

**Garden State CLE Presents:**



## **Defending a Character & Fitness Bar Admissions Case**

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**Lesson Plan**

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## **I. Introduction**

1) In the United States, it has long been established that the power to determine standards for the admission to the bar is a matter of state law. (Konigsberg vs. State Bar of California, 353 U.S. 252, 273(1957)).

2) In New Jersey, this power has been constitutionally delegated to the Supreme Court under the Constitution of 1947, Article VI, Section 2, paragraph 3. Under this provision, the Supreme Court has exclusive jurisdiction over the admission to practice law and the discipline of persons admitted.

3) Rule 1:27-1 sets forth the specific qualifications an applicant must satisfy as conditions to admission to the New Jersey bar. Essentially there are three conditions. They include:

1) Passage of the bar examination;

2) Certification of good character by the Committee on Character pursuant to Rule 1:25; and

3) Attainment of a qualifying score on the Multi-State Professional Responsibility Examination or passage of an approved course on professional ethics given by an American Bar Association-accredited law school.

4) To date, all of the case law dealing with admission to practice has involved character issues. That is to say that the character of the applicant, as determined by the Committee on Character, has been found to be lacking the traits that are deemed necessary for a New Jersey attorney.

5) The New Jersey Supreme Court has consistently held that bar membership is a privilege burdened with conditions. See In re Pennica, 36 N.J. 401, 433(1962). Among the most basic conditions are good moral character, a capacity for fidelity to the interests of clients, and for fairness and candor in dealing with the courts.

6) What constitutes good moral character? According to the New Jersey Supreme Court, it includes a set of traits evidencing honesty, truthfulness, trustworthiness, reliability and a professional commitment to the judicial process and the administration of justice. Those bar candidates who possess these character traits

will also tend to have the ability to adhere to the Rules of Professional Conduct, a requirement that is absolutely demanded of all members of the bar.

7) The administrative and investigative functions of determining fitness and character have been delegated to the Supreme Court's Committee on Character as established under Rule 1:25:

The Supreme Court shall appoint a committee on character comprised of such number of attorneys as it may determine. It shall be the duty of the committee on character to determine the fitness to practice law of each candidate for admission to the bar of the State of New Jersey on the basis of and by reviewing the personal record and reputation of each candidate and, following such review, to certify as to such fitness to the Supreme Court or withhold such certification. Subject to the approval of the Supreme Court, the committee shall prescribe such Rules governing its procedures as may be deemed necessary and desirable.

8) The Supreme Court has also promulgated Regulations Governing the Supreme Court Committee on Character. They are properly cited with the prefix "RG" as in "RG 101:2". A copy of these regulations is included in this lesson plan as an appendix.

9) In each of the cases we will discuss during this CLE, the candidate for admission to the New Jersey bar engaged in some type of misconduct that brought into question his good character. The Supreme Court was called upon to evaluate the candidate's evidence of good character against the findings and recommendation of the Committee on Character.

## **II. Controlling Case Law**

### **In re Application of Matthews, 94 N.J. 59(1983)**

- 1) The leading case on character and fitness issues is Matthews. Evidence of past misconduct by a bar candidate will create a strong presumption of present unfitness for admission. The burden of production to show reformation and good character is on the candidate. This has been described as a “heavy burden” by the Supreme Court. However, in a factual dispute concerning a candidate's good character, any lingering doubts as to his or her ability to undertake the professional responsibility of an attorney will be resolved in favor of the candidate and admission to the bar will be allowed.
- 2) The process for making fitness determinations is set forth under RG 302 and 303.

