



THE SUPREME COURT *of* OHIO

CHARACTER AND FITNESS INVESTIGATIVE PROCESS

I. Background Information

- A. Under the Ohio Constitution, the Supreme Court has exclusive authority to regulate admission to the practice of law, the discipline of attorneys, and all other matters relating to the practice of law.
- B. Pursuant to this constitutional grant of authority, the Supreme Court has promulgated Rules for the Government of the Bar. Rule I addresses admission to practice. It requires that, to be admitted to practice in Ohio, an applicant must:
 - 1. be at least 21 years of age;
 - 2. have a bachelor's degree from an accredited college or university;
 - 3. have a law degree from an ABA approved law school;
 - 4. **be approved as to character, fitness, and moral qualifications;**
 - 5. pass the Ohio bar examination, the Ohio Law Component (OLC), and the Multistate Professional Responsibility Exam (MPRE); and
 - 6. take an oath of office.
- C. An applicant's character and fitness are so important that no one may take the Ohio bar exam without **first** receiving character and fitness approval. The Supreme Court does not waive this requirement of pre-exam approval.

II. Procedures for Review of Character and Fitness

- A. Registration Application
 - 1. Any applicant who intends to take the Ohio bar exam must file an Application to Register as a Candidate for Admission to the Practice of Law (Registration Application) with the Supreme Court.
 - 2. The Registration Application consists of a number of items, including:
 - a. a character questionnaire;
 - b. release forms;
 - c. fees for a character investigation (\$75 to the Supreme Court and \$250 to the NCBE).

3. The Registration Application is due by November 15 in the second year of law school. Applications filed after that date are subject to late fees and “outside” deadlines.
 - a. An applicant may not apply to take a July bar exam if the applicant did not register by the preceding January 15.
 - b. An applicant may not apply to take a February bar exam if the applicant did not register by the preceding August 15.
4. The Registration Application triggers a character investigation of the applicant. The investigation, and approval of the applicant’s character and fitness, **must** be completed before the applicant may take the Ohio bar exam. The early filing deadlines are imposed:
 - a. to provide adequate time for a thorough investigation and thoughtful evaluation of the applicant;
 - b. to provide time and information to the applicant with a problem record so the applicant can make a more informed decision about completing law school, applying for bar admission elsewhere, demonstrating rehabilitation, etc.

B. NCBE Background Verification

1. The applicant’s character questionnaire is reviewed by the National Conference of Bar Examiners (NCBE).
2. The NCBE verifies information reported by the applicant, contacts the applicant’s references, obtains a police report from each jurisdiction in which the applicant has resided, and performs other checks as needed.
3. The NCBE prepares a report for the Supreme Court.

C. Investigation by Admissions Committee

1. After the NCBE has submitted its report, the Bar Admissions Office forwards the following to the appropriate admissions committee:
 - a. NCBE Report;
 - b. cover sheet from Bar Admissions Office indicating if any items are missing from the NCBE report;
 - c. applicant’s character questionnaire;
 - d. executed authorization and release forms;
 - e. forms for the Admissions Committee Report and Report of the Admissions Committee Interviewer (to be completed by the members of the admissions committee).
2. Within 35 days after receiving the above documents, the admissions committee must:

- a. review the applicant's character questionnaire, the NCBE report, and the checklist of missing items, paying particular attention to items that call into question the applicant's character, fitness, and moral qualifications to practice;
- b. schedule a personal interview of the applicant; and
- c. notify the applicant in writing of the date and the place of the interview and that failure to cooperate in completing the interview may be grounds for disapproval of the applicant.

(Note, however, that Gov. Bar R. I does **not** impose any deadline by which the admissions committee must make a decision as to an applicant's character, fitness, and moral qualifications. Although an admissions committee is expected to review an applicant and make a recommendation as expeditiously as reasonable, the admissions committee should take any amount of time it considers necessary and appropriate in order to review an applicant thoroughly. This is especially important to remember when late filing applicants pressure the admissions committee to make a hasty recommendation before a bar exam.)

