
- (J) the ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

§ 3-112 amended July 25, 2013, effective August 1, 2013.

15-103. Qualifications.

A. Requirements mandatory. License to practice law shall be granted only to applicants who fulfill all of the requirements of these rules.

B. Qualifications. Every person seeking admission to practice law in New Mexico shall file a formal application as prescribed by these rules and as required by the board. Submission of the application shall constitute submission by the applicant to the jurisdiction of the New Mexico Board of Bar Examiners until a final determination upon admission of the applicant may be completed. Every applicant shall have the burden of establishing to the satisfaction of the board that the applicant possesses all of the following qualifications:

- (1) is at least eighteen (18) years of age;
- (2) is a graduate with a juris doctor or bachelor of laws and letters degree (at the time of the bar examination for which application is made or at the time of application for admission by transferred Uniform Bar Examination (UBE) score) of a law school formally accredited by the American Bar Association or is a graduate of any law school who has been engaged in the practice of law in another state or states for at least four (4) of the six (6) years immediately preceding the person's application for admission to practice in New Mexico;
- (3) is a person of good moral character, physically and mentally fit to practice law;
- (4) is, if ever admitted to practice in any other state or states, in good standing in such state or states;
- (5) is professionally qualified for admission to the bar of New Mexico;
- (6) is in compliance with all child support and spousal support obligations imposed under a "judgment and order for support" as defined in the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978, or imposed under a child support or spousal support order entered by any other court of competent jurisdiction. If an applicant is not in compliance with a child support or spousal support obligation, the applicant will not be recommended for admission to the bar until the applicant provides the board with evidence that the applicant is in compliance with the judgment or order. If the applicant has appeared on the Human Services Department's certified list of obligors, the applicant shall submit a certified statement from the Human Services Department that the applicant is in compliance with the judgment and order for support. In all other cases, the applicant shall provide evidence acceptable to the board of compliance with all applicable child and spousal support orders; and
- (7) is a citizen or national of the United States, an immigrant alien lawfully admitted for permanent residence in the United States, or an alien otherwise authorized to work lawfully in the United States.

C. Character and fitness standards and investigation.

- (1) The purpose of character and fitness investigation before admission to the Bar is to assure the protection of the public and to safeguard the justice system.
- (2) The applicant bears the burden of proving good character in support of the application.
- (3) The revelation or discovery of any of the following may be treated as cause for further inquiry before the board determines whether the applicant possesses the character and fitness to practice law:
 - (a) unlawful conduct;

- (b) academic misconduct;
- (c) misconduct in employment;
- (d) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (e) acts which demonstrate disregard for the rights or welfare of others;
- (f) abuse of legal process, including the filing of vexatious or frivolous lawsuits;
- (g) neglect of financial responsibilities or professional obligations;
- (h) violation of an order of a court, including child support orders;
- (i) conduct that evidences current mental or emotional instability that may impair the ability to practice law;
- (j) conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
- (k) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (l) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (m) making of false statements, including omissions, on bar applications in this state or any other jurisdiction; or
- (n) as otherwise determined by the board for just and good cause.

(4) The board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

- (a) the applicant's age at the time of the conduct;
- (b) the recency of the conduct;
- (c) the reliability of the information concerning the conduct;
- (d) the seriousness of the conduct;
- (e) the factors underlying the conduct;
- (f) the cumulative effect of the conduct or information;
- (g) the evidence of rehabilitation;
- (h) the applicant's positive social contributions since the conduct;
- (i) the applicant's candor in the admissions process; and
- (j) the materiality of any omissions or misrepresentations.

(5) The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the board or the Court.

D. Conviction; rehabilitation. A person who has been convicted of a serious crime as defined under these rules shall prove good moral character by demonstrating by clear and convincing evidence that the applicant is rehabilitated and satisfies all other requirements for good moral character.

E. Examination. Except as otherwise provided with respect to law faculty at the University of New Mexico and applicants for admission by motion under Rule 15-107 NMRA, all applicants shall be required to take and pass the bar examination in New Mexico or meet the requirements of these rules for admission by transferred Uniform Bar Examination score.

F. Ethics Exam. Applicants must receive a minimum scaled score of eighty (80) on the Multistate Professional Responsibility Examination (MPRE) prepared and administered by the National Conference of Bar Examiners to be eligible for admission. Applicant must pass the MPRE within one (1) year after the date of notification that the applicant has passed the bar examination or within one (1) year after the date of administration of the Uniform Bar Examination in which a transferred score was earned. For purposes of this paragraph, the date of the notification shall be the date notification is mailed to the applicant by the secretary of the board.

G. Course on New Mexico law. All applicants must submit evidence of in-person attendance at, and successful completion of, a course approved by the Supreme Court, which shall include Indian law, New Mexico community property law, and professionalism, within three (3) years prior to being approved for admission.

[As amended, effective November 14, 1988; July 24, 1996; as amended by Supreme Court Order No. 05-8300-010, effective September 1, 2005; by Supreme Court Order No. 08-8300-028, effective for the February 2009 bar examination; as amended by Supreme Court Order No. 14-8300-001, effective June 1, 2015; as amended by Supreme Court Order No. 15-8300-018, effective November 1, 2015; as amended by Supreme Court Order No. 17-8300-022, effective December 31, 2017.]

Committee commentary. -- The requirements of this rule are intended to assist the Board in assessing whether an applicant has demonstrated

(a) the ability to reason, recall complex factual information and integrate that information with complex legal theories;

(b) the ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;

(c) the ability to use good judgment on behalf of clients and in conducting one's professional business;

(d) the ability to conduct oneself with respect for and in accordance with the law;

(e) the ability to avoid acts that exhibit disregard for the rights, health, safety and welfare of others;

(f) the ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;

(g) the ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts and others; and

(h) the ability to comply with deadlines and time constraints.

[Adopted by Supreme Court Order No. 10-8300-018, effective July 4, 2010.]



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North Dakota Supreme Court Rules
Admission to Practice R. 1A/7

Effective October 1, 2016
[Go to previous version of rule.]

Rule 2. Standards for Admission

A. Essential Eligibility Requirements. Applicants must meet the following essential eligibility requirements for the practice of law:

1. The ability to be honest and candid with clients, lawyers, courts, the Board, and others;
2. The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
3. The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
4. The ability to use good judgment on behalf of clients and in conducting one's professional business;
5. The ability to conduct oneself with respect for and in accordance with the law;
6. The ability to avoid acts which exhibit disregard for the rights or welfare of others;
7. The ability to comply with the requirements of the North Dakota Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a Court or tribunal;
8. The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
9. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
10. The ability to comply with deadlines and time constraints.

B. Character and Fitness Standards and Investigation

1. The applicant shall have the burden of proving that the applicant possesses good moral character and fitness to practice law.
 - a. The Board shall determine whether an applicant's moral character is such as permits a positive recommendation when

the applicant's record of conduct indicates that the applicant is presently honest, trustworthy, diligent, and reliable.

b. The Board shall determine whether an applicant possesses the present fitness to carry out professional duties to clients, courts and the profession. Fitness involves the assessment of mental and emotional health as it affects the competence of a prospective lawyer. An applicant may be of good moral character, but may be incapacitated from proper discharge of the duties as a lawyer by a mental or emotional illness or condition.

c. When an applicant's record of conduct includes inappropriate behavior - such as, for example, an instance of any of the items listed below - the Board will make further inquiry before deciding whether the applicant possesses the good moral character and fitness to practice law required for a positive recommendation:

- (1) unlawful conduct;
- (2) academic misconduct;
- (3) making false statements;
- (4) misconduct in employment;
- (5) acts involving dishonesty, fraud, deceit or misrepresentation;
- (6) abuse of legal process;
- (7) neglect of financial responsibilities;
- (8) neglect of professional obligations;
- (9) violation of an order of a court;
- (10) evidence of mental or emotional instability;
- (11) evidence of drug or alcohol dependency;
- (12) denial of admission to the bar in another jurisdiction;
- (13) disciplinary action by a lawyer disciplinary agency or other professional agency of any jurisdiction.

d. In determining whether the present moral character and fitness of an applicant qualifies the applicant for a positive recommendation, the Board will assess the weight and

significance of any inappropriate conduct by considering the following factors:

- (1) the applicant's age at the time of the conduct;
- (2) the recentness of the conduct;
- (3) the reliability of the information concerning the conduct;
- (4) the seriousness of the conduct;
- (5) the factors underlying the conduct;
- (6) the cumulative effect of conduct or information;
- (7) the evidence of rehabilitation;
- (8) the applicant's positive social contributions since the conduct;
- (9) the applicant's candor in the admissions process;
- (10) the materiality of any omissions or misrepresentations.

