

2013 SC 125

FILED

DEC - 5 2013


CAROL G. GREEN
CLERK OF APPELLATE COURTS

IN THE SUPREME COURT OF THE STATE OF KANSAS

RULES RELATING TO ADMISSION OF ATTORNEYS

New Rules 701A and 701B are hereby adopted and Rules 702, 703, 704, 707, 708, 709, 710, 712, 717, 718, 721, and 722 are hereby amended effective February 3, 2014. See attached document.

BY ORDER OF THE COURT this 3 day of December, 2013.



Lawton R. Nuss
Chief Justice

**RULES RELATING TO ADMISSION
OF ATTORNEYS**

RULE 701A
ADMISSIONS ATTORNEY

- (a) The Disciplinary Administrator shall appoint an attorney on the Disciplinary Administrator's staff to serve as the Admissions Attorney for the Board.
- (b) The duties of the Admissions Attorney include:
- (1) conducting character and fitness investigations of all applicants for admission to the Kansas bar;
 - (2) approving an application when the applicant meets character and fitness qualifications under Rule 707;
 - (3) referring to the Review Committee applications that present character and fitness issues; and
 - (4) prosecuting hearings before the Board when recommended by the Review Committee.

RULE 701B
ADMISSIONS REVIEW COMMITTEE

- (a) The Supreme Court shall appoint an Admissions Review Committee (Review Committee) consisting of three active attorneys in good standing and engaged in the practice of law in Kansas who are not members of the Board. The Supreme Court shall designate one member as chair.
- (b) The initial terms for each of the three members shall be for one, two, or three years. Subsequent terms shall be for three years, except an appointment to fill an unexpired term. The Supreme Court shall appoint a new member to fill a vacancy occurring during a term. No member may serve more than three consecutive three-year terms, except that a member whose initial term is less than three years may serve three consecutive three-year terms thereafter. Temporary appointments may be made by the Supreme Court for a particular application if a Review Committee member has a conflict or for a period of time if a Review Committee member is unable to act.
- (c) The Review Committee shall meet on call of the Admissions Attorney who shall designate the time, date, and place of the meeting. Meetings may be conducted by telephone conference.
- (d) Individual members of the Review Committee may review written materials, interview bar applicants referred by the Admissions Attorney, and report to the full committee.

The Review Committee may approve an applicant or request additional investigation or materials from the Admissions Attorney or an applicant. On a finding of probable cause that an applicant has failed to meet the applicant's burden to establish by clear and convincing evidence the requisite character and fitness qualifications under Rule 707, the Review Committee shall refer the applicant to the Board for a hearing, subject to Rule 721(f). The Review Committee shall take final action only on a majority vote of the members.

(e) The chair shall maintain records reflecting each action of the Review Committee and shall distribute copies of the records to members of the Review Committee, the Admissions Attorney, and the Clerk of the Appellate Courts.

(f) The Review Committee may employ or otherwise obtain the services of other persons to assist in carrying out its duties herein. Compensation for any person so employed shall be that agreed upon between such person and the Review Committee, subject to prior approval of the Supreme Court.

(g) Each member of the Review Committee shall be paid all actual and necessary expenses incurred in the performance of services. All expenses of the Review Committee shall be paid out of the bar admission fee fund.

Rule 702 CONFIDENTIALITY

(a) The Board and the Review Committee shall maintain such records as are generated in the course of accepting and processing applications for admission to the bar and results of taking the bar examination. The following records, and no others, shall be maintained as public records:

- (1) With respect to application for admission to the bar, the name, address, and educational achievement of each applicant.
- (2) With respect to each written examination required for admission to the bar:
 - (i) The names and addresses of persons who passed the examination and have met all the requirements for admission to the bar.
 - (ii) Such statistical summaries as may be specifically authorized by the Supreme Court.

(b) Except as otherwise specifically provided herein, all other information provided by or obtained with respect to an applicant, including examination results, shall be deemed confidential and privileged communications, and as such shall not be released to any person or agency.

(c) Notwithstanding the foregoing restrictions, applications and other information required incident to an application for admission to the bar may be released to:

- (1) the National Conference of Bar Examiners and to the bar admissions authority of any United States jurisdiction where the applicant has applied for admission to the practice of law, provided the applicant shall have made written request for such release and the receiving authority has agreed not to give the information to the applicant;
- (2) the Attorney General of Kansas, the office of the Disciplinary Administrator, the Review Committee, and the Clerk of the Appellate Courts, for purposes of investigations and hearings as to moral and educational qualifications, for disciplinary purposes, or for administrations of bar examinations; and
- (3) such other parties and in such instances as shall be provided by order of the Supreme Court.