### **III. Triggering Events**

1) RG 302:1 Conduct Requiring Investigation. The appropriate Part of the Committee, or such member or members thereof so assigned, shall review the Statement of Candidate and related documents. If, on such review, further information is deemed desirable, a request therefore may be made of the candidate or any other appropriate source. The request may be made in person or by telephone or mail. Conduct requiring additional action may include, but is not limited, to the following:

- a) Nondisclosure of information;
- b) Academic dishonesty;
- c) Unlawful conduct, including arrests, whether resulting in conviction, dismissal, or expungement;
- d) Failure to file required federal, state, or local tax returns or to pay tax obligations;
- e) Financial misrepresentation, mismanagement, irresponsibility, or neglect;
- f) Default or arrearages in the payment of student loans;
- g) Allegations of fraud, perjury, or false swearing;
- h) Misconduct in employment;
- i) Evidence of moral turpitude;
- j) Having been disciplined as a member of a profession, trade or occupation, including but not limited to the practice of law;
- k) Failure to comply with Court orders, such as support and alimony orders;
- l) Domestic violence;
- m) Abuse of legal process or history of vexatious lawsuits;
- n) Current substance abuse; or
- o) Evidence of current psychotic disorders including paranoia, bipolar disorder, or schizophrenia.

2) RG 202:6 Child support obligations. Each candidate must certify as part of the Certified Statement of Candidate that he or she is not the obligor of a child support order, or that the candidate is the obligor of a child support order but does not owe past-due support in an amount equal to or exceeding the amount of child support payable for six months and has complied with all health insurance provisions related to the child, and that the candidate is not the subject of a child-support related warrant. If the candidate cannot or does not so certify, certification for admission to the bar shall be withheld.

3) RG 202:7 Student loan obligations. Each candidate must certify as a part of the Certified Statement the loan number, lender, and the amount of each student loan and that he or she is not in default of any state, federal, or governmentally guaranteed student loan. If a candidate does not so certify, or if the candidate does not provide satisfactory proof of arrangements to cure the default after having been requested to do so by the Committee, a RG. 303 hearing shall be held to determine whether certification should be withheld.

4) RG 202:8 Probation and parole ineligibility.

(a) Criminal Offenses. A candidate who is on probation or parole from a sentence for a criminal offense shall not be eligible for consideration by the Committee until the probation or parole has been successfully completed. A candidate who is subject to the terms of this Regulation shall have the right to petition the Statewide Panel for a waiver of the ineligibility provision based on the demonstration of exceptional circumstances. If the Statewide Panel grants the petition, the Committee shall conduct a hearing before a RG 303 Panel to consider the candidate's current character and fitness to be admitted to practice.

(b) Motor Vehicle Violations. Paragraph (a) of this regulation shall not apply either to motor vehicle violations under Title 39, including driving while intoxicated, or to a conviction in another jurisdiction for a criminal offense that would constitute a motor vehicle violation under Title 39 in New Jersey.

## **IV. Investigation and R.G. 303 Hearing**

1) RG 302:2 Interview Procedures. A candidate and any other persons with knowledge relevant to the candidate's character and fitness to practice law may be asked to appear for an informal interview before the member or members. The interview shall be conducted in private unless the candidate requests otherwise. The candidate has the right to be represented by counsel. Testimony may be given under oath, and a verbatim record may be taken at the request of either the Committee or the candidate.

2) RG 302:3 Determination of Certification. On a determination for the Committee that a candidate is fit to practice law, the member or members of the Committee shall so certify to the Supreme Court.

3) RG 302:4 Consequences of failure to certify. If a candidate has not been certified by the Committee at the time the Board of Bar Examiners reports the results of the bar examination, such results shall not be withheld pending final Committee action. The attorney oath, however, shall not be administered to any candidate nor shall admission to the bar be given effect prior to a certification of fitness by the Committee.

4) RG 302:5 Revocation of Certification. Certification of a candidate may be revoked by the Committee at any time prior to the administration of the oath on the receipt of information warranting further review.

### **REGULATION 303. Part Hearing**

5) RG 303:1 When Held. If a single member of the Committee determines not to certify a candidate as fit to practice law or desires to have a determination made by a Panel, a hearing shall be conducted by three members of the Committee. In the discretion of the assigned member and subject to the approval of the Part Chair, the candidate may waive entitlement to a three-member Panel and proceed with a hearing before the assigned member of the Committee.