2. The Board may employ such assistance in conducting the character and fitness investigation as it deems necessary, including a character report by the National Conference of Bar Examiners or further investigation by the Character and Fitness Committee.

3. At any stage of the registration or application proceedings, the Board may request the applicant to appear before it or a designated Board member to answer any questions.

4. Seeking counsel from the State Bar Association of North Dakota Lawyer Assistance Program (LAP) for mental health or substance abuse problems that might affect law practice administration or compromise professional competence may not be considered adversely by the Board in its evaluation. If the applicant chooses to participate in a program designed for the applicant by LAP and successfully completes that program by the time of graduation, the evidence of such rehabilitation and recovery may be considered favorably by the Board when evaluating the applicant's character and fitness. The applicant's failure to complete a treatment program may be considered adversely by the Board.

C. Independent Evaluation. The Board may require further evidence of an applicant's mental stability and fitness to practice law

reasonably related to the standards for admission, which may require the applicant to undergo an independent evaluation by a licensed professional selected by the Board. The applicant shall be required to complete any necessary releases to facilitate the evaluation. The Board shall request a written report from the professional, including results of all tests made, diagnoses and conclusions. A copy of the report shall be provided to the applicant when the Board receives the report. The cost of any independent evaluation required under this Rule shall be the responsibility of the Board.

D. Character and Fitness Committee. To assist the Board in conducting such character and fitness investigation as it deems necessary, the Board may appoint a Character and Fitness Committee.

1. The Committee shall consist of five persons no more than three of whom may be lawyers currently licensed to practice law in North Dakota. Committee members shall be appointed to five-year terms. Upon the initial appointment of the Committee, its members shall determine by lot the term length of each member. From its members, on an annual basis, the Board shall select a Chairperson. Committee members shall serve without compensation except that they shall be reimbursed their actual expenses incurred in attending Committee meetings.

2. The Character and Fitness Committee shall investigate issues concerning the moral character and fitness qualifications of a registrant or an applicant for admission upon the request of the Board. Upon receipt of such referral, accompanied by all information regarding the registrant or applicant as obtained by the Board, the Character and Fitness Committee shall review the information and conduct such additional investigation as it deems necessary to make its report to the Board. The Committee shall conduct a personal interview with the registrant or applicant regarding the issues referred by the Board.

3. The Character and Fitness Committee shall consider the issues referred by the Board in accordance with:

- a. The provisions of this Rule; and
- b. The applicable decisions of the Supreme Court of North Dakota and the Supreme Court of the United States.

4. Upon completion of the investigation the Committee shall submit to the Board its written report concerning the issues referred by the Board. After review by the Board, a copy of the report shall be forwarded to the applicant only if the Board recommends a conditional admission or makes a negative recommendation.

E. Reapplication and Rehabilitation. Any applicant who receives a negative recommendation for admission based on the lack of moral character and/or fitness that has been accepted by the Supreme Court, may reapply for admission by filing a new application two years after the date of the Board's negative recommendation or such other period as may be set by the Board or the Court. The applicant must take the bar examination if the new application is received later than two years following the negative recommendation, unless the applicant is licensed and a member in good standing of the bar of another state or the District of Columbia. The applicant shall produce clear and convincing evidence of the applicant's rehabilitation and present moral character and fitness to practice law.

[Amended effective August 1, 2001; March 1, 2009; April 1, 2013; October 1, 2014; October 1, 2016.]

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ESSENTIAL ELIGIBILITY REQUIREMENTS FOR THE PRACTICE OF LAW

Definitions of Essential Eligibility Requirements for the Practice of Law

In fulfilling its obligations for investigating whether an applicant possesses the requisite character, fitness and moral qualifications for admission to the practice of law, the Board of Commissioners on Character and Fitness considers the following to be essential eligibility requirements for the practice of law:

1. The cognitive capacity to learn, to recall what has been learned, to reason and to analyze;
2. The ability to communicate clearly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one's professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Code of Professional Responsibility;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and
10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

Admission and Practice Rules

APR 20

DEFINITIONS RELATING TO CHARACTER AND FITNESS DETERMINATIONS

(a) Applicant. "Applicant" as used in APR 20-25.6 means every applicant for admission to practice law, for limited admission or licensure to practice law, for enrollment in the APR 6 law clerk program, or for change of membership class or status under the Bar's bylaws. In matters involving investigations or hearings pursuant to the filing of a petition for reinstatement by a disbarred or revoked lawyer, LLLT, or LPO, "applicant" shall also include a petitioner for reinstatement.

(b) Bar Counsel. "Bar Counsel" as used in APR 20-25.6 means one or more lawyers employed by the Bar who shall represent the Bar Association in reviewing applications for admission, readmission, and licensure or at hearings before the Character and Fitness Board and/or act as counsel to the Character and Fitness Board. Bar Counsel who represents the Bar at hearings before the Character and Fitness Board may make a recommendation in support of or in opposition to the admission, licensure, enrollment, or reinstatement of an applicant.

(c) Good Moral Character. Good moral character is a record of conduct manifesting the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibilities, adherence to the law, and a respect for the rights of other persons and the judicial process.

(d) Fitness to Practice Law. Fitness to practice law is a record of conduct that establishes that the applicant meets the essential eligibility requirements for the practice of law.

(e) Essential Eligibility Requirements. The essential eligibility requirements for the practice of law are:

(1) the ability to exercise good judgment and to conduct oneself with a high degree of honesty, integrity, and trustworthiness in financial dealings, legal obligations, professional relationships and in one's professional business.

(2) the ability to conduct oneself in a manner that engenders respect for the law and adheres to the Washington Rules of Professional Conduct.

(3) the ability to diligently, reliably, and timely perform legal tasks and fulfill professional obligations to clients, lawyers, LLLTs, or LPOs, courts, and others.

(4) the ability to competently undertake fundamental legal skills commensurate with the lawyer, LLLT, or LPO license applied for, such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem solving, and recognition and resolution of ethical dilemmas and:

(5) the ability to communicate comprehensibly with clients, lawyers, LLLTs, LPOs, courts, and others, with or without the use of aids or devices.

(f) Health Diagnosis. "Health diagnosis" as used in APR 20-25.6 means a determination or conclusion regarding a sensory, mental, or physical condition that:

(1) Is medically cognizable or diagnosable; or

(2) Exists in a record or history; or

(3) Is perceived to exist whether or not it exists in fact.

(g) Disbarred or Disbarment. "Disbarred" or "disbarment" as used in APR 20-25.6 includes those terms as applied to lawyers or others and also includes the terms "revoked" or "revocation" when referring to LLLT or LPO licenses.

[Adopted effective October 1, 2002; amended effective September 1, 2006; January 1, 2014; September 1, 2016; September 1, 2017.]