Rule 703
IMMUNITY

(a) Applications for admission, reports, decisions, Board proceedings, and documents obtained, or testimony received in the course thereof pursuant to these Rules shall be deemed to be made in the course of judicial proceedings. The office of the Disciplinary Administrator, Review Committee members, and Board members shall be entitled to all rights, privileges and immunities afforded public officials in the performance of their duties; and the office of the Disciplinary Administrator, Review Committee members, Board members, and other participants shall be entitled to the immunity afforded public officials in actions filed in the courts of this state, whether in providing testimony in such actions, or as parties thereto with respect to the performance of their duties or the testimony rendered.

(b) Any person who communicates information concerning a person applying for admission to the bar to any member of the Review Committee or the Board or to any attorney, employee or agent of the Board, or to any employee of the Clerk of the Appellate Courts, or to any investigator acting on behalf of the Review Committee or the Board is immune from all civil liability that, except for this rule, might result from any such communication. The grant of immunity provided by this rule applies only to those communications made by such person as a part or for the purpose of the investigation of character and fitness.

Rule 704
APPLICATION FEES

(a) Each applicant shall pay application processing fees for each of the following, which fees may not be waived and shall not be refunded:

- (1) Legal intern under Rule 719: \$50.
- (2) Temporary permit to practice law under Rule 710: \$100.

- (3) Admission to the bar upon written examination under Rule 709: \$400.
- (4) Admission to the bar without written examination under Rule 708: \$1250.
- (5) Restricted license to practice law under Rule 712: \$1250.
- (6) Reapplication for an individual whose application to take the bar examination has been previously denied for failure to establish good moral character or mental and emotional fitness: \$1250.

(b) The amount of the fee for each of the foregoing categories shall be that established by order of the Supreme Court and may be changed from time to time. Applicants shall be advised as to the amount of the fees then applicable upon inquiry to the Clerk of the Appellate Courts.

(c) Applicant fees shall constitute a fund to be known as the bar admission fee fund. Disbursements for compensation and expenses in connection with the duties of the Review Committee or the Board shall be from this fund. By order of the Supreme Court any unused balance in the bar admission fee fund may be applied to such appropriate usage as shall be determined by the Supreme Court.

(d) Any applicant who is unable to take a bar examination due to active military service may receive a refund of the application processing fee, on request.

Rule 707
CHARACTER AND FITNESS QUALIFICATIONS FOR
ADMISSION TO THE BAR

(a) Before an applicant shall receive a license to practice law pursuant to Rules 708, 709, or 712 or a temporary permit pursuant to Rule 710, the applicant must establish 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.

(b) Good moral character includes, but is not limited to, the qualities of honesty, fairness, responsibility, trustworthiness, integrity, respect for and obedience to the laws of the state and nation, and respect for the rights of others and for the judicial process.

(c) In determining whether an applicant possesses good moral character, the office of the Disciplinary Administrator, the Review Committee, and the Board shall consider evidence of the following:

- (1) unlawful conduct;
- (2) academic misconduct;

- (3) misconduct in employment;
- (4) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (5) acts which demonstrate disregard for the rights or welfare of others;
- (6) abuse of legal process, including the filing of vexatious or frivolous lawsuits;
- (7) neglect of financial responsibilities;
- (8) violation of a court order, including child support orders;
- (9) the making of false or misleading statements or omission of relevant information, including any false or misleading statement or omission on law school or bar applications in this state or any jurisdiction;
- (10) denial of admission to the bar in another jurisdiction on character grounds;
- (11) disciplinary action by any professional disciplinary agency of any jurisdiction;
- (12) any other conduct which reflects adversely on the character of the applicant.

(d) Current mental and emotional fitness to engage in the active and continuous practice of law involves an assessment of mental and emotional health and condition as it affects the applicant's competence to practice law and carry out duties to clients, courts, and the profession. An applicant may be of good moral character but unable to discharge his or her duties as an attorney due to a mental or emotional illness or condition. The fitness required is a present fitness, and a prior mental or emotional illness or condition is relevant when it indicates the existence of a present lack of fitness.

(e) In determining whether an applicant is currently mentally and emotionally fit to engage in the active and continuous practice of law, the office of the Disciplinary Administrator, the Review Committee, and the Board shall consider:

- (1) evidence of mental or emotional instability that may impair the applicant's ability to practice law, and
- (2) evidence of drug or alcohol dependency or abuse or other addictive behaviors that may impair the applicant's ability to practice law.

(f) In determining whether an applicant possesses good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the office of the Disciplinary Administrator, the Review Committee, and the Board shall also consider:

- (1) the applicant's age at the time of the conduct;

- (2) the recency 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 the conduct or information;
- (7) evidence of rehabilitation;
- (8) the applicant's social contributions since the conduct;
- (9) candor in the admissions process; and
- (10) materiality of any omissions or misrepresentations.

