

***IN THE SUPREME COURT, STATE OF WYOMING***

***October Term, A.D. 2017***

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***In the Matter of the Amendments to the     )***  
***Rules and Procedures Governing            )***  
***Admission to the Practice of Law         )***

**ORDER AMENDING THE RULES AND PROCEDURES GOVERNING  
ADMISSION TO THE PRACTICE OF LAW**

**The Wyoming State Bar’s Character and Fitness Committee** has recommended that this Court amend the Rules and Procedures Governing Admission to the Practice of Law. This Court finds that the Committee’s recommendations should be adopted. It is, therefore,

**ORDERED** that the amendments to the Rules and Procedures Governing Admission to the Practice of Law, attached hereto, are adopted by the Court to be effective June 1, 2018; and it is further

**ORDERED** that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch’s website, <http://www.courts.state.wy.us>. The amendments shall also be recorded in the journal of this Court.

**DATED** this 13<sup>th</sup> day of March, 2018.

**BY THE COURT:**

/s/

**E. JAMES BURKE**  
**Chief Justice**

**Rules and Procedures Governing Admission to the Practice of Law**

**SECTION I  
GENERAL PROVISIONS**

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**Rule 102. Character and Fitness Committee.**

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(c) The Committee shall have the power and authority to:

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(3) Request medical or other treatment records, hear testimony from and ask questions of medical or other treatment providers ~~in accordance with Rule 402(e) and (f);~~

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**SECTION II  
APPLICATION FOR ADMISSION BY EXAMINATION**

**Rule 201. Applications for Admission by Examination, Fees.**

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(c) An applicant who is unsuccessful on an examination, or who fails to take the examination, may request registration for the next UBE without paying an additional fee and without resubmitting evidence of meeting the educational requirements set forth in these rules. Thereafter, the applicant shall be required to reapply by following the procedure set forth in Rule 201(b), except that the applicant shall not be required to resubmit evidence of meeting the educational requirements set forth in these rules. Reapplications must be filed no later than the 1<sup>st</sup> ~~first~~ day of ~~June~~ May for the July examination, and the 2<sup>nd</sup> ~~first~~ day of ~~January~~ December for the February examination. An applicant who has failed a bar examination four times will not be permitted to sit for the UBE in Wyoming. For purposes of this rule, attempts to achieve a passing score on the UBE count toward the limit of four regardless of where the applicant sat for the UBE. The four-attempt limitation may be waived upon a strong showing, to the Board's satisfaction and in its sole discretion, that the applicant has substantially improved his or her exam preparation and there is good cause warranting the requested waiver.

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**Rule 210. Examination Accommodations.**

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(f) *Applying for test accommodations.* All forms necessary to complete a request for special testing accommodations shall be obtained from the ~~Bar's~~ Court's website, ~~www.wyomingbar.org.~~ <https://www.courts.state.wy.us/>.

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**SECTION IV  
CHARACTER AND FITNESS OF BAR APPLICANTS**

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**Rule 401. Character and Fitness Requirements.**

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

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(13) Disciplinary action by the lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; ~~and~~

(14) Conduct evidencing current mental or emotional instability that may interfere with the ability to practice law;

(15) Conduct evidencing current drug or alcohol dependence or abuse that may interfere with the ability to practice law; and

~~(14)~~ (16) Any other conduct which reflects adversely upon the good moral character or fitness of the applicant to practice law.

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**Rule 402. Review of Applications.**

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(c) *Review by Bar Counsel.* Upon receiving a referral, Bar Counsel may conduct such further investigation as is reasonably deemed necessary into matters which may demonstrate the inability of an applicant to meet one or more of the essential eligibility requirements. ~~Any investigation or inquiry into~~ including without limitation investigation of a health diagnosis, alcohol or drug dependence, or treatment for either must comply with sections (e) and (f) of this Rule. In connection with such investigation, Bar Counsel may issue subpoenas to compel the deposition testimony of witnesses, including the applicant, and the production of pertinent books, papers, documents, or other evidence. All such subpoenas shall be subject to the provisions of Rule 45, W.R.C.P. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Committee chair. If Bar Counsel, after conducting such ~~review investigation~~, concludes that the applicant possesses good moral character and fitness to practice law, the application shall be forwarded to the Committee for approval or for such further proceedings as the Committee deems appropriate. The failure of an applicant to cooperate with Bar Counsel's investigation may result in a recommendation to the Court that the applicant's application be denied.

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~~(e) *Basis for Inquiry into Health Diagnosis and Drug or Alcohol Dependence.* Any inquiry about drug or alcohol dependence, a health diagnosis, or treatment for either can occur only if it appears that the applicant has engaged in conduct that demonstrates the inability to meet one or more of the essential eligibility requirements and (1) the drug or alcohol dependence, health diagnosis, or treatment information was disclosed voluntarily to explain the conduct or as a voluntary response to any question on the application; or (2) the Admissions Director, Bar Counsel or the Committee learns from a third party source that the drug or alcohol dependence, health diagnosis, or treatment was raised as an explanation for the conduct.~~

~~(f) *Scope of Inquiry into Health Diagnosis and Drug or Alcohol Dependence.* When a basis for an inquiry by Admissions Director, Bar Counsel or the Committee has been established under~~

section (e), any such inquiry must be narrowly, reasonably, and individually tailored and adhere to the following:

(1) ~~The first inquiry will be to request statements from the applicant;~~

(2) ~~After statements are obtained from the applicant, additional statements may be requested from treatment providers if reasonably deemed necessary by the Admissions Director, Bar Counsel or the Committee. The statements of treatment providers shall be accorded considerable weight.~~