Admission and Practice Rules

APR 21 FACTORS CONSIDERED WHEN DETERMINING CHARACTER AND FITNESS

(a) Factors Considered. The following factors shall be considered when determining an applicant's good moral character and fitness to practice law;

- (1) unlawful conduct;
- (2) academic misconduct;
- (3) making of false statements or omitting material information in connection with an application for limited admission to practice law, to take an examination required for admission, or otherwise for a license or admission to practice law;
- (4) misconduct in employment;
- (5) acts involving dishonesty, making false statements, fraud, deceit, or misrepresentation;
- (6) abuse of legal process;
- (7) neglect of financial responsibilities;
- (8) disregard of professional obligations;
- (9) violation of a court order;
- (10) conduct demonstrating an inability to meet one or more essential eligibility requirements for the practice of law;
- (11) denial of admission to the bar in this or another jurisdiction on character and fitness grounds;
- (12) disciplinary action by any professional licensing or disciplinary agency of any jurisdiction;
- (13) conduct that physically threatens or harms another person; and
- (14) any other conduct that reflects adversely on moral character or fitness of the applicant to practice law.

(b) Aggravating and Mitigating Factors. The following factors shall be considered in mitigation or aggravation when determining an Applicant's good moral character or fitness to practice law;

- (1) applicant's age at the time of the conduct;
- (2) recency of the conduct;
- (3) reliability of the information concerning the conduct;
- (4) seriousness of the conduct;
- (5) factors or circumstances underlying the conduct;
- (6) cumulative nature of the conduct;
- (7) candor in the admissions process and before the Character and Fitness Board;
- (8) materiality of any omissions or misrepresentations; and
- (9) evidence of rehabilitation, recovery, or remission, which may include but is not limited to the following, no single one of which is determinative;
 - (i) absence of recent misconduct
 - (ii) compliance with any disciplinary, judicial, or administrative order arising out of the misconduct;
 - (iii) sufficiency of punishment;
 - (iv) restitution of funds or property, where applicable;
 - (v) applicant's attitude toward the misconduct, including without limitation acceptance of responsibility and remorse;
 - (vi) personal assurances, supported by corroborating evidence, of a desire and intent to engage in exemplary conduct in the future;
 - (vii) constructive activities and accomplishments since the conduct in question;

(viii) the applicant's understanding and acceptance of the factors leading to the misconduct and how similar misconduct may be avoided in the future;

(ix) length of time in which the applicant has been in recovery, or remission, where applicable, and if it is less than two years, expert opinion that the period of treatment, recovery, or remission is adequate for the Applicant to meet the essential eligibility requirements for the practice of law; and

(x) compliance with any recommended or prescribed treatment plans.

(c) Nondiscrimination Policy. In determining good moral character and fitness to practice law, the Bar and the Character and Fitness Board shall not discriminate against any Applicant on the basis of:

- (1) race, color, or ethnic identity;
- (2) gender or gender identity;
- (3) sexual orientation;
- (4) marital status;
- (5) creed or religion;
- (6) political beliefs or affiliation;
- (7) sensory, mental, or physical disability;
- (8) national origin;
- (9) age;
- (10) honorably discharged veteran or military status;
- (11) use of a trained service animal by a person with a disability; or
- (12) any other class protected under state or federal law.

[Adopted effective September 1, 2006; amended effective September 1, 2016; September 1, 2017.]

Exhibit 6

Troy Wood

From: Sharon Orlowski <s.orkowski@csc.state.co.us>
Sent: Wednesday, November 14, 2018 8:11 AM
To: Diane VanAken
Cc: Dawn McKnight; Jessica Crawley; JoAnne Dionesse; Margaret Funk
Subject: RE: Text of Fitness Questions

Good Morning, Diane,

Here is a copy of the text from our application regarding mental health questions:

The following questions address recent mental health and chemical or psychological dependency matters. The purpose of these questions is to determine the current fitness of an applicant to practice law. Each applicant is considered on an individualized basis. The mere fact of treatment for mental health problems or chemical or psychological dependency is not, in itself, a basis on which an applicant is ordinarily denied admission to the Colorado bar. The Office of Attorney Admissions regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical or psychological dependency issues. The Board encourages applicants who may benefit from treatment to seek it. As indicated in the Rules Governing Admission to the Bar, all proceedings conducted pursuant to the Rules are confidential, with certain limited and enumerated exceptions; further, no information is disclosed without giving the applicant advance notice and an opportunity to object. See Rule 211.1.

On occasion a license may be denied when an applicant's ability to function is impaired in a manner relevant to the practice of law at the time that the licensing decision is made, or when an applicant demonstrates a lack of candor by his or her responses. Protection of the public that will receive legal services underlies the licensing responsibilities assigned to the Office of Attorney Admissions. Furthermore, each applicant is responsible for demonstrating that he or she possesses the qualifications necessary to practice law. Your response may include information as to why, in your opinion or that of your treatment provider, your condition will not affect your ability to practice law in a competent and professional manner.

The Office of Attorney Admissions does not, by its questions, seek information that is characterized as situational counseling, such as stress counseling, domestic counseling, and grief counseling. Generally, these types of counseling are not viewed as germane to the issue of whether an applicant is qualified to practice law.

*** I have read, understand and acknowledge the above.**

37. This question number has been intentionally left blank. DO NOT ANSWER.

38. Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner? If YES, complete FORM 38. Duplicate FORM 38 as needed.

39. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner? As used in Question 39, "currently" means recently enough so that the condition or impairment could reasonably have an impact on your ability to function as a lawyer. If YES, complete a separate FORM 39 for each service provider. Duplicate FORM 39 as needed.

40. If your answer to Question 39 is YES, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program? If YES, complete a separate FORM 40 for each service provider. Duplicate FORM 40 as needed.

41. Within the past five (5) years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding, by an educational institution, government agency, professional organization, or licensing authority; or in

connection with an employment or termination procedure? If YES, complete FORM 41. Duplicate FORM 41 as needed.

42. Have you ever been declared incompetent or had a conservator appointed to help conduct your affairs? If YES, provide a copy of the declaration or appointment.

Best Regards,

Sharon Orlowski
Exam Administrator
COLORADO SUPREME COURT
1300 Broadway, Suite 500
Denver, CO 80203
303-928-7784 - Direct line
303-501-1141 - Fax
s.orkowski@csc.state.co.us

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From: Bar Exam Mailing List (<mailto:BAREXAM@NCBEX.ORG>) On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 12:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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+-----+

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Troy Wood

From: Harrington, Kathleen <Kathleen.Harrington@jud.ct.gov>
Sent: Tuesday, November 13, 2018 11:55 AM
To: Diane VanAken
Cc: Jessica Kallipolites; Lisa Valko
Subject: RE: Text of Fitness Questions
Attachments: MentalHealthQuestions_CT2018.2019.pdf

Hi Diane:

Attached please find the questions from our February 2019 bar exam application that deal with mental health. You will see the preamble in the middle of the page explaining why we ask these particular fitness questions. Questions 36 and 37 are the questions that specifically deal with mental health.

I'm sending you the entire page so that you can also see Questions 34 and 35, which our Committee intentionally placed before the preamble since they do not expressly solicit information pertaining to mental health. That said, these questions (34 in particular) have produced numerous disclosures bearing directly on an applicant's character and fitness and these disclosures often, but not always, involve mental health issues. In my opinion, these questions have been much more effective than the specific mental health questions in soliciting useful information.

Best,
Kathie

Kathleen B. Harrington
Deputy Director, Attorney Services
100 Washington Street, 1st Floor
Hartford, CT 06106
(860) 706-5138

DISCLAIMER: While every effort is made to provide candidates with accurate information, in all cases the Rules of the Superior Court and the Regulations of the Connecticut Bar Examining Committee control. You are advised to read the Rules and Regulations carefully.