Rule 708

ADMISSION TO THE BAR WITHOUT WRITTEN EXAMINATION

(a) Any applicant for admission to the bar of Kansas who was duly admitted to the practice of law upon written examination by the highest court of another state or in the District of Columbia may be admitted to practice in this state without written examination, upon showing that the applicant:

- (1) has an active license in at least one jurisdiction that permits mutuality of admission without examination for members of the Kansas bar;
- (2) has never failed a written Kansas bar examination;
- (3) presently meets the requirements of Rules 706 and 707 to take the Kansas bar examination;
- (4) has never received professional discipline of suspension, disbarment, or loss of license in any other jurisdiction;
- (5) is not currently the subject of a pending disciplinary investigation in any other jurisdiction;
- (6) is a person of good moral character and mentally and emotionally fit to engage in the active and continuous practice of law; and
- (7) has been lawfully engaged in the active practice of law outside the State of Kansas, or in Kansas under Rule 712, for five of the seven years immediately

preceding the date of his or her application. For purposes of this rule, the “active practice of law” shall include the following activities:

- (i) Representation of one or more clients in the practice of law;
- (ii) Service as a lawyer with a local, state or federal agency, including military service, with the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law or preparing, trying or presenting cases before courts, departments of government or administrative agencies;
- (iii) Service as corporate counsel with the same primary duties as described in subsection (7)(ii) above;
- (iv) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant’s employment;
- (v) Service as a judge in a federal, state or local court, provided that such employment is available only to licensed attorneys;
- (vi) Service as a judicial law clerk; or
- (vii) Any combination of the above.

Applicants shall furnish such proof of practice as may be required by the Board of Law Examiners.

(b) Each applicant to the bar without written examination shall pay an application fee as provided in Rule 704 and shall file in duplicate on forms approved by the Supreme Court and procured from the Clerk of the Appellate Courts:

- (1) a verified application for admission,
- (2) such other and further information as the office of the Disciplinary Administrator, the Review Committee, or the Board ~~or the Disciplinary Administrator’s Office~~ may require in the consideration of his or her application, and
- (3) a designation of the Clerk of the Appellate Courts for service of process.

~~(c) The Board shall review each application under this rule and, if deemed necessary, shall interview each applicant and will report its findings and recommendations in writing to the Supreme Court. The Board retains full authority to conduct investigations and hearings pursuant to Rule 721 in the course of its review. The provisions of Rule 721 apply to applicants under this rule.~~

(d) When the Board recommends denial of an application under this rule ~~without hearing~~, its recommendation shall be submitted to the Supreme Court and a copy thereof shall be filed

with the Clerk of the Appellate Courts, who shall thereupon mail or otherwise furnish a copy to the applicant. The applicant may, within twenty days of service thereof, file with the Clerk exceptions to the Board's recommendation. The Board shall file a response to any such exceptions within twenty days following service of the exceptions. The Supreme Court will then make a final determination based upon the record, exceptions and response, if any, and enter its final order, subject to the provisions of Rule 722(g) and (h).

(e) When an application under this rule is granted by the Supreme Court, the applicant shall appear before the Clerk of the Appellate Courts to take the oath and sign the roll of attorneys. The Clerk shall thereafter issue applicant a certificate of authority to practice law in this State.

Rule 709

ADMISSION TO THE BAR UPON WRITTEN EXAMINATION

(a) The Board shall conduct written bar examinations on the last Tuesday and Wednesday in February and the last Tuesday and Wednesday in July.

(b) Only those applicants whose applications have been considered and approved by the office of the Disciplinary Administrator, the Review Committee, or the Board will be permitted to take the bar examination.

(c) Each applicant for admission to the bar upon written examination shall file a completed application for admission to be received in the Office of the Clerk of the Appellate Courts on or before October 1 (for the February examination) and on or before March 1 (for the July examination) on forms approved by the Court and procured from the Clerk of the Appellate Courts. The completed application shall consist of:

- (1) a verified application for admission;
- (2) not less than three affidavits, on forms to be supplied by the Clerk of the Appellate Courts, from responsible persons attesting that the applicant is a person of good moral character, or such other evidence of character as shall be satisfactory to the Board; and
- (3) any other and further information as the Board then or thereafter may require for its consideration of the application.

(d) Any applicant who wishes to file a completed application for admission after the filing deadline, but on or before November 1 (for the February examination) and on or before April 1 (for the July examination), shall pay a late penalty fee in the amount of \$200 in addition to the application fee.

(e) Notwithstanding the deadlines set out above, any applicant who is unsuccessful on the February Kansas Bar Examination will be given 30 days from the date of the letter announcing

results to make reapplication for the following July examination without imposition of a late penalty fee. Reapplication for the following July examination will not be accepted after that 30 day period.

