

CHARACTER AND FITNESS

CHARACTER & FITNESS PROCESS

An applicant has the burden of proving the character and fitness necessary to practice law in Colorado.

The first step in meeting this burden is to complete and submit the application materials in a timely manner, to provide all information and/or materials requested, and to provide full explanations. An applicant's timeliness in responding to requests reflects upon the probability the applicant will serve clients in a timely manner. Additionally, an applicant's cooperation and candor in complying with investigative requests reflects upon the probability that the applicant will truthfully deal with courts and opposing parties, upon the applicant's attitude toward authority, and on whether the applicant will follow rules, laws and standards once a licensed lawyer.

The second step is to timely update the investigative information as circumstances change, without waiting to be asked. The applicant has a continuing obligation to timely update the application with respects to all matters inquired of on the application. This obligation continues during the pendency of the application and until the applicant is sworn in as an attorney. See *Rule 208.2(3)*. Address or employment changes, status changes in ongoing litigation, new arrests or judgments, and any other change in circumstances, should be promptly forwarded to Attorney Admissions in writing via an Application Amendment. An applicant should keep a copy of the information which has been provided to Attorney Admissions and review it periodically to determine whether there have been any changes that need reporting.

A thoughtful and complete Character and Fitness Investigation takes a significant amount of time and involves a multi-step process. For bar examination applications, the character and fitness investigation begins before the bar examination. However, the full investigation and determination of character and fitness is made only after the successful completion of the bar examination and a passing score achieved. For other applicant types, the character and fitness investigation begins upon the eligibility determination that the applicant meets the requirements to qualify as an On Motion or UBE Score Transfer attorney. The Character and Fitness Investigation can take anywhere from several weeks to more than a year depending on the nature of the investigation, the issues involved, the applicant's response to requests for additional information, cooperation from outside sources (i.e. references, other government agencies), etc.

Once the application is accepted, the Staff Assistant assigned to the application undertakes an investigation of each applicant. Various methods are used to follow up on applicant responses. Letters and/or email are sent, references are checked, phone calls are made, documentation is received and reviewed from various reporting agencies, etc. As information is received, it is

compared with the applicant's disclosures. An applicant may be asked to explain a discrepancy between the applicant's disclosure and official records, or to explain a nondisclosure when information is discovered during the course of the investigation. Once all information is collected for each file, the file is viewed as a whole.

If the Staff Assistant's investigation of an applicant discloses significant adverse information, the application will be assigned to a Character and Fitness Investigator for further processing. If, after further investigation, the Character and Fitness Investigator believes the applicant does not possess the character and fitness necessary to practice law in Colorado, the application will be reviewed by the Director of Character and Fitness and the Chief Deputy Regulation Counsel. If Attorney Admissions cannot recommend admission, those applicants not certified shall be referred for review by an inquiry panel of the Character and Fitness Committee. See *Rule 208.3(5)*.

If, after investigation, Attorney Admissions recommends that an inquiry panel be assigned to determine whether the applicant has met their burden of establishing possession of the necessary character and fitness, the applicant will be assigned to an inquiry panel for an interview. The inquiry panel is comprised of members of the Character and Fitness Committee. The applicant will receive notice of the inquiry panel interview, in writing, that briefly describes the character and fitness matters in question. An applicant may wish to consider consulting with counsel of the applicant's choice before attending the interview, and may wish to have representation during the interview.

During the interview, which is recorded but not conducted under oath nor governed by the Colorado Rules of Civil Procedure or Rules of Evidence, the applicant is asked to explain his or her conduct surrounding each of the issues. The inquiry panel members ask questions as well. The inquiry panel evaluates the applicant's responses and compares them to the information contained in the applicant's file. The inquiry panel also takes into account the applicant's demeanor, conduct and cooperation with Attorney Admissions' investigation, evidence of rehabilitation, remorse, and whether the applicant demonstrates an understanding of why the issues that brought the applicant before the Character and Fitness Committee are of concern to the Court. The inquiry panel makes a finding whether the applicant has established that he or she possesses the character and fitness necessary to practice law. The inquiry panel can decide that the applicant be admitted, denied admission, or, in its discretion, the inquiry panel may postpone, or defer, making a determination to allow the applicant an opportunity to submit further documentation as evidence that he or she possesses good character and fitness.

An applicant who receives a determination by the inquiry panel he or she has not established the necessary character and fitness for admission is entitled to make a written request for a formal hearing before the Presiding Disciplinary Judge (PDJ) and two members of the Character and Fitness Committee who did not participate in the inquiry panel interview. The inquiry panel findings are defended by the Office of Attorney Regulation Counsel (OARC), acting on behalf of the People of the State of Colorado. Hearings before the hearing board are more formal than the inquiry panel. The Presiding Disciplinary Judge or an attorney member designated as the

presiding member of the hearing board, rules on all motions, objections and other matters of law. The Colorado Rules of Civil Procedure apply when not inconsistent with the Rules Governing Admission and the hearing board is not bound by formal rules of evidence. The hearing board has the authority to issue subpoenas and to cite persons for contempt of the Supreme Court. The proceedings are transcribed and all witnesses are sworn. The applicant continues to bear the burden of proof by clear and convincing evidence at the hearing board, and the hearing is confidential unless the applicant requests in writing that it be made public.

Following the conclusion of the formal hearing, the hearing board will confer and reach a decision. After a decision is reached the hearing board files a report with the Colorado Supreme Court including findings of fact, conclusions of law and recommendations as to admission. Both the applicant and the OARC have the right to file written exceptions to the report. If no written exceptions are timely filed, the case stands submitted upon the hearing board's report. Should written exceptions be filed by either party, the matter is docketed by the Supreme Court and no longer remains confidential and instead becomes a public proceeding. The record is certified to the Colorado Supreme Court and the matter briefed by the parties.

The Supreme Court, after reviewing the report of the hearing board, any exceptions filed, the record and the parties' briefs, may adopt, modify, or reject the report in whole or in part, or may receive further evidence prior to its decision to admit or decline to admit the applicant. The Supreme Court reserves the authority to review any determination made in the course of an admission proceeding and to enter any order with respect thereto, including an order that the Character and Fitness Committee, inquiry panel, and/or hearing board conduct further proceedings. The Supreme Court makes the final decision with regard to the admission of an applicant. If the Supreme Court denies an applicant's application for admission, the applicant may reapply for admission no earlier than five (5) years from the date of the final order.

An applicant's candor when filling out the application questionnaire, and during the entire character and fitness process, may be the most telling indicator of the applicant's current character and fitness. If an applicant is not truthful concerning past conduct, that lack of candor may say more about the applicant's true character than any incident that may have previously occurred. Because required disclosures may be sensitive in nature, and because the process requires applicants to be candid, the Character and Fitness process is confidential. Information obtained in the course of processing an application for admission to the bar may not be used for any other purpose or otherwise disclosed without consent of the applicant or one of the enumerated exceptions found in Rule 211.1(1).