From: Bar Exam Mailing List [mailto:BAREXAM@NCBEX.ORG] **On Behalf Of** Diane VanAken
Sent: Tuesday, November 13, 2018 2:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

STATE BAR OF MICHIGAN
Michael Frank Building
306 Townsend Street
Lansing, MI 48933-2012
P: (517) 346-6344
F: (517) 372-0403
dvanaken@michbar.org
www.michbar.org

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Yes ☐ No ☐ 34. Within the past five years, have you engaged in any conduct that: (1) resulted in an arrest, discipline, sanction or warning; (2) resulted in termination or suspension from school or employment; (3) resulted in loss or suspension of any license; (4) resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or (5) endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules? If so, explain on Form 2 and include any asserted defense or claim in mitigation or as an explanation of your conduct and, if applicable to your explanation, Form 8.

Yes ☐ No ☐ 35. Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner? If so, explain on Form 2.

Questions 36 – 37 address mental health and chemical or psychological dependency matters. The Committee asks these questions because of its responsibility to protect the public by determining the current fitness of an applicant to practice law, and the purpose of these questions is to determine an applicant's current fitness to practice law. This information, along with all other information, is treated confidentially by the Committee and the Administrative Office. Each applicant is considered on an individual basis. The mere fact of treatment for mental health problems or chemical or psychological dependency is not, in and of itself, a basis on which an applicant is ordinarily denied admission to the Connecticut bar. The Connecticut Bar Examining Committee regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical or psychological dependency issues. The Committee encourages applicants who may benefit from treatment to seek it, and the Committee views such treatment as a positive factor in evaluating an application. As indicated in the Rules, all proceedings conducted pursuant to the Rules and Regulations are confidential.

On occasion, a license may be denied when an applicant's ability to function is impaired in a manner that indicates that the applicant is currently unfit to practice law at the time the licensing decision is made, or when the applicant demonstrates a lack of candor and/or credibility by his or her response. Protection of the public that will receive legal services underlies the licensing responsibilities assigned to the Committee. Furthermore, each applicant is responsible for demonstrating that he or she possesses the qualifications necessary to practice law. Your response may include information as to why, in your opinion or that of your treatment provider, your condition will not affect your ability to practice law in a competent and professional manner.

The Connecticut Bar Examining Committee does not, by its questions, seek information that is characterized as situational counseling, such as stress counseling, domestic counseling, and grief counseling. Generally, the Committee does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

If you answer "YES" to Question 36, complete Forms 7 and 8. Make as many copies of the forms as you need to describe the events.

Yes ☐ No ☐ 36. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in a material way affects your ability to practice law in a competent, ethical, and professional manner? "Currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer. If your answer is yes, continue to Question 37 and complete Forms 7 and 8. If your answer is no, continue to Question 38.

Yes ☐ No ☐ 37. If your answer to Question 36 is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

Troy Wood

From: Michele A. Gavagni <gavagnim@flcourts.org>
Sent: Wednesday, November 14, 2018 10:34 AM
To: Mark Huntsberger; Diane VanAken
Subject: Re: Fitness question preamble
Attachments: BarApp.pdf

Hi Diane,

Attached is our most recent bar application, effective November 1. If you look at Item 25 and 26, you will see the new preamble and the new questions.

Hope this helps,
Missy

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From: Diane VanAken <DVANAKEN@michbar.org>
Sent: Wednesday, November 14, 2018 11:47 AM
To: Michele A. Gavagni; Mark Huntsberger
Subject: Fitness question preamble

Hi Missy and Mark - Would you be able to forward a copy of the new preamble Missy mentioned at the Denver meeting, as well as your current mental health questions from your application? We have had MI Supreme Court inquiry into our mental health questions, so we are trying to offer palatable suggestions for improving, rather than eliminating the area of inquiry.

Thanks much!

Diane

Diane K. Van Aken
Manager of Character and Fitness

STATE BAR OF MICHIGAN
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306 Townsend Street
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Troy Wood

From: Rochelle R Kauai <Rochelle.R.Kauai@courts.hawaii.gov>
Sent: Tuesday, November 13, 2018 11:15 AM
To: Diane VanAken
Subject: Re: Text of Fitness Questions
Attachments: Hawaii Questions 25 and 26 2-2017.pdf

Hi Diane,

Attached is the NCBE-Hawaii Character and Fitness application questions. These are the only 2 questions that we ask regarding mental health issues due to an agreement with the DOJ a number of years ago. Should you require further information please let me know.

Thank you.
Rochelle

-----Bar Exam Mailing List <BAREXAM@NCBEX.ORG> wrote: -----

To: <BAREXAM@NCBEX.ORG>
From: Diane VanAken
Sent by: Bar Exam Mailing List
Date: 11/13/2018 09:07AM
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken

Manager of Character and Fitness

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CHARACTER AND FITNESS INFORMATION

PREAMBLE TO QUESTIONS 25 and 26

NOTICE TO HAWAII APPLICANTS ONLY:

The Supreme Court of the State of Hawai'i has adopted questions 25-26 which must be answered by applicants for admission in Hawai'i.

- 25.** Do you currently consume alcoholic beverages or use drugs in such quantities that your consumption affects your ability to practice law on a day-to-day basis? ☐ Yes ☐ No

If you answered yes, furnish a thorough explanation.

Explanation _____

-
- 26.** Do you currently have any condition(s) that would impair your ability to obey the law, to competently practice law, or to carry out fiduciary duties and ethical responsibilities to clients or as an officer of the court? ☐ Yes ☐ No

If you answered yes, furnish a thorough explanation.

Explanation _____

Troy Wood

From: Maureen Ryan Braley <mryanbraley@isb.idaho.gov>
Sent: Tuesday, November 13, 2018 12:43 PM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Hi Diane. Here you go!

32. (a) Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner?

(b) Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or condition) that in any way affects your ability to practice law in a competent and professional manner?

(c) If your answer to question 32(b) is affirmative, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program? If yes, attach a supplemental sheet specifying the details of such treatment, including the name and contact information of each treatment provider. As used in question 32(b), currently means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.

Maureen Ryan Braley, Esq. | Director of Admissions

Idaho State Bar
525 W. Jefferson Street, P.O. Box 895, Boise, ID 83701
(208) 334-4500 | fax: (208) 334-2764 | www.isb.idaho.gov
mryanbraley@isb.idaho.gov

From: Bar Exam Mailing List [mailto:BAREXAM@NCBEX.ORG] **On Behalf Of** Diane VanAken
Sent: Tuesday, November 13, 2018 12:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken

Manager of Character and Fitness

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Troy Wood

From: Hopson, Tina <Tina.Hopson@courts.in.gov>
Sent: Tuesday, November 13, 2018 11:15 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Diane,
Here are our mental illness questions

23. Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner? Yes ☒ No ☐
- 24.A Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? Yes ☐ No ☒
25. Within the past ten years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure? Yes ☐ No ☐

Thank you,
Tina Hopson
Office Administrator
Admissions Manager
Office of Admissions and Continuing Education
251 N. Illinois Street, Suite 550
Indianapolis, IN 46204
(317) 233-0263

****Please note new address****

From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 2:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

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If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

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Manager of Character and Fitness

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Troy Wood

From: Daniel.Saar@iowacourts.gov
Sent: Tuesday, November 13, 2018 11:21 AM
To: Diane VanAken
Subject: Re: [EXTERNAL] Text of Fitness Questions

Diane-
Please see below for our questions. Let me know if you have any follow-up questions.
Thanks
Dan

43. CONDUCT AND BEHAVIOR: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

If **YES**, furnish a thorough explanation below, including relevant dates.

44. CONDITIONS OR IMPAIRMENTS: Do you currently have any condition or impairment that in any way affects your ability to practice law in a competent, ethical, and professional manner?