(f) Any application returned to the applicant due to deficiencies, pursuant to Rule 713, will not be considered as timely filed.

(g) Any application received after November 1 (for the February examination) and April 1 (for the July examination) shall be considered as an application for the next ensuing bar examination.

(h) If the applicant does not take the examination for which application is made, the original application shall remain valid for the next ensuing examination; however, the applicant must, by the filing deadline, file an updated application or an affidavit verifying that the application on file remains current. The current application fee and late penalty fee, if applicable, shall be paid on or before the filing date. If the failure of an applicant to take the bar examination for which application is made is the result of delay attendant to investigation of applicant's fitness and/or character, the need for a hearing thereon, or actions of the office of the Disciplinary Administrator, the Review Committee, the Board, or the Supreme Court, the period for taking the examination and the viability of the application fee shall be extended for such additional time as shall be determined by the Board.

(i) An applicant who is retaking the examination shall file a completed application with the current application fee and late penalty fee, if applicable, on or before the filing date.

(j) Upon the filing of an application, the name and address of the applicant shall be posted in a conspicuous place in the office of the Clerk of the Appellate Courts for not less than forty-five days prior to the date of the bar examination.

(k) The Board shall conduct examinations of applicants for admission to the bar as to their learning in the law and educational qualifications for admission to the practice of law. The examinations shall test applicants upon such of the following subjects as the Board may require: personal property, domestic relations and family law, noncorporate business organizations, agency and employment, U.C.C. and commercial transactions, legal ethics, contracts, corporations, real property, constitutional law, criminal law, criminal procedure, Kansas and federal civil procedure, torts, wills, trusts and administration, conflict of laws, and evidence. All bar examinations shall be in writing. The Board may, subject to prior approval of the Supreme Court, employ written multiple-choice or essay tests prepared by the National Conference of Bar Examiners, including, but not limited to, the Multistate Bar Examination.

(l) At every bar examination each applicant may be required to provide evidence of identification satisfactory to the Clerk of the Appellate Courts. Each applicant shall place his or her name on the form furnished by the Clerk and deposit it in a sealed envelope with the Clerk. When the applicant shall have finished the examination, he or she shall mark it with his or her examination number only, as directed by the Board. Any other mark of identification placed upon the examination paper shall disqualify it, and the Board may refuse to read or consider it.

(m) In lieu of taking the Multistate portion of the first Kansas bar examination taken by the applicant, the Board may, if requested by the applicant, accept any Multistate Bar Examination score achieved in another jurisdiction in a concurrent examination or in a prior examination conducted within thirteen months of the current examination, provided the applicant successfully passed the entire bar examination in the other jurisdiction in one sitting and achieved a minimum scaled score of 120 on the Multistate Bar Examination. An applicant desiring to use the Multistate Bar Examination score from a concurrent bar examination in another state will not be eligible for admission to the practice of law in Kansas until it is shown that the applicant successfully passed the entire bar examination of the other state in one sitting, regardless of the score obtained on the essay portion of the Kansas examination. In the event the applicant fails the bar examination in the other jurisdiction, the Multistate Bar Examination score may not be used in Kansas in the current or any succeeding examination. If the applicant fails the Kansas examination, the Multistate Bar Examination score so transferred may not be used in any succeeding Kansas Bar Examination. All applicants shall notify the Clerk of their intention to use Multistate Bar Examination scores achieved in another jurisdiction at the time their application is filed. It shall be the responsibility of the applicant to cause his or her Multistate Bar Examination scores to be certified to the Clerk by the National Conference of Bar Examiners or by the appropriate bar examination authority where the prior Multistate Bar Examination was taken. The Clerk shall adopt such procedures as are necessary to report such scores to the Board without divulging the identity of the applicant to the Board members.

(n) No applicant shall be admitted to the bar who has not completed the Multistate Professional Responsibility Examination, caused his or her score to be reported to the Clerk of the Appellate Courts, and received a passing score as determined by the Board. Failure to successfully complete the Multistate Professional Responsibility Examination within 180 days from the date an applicant took the bar examination will negate the results of such bar examination and require reapplication for admission and reexamination, including the payment of all fees required.

(o) As soon as practicable after the completion of a bar examination, the Board shall file a report with the Clerk of the Appellate Courts recommending granting or denying admission of the applicant. When such report recommends granting admission, unless some reason appears to the contrary, the Supreme Court will make an order admitting the applicant to practice in all the courts of the state, which order shall become effective upon taking an oath pursuant to Rule 720.

(p) When the Board recommends denying admission by reason of an applicant's failure to make a satisfactory grade on the bar examination, its report shall be final and shall be filed with the Clerk of the Appellate Courts.

(q) An applicant who has failed the examination four times shall no longer be eligible to apply for admission.