6) RG 303:2 Reasons for a hearing. Reasons for a hearing may include, but are not limited to, evidence of the conduct specified in RG 302:1.

If a factual question arises in respect of the candidate's certification pursuant to RG. 202:6 or RG 202:7, a hearing shall be held. The Panel shall make findings of fact on whether the candidate is in violation of one or more of the conditions contained in the Regulations. If the Panel determines that the candidate has failed



to meet or comply with one or more of the conditions of the Regulations, the Panel shall report same for final decision on the candidate's eligibility for admission pursuant to RG 304:2.

A determination that the candidate is not currently in violation of the requirements of RG 202:6 in respect of child support obligations shall not prohibit the Committee from inquiring into the impact of past violations of child support orders on the current fitness and character of the candidate.

7) RG 303:3 Presumption from Nondisclosure. There shall be a rebuttable presumption that nondisclosure of a material fact on the Statement of Candidate is prima facie evidence of the lack of good character.

a) The presumption shall be the same whether the nondisclosure is discovered prior or subsequent to the applicant's admission to the bar.

b) The presumption may be rebutted by clear and convincing evidence of mistake or of rehabilitation and current good character.

8) RG 303:4 Notice. The hearing shall be conducted on at least seven days' written notice to the candidate. The notice shall state the reasons for the hearing. When possible, the Committee shall schedule the hearing within ninety days of the official date for the admission of successful applicants.

9) RG 303:5 Procedures. A candidate has the right to be represented by counsel, to present witnesses, and to cross-examine witnesses. The hearing shall be conducted in private unless the candidate requests otherwise. All testimony shall be given under oath. Any member of the Committee is authorized to administer oaths to the candidate and such witnesses as may appear before the Committee. Testimony and written documentation need not be presented in strict accordance with the Rules of Evidence. A verbatim record may be made at the request of either the candidate or the Committee. Whenever a transcript of the record is ordered by the Committee, a copy shall be furnished to the candidate. The Committee may issue subpoenas in the same manner as provided by Rule 1:20-7(i).

Practice tip – At the hearing, the panel members do not want to hear from the attorney; they want to hear from the candidate. Thus, the attorney's role is limited and should be confined to intense pre-hearing preparation.

## **V. Burdens of Proof and Production**

1) Burden of production - The candidate maintains the burden of going forward with the evidence. This means that the candidate is obligated to show proof of good character or, when relevant, proof of reform and rehabilitation.

RG 202:1 General Duty of Candidate. It shall be the duty of each candidate for admission to the Bar of the State of New Jersey to disclose all available information requested by the Committee on Character. Candidates shall be required to demonstrate their fitness to practice law in this State and their possession of the requisite traits of honesty, integrity, financial responsibility, and trustworthiness.

RG 202:4 Continuing duty to disclose. A candidate shall have a continuing duty to disclose changes that occur with respect to information given in response to questions on the Statement until the attorney oath has been administered. All additional information shall be promptly communicated by the candidate to the Secretary in a certified statement.

2) Burden of proof – In general - The burden of proof has been set by the Court at the clear and convincing standard that the bar candidate currently lacks the requisite good character necessary for admission to the bar.

RG 303:6 Burden of Proof. The candidate shall have the burden to establish by clear and convincing evidence his or her good character and current fitness to be admitted to the practice of law in this State. Among the factors the Committee shall take into consideration are the:

- a) Severity of the conduct;
- b) Cumulative nature of the conduct;
- c) Candidate's candor and honesty before the Panel;
- d) Age of the candidate at the time of the alleged misconduct; and
- e) Any rehabilitation evidence presented by the candidate.

Clear and convincing evidence ... “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established”[; it is] evidence “so clear, direct and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the precise facts in issue.” In re Seaman, 133 N.J. 67, 74(1993).