If **YES**, set forth the specifics, including dates, the name and the address of treating physician or mental health counselor.

"Condition or impairment" means any physiological, mental, or psychological condition, impairment or disorder, including drug addiction and alcoholism.

"Currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.

"Ability to Practice Law" is to be construed to include the following:

- a. The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, factual investigation, organization and management of legal work, making appropriate reasoned legal judgments, and recognizing and resolving ethical dilemmas, for example.
- b. The ability to communicate legal judgments and legal information to clients, other attorneys, judicial and regulatory authorities with or without the use of aids or devices; and
- c. The capability to perform legal tasks in a timely manner.

The Board understands that mental health counseling or treatment is a normal part of many persons' lives and such counseling or treatment does not of itself disqualify an applicant from the practice of law. Furthermore, the Board does not wish to pry into the private affairs of applicants. However, the Board is obligated by the Supreme Court of Iowa's rules governing admission to the Bar to determine

whether an applicant is physically and mentally fit to practice law, and therefore, must inquire into such matters to the extent necessary to make such determination. The Board is not seeking disclosure of counseling or treatment for a traumatic or upsetting event such as death, break-up of a relationship, or a personal assault, even if such event does affect the applicant's ability to practice law for a limited time.

45. CONDITIONS OR IMPAIRMENTS: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure

If **YES**, set forth the specifics, including dates, the name and the address of entity before which the issue was raised, the nature of the proceeding, and the disposition, if any.

Dan Saar
Assistant Director for Admissions
Office of Professional Regulation
1111 E. Court Avenue
Des Moines, IA 50319
Phone (515) 348-4670
Fax (515) 348-4698

From: Diane VanAken <DVANAKEN@MICHBAR.ORG>
To: <BAREXAM@NCBEX.ORG>
Date: 11/13/2018 01:07 PM
Subject: [EXTERNAL] Text of Fitness Questions
Sent by: Bar Exam Mailing List <BAREXAM@NCBEX.ORG>

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Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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Troy Wood

From: Barry Garrison <Garrisonb@kscourts.org>
Sent: Tuesday, November 13, 2018 11:41 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Diane:

The Kansas Board of Law Examiners had two character and fitness hearings last week. After the hearings, we discussed how to resolve the issue of mental health, character and fitness proceedings, and the ADA. The Board came up with this notion of *if* the recommendation is denial; the applicant is free to raise mental health as a defense. Thereby placing the burden upon them to demonstrate the conduct relates to the mental health issue they raise.

It is a shift in practice from what we have historically done. However, it places the procedure in line with our rules, which indicate, "At the hearing, the applicant bears the burden of establishing, by clear and convincing evidence, that the applicant possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law."

As for your question, see below for a direct quote from our question, which includes mental health:

The purpose of the following inquiries is to determine the current fitness of the applicant to practice law. The mere fact of treatment for mental health problems or addictions is not, in itself, a basis on which an applicant is ordinarily denied admission, and the Board of Law Examiners routinely certifies for admission individuals who have demonstrated personal responsibility and maturity in dealing with mental health and addiction issues.

The Board of Law Examiners does, on occasion, deny certification to applicants whose ability to function is impaired in a manner relevant to the practice of law at the time the licensing decision is made, or to applicants who demonstrate a lack of candor by their responses. This is consistent with the public purpose that underlies the licensing responsibilities assigned to bar admission agencies; further, the responsibility for demonstrating qualification to practice law is ordinarily assigned to the applicant.

The Board of Law Examiners does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board of Law Examiners does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

40. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way affects your ability to practice law in a competent and professional manner?

☐ Yes ☐ No

If you have any additional questions, please let me know.

Best Regards,

Barry L. Garrison
Admissions Administrator
Kansas Board of Law Examiners
301 SW 10th Avenue, First Floor
Topeka, Kansas 66612
785-296-8410

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To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

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Thank you very much for your assistance!

Best regards,

Diane

*Diane K. Van Aken
Manager of Character and Fitness*

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Troy Wood

From: Knight, Linda B. <lknight@courts.ms.gov>
Sent: Thursday, November 15, 2018 5:00 PM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Diane,

We do not have a question on our application which specifically asks about mental health. A number of years ago we did ask about specific mental health issues, however, after Louisiana was sued, those questions were removed from our application and replaced with the following:

- 31) Have you engaged in any inappropriate, illegal, immoral or irresponsible behavior over the last five years that you or others have attributed to consumption or use of prescription, non-prescription or other drugs, alcohol or other intoxicating substances? If YES, complete FORM 2 (Additional Response page), number your response to correspond with this question and describe the facts concerning the behavior, including the date(s), persons witnessing the behavior, any disciplinary action taken or inquiry that was made and the resolution of any inquiry and or disciplinary action.
- 32) Have you engaged in any inappropriate, illegal, immoral or irresponsible behavior over the last five years that resulted in any investigative process, disciplinary or legal consequences or your separation from employment or from an educational institution? If YES, complete FORM 2 (Additional Response page) number your response to correspond with this question and describe the facts concerning the behavior, including the date(s), persons witnessing the behavior, any disciplinary action taken or inquiry that was made and the resolution of any inquiry and or disciplinary action.

I'm about to leave the office and won't be back until November 26. Hope you and Todd and pups have a safe and blessed Thanksgiving! It was great to see you in Denver!

Best, Linda

Linda Knight

Bar Admissions Administrator
Mississippi Board of Bar Admissions
Gartin Justice Building
450 High Street, Suite 2027
Jackson, MS 39201
Direct #601-576-4619

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Sent: Tuesday, November 13, 2018 1:07 PM
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Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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Troy Wood

From: Maine Board of Bar Examiners <execdir@mainebarexaminers.org>
Sent: Thursday, November 15, 2018 8:03 AM
To: Diane VanAken
Subject: Re: Text of Fitness Questions

Hi Diane,

I am the new Executive Director. Please see below for our mental health questions. I look forward to meeting you in person sometime soon, perhaps in San Francisco?

25. A. Do you currently use any drug, narcotic or substance which use is illegal under state or federal law?

1 Yes 1 No

If Yes, please explain.

B. Have you ever claimed to be or been declared legally incompetent?

1 Yes 1 No

If Yes, please explain.

If your answer to either Question 25 (A) or (B) is Yes, complete FORMS 7 and 8.

26. A. Within the last three (3) years have you had any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice law in a competent and professional manner?

1 Yes 1 No

If your answer to Question 26 (A) is Yes, complete FORMS 7 and 8.

B. If your answer to Question 26(A) is Yes, are the limitations or impairments caused by your mental health condition or substance abuse problem reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?

1 Yes 1 No

27. A. Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous, or behavioral disorder or condition as a defense, in mitigation of, or as an explanation for your actions in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination by an educational institution, employer, government agency, professional organization, or licensing authority?

1 Yes 1 No

If you answered Yes, furnish a thorough explanation below:

Name of Entity before which the issue was raised (i.e. court, agency, etc.): _____

Address: _____
City: _____ State: _____ Zip: _____
Telephone: () _____
Nature of the Proceeding: _____

Explanation: _____

B. Are there any other facts not disclosed hereto concerning your background, history, experience or activities which may have a negative bearing on your character, moral fitness, or eligibility to practice law in Maine?

1 Yes 1 No

If Yes, please attach a statement giving a full explanation.

