

## THE CHARACTER & FITNESS PROCESS

An applicant has the burden of proving they have the necessary character and fitness to practice law in Colorado. The Office of Attorney Admission (“Office,” “OAA”) is charged with making this determination. All individuals who wish to practice law in Colorado must demonstrate they possess the character and fitness and exhibit good moral character. An applicant must prove they meet their burden in order to safeguard the practice of law and protect the public. See C.R.C.P 208.1(1).

The Office of Attorney Admissions (“Office,” “OAA”) is charged with completing a character and fitness investigation on each application submitted to the Office. The Office must be able to certify to the Colorado Supreme Court that an applicant has met their burden. To complete the certification the Office identifies Relevant Conduct and weighs it against Considerations and Rehabilitative efforts.

C.R.C.P. 208.1(6) outlines the following Relevant Conduct which shall be treated as cause for scrutiny during the character and fitness review. The following is inclusive 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.

Due to the nature of the Relevant Conduct additional materials are often required. Those materials are reviewed by either a Licensure Analyst or an Investigator with the Office. The Colorado Rules of Civil Procedure allows the Office to weigh Relevant Conduct against Considerations and Rehabilitation.

In making a character and fitness determination, the Office includes the following Consideration factors. See C.R.C.P. 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 another important factor when assessing weight and significance against Relevant Conduct. Under C.R.C.P. 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.

To summarize, the Office of Attorney Admissions completes a thorough and holistic approach to conducting a character and fitness review. The aforementioned rules are used to conduct a holistic character and fitness review.

For the Office to make its decision, an applicant must complete and submit an application for admission to practice law in Colorado with our Office. A complete application includes all required and requested materials as instructed. Applicants do have the ability to submit an incomplete application. Please be advised, however, that applicants will not be cleared for character and fitness purposes until all materials are received and reviewed by OAA.

At times it will become necessary to update or amend an application with OAA. The final section of the application instructs applicants to make amendments within ten days of the event. You will also certify on your Statement of Verification that you will comply with this condition. An example for an amendment is when an applicant changes employers during the admission process. The Applicant is required to complete and upload an employment change within ten days of changing employers. Timeliness is an essential eligibility requirement of a practicing attorney. *See C.R.C.P. 208.1(5)(j)*. Applicants should keep a copy of the information they provide to OAA and review it periodically to ensure their application remains updated.

After the online application is submitted, the application is reviewed for eligibility (based on application type) by a Licensure Analyst (“Analyst”). The completion of the eligibility determination then triggers the character and fitness review. During the review it is commonplace for an Analyst to contact applicants through the online portal concerning their application. References are also contacted.

On occasion, the Analyst may believe further investigation of an application file is needed. The Analyst presents the applicant file at the Character and Fitness Meeting. The Character and Fitness Meeting is comprised of Analysts, Investigators, Deputy Regulation Counsel, Chief Deputy Regulation Counsel, and Attorney Regulation Counsel. As a team a decision is made as to the direction of the application.

Some applications are assigned to an Investigator. The investigator takes a deeper dive into the application. Investigators commonly communicate with applicants, references, and third parties. They compile collected information and present their findings at another Character and Fitness Meeting. Again, a team decision is made as to the best course of action to be taken with an application.

If the Office is unable to certify to the Court that the applicant has met their burden of demonstrating they have the character and fitness to practice law in Colorado, the applicant will be asked to appear for an interview before an Inquiry Panel. *See C.R.C.P. 208.3(5)*. The applicant will receive notice in writing. The notice will briefly describe the character and fitness matters in question. Applicants asked to appear before an Inquiry Panel will receive a copy of the Report of Investigation (ROI) that is presented to the Panel prior to the interview being conducted. Applicants are welcomed to provide OAA with any additional documentation they

would like the Panel to receive. Applicants are allowed to appear for the interview with their counsel.

The members of an Inquiry Panel are charged with the responsibility of conducting the interview and making a determination as to if an applicant met their character and fitness burden. Office of Attorney Admissions staff does not participate in the interview but is present in order to provide administrative support. The interview is informal and is not bound to the formal rules of evidence. *See* C.R.C.P. 208.4(5). The interview is recorded. The nature of the interview is to discuss the Report of Investigation and for the applicant to address the Panel's questions and concerns. The Panel may clear the applicant for admission, defer their decision, or recommend denial of the application.

If the Panel recommends the applicant be denied admittance to practice law in Colorado, the Panel has 35 days to complete their Findings and Conclusions. The Findings outline the Panel's fact findings and the reasoning for their determination. The Findings are presented to the applicant. An applicant may submit a written request for a Formal Hearing if they object to the Panel's Findings. The applicant has 28 days to file a Request for Formal Hearing with the Office of the Presiding Disciplinary Judge (PDJ). *See* C.R.C.P. 209.1.

A Formal Hearing is then conducted before the Presiding Disciplinary Judge (PDJ) and two other members of the Character and Fitness Committee that did not participate in the Inquiry Panel interview. Hearings are not as informal as the interview but are conducted in a manner similar to a courtroom proceeding. 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 applicant continues to bear the burden of proof by clear and convincing evidence at the Hearing.

At the conclusion of the Hearing the hearing board will confer and reach a determination. Their Findings of Fact and Conclusions of Law are submitted to the Colorado Supreme Court. The Findings include a recommendation to the Court as to admission or denial for the applicant. The Court may adopt, modify, or reject the Findings in whole or in part. The Supreme Court makes the final decision with regard to the admission of an applicant. If the Supreme Court denies an applicant for admission, the applicant may reapply for admission no earlier than five years from the date of the final order.