## **VI. Denial of admittance - Reconsideration & Reapplication**

1) In general- Disbarment in New Jersey is permanent. Such a person will never again be permitted to practice law in this State. On the other hand, the Supreme Court has not permanently foreclosed bar admission to any person who was deemed unfit to be admitted to practice due to lack of good character. As will be seen in the following sections, in every case where the Supreme Court denied admission to practice based upon lack of good character, the Justices also extended an invitation to the candidate to reapply at some future date. In some cases, the Court has assigned a specific period of time that the candidate must wait before seeking reconsideration.

RG 304:4 Request to Reopen. Following a final decision to withhold certification, a candidate may reapply for admission when the candidate can demonstrate clear and convincing evidence of rehabilitation and current fitness to practice law, but no earlier than one year from the date of the final decision. The Supreme Court may require a candidate seeking to reopen his or her application to retake the bar examination if the examination on which admission would otherwise be based occurred more than two years prior to the date the candidate is eligible to reapply for admission.

a) The candidate shall submit an original verified petition and four copies with appropriate supporting documentation attesting to his rehabilitation and current fitness to practice law.

b) The State Chair or, in the event of the Chair's unavailability, the most senior Part Chair shall appoint a three-member panel to review the petition and make a recommendation on the petition to the Supreme Court.

2) The panel may appoint a member of the Committee to investigate and report on the candidate's petition.

- 3) The record before the panel shall consist of the candidate's existing file, the verified petition and supporting documentation together with such additional evidence as may be considered by the panel in its discretion.
- 4) The panel may, in its discretion, take testimony or hear oral argument on the petition.
- 5) The panel shall prepare and forward a report and recommendation to the Supreme Court for appropriate action.

A candidate who has had certification withheld solely because of his or her failure to meet the conditions set forth in RG 202:6 (Child Support Obligations) may apply for reconsideration pursuant to this Regulation on the submission of satisfactory proof of his or her compliance with all child support orders.

A candidate who has had certification withheld solely because of his or her default on state, federal, or governmentally guaranteed student loans may apply for reconsideration pursuant to this Regulation on submission of satisfactory proof that the candidate has made satisfactory arrangements for the repayment of each defaulted loan.

## **VII. Reform and Rehabilitation**

1) In general - A candidate who seeks to prove reform and rehabilitation bears the burden of proof. He or she must first show by clear and convincing evidence that his or her attitude and behavior after the disqualifying misconduct is such that admission to the bar is proper. The more serious the offense, the greater will be the need for a showing of genuine rehabilitation. In certain cases, evidence of a positive kind, including affirmative acts demonstrating personal reform and improvement will be required in order to establish the requisite degree of rehabilitation. In all instances, the applicant must display complete candor in all filings and proceedings required by the Committee on Character. The applicant's attitude before this committee will be of great importance. So, too, will be the applicant's voluntary renunciation of past misconduct. The absence of misconduct over a period of intervening years is also an important factor. During the intervening years, the candidate should be prepared to show a particularly productive use of his or her time. And finally, the Court will consider affirmative

recommendations from people who are aware of the candidate's past misconduct and consider him or her to be currently fit to practice law despite the misconduct. Later cases have reduced evidence of reform and rehabilitation to a five-part list.

- 1) Complete candor in all filings and proceedings conducted by the Committee;
- 2) Renunciation of past misconduct;
- 3) Complete absence of misconduct in the intervening years;
- 4) A productive use of time subsequent to the misconduct; and
- 5) Affirmative recommendations from people who are aware of the past misconduct who specifically consider the applicant's fitness in light of that behavior.

2) Evidence of reform – In re Jenkins, 94 N.J. 458(1983). A fundamental rule in bar admission cases is that evidence of reform and rehabilitation is relevant to determine an applicant's present fitness to practice law. If an applicant's behavior subsequent to the disqualifying misconduct clearly and convincingly demonstrates rehabilitation, it can overcome the adverse inference of unfitness arising from past misconduct, and if persuasive, it may support a finding of present fitness. On occasion, the Justices will also make specific suggestions about the type of rehabilitation evidence that would be appropriate in a particular candidate's case and invite the candidate to reapply at a later date.