Melissa K. Hansen, Executive Director
Maine Board of Bar Examiners
207-623-2464 (Phone)
207-622-0059 (Fax)
P.O. Box 140
Augusta, Maine 04332-0140
www.mainebarexaminers.org

From: Diane VanAken
Sent: Tuesday, November 13, 2018 2:06 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken

Manager of Character and Fitness

STATE BAR OF MICHIGAN
Michael Frank Building
306 Townsend Street
Lansing, MI 48933-2012
P: (517) 346-6344
F: (517) 372-0403
dyanaken@michbar.org
www.michbar.org

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Troy Wood

From: Emily Eschweiler <eeschweiler@mbcle.state.mn.us>
Sent: Wednesday, November 14, 2018 10:03 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Minnesota's questions begin at page 8. Thanks.

<https://www.ble.mn.gov/wp-content/uploads/2017/01/Bar-Application-Fill-In.pdf>

Emily J. Eschweiler | Director

Minnesota Board of Law Examiners | Board of Continuing Legal Education | Board of Legal Certification | Office of Lawyer Registration
180 East 5th Street, Suite 950 | St. Paul, MN 55101

☎: 651.201.2719 | 📠: 651.297.1196 | ✉: Email: eeschweiler@mbcle.state.mn.us

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From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 1:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken

Manager of Character and Fitness

STATE BAR OF MICHIGAN
Michael Frank Building
306 Townsend Street
Lansing, MI 48933-2012
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F: (517) 372-0403

dsanaken@michbar.org
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Troy Wood

From: Andrea.Spillars@courts.mo.gov
Sent: Tuesday, November 13, 2018 11:16 AM
To: Diane VanAken
Subject: Re: Text of Fitness Questions

Diane,

Here are the Missouri questions related to fitness:

Fitness Q1: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical or professional manner?

Fitness Q2: Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner?

Fitness Q3: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?

Best,
Andrea

Andrea Spillars, J.D.
Executive Director
Missouri Board of Law Examiners
1700 Jefferson Street
Jefferson City, MO 65109
(573)751-9814 (main)
(573)751-6189 (direct)

From: Diane VanAken <DVANAKEN@MICHBAR.ORG>
To: <BAREXAM@NCBEX.ORG>
Date: 11/13/2018 01:07 PM
Subject:Text of Fitness Questions
Sent by: Bar Exam Mailing List <BAREXAM@NCBEX.ORG>

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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Troy Wood

From: Kathie Lynch <klynch@montanabar.org>
Sent: Tuesday, November 13, 2018 1:17 PM
To: Diane VanAken
Subject: RE: Text of Fitness Questions
Attachments: Mental Health Question.pdf

Diane,

I have attached the page from our application in Montana that pertains to the mental health question.

Best,
Kathie

Kathie Lynch
Bar Admissions Administrator | State Bar of Montana
33 S. Last Chance Gulch, Suite 1B
P.O. Box 577 | Helena, MT 59624
Tel: 406-447-2210 (direct) | Fax: 406-442-7763
klynch@montanabar.org | www.montanabar.org

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From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 12:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken

Manager of Character and Fitness

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☐ Yes ☐ No

Explanation _____

30. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?

Note: In this context, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.

☐ Yes ☐ No

Are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

☐ Yes ☐ No

Service provided: From Mo/Yr _____ Mo/Yr _____

Describe the condition or impairment _____

Describe any treatment, or any program that includes monitoring or support _____

■
Name of attending physician or counselor (if applicable) _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Telephone _____

■
Name of hospital or institution (if applicable) _____

Address _____

City _____ State _____ Zip _____

Troy Wood

From: Brian Kunzi <briank@nvbar.org>
Sent: Tuesday, November 13, 2018 11:45 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Diane,

We do not ask any specific questions about mental health. We do include the following question:

Are you now or have you ever been dependent upon, an abuser of, or treated for any condition involving your use of any drug, chemical, narcotic, hypnotic or hallucinatory or other illegal or controlled substance or alcohol?

We specifically state that we do not "ask applicants to disclose information in this Application relating to an applicant's mental health, although applicants are required to provide the Board of Bar Examiners with any information relating to the applicant's conduct or behavior that could call into question the applicant's ability to practice law in a competent, ethical and/or professional manner or renders the applicant unfit to practice law in the State of Nevada.

This statement is followed up with the following question:

Are there any events or circumstances relating to your past or present conduct or behavior which call into question your ability to practice law in a competent, ethical and/or professional manner or renders you unfit to practice law in the State of Nevada?

Please let me know if you need any additional information.

Brian T. Kunzi, Esq.
Director of Admissions
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
Direct (702) 317-1403
Main (702) 382-2200



From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 11:07 AM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

STATE BAR OF MICHIGAN
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Troy Wood

From: Sherry Hieber <shieber@nhoba.org>
Sent: Tuesday, November 13, 2018 11:10 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Hi Diane,

Here are our questions in NH.

11. Do you currently have any condition (including but not limited to substance abuse, alcohol abuse, or a mental, emotional, nervous, or behavioral disorder or condition) which in any way currently affects your ability to practice law in a competent and professional manner? ☐ Yes ☐ No 6

12. If the answer to question 11 is yes, please attach an explanation and provide the names and present addresses of the doctors or other health care professionals with whom you currently consult, or from whom you receive treatment. NOTE: The Committee on Character and Fitness may be requesting reports from treating doctor or other health care professionals concerning such treatment. In the event that the committee or committee staff decides to contact your treating professionals, you will be so notified prior to the contact.

13. Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure? ☐ Yes ☐ No If yes, please attach an explanation and provide the name and address of the authority before which the issue was raised, and the disposition of the matter.

Sherry M. Hieber
General Counsel
N.H. Supreme Court Office of Bar Admissions
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
(603) 224-8806
(603) 224-8728 (fax)
shieber@nhoba.org

From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 2:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

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Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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Troy Wood

From: John McAlary <john.mcalary@nybarexam.org>
Sent: Tuesday, November 13, 2018 11:44 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Hi Diane,

The text of the mental health/fitness question that appears on the New York Application for Admission is:

Do you currently have any condition or impairment including, but not limited to a mental, emotional, psychiatric, nervous or behavioral disorder or condition, or an alcohol, drug or other substance abuse condition or impairment or gambling addiction, which in any way impairs or limits your ability to practice law? ☐ No ☐ Yes

If your answer is 'Yes', describe the nature of the condition or impairment.

If your answer is "Yes", are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program? ☐ No ☐ Yes

If your answer is 'Yes', the Committee on Character and Fitness may require that you provide an Authorization for the Release of Health Information Pursuant to HIPAA (OCA Official Form No.:960) for some or all of the providers of your treatment. The form is available at www.nycourts.gov/forms/hipaa_fillable.pdf.

I hope this is helpful. Let me know if you have any further questions.

Best,

John

From: Bar Exam Mailing List [mailto:BAREXAM@NCBEX.ORG] **On Behalf Of** Diane VanAken
Sent: Tuesday, November 13, 2018 2:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

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Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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Through this application, the Board of Law Examiners makes inquiry about circumstances that may affect an applicant's ability to meet the professional responsibilities of a lawyer. This information is treated confidentially by the Board. The purpose of such inquiries is to allow the Board to determine the current fitness of an applicant to practice law. The mere fact of treatment, monitoring, or participation in a support group is not, in itself, a basis on which admission is denied; the Board routinely admits individuals who demonstrate personal responsibility and maturity in dealing with fitness issues. The Board encourages applicants who may benefit from assistance to seek it.

The Board does, on occasion, deny admission to applicants whose ability to function is impaired in a manner relevant to the practice of law at the time that the licensing decision is made, or to applicants who demonstrate lack of candor by their responses. This is consistent with the public purpose that underlies the licensing responsibilities assigned to the Board; further, the applicant has the responsibility for demonstrating qualification to practice law.

The Board does not seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders.

☐ I have read the information above.

49. Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

☐ Yes ☐ No

Explanation _____

Relevant dates _____

50. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?

Note: In this context, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.