(3) ~~In those cases in which the statements from the applicant and treatment providers do not resolve reasonable concerns about the applicant's ability to meet the essential eligibility requirements, the Admissions Director, Bar Counsel or the Committee may seek medical or treatment records. Any requests for medical or treatment records shall be by way of narrowly tailored requests and releases that provide access only to information that is reasonably necessary to assess the applicant's ability to meet the essential eligibility requirements.~~

(4) ~~Any testimony or records from medical or other treatment providers may be admitted into evidence at a hearing on, or review of, the applicant's fitness and transmitted with the record on review to the Court. Records and testimony regarding the applicant's fitness shall otherwise be kept confidential in all respects and neither the records nor the testimony of the medical or treatment provider shall be discoverable or admissible in any other proceeding or action without the written consent of the applicant.~~

### **Rule 403. Hearing Procedure.**

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(e) Committee to conduct hearing; Committee chair authority as chief hearing officer. The Committee shall conduct the hearing. The Committee chair or the chair's designee shall serve as the chief hearing officer and shall have the following powers and duties:

(1) To issue and enforce subpoenas;

(2) To administer oaths and affirmations;

(3) To conduct a scheduling conference if requested by a party, and to enter a scheduling order following the conference;

(4) To conduct pre-hearing conferences and establish pre-hearing procedures;

(5) To rule upon nondispositive pre-hearing motions;

(6) To preside at hearings and to rule on evidentiary matters as requested;

(7) To compel obedience to rulings, orders, and subpoenas, including the imposition of sanctions pursuant to the provisions of Rule 37, W.R.C.P.

(A) In the event any person fails or refuses to comply with a subpoena, the party causing the subpoena to be issued may file with the Admissions Director a motion for order to show cause why the person should not be held in contempt of court.

(B) The person against whom the motion is made shall file a written response within ten (10) days of service of the motion.

(C) The motion shall be heard by the Committee chair. In the absence of good cause shown, the chair shall submit a report and recommendation to the Court. The Court shall then determine whether to impose contempt.

(e)(f) Witnesses and Exhibits. A listing of trial witnesses and exhibits shall be filed and copies of exhibits shall be exchanged at least 10 days prior to the hearing. Although the Rules of

Civil Procedure do not apply to proceedings conducted pursuant to these Rules, Bar Counsel, the applicant and the applicant's counsel shall comply with reasonable information requests.

~~(f)~~(g) *Admissibility of Evidence.*

(1) Evidentiary rulings shall be made by the Committee chair. A majority of Committee members present may by vote overrule a ruling by the chair.

(2) Evidence, including hearsay evidence, is admissible if it is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The chair may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Witnesses shall testify under oath; all testimony shall be reported by and, if necessary, transcribed by a certified court reporter.

(4) Expert witnesses shall appear and testify in person or by telephone or video conference before the Committee, unless in the discretion of the Committee their appearance before the Committee is waived.

(5) Questioning of the applicant and the applicant's witnesses shall be conducted by Bar Counsel, by members of the Committee, and by the applicant or the applicant's counsel.

~~(6) The Committee may question medical or other treatment providers and seek medical or other treatment records consistent with the provisions of Rule 402(e) and (f), and in accordance with Rule 403(g) below. Any testimony or records from medical or other treatment providers may be admitted into evidence at a hearing on, or review of, the applicant's fitness and transmitted with the record on review to the Court. Such records and testimony regarding the applicant's fitness shall otherwise be kept confidential in all respects and neither the records nor the testimony of the medical or treatment provider shall be discoverable or admissible in any other proceeding or action without the written consent of the applicant.~~

~~(g)~~(h) *Independent Medical Examination.* If the testimony and evidence presented at a hearing has failed to resolve the Committee's reasonable concerns regarding the applicant's ability to meet the essential eligibility requirements to practice law, An Independent Medical Examination (IME) may be requested by the Committee only when a basis for an inquiry by the Committee exists under Rule 402(e) and only after testimony and evidence presented at the hearing has failed to resolve the Committee's reasonable concerns regarding the applicant's ability to meet the essential eligibility requirements to practice law, and the hearing shall be continued as necessary. If the applicant has not previously been requested to provide information pursuant to Rule 402(f)(1), (2) and (3) regarding the applicant's drug or alcohol dependence, health diagnosis or treatment, the Committee shall continue the hearing and shall provide the applicant with the opportunity to submit such information, within such reasonable time as the Committee shall establish, prior to requesting the IME.

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(2) *Failure to Comply.* The failure of an applicant to agree to or submit to a required IME ~~shall~~ may result in a recommendation to the Court that the applicant's application be denied.

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(6) After receiving information regarding the applicant's drug or alcohol dependence, health diagnosis or treatment not previously requested or upon completion of the IME and any rebuttal IME or other evidence, the Committee may re-open the hearing and take any further testimony or evidence it deems necessary or may close the hearing and make its decision and recommendation based upon the record before it.

~~(h)~~(i) *Withdrawal of Application.* Upon written request an applicant may withdraw his/her application before a final recommendation on such application has been submitted by the Committee to the Court. In the event of a reapplication, any information obtained from any previous application proceeding may be considered by the Board and the Committee.

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**SECTION V  
ADMISSION TO PRACTICE**

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**Rule 503. Conditional Admission.**

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(i) *Hearing procedure.*

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(5) *Admissibility of Evidence.*

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(F) The Committee may question medical or other treatment providers and seek medical or other treatment records ~~consistent with the provisions of Rule 402(e) and (f), and~~ in accordance with Rule 403(g).

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