RG 303:7 sets forth some typical reform issues:

**303:7 Rehabilitation Evidence.** The candidate may present rehabilitation evidence including, but not limited to:

- a. Positive social conduct and community service;
- b. Absence of recent misconduct;
- c. Reputation testimony;
- d. Demonstration of the candidate's understanding of responsibility to the administration of justice and the practice of law.

Substance abuse or mental illness may not be considered a defense or justification for misconduct, but evidence of treatment and recovery may be offered to support a claim of rehabilitation.

Practice tip – Completion of substantial CLE courses, especially in the field of attorney ethics is an important piece of evidence demonstrating reform and rehabilitation.

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## **VIII. Successful Applications Based upon Reform and Rehabilitation**

1) There have been three cases thus far wherein the Supreme Court has found sufficient evidence of reform and rehabilitation to grant admission to practice. The first of these is In re Application of Strait, 120 N.J. 477(1990). The candidate in *Strait* had a long history of drug and alcohol abuse, coupled with numerous arrests for theft and drug-related offenses. Moreover, certain of his written responses to the Committee on Character were false or misleading. Yet the Justices were persuaded to admit the candidate to practice based upon clear and convincing evidence of rehabilitation. He voluntarily underwent substantial in-patient and out-patient treatment for drug and alcohol addiction. His purported lack of candor with the committee was adequately explained away by confusion and the effects of his addictions. Moreover, he had used his time productively, engaging in community service. Finally, the reports of his experts and the letters of recommendation from people who were aware of his misconduct supported a finding of current good character. Accordingly, he was admitted to practice, subject to certain conditions calculated to ensure his continuing sobriety.

2) In re Application of Peterman, 134 N.J. 201(1993) dealt with a candidate who had been convicted in another state of misappropriation of a client's funds. That conviction resulted in his disbarment in Pennsylvania. There was also extensive evidence that the candidate had a long history of drug abuse and addiction. However, the Supreme Court was impressed with the candidate's evidence of rehabilitation, which included intensive and on-going therapy, a commitment to sobriety, positive reports from experts in the field of addiction and letters of recommendation. The Justices also declined to make a finding that the candidate's conviction for misappropriation of entrusted funds should automatically bar him from practice in New Jersey under the mandatory disbarment rule of In re Wilson, 81 N.J. 451(1979). Rather, the Court ruled that there was insufficient evidence to

show that the misappropriation in this candidate's case had been knowingly executed. On the other hand, the Court was quick to point out that it would deny admission to any candidate from another jurisdiction who has knowingly misappropriated client funds, regardless of evidence of rehabilitation or re-admission to practice in other states.

3) In the most recent of the admission cases, *In re Application of Jackman*, 165 NJ 580 (2000) the candidate, who was a member of the Massachusetts bar, practiced law at a large New Jersey firm over a period of seven years without sitting for the New Jersey bar examination. His actions over this time period constituted the unauthorized practice of law. As a result, he was deemed unfit to be admitted to practice. On the other hand, because of the unique nature of the case, the passage of time and the lack of any aggravating factors, the Justices determined that usual proofs of reform and rehabilitation were unnecessary. Accordingly, they approved the candidate's certification of fitness to practice effective 30 days from the publication of the opinion.

## **IX. Denial of Reapplication**

In the years following the *Matthews* decision, the Justices have not deviated from the standards they set in that case. Rather, they have applied the standards defined in *Matthews* to every subsequent bar admissions case. For example, just four months after the publication of *Matthews*, the Court rendered an opinion in *In re Application of Jenkins*, 94 N.J. 458(1983). In *Jenkins*, the candidate failed to disclose to the Committee on Character various arrests and involvement in civil actions. The Justices found a pattern of deceit in the candidate's action that included an initial denial of the adverse event and then a demonstration of contrition when confronted with the truth. This pattern of non-disclosure evidenced a serious lack of fitness to practice law. Yet, the Justices left open the possibility that at some point in the future the candidate might be able to produce sufficient evidence of the character traits necessary to establish fitness to practice law.