(r) Any applicant whose admission is denied because of failure to make a satisfactory grade on the bar examination shall have the right to receive a copy of his or her essay examination papers if such request is made in writing not later than the ninetieth day after the

mailing by the Clerk of the notice of denial of admission. Because of the need for confidentiality to protect the integrity of the examination, no review or inspection of questions asked or answers given on the Multistate Bar Examination is permitted. No examination papers of an applicant who successfully passes the examination shall be retained beyond the administration date of the next succeeding examination.

Rule 710

TEMPORARY PERMIT TO PRACTICE

(a) Any applicant for admission to the bar upon written examination who has satisfied the educational requirements, has achieved the required Kansas score on the Multistate Professional Responsibility Examination, and has been approved by the office of the Disciplinary Administrator, the Review Committee, or the Board to sit for the examination may file with the Clerk of the Appellate Courts an application for a temporary permit to practice law.

(b) The application must include a written statement from an attorney in good standing who is actively engaged in the practice of law in Kansas that such attorney will supervise and be responsible for the acts of the applicant during the period covered by the temporary permit.

(c) If the Supreme Court shall find that the circumstances are such to justify it, a temporary permit may be granted, expiring at the date the results of the examination are announced, if unsuccessful, or, if successful, on the last Friday in April or September following the bar examination. If the applicant withdraws the application, the temporary permit expires on the date the application is withdrawn. If the applicant does not take the bar examination, the temporary permit expires on the first day of administration of the bar examination. If the office of the Disciplinary Administrator, the Review Committee, or the Board re-opens the investigation into the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the temporary permit is revoked on the date the applicant is informed that the investigation has been re-opened.

(d) The temporary permit shall be effective upon the applicant's taking an oath to support the Constitution of the United States and the Constitution of the State of Kansas, in conformity with the oath prescribed by Rule 720.

(e) An applicant who, within ten years prior to filing an application in Kansas, has failed a bar examination in Kansas or any other state or jurisdiction will not thereafter be eligible for a temporary permit.

Rule 712

RESTRICTED LICENSURE OF ATTORNEYS PERFORMING LEGAL SERVICES FOR SINGLE EMPLOYERS

(a) Any applicant for admission to the Bar of Kansas who was duly admitted to and continuously licensed for the practice of law upon written examination by the highest Court of

another state's judicial system or that of the District of Columbia, and who has accepted or intends to accept or continue employment by a person, firm, association, corporation, or accredited law school engaged in business in Kansas other than the practice of law, and whose full time is, or will be, limited to the business of such employer, and who receives, or will receive, his or her entire compensation from such employer for the rendering of services, which include legal services, may be granted a restricted license to practice law in Kansas and the courts of this state, without examination, upon showing that the applicant:

- (1) has filed a completed application pursuant to subsection (b) of this rule within ninety (90) days of the beginning of employment;
- (2) would be fully qualified to take the written bar examination in Kansas under the Rules of the Supreme Court;
- (3) has satisfied any applicable continuing legal education requirements specified by the rules of the jurisdictions in which applicant has been admitted prior to making application in Kansas;
- (4) is now and has been a person of good moral character, is currently mentally and emotionally fit to engage in the active and continuous practice of law, and in all respects is a proper person to be granted a restricted license to practice law in this state; and
- (5) has never failed a Kansas bar examination.

(b) Subsequent to filing the completed application and pending issuance of the restricted license, an applicant may engage in the business of his or her employer, including legal services, if an attorney actively engaged in the practice of law in Kansas agrees, in writing, to supervise and be responsible for the acts of the applicant during that interim period. A restricted license granted under the provisions of this rule shall remain in effect for so long as such person remains in the employ of, and devotes his or her full time to the business of, and receives compensation for legal services from no source other than such employer. Upon the termination of such employment, the right of such person to practice law in Kansas shall terminate unless he or she shall have accepted like employment with another Kansas employer. Persons granted a restricted license under this rule shall be subject to all of the rules for practice in this state, including the requirements for continuing legal education.

(c) Each applicant for a restricted license under this rule shall file in duplicate on forms approved by the Court and procured from the Clerk of the Appellate Courts:

- (1) a verified application for admission;
- (2) a written certificate from the authority charged with the administration of discipline in each jurisdiction in which the applicant holds a license to practice law, certifying that the applicant is in good standing, has not been disciplined by such jurisdiction for violations of the Code of Professional Responsibility, Kansas Rules of Professional Conduct or any other ethical standards therein applicable,

and that there are no complaints of such violations then pending against the applicant;

- (3) where required by the rules of such jurisdictions, a written certificate from the authority charged with the administration of continuing legal education in the jurisdictions in which the applicant has been admitted to practice, certifying that the applicant has satisfied the continuing legal education requirements of such jurisdictions for any required years prior to making application in Kansas;
 - (4) a written certificate from the employer of such applicant evidencing the applicant's employment by such employer and that his or her full-time employment will be by such employer in Kansas; and
 - (5) not less than three affidavits, on forms to be supplied by the Clerk of the Appellate Courts, from responsible persons attesting that the applicant is a person of good moral character, or such other evidence of character as shall be satisfactory to the office of the Disciplinary Administrator, the Review Committee, or the Board; and
 - (6) such other and further information as the office of the Disciplinary Administrator, the Review Committee, or the Board may require in the consideration of the application.
- (d) The provisions of Rules ~~706 and 707~~ 706, 707, and 721 apply to applicants under

this rule.