3. In preparation for the interview of the applicant, the admissions committee may conduct additional investigation of the applicant. The admissions committee may use the applicant's signed authorization and release forms to obtain relevant records and information needed to assess the applicant's character, fitness, and moral qualifications. The course and extent of a pre-interview investigation will depend in large part upon whether relevant items are missing from the NCBE report and whether any items in the application call into question the applicant's character and fitness. Pre-interview investigation may include, for example, the following:
 - a. phone calls to or interviews of the applicant's character references;
 - b. requests to the appropriate sources for verification of information reported by the applicant in the character questionnaire, if not verified by the NCBE;
 - c. review of files or other court records in cases in which the applicant is or was involved;
 - d. requests for background records, including, for example,
 - i. driving records (e.g., Bureau of Motor Vehicles);
 - ii. criminal records (e.g., relevant police departments, Bureau of Criminal Identification and Investigation);
 - iii. credit reports;

- e. requests that the applicant undergo a drug or alcohol assessment or a psychological evaluation.

The admissions committee may require the **applicant** to obtain relevant documents and information.

4. At least two members of the admissions committee must **jointly** conduct a **personal** interview of the applicant. During the interview, the interviewers should:
 - a. ask the applicant whether any answer on the character questionnaire should be changed or supplemented because of events occurring after the date on which the character questionnaire was prepared and signed by the applicant;
 - b. inquire into items in the application that call into question the applicant's character, fitness, and moral qualifications to practice.
5. Following the interview, each interviewer must complete a Report of the Admissions Committee Interviewer ("green sheet"). On the form, the interviewers should answer each question, identify any areas of concern that they have regarding the applicant, and explain how the concerns were considered and resolved. This is important; if it does not receive an adequate explanation of concerns from the interviewers, the Board might think that important issues were overlooked. This could prompt an unnecessary *sua sponte* investigation by the Board.
6. Before making a recommendation regarding the applicant's character, fitness, and moral qualifications, the admissions committee may conduct additional investigation following the interview.
 - a. The post-interview investigation may include the same steps as those identified with regard to the pre-interview investigation.
 - b. In some instances, the admissions committee may wish to conduct a second interview of the applicant.
 - c. Some admissions committees have adopted procedures for a hearing before the full admissions committee, if a second interview does not satisfy the concerns of the committee.
7. At the conclusion of the investigation, the admissions committee must apply the standards in Gov. Bar R. I in determining whether the applicant possesses the requisite character, fitness, and moral qualifications for admission to practice. The committee must then complete an Admissions Committee Report regarding the applicant.

- a. The report makes a recommendation regarding the applicant's character, fitness, and moral qualifications to practice. This recommendation should be one of the following:
 - i. approval;
 - ii. approval with qualifications; or
 - iii. disapproval.
 - b. The report must be signed by the chair of the admissions committee.
 - c. If the admissions committee recommends an approval with qualifications, the specific qualifications should be included in the report.
 - d. If the admissions committee recommends either a disapproval or an approval with qualifications, the admissions committee must identify in its report those factors upon which it based its recommendation.
8. The admissions committee submits its reports (Admissions Committee Report and interviewers' green sheets) to the Bar Admissions Office. At the same time, the admissions committee should return to the Bar Admissions Office all documents originally forwarded to it by the Bar Admissions Office along with any additional documents obtained by the admissions committee in the course of its own investigation.
9. An admissions committee provisional recommendation of **unqualified approval** is submitted to the Board, and the **Board** determines whether the applicant has the requisite character, fitness, and moral qualifications for admission. An approval at this point is considered an initial, or preliminary, approval. The applicant must be reviewed again and receive a final approval before he or she will be entitled to take the bar examination.
10. If the admissions committee recommends a disapproval or an approval with qualifications, the applicant may appeal to the Board for a hearing.

III. Hearings before the Board

A. Origin

1. Appeals by Applicants

- a. If the admissions committee's recommendation is approval with qualifications or disapproval, the recommendation is deemed a disapproval. In its written report, the admissions committee must enumerate the specific reasons for its recommendation.

The Bar Admissions Office must then forward a copy of the admissions committee report to the applicant by certified mail. The applicant has 30 days from receipt of the report in which to appeal the admissions committee's recommendation.