☐ Yes ☐ No

Are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

☐ Yes ☐ No

From Mo/Yr _____ To Mo/Yr _____

Description of condition or impairment _____

Description of treatment or monitoring/support program _____

■ Name of attending physician or counselor (if applicable) _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Telephone _____

■ Name of hospital or institution (if applicable) _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Telephone _____

51. Within the past five years, have you engaged in any conduct that: (1) resulted in arrest, discipline, sanction or warning; (2) resulted in termination or suspension from school or employment; (3) resulted in loss or suspension of any license; (4) resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an employer, educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or (5) endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules? If so, provide a complete explanation and include all defenses or mitigations that you offered in mitigation or as an explanation for your conduct.

☐ Yes ☐ No

Name of entity before which the issue was raised _____

Address _____

City _____ State _____ Zip _____

Telephone _____

Country _____ Province _____

Nature of the proceeding _____

Relevant date(s) _____

Disposition, if any _____

Explanation _____

Troy Wood

From: Penny Gessler <pgessler@ncbex.org>
Sent: Monday, November 19, 2018 6:29 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Hi Diane,
Sorry for the delay, I was out of the office. As you may know, our sample standard C&F application can be found here <http://www.ncbex.org/character-and-fitness> (see questions 29-31).
Many jurisdictions use this version. Please let me know if you require additional information.
Penny

From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 1:07 PM
To: barexam <barexam@ncbe-watson.ncbex.org>
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

*Diane K. Van Aken
Manager of Character and Fitness*

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Troy Wood

From: Allan Cook <Allan.Cook@ble.texas.gov>
Sent: Tuesday, November 13, 2018 11:37 AM
To: Diane VanAken
Subject: RE: Text of Fitness Questions
Attachments: TX app MH questions.pdf

Diane,

Texas asks essentially the same question relating to bipolar or psychotic disorders (including but not limited to schizophrenia or paranoia) on each of four forms attached: the declaration of intention to study law, the in-state application, the out-of-state application and the application for admission without examination.

Thanks.

ALLAN K. COOK
General Counsel
Texas Board of Law Examiners
P.O. Box 13486
205 West 14th St., 5th Floor
Austin TX 78701
(512) 463-9422/Fax (512) 463-5300
allan.cook@ble.texas.gov

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From: Bar Exam Mailing List [mailto:BAREXAM@NCBEX.ORG] **On Behalf Of** Diane VanAken
Sent: Tuesday, November 13, 2018 1:07 PM
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Subject: Text of Fitness Questions

Hello everyone!

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If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

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Declaration of Intention

Date(s)

From

To

Description

7.3 Mental Health Diagnosis

Do you currently have bipolar disorder or any psychotic disorder (including but not limited to schizophrenia or paranoia) that in any way might affect your activities of daily living or ability to practice law in a competent, ethical, and professional manner?

Date Diagnosed

Name of facility or individual providing treatment

Address 1

Address 2

City

State

Zip

Country

Phone number

Email Address

If your answer to this question is 'Yes' are the limitations caused by your disorder reduced or ameliorated by your current ongoing treatment or participation in a monitoring or support program?

Explain

Provide a description of your course of treatment and a description of your present condition. You may also provide information as to why, in your opinion or that of your health care provider, your illness or disorder will not affect your ability to practice law in a competent, ethical, and professional manner.

7.4 Mitigation

Within the past 5 years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, investigation, or administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an unemployment claim, employer discipline, or termination procedure?

Name of entity

Dates of the proceeding

In-state APP

Description

7.3 Mental Health Diagnosis

Since filing your Declaration of Intention to Study Law, do you have bipolar disorder or any psychotic disorder (including but not limited to schizophrenia or paranoia) that in any way might affect your activities of daily living or ability to practice law in a competent, ethical, and professional manner?

Date Diagnosed

Name of facility or individual providing treatment

Address 1

Address 2

City

State

ZIP Code

Province

Country

Phone number

Email Address

Information as to why, in your opinion or that of your health care provider, your illness or disorder will not affect your ability to practice law in a competent, ethical, and professional manner.

7.4 Mitigation

Since filing your Declaration of Intention to Study Law, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, investigation, or administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an unemployment claim, employer discipline, or termination procedure?

Name of entity

Dates of the proceeding

From

To

Address 1

Address 2

City

State

Out of state TX

Within the past 5 years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

Date(s)

From

To

Description

8.3 Mental Health Diagnosis

Do you currently have bipolar disorder or any psychotic disorder (including but not limited to schizophrenia or paranoia) that in any way might affect your activities of daily living or ability to practice law in a competent, ethical, and professional manner?

Date Diagnosed

Name of facility or individual providing treatment

Address 1

Address 2

City

State

ZIP Code

Province

Country

Phone number

Email Address

Information as to why, in your opinion or that of your health care provider, your illness or disorder will not affect your ability to practice law in a competent, ethical, and professional manner.

8.4 Mitigation

Within the past 5 years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, investigation, or administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an unemployment claim, employer discipline, or termination procedure?

Name of entity

Dates of the proceeding

From

To

ALWDX

Description of abuse, addiction, and/or treatment

8.2 Conduct or Behavior

Within the past 5 years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

Date(s)

From

To

Description

8.3 Mental Health Diagnosis

Do you currently have bipolar disorder or any psychotic disorder (including but not limited to schizophrenia or paranoia) that in any way might affect your activities of daily living or ability to practice law in a competent, ethical, and professional manner?

Date Diagnosed

Name of facility or individual providing treatment

Address 1

Address 2

City

State

Zip

Country

Phone number

Email Address

If your answer to this question is 'Yes' are the limitations caused by your disorder reduced or ameliorated by your current ongoing treatment or participation in a monitoring or support program?

Explain

Provide a description of your course of treatment and a description of your present condition. You may also provide information as to why, in your opinion or that of your health care provider, your illness or disorder will not affect your ability to practice law in a competent, ethical, and professional manner.

8.4 Mitigation

Troy Wood

From: Joni Seko <joni.seko@utahbar.org>
Sent: Tuesday, November 13, 2018 12:09 PM
To: Diane VanAken
Subject: RE: Text of Fitness Questions

Diane,

Here is the only question on mental health in Utah's application:

Do you have a current condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which affects your conduct that has not been or is not currently being treated effectively or for which the treatment is unstable?

All the best,

Joni

Joni Dickson Seko
Deputy General Counsel / Admissions
Utah State Bar
645 S. 200 E.
SLC, UT 84111
801-297-7024 - Direct
801-531-0680 - Fax

From: Bar Exam Mailing List <BAREXAM@NCBEX.ORG> On Behalf Of Diane VanAken
Sent: Tuesday, November 13, 2018 12:07 PM
To: BAREXAM@NCBEX.ORG
Subject: Text of Fitness Questions

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

Diane K. Van Aken
Manager of Character and Fitness

STATE BAR OF MICHIGAN
Michael Franck Building
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Troy Wood

From: Catherine Hill (VBBE) <c.c.hill@barexam.virginia.gov>
Sent: Tuesday, November 13, 2018 11:31 AM
To: Diane VanAken
Subject: Re: Text of Fitness Questions

Diane,

Below are the 2 questions we ask related to health matters:

“Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?”

“Do you currently have any condition or impairment, including, but not limited to, (1) any related to substance or alcohol abuse, or (2) a mental, emotional, or nervous disorder or condition, which in any way affects your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner? ‘Currently’ means recently enough so that the condition could reasonably have an impact on your ability to function as a practicing lawyer.”

We preface these questions with the following:

“The mere fact of treatment for health problems is not, in itself, a basis on which an applicant is denied admission in Virginia, and the Board of Bar Examiners regularly licenses individuals who have demonstrated personal responsibility and maturity in dealing with health issues. The Board encourages applicants who may benefit from treatment to seek it. It is only when an applicant’s condition or impairment is so severe that it affects his or her ability to practice law in a competent, ethical, and responsible manner that it is relevant to the character and fitness screening process and, therefore, must be disclosed. ”

“The Board does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board does not view these types of counseling as relevant to the issue of whether an applicant is qualified to practice law.”