- ~~(e) — The Board shall review each application under this rule and, if deemed necessary, shall interview each applicant and report its findings and recommendations in writing to the Supreme Court. The Board retains full authority to conduct investigations and hearings pursuant to Rule 721 in the course of its review.~~

~~(f)~~ (e) When the Board recommends denial of an application under this rule ~~without hearing~~, its recommendation shall be submitted to the Supreme Court and a copy thereof shall be filed with the Clerk of the Appellate Courts, who shall thereupon mail or otherwise furnish a copy to the applicant. The applicant may, within twenty days of service thereof, file with the Clerk exceptions to the Board's recommendation. The Board shall file a response to any such exceptions within twenty days following service of the exceptions. The Supreme Court will then make a final determination based upon the record, exceptions and response, if any, and enter its final order, subject to the provisions of Rule 722(g) and (h).

~~(g)~~ (f) When an application under this rule is granted by the Supreme Court, the applicant shall appear before the Clerk of the Appellate Courts to take the oath and sign the roll of attorneys. The Clerk shall thereafter issue applicant a restricted license to practice law in this State. The restricted license shall recite that it is issued under this rule and shall limit the licensee to perform only legal services for the employer's business. Such restricted license shall expire upon (i) termination of the applicant's employment by his full-time employer, or (ii)

admission of the applicant to practice in Kansas under the terms of Rule 708 or 709, or, if the applicant shall fail the bar examination, on the date the results of the examination are announced.

(h) (g) Time in practice under a restricted license issued pursuant to this rule may not be used to satisfy requirements of any statute or regulation of the State of Kansas.

(i) (h) Any applicant for admission under this rule who withdraws or fails to pursue his or her application within one year of the date of filing thereof, shall thereafter be required to file a new application and pay the same fee required for the initial application. However, if the failure of an applicant to pursue said application during such period is the result of delay attendant to investigation of applicant's fitness and/or character, the need for a hearing thereon, or actions of the office of the Disciplinary Administrator, the Review Committee, the Board, or the Supreme Court, such period shall be extended for such additional time as shall be determined by the Board.

Rule 717

EFFECT OF DISCIPLINARY COMPLAINT IN ANOTHER JURISDICTION

(a) Any person having an attorney disciplinary complaint pending before the licensing authority of any other jurisdiction is not eligible to apply for admission to the bar of the State of Kansas while such complaint is pending.

(b) Any person who has been suspended or disbarred from the practice of law by the licensing authority of any other jurisdiction is not eligible to apply for admission to the bar of the State of Kansas until such time as the person has been fully reinstated in the other jurisdiction.

(c) The underlying facts of an attorney disciplinary complaint in another jurisdiction may be considered by the office of the Disciplinary Administrator, the Review Committee, or the Board in determining whether the person possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law.

Rule 718

SUBSTANCE-ABUSE AND/OR PSYCHOLOGICAL REFERRALS AND EVALUATIONS

(a) The office of the Disciplinary Administrator, the Review Committee, or the Board may refer an applicant to the Kansas Impaired Lawyers Assistance Program if recommended by a qualified professional.

(b) The office of the Disciplinary Administrator, the Review Committee, or the Board may require an applicant to submit to a substance-abuse evaluation by a qualified professional of the Board's that entity's choosing.

(c) ~~The office of the Disciplinary Administrator, the Review Committee, or the Board may require an applicant to submit to a psychological evaluation by a qualified professional of the Board's that entity's choosing.~~

(d) If the applicant disagrees with any recommendation arising from an evaluation ordered under subsections (b) and/or (c) of this rule, the applicant may seek a second evaluation, at the applicant's expense, by a qualified professional of the applicant's choosing. If any recommendation arising out of the second evaluation differs from that arising out of the first, the two qualified professionals shall agree on a qualified professional to review both of the earlier evaluations and make a recommendation that shall finally resolve the difference in the first two recommendations. The applicant shall pay one-half the cost of the third evaluation.