- b. To appeal, the applicant must file a written notice of appeal with the Bar Admissions Office and serve a copy of the notice of appeal on the admissions committee.
- c. If the applicant does not appeal, the application is considered withdrawn.
- d. Upon receipt of a timely-filed notice of appeal, the Secretary of the Board issues an entry appointing a panel of three Commissioners, designating one Commissioner as chair, and requesting the admissions committee to identify counsel who will represent it before the Board.

2. *Sua Sponte* Hearings by Board

- a. Any time prior to an applicant's admission to the practice of law, the Board may investigate *sua sponte* an applicant's character, fitness and moral qualifications.
- b. The Board might conduct a *sua sponte* investigation under the following circumstances:
 - i. The applicant had an earlier character and fitness hearing before the Board and is now reapplying for admission;
 - ii. A significant character and fitness issue appears in the applicant's record, but it is not evident from the admissions committee reports that the committee considered the issue and explored it with the applicant;
 - iii. The applicant's record includes a very serious matter that the board feels an obligation to review, even if it has been carefully investigated by the admissions committee;
 - iv. After the admissions committee has reviewed the applicant and recommended approval, the Board obtains new information that the admissions committee did not have during its review (e.g., information that was withheld by the applicant, information about a recent incident that occurred after the admissions committee's review);
 - v. The applicant's record includes a "red flag" issue. Certain issues are red-flagged for review by the Board to ensure consistency in how the various admissions committees approach and treat applicants with the same problems. For example, the Board might conduct a *sua sponte* investigation of an applicant with a record of past due debt if the admissions committee's recommendation

for approval is inconsistent with how similarly situated applicants have been treated in the past.

- c. The Board may appoint a special investigator to assist with *sua sponte* investigations. However, the Board also prefers to have admissions committees involved at its *sua sponte* hearings.
- d. The Board also may investigate an attorney **already** admitted to the practice of law in Ohio. This may be done if a matter is brought to the Board's attention alleging that the attorney had made a materially false statement in—or deliberately failed to disclose any material fact in connection with—the attorney's application for admission to the practice of law.
- e. Hearings initiated under the Board's *sua sponte* investigatory authority generally are conducted in the same manner as those initiated by an applicant's appeal.

3. Hearings for Applicants with Felony Records

- a. If an applicant has been convicted of a felony, the applicant **must** undergo a review by the Board, regardless of what the admissions committee recommends.
- b. The Board may approve the applicant after review of additional temporal and substantive criteria.
- c. If the applicant's felony record involves aggravated murder, murder, or any first or second degree felony under Ohio law, the applicant **must also** undergo a review by the Supreme Court.

B. Filing of Documents in Character and Fitness Case

- 1. Original documents are filed with the Secretary of the Board at the Bar Admissions Office address.
- 2. Copies should be mailed to the panel members, counsel of record, and the applicant (if not represented by counsel).

C. Pre-hearing Matters

- 1. A telephone pre-hearing conference is arranged by the panel chair. This conference usually involves the panel chair, both counsel of record and the applicant (if not represented by counsel), and is intended to define and narrow issues, discuss discovery, set a hearing date, discuss length of hearing, identify witnesses, and agree on a hearing location.
- 2. The Board chair, panel chair, and Secretary of the Board have authority to issue subpoenas, which are issued under the name and seal of the Supreme Court of Ohio.

- a. Counsel of record may obtain pre-signed subpoenas from the panel chair. Persons requesting subpoenas are responsible for serving the subpoenas in accordance with the Ohio Rules of Civil Procedure.
 - b. To preserve confidentiality consistent with Gov. Bar R. I, subpoenas bear the case number but not the name of the applicant.
 - c. Refusal of a person to comply with a subpoena is deemed contempt of the Supreme Court and punished accordingly.
3. The applicant may have counsel represent him or her in the appeal, at the applicant's expense. Written notice of appearance of applicant's counsel should be filed with the Secretary of the Board, and copies should be sent to panel members and counsel of record.
 4. There is an expectation that all parties will cooperate with discovery.