I hope this is helpful to you. Just holler if you have additional questions.

Catherine
Catherine Crooks Hill
Secretary-Treasurer
Virginia Board of Bar Examiners
2201 W. Broad Street, Suite 101
Richmond, VA 23220
(804) 367-0445
c.c.hill@barexam.virginia.gov

On Nov 13, 2018, at 2:06 PM, Diane VanAken <DVANAKEN@MICHBAR.ORG> wrote:

Hello everyone!

I have a somewhat urgent request of you today. Several months ago, we did a survey asking if your character and fitness application includes mental health questions; your responses were very helpful to us. We now have a follow up to that inquiry. I looked through the archived surveys, and did not see any that addressed this area of inquiry.

If your application includes questions pertaining to mental health, would you please provide me with the text of the question or questions? I would appreciate it if I could get your response by the end of this week.

Thank you very much for your assistance!

Best regards,

Diane

*Diane K. Van Aken
Manager of Character and Fitness*

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F: (517) 372-0403
dvanaken@michbar.org
www.michbar.org*

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Current West Virginia Questions

Preamble to Questions 30 to 33

NOTICE TO WEST VIRGINIA APPLICANTS ONLY:

The West Virginia Board of Law Examiners (WVBLE) has adopted questions 30-33 which must be answered by applicants for admission in West Virginia.

Through this application, the WVBLE makes inquiry about circumstances that may affect an applicant's ability to meet the professional responsibilities of a lawyer. This information is treated confidentially by the WVBLE. The purpose of such inquiries is to allow jurisdictions to determine the current fitness of an applicant to practice law. The mere fact of treatment, monitoring, or participation in a support group is not, in itself, a basis on which admission is denied; boards of bar examiners routinely certify for admission individuals who demonstrate personal responsibility and maturity in dealing with fitness issues. The WVBLE encourages applicants who may benefit from assistance to seek it.

Boards do, on occasion, deny certification to applicants whose ability to function is impaired in a manner relevant to the practice of law at the time that the licensing decision is made, or to applicants who demonstrate a lack of candor by their responses. This is consistent with the public purpose that underlies the licensing responsibilities assigned to bar admission agencies; further, the responsibility for demonstrating qualification to practice law is ordinarily assigned to the applicant in most jurisdictions.

The WVBLE does not seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Applicants should review the following questions carefully to determine whether a particular condition should be reported.

☐ I have read the information above

Question 30 - Conduct or Behavior

Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

☐ Yes ☐ No

[If the applicant reports conduct in response to this question, he is prompted to give an explanation and to provide the relevant dates.]

Question 31 - Condition or Impairment

Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?

Note: In this context, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.

☐ Yes ☐ No

[If the applicant responds affirmatively, he is prompted to complete a separate entry for each condition or impairment and to include current contact information for the treating physician or counselor. If a condition or impairment was treated by more than one physician or counselor, the applicant is instructed to complete a separate entry for each.]

New Condition or Impairment

The National Conference of Bar Examiners is aware of HIPAA requirements.

Are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or participate in a monitoring or support program? ☐ Yes ☐ No

☐ Present From Month/Year To Month/Year

Description of Condition or Impairment (2000 of 2000 characters remaining)

Description of Treatment or Monitoring/Support Program (2000 of 2000 characters remaining)

Name and Complete Address and Phone of Attending Physician or Counselor (if applicable)

Name and Complete Address and Phone of Hospital or Institution (if applicable)

Question 32 - Defense or Explanation

Within the past five years, have you asserted any condition, impairment, diagnosis, or treatment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?

[If the applicant responds affirmatively, he is prompted to provide additional information.]

New Defense or Explanation

Name and Address of Entity Before Which the Issue Was Raised (e.g., court, agency, etc.)

Nature of the Proceeding

Relevant Date(s)

Disposition, if any

Explanation (2000 of 2000 characters remaining)

Question 33 - Psychotic Disorders

Within the past five years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder as defined by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent editions thereof?

[If the applicant responds affirmatively, he is prompted to provide the current contact information for the treating physician or counselor and to complete an authorization and release form for each physician or treatment facility.]

New Psychotic Disorder

☐ Present From Month/Year To Month/Year

Description of Condition or Impairment (2000 of 2000 characters remaining)

Description of Treatment or Monitoring/Support Program (2000 of 2000 characters remaining)

Name and Complete Address and Phone of Attending Physician or Counselor (if applicable)

Name and Complete Address and Phone of Hospital or Institution (if applicable)

Exhibit 7



OSB Task Forces

BBX Fitness Task Force

The primary purpose of the Oregon State Board of Bar Examiners (BBX) is to safeguard the public by ensuring that bar applicants admitted to practice law in Oregon possess the requisite learning and ability, and character and fitness to practice law. Pursuant to Oregon Revised Statute (ORS) 9.210, the Oregon Supreme Court appoints members to the BBX to carry out the admissions functions of the Oregon State Bar (OSB), and authorizes the BBX to conduct bar examinations and to investigate the character and fitness of bar applicants. ORS 9.220(2) requires an applicant to demonstrate being of good moral character and fit to practice law.

The Oregon Supreme Court's Rules for Admission of Attorneys (RFA) 1.05(4) defines "Fit to practice law" or "fitness" as an applicant demonstrating a level of conduct, mental health, judgment, and diligence that will result in adequate representation of the best interests of clients, including participation in the legal process according to the Oregon Rules of Professional Conduct.

Several recent studies have shown a reticence on the part of bar applicants to seeking treatment for mental health issues out of a concern that doing so will result in a denial of admission due to their condition. In reality, the number of applicants that are ultimately denied admission for any reason is a very small number. Of those who receive closer scrutiny, it is most typically triggered by the person's criminal, employment, or financial issues. Moreover, with the option of conditional admission, those few with recent concerning behaviors who are already on a trajectory of recovery and treatment have a pathway to licensure. These studies emphasize the importance of seeking treatment as early as

possible; in order to minimize the impact any untreated condition might have on the future ability to practice of law.

The BBX has determined that an independent body should re-evaluate the bar application inquiries about mental health and substance use and the screening of these fitness issues. It was also contemplated that the development of essential eligibility admission requirements might help shape these inquiries or, at least, help future applicants understand the abilities needed to become a licensed lawyer in the State of Oregon.

The BBX has appointed a Task Force to examine the following two topics by reviewing other jurisdictions' treatment of them, identifying and developing a compilation of best practices based upon that review, and making recommendations to the BBX:

1. Essential Eligibility Requirements. The ABA Report recommends the adoption of essential eligibility requirements. Approximately 14 jurisdictions have such provisions in place. The ABA Report recommends requirements that affirmatively state the abilities needed to become a licensed lawyer. Their purpose is to provide the framework for determining whether an individual has the required abilities, with or without reasonable accommodations. The report opines that these requirements will help the applicant, the admissions authority, and the medical expert understand what is needed to demonstrate fitness to practice law.

2. Bar Application Fitness Inquiries. Oregon, consistent with a majority of states, utilizes the NCBE's model application questions that screen for fitness issues on its application. A few have moved away from asking any questions related to mental health or behavioral conditions. These jurisdictions have adopted a more resource intensive approach to investigate and screen the backgrounds of each bar applicant.

If you have any questions, please contact Troy Wood at twood@osbar.org or 503-431-6310.

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OSB Task Forces

Materials

Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders

Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns

Dec. 11, 2018 Memo to OSB BBX from Caroline Wong

National Task Force on Lawyer Well-Being from ABA

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