Rule 721

INVESTIGATION AND HEARING PROCEDURES

~~(a) The Board, through the Disciplinary Administrator and the Clerk of the Appellate Courts, shall review all applications and conduct investigations to determine whether each applicant possesses good moral character and current mental and emotional fitness to engage in the active and continuous practice of law. The Admissions Attorney shall review all applications; investigate matters that bear on the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law; direct applicants to submit to evaluations under Rule 718, if deemed necessary; and interview applicants, if deemed necessary.~~

~~(b) The Board office of the Disciplinary Administrator or the Review Committee may also call on any state or local bar association, or one or more members of the bar of the judicial district where the applicant resides, to make such investigation and report the results to the Board office of the Disciplinary Administrator or the Review Committee.~~

~~(c) The Board may require an applicant~~ Applicants are required to submit fingerprints for investigative purposes.

~~(d) In no event will permission be granted to sit for the bar examination pursuant to Rule 709 or a license to practice law be issued pursuant to Rules 708 or 712 until the investigation as to good moral character and current mental and emotional fitness to engage in the active and continuous practice of law has been satisfactorily completed.~~

~~(e) Following the investigation, the office of the Disciplinary Administrator shall~~ approve and certify to the Board the names of those applicants who appear to be qualified for admission.

~~(f) The applicants not certified by the Disciplinary Administrator shall be referred to the Chairman of the Board. The Chairman, or his or her designee, shall review the applications, along with additional materials discovered during the investigation and determine whether the applicant appears to be qualified for admission or whether a hearing before the Board is warranted. The applicants not certified by the office of the Disciplinary Administrator shall be~~

referred to the Review Committee. The Review Committee, or one of its members, may conduct additional investigation, including applicant interviews, if deemed necessary. If the Review Committee finds probable cause that an applicant has failed to meet the applicant's burden to establish by clear and convincing evidence the requisite character and fitness qualifications under Rule 707, the Review Committee may initiate remedial action on agreement with the applicant but shall refer the applicant to the Board for a formal hearing under Rule 721 if an agreement with the applicant cannot be reached.

~~(g) If the Chairman determines that a hearing is warranted, he or she~~ The Chairman of the Board shall inform the Clerk of the Appellate Courts that a hearing is to be scheduled. Thereafter, the Clerk of the Appellate Courts shall inform the applicant of the date, time, and location of the hearing.

(h) The applicant is entitled to retain counsel at any time. The applicant is also entitled to cross-examine witnesses and to present evidence at the hearing.

(i) If an applicant who applied pursuant to Rule 709 is not allowed to take the bar examination for which the application was made due to an ongoing investigation into or because of a hearing regarding the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the application shall be considered for the bar examination following the completion of the investigation and/or the hearing.

~~(j) During the investigation and hearing on the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the Board may obtain information, take and hear testimony, administer oaths and affirmations, and, by subpoena issued at the request of either the applicant or the Disciplinary Administrator, compel the attendance of witnesses, and compel the production of books, papers, and documents.~~

~~(k) Any member of the Board may administer such oaths and affirmations.~~

(j) During the investigation of the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the office of the Disciplinary Administrator and the Review Committee may obtain information, take and hear testimony, administer oaths and affirmations, and, by subpoena issued at the request of either the office of the Disciplinary Administrator or the Review Committee, compel the attendance of witnesses and the production of books, papers, and documents.

(k) During the hearing on the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the Board may obtain information, take and hear testimony, administer oaths and affirmations, and, by subpoena issued at the request of either the applicant or the office of the Disciplinary Administrator, compel the attendance of witnesses and the production of books, papers, and documents.

(l) The office of the Disciplinary Administrator shall file and serve a notice of hearing on the applicant not less than forty-five days prior to a formal hearing. The notice of hearing shall include factual allegations that generally inform the applicant of issues that appear to bear on the

applicant's character and fitness. The notice must adequately inform the applicant of the nature of the evidence against the applicant, although the office of the Disciplinary Administrator need not list every item and source of information to be presented at the hearing. A copy of the notice of hearing shall be served on the applicant. The original and fifteen copies of the notice of hearing shall be served on the Clerk of the Appellate Courts who shall forward the notice of hearing to each member of the Board.

(m) Within twenty days of service of the notice of hearing, the applicant shall file a response to the notice of hearing, admitting or denying each of the factual allegations contained in the notice of hearing. A copy of the response to the notice of hearing shall be served on the office of the Disciplinary Administrator. The original and fifteen copies of the response to the notice of hearing shall be served on the Clerk of the Appellate Courts who shall forward the response to the notice of hearing to each member of the Board.

(n) 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.

(o) An applicant may not be required to testify or produce records over objection if to do so would be in violation of the applicant's constitutional privilege against self-incrimination.

(p) A certified journal entry of conviction of an applicant for any crime shall be conclusive evidence of the commission of that crime. A diversion agreement or other similar document, for the purposes of any admissions proceeding, shall be deemed a conviction of the crimes originally charged.