D. Hearing

1. The Board hearing should inquire into the applicant's character, fitness and moral qualifications. The admissions committee and the applicant should offer such evidence as bears upon the applicant's character, fitness and moral qualifications. The applicant and the admissions committee may call witnesses and cross examine witnesses; the panel may also call and examine all witnesses.
2. The panel will consider all relevant evidence as determined by the panel. The parties and counsel must cooperate with the panel and may not keep relevant information from the panel. For example, doctrines such as attorney-client privilege should not be invoked by the applicant to keep relevant information from the panel. See In re Application of Davis (1974), 38 Ohio St. 2d 273, 274-275.
3. The burden of proof is on the applicant to establish by clear and convincing evidence the applicant's present character, fitness and moral qualifications. An applicant's failure to provide requested information or otherwise cooperate in the proceedings may be grounds for disapproval.
4. Proceedings in a character and fitness hearing should be cooperative in nature. These proceedings involve a mutual inquiry to acquaint the Court and its agents with "the applicant's innermost feelings and personal views on those aspects of morality, attention to detail, forthrightness and self-restraint which are usually associated with the accepted definition of 'good moral character'". See In re Application of Davis (1974), 38 Ohio St. 2d 273, 274.
5. The applicant should respond to questions raised by the admissions committee. The committee should explain its concerns regarding the applicant and make available all pertinent information.

E. Panel Report and Review by Board

1. After concluding the investigation and hearing, the panel reports its findings, including a stenographic record of the proceedings, to the full Board.
2. An applicant reviewed by the Board will be approved only if he or she receives a vote in favor of approval by not fewer than seven Commissioners.
 - a. The Board may accept, modify, or reject the panel's report and recommendation.
 - b. The Board may remand a matter to the admissions committee for further investigation.
3. If the Board approves the applicant, an entry of approval is sent to the applicant, the admissions committee, and all counsel of record. There is no provision in Gov. Bar Rule I for admissions committee appeal of an approval by the Board.
4. If the applicant is not approved, the Board files its final report, including its findings of fact and recommendations, with the Clerk's Office of the Supreme Court. The Board may recommend either that the applicant be disapproved and not permitted to reapply or that the applicant be disapproved and permitted to reapply only after a specific period of time.
5. If the applicant has a felony record for aggravated murder, murder, attempted murder, or rape, the Board files a report with the Court even if it recommends approval of the applicant.

IV. Supreme Court Review of Board Reports

- A. Upon the filing of a Board report with the Supreme Court, the Court issues a show cause order. Copies of the Board report and the show cause order are sent to the applicant, the admissions committee, and all counsel of record.
- B. Within 30 days after the show cause order is issued, the applicant and the admissions committee may file objections and a supporting brief.
- C. The applicant and the admissions committee may respond to the other side's objections by filing an answer brief within 15 days after the objections are filed.
- D. The Rules of Practice of the Supreme Court apply in character and fitness proceedings pending before the Court. Therefore, parties must strictly adhere to the filing deadlines, service requirements, and other requirements of the rules.

- E. If objections are filed, the case is scheduled for oral argument before the Court. If objections are not filed, the matter is considered on the report of the Board. The Court issues an order, which is usually accompanied by a written opinion.

V. Confidentiality

- A. All information, proceedings, and documents relating to an applicant's character and fitness investigation are strictly confidential. They may be disclosed only:
1. as necessary to conduct the character and fitness investigation of the applicant;
 2. in connection with a disciplinary investigation of the applicant after the applicant's admission;
 3. pursuant to a written release of the applicant if the applicant is seeking admission in another jurisdiction;
 4. in connection with character and fitness cases filed with the Supreme Court;
 5. as necessary to report violations of law by licensed attorneys, as limited by Gov. Bar R. I, Sec. 16(D).
- B. A Board report is public when it is filed with the Supreme Court. However, the Board's record in the case, which is filed in the Supreme Court along with the Board's report, is filed under seal. The record remains under seal for 60 days. It then becomes public unless the Court, on motion or sua sponte, orders that the record or portions of the record should remain confidential.
- C. The confidentiality requirement applies to:
1. members, employees, and agents of the Supreme Court or the Board;
 2. members and employees of admissions committees;
 3. court reporters at Board hearings;
 4. witnesses at Board hearings
[Note: it is the responsibility of the party calling the witness to inform the witness of the confidentiality requirements.];
 5. attorneys representing applicants.
- D. The failure of a person to abide by the confidentiality requirements is deemed contempt of the Supreme Court.