(q) A certified copy of a civil judgment based on clear and convincing evidence shall be conclusive evidence of the commission of that civil wrong.

(r) All other civil judgments shall be prima facie evidence of the findings made therein and shall raise a presumption as to their validity. The burden shall be on the applicant to disprove the findings made in the civil judgment.

(s) A final adjudication in another jurisdiction that an applicant has been guilty of misconduct in an attorney disciplinary proceeding shall establish conclusively the misconduct for purposes of an admissions proceeding in this state.

(t) Anytime after ~~the Board approves the applicant~~ an applicant is approved to sit for the written examination pursuant to Rule 709 or for licensure pursuant to Rules 708 or 712, but before the applicant receives a license to practice law in the State of Kansas, ~~the Board may re-open its investigation if it receives additional information~~ an investigation may be re-opened if additional information is received that bears on the applicant's good moral character or current mental and emotional fitness to engage in the active and continuous practice of law. In that event, the Board may hold a hearing pursuant to this rule.

(u) If the Board has cause to believe that an applicant who applied pursuant to Rule 709 engaged in misconduct during the administration of the bar examination, the Board may re-open

the investigation into the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law. In that event, the applicant's bar examination scores will not be released until the matter has been resolved. The Board may hold a hearing pursuant to this rule.

(v) All hearings held before the Board shall be transcribed by a certified court reporter.

(w) All investigations and hearings into an applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, and the records thereof, shall be confidential and such records shall be subject to release only as provided in Rule 702. However, if the applicant requests the Board may hold any hearing, or any portion thereof, as an open hearing.

(x) Following the hearing, the Board shall issue a written decision detailing its findings of fact, conclusions of law, and recommendation whether the applicant should be allowed to sit for the written examination or be approved for licensure pursuant to Rules 708 or 712. If the Board approves the applicant, the matter is concluded. If the Board does not recommend approval of the applicant, the matter shall be referred to the Supreme Court for review and decision.

Rule 722

PROCEEDINGS BEFORE THE SUPREME COURT FOLLOWING AN ADVERSE BOARD RULING

(a) An original and ten copies of the Board's written decision following a character and fitness hearing shall be filed with the Clerk of the Appellate Courts who shall mail a copy to the applicant.

(b) Upon the filing of the written decision, the Clerk shall forthwith order a copy of the transcript of the hearing before the Board which shall be mailed to the applicant, upon receipt in the Clerk's Office.

(c) The applicant may, within twenty days of service of the transcript of the hearing, file with the Clerk exceptions to the written decision of the Board. Any part of the written decision which is not specifically excepted to shall be deemed admitted.

(d) If exceptions are filed, the Board shall file a response with the Clerk within twenty days after service of the exceptions.

(e) If the applicant fails to file exceptions to the written decision of the Board within twenty days of service of the transcript on the applicant, the findings of fact and conclusions of law in the written decision shall be deemed submitted to the Supreme Court.

(f) The notice of hearing, the response to the notice of hearing, the written decision of the Board, the applicant's exceptions and the Board's response, if any, the transcript of the hearing,

and all other evidence admitted before the Board shall constitute the record before the Supreme Court.

(g) The Board's factual findings will be accepted if a reasonable fact finder could have been persuaded that the factual finding was proved to be highly probable. The Supreme Court shall make the final determination as to those persons who shall be admitted to practice law in the State of Kansas.

(h) Oral argument will not be permitted. The Supreme Court will make a determination based upon the record before the Board and enter its final order.

(i) Any applicant whose petition for admission to the practice of law in the State of Kansas is denied by the Supreme Court by reason of lack of good moral character or current mental and emotional fitness to engage in the active and continuous practice of law shall not be permitted to reapply in Kansas until three years shall have elapsed from the date the previous application was denied by the Court.

(j) Any subsequent reapplication shall be heard by the Board, following a full investigation by the office of the Disciplinary Administrator and consideration by the Review Committee. The applicant shall have 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. Additionally, the applicant shall have the burden of establishing by clear and convincing evidence that:

- (1) The applicant has demonstrated consciousness and acknowledged the seriousness of any wrongful conduct to the extent that wrongful conduct gave rise to the denial of the previous application;
- (2) The applicant has engaged in conduct since the denial of the previous application which demonstrates that the applicant has been an active and productive citizen;
- (3) The time elapsed since any misconduct, to the extent that wrongful conduct gave rise to the denial of the previous application, is sufficient;
- (4) The applicant has not engaged in the unauthorized practice of law; and
- (5) The applicant has received adequate treatment and rehabilitation and experienced a sustained period of rehabilitation from any substance abuse or mental or emotional illness or condition, to the extent that such conduct gave rise to the denial of the previous application.