In the 1996 case In re Application of McLaughlin, 144 N.J. 133(1996), the candidate also failed to disclose one arrest and provided false and misleading information to the Committee on Character about a second arrest. He also displayed a lack of candor in dealing with the Committee on the issue of his personal automobile insurance. To make matters worse, his attitude before the Committee on Character and his treatment of court personnel were described by the Justices as intemperate and inappropriate. Moreover, the content and tone of his communications were sarcastic, flippant, snide, condescending and disrespectful. Based upon the totality of the evidence presented, the Court concluded that the candidate did not possess the character traits of truthfulness and honesty that are the fundamental elements to admission to practice. Moreover, his general demeanor and mistreatment of members of the Committee on Character and other judiciary employees further demonstrated disrespect for the administration of justice. However, despite these findings, the Court also extended an invitation for the candidate to submit additional evidence of reform and rehabilitation after a period of six months.

The following year, in In re Application of Triffin, 151 N.J. 510(1997) the Court rejected the application of a candidate based upon a variety of factors and misconduct, including proof of actual fraud, a lack of respect for the judicial process, and a failure to demonstrate any sense of financial responsibility. Moreover, the record did not reveal any evidence of rehabilitation in the intervening years since the episodes of misconduct. However, as in all the past rejection cases the Justices did not foreclose the possibility of the candidate's ultimate admission to the bar based upon sufficient evidence of rehabilitation. As in McLaughlin, the Court placed a time limit on the presentation on such evidence and instructed that such a presentation would have to be made after a period of no less than three years.

The Court imposed a two-year time limit in In re Application of La Tourette, 156 N.J. 444(1998). This candidate's application for admission was rejected by the Supreme Court on the basis of a lack of fidelity to the administration of justice. The candidate had engaged in intemperate communications with Bar Examiner personnel and filed frivolous lawsuits against both the Board of Bar Examiners and his own law school in federal court. In denying his application, the Court recommended specific types of proof that would support a finding of reform and rehabilitation in the candidate's case. This was exactly the same advice the Court had given in the Matthews case. The Justices noted that future evidence of reform and rehabilitation should show payment of support for his children, the implementation of a payment plan for his creditors, involvement with the justice



system in a manner consistent with a member of the bar and involvement in community service. Overall, he must be able to demonstrate that when placed in a position of responsibility, he can act honestly and truthfully and with trustworthiness and reliability in his dealings with others.

## **X. Appendix – Regulations**

### **PART I - GENERAL REGULATIONS**

#### **REGULATION 101. Applicability and Citation of Regulations**

**101:1 Adoption and Approval.** These regulations have been adopted by the Committee on Character and approved by the Supreme Court pursuant to Rule 1:25.

**101:2 Citation.** These regulations shall be referred to as "Regulations Governing the Committee on Character" of the New Jersey Supreme Court and may be cited as, for example, "RG. 102".

#### **REGULATION 102. Membership and Structure**

**102:1 Appointments.** The Supreme Court shall appoint the Committee on Character, which shall consist of such members of the bar as the court may determine. Members shall serve for terms of three years and may be reappointed at the discretion of the Supreme Court. A vacancy shall be filled by the Court for the unexpired portion of the member's term. A member participating in a matter when his or her term expires may continue to participate until certification is granted or withheld.

**102:2 Statewide Chair.** The Court shall annually designate a member of the Committee to serve as Statewide Chair. The Statewide Chair shall be the administrative head of the Committee and the Statewide Panel and shall perform such other duties as are set forth in these Regulations. In the absence or inability to serve of the Statewide Chair, the functions of that position shall be performed by the Part Chair who is senior in service and able to serve.

**102:3 Parts and Membership.** The Committee shall be divided into such number of Parts as the Supreme Court may determine with one member of each Part designated as its Chair. Each Part shall be assigned a specified area. The Statewide Chair may assign members of one Part temporarily to a different Part or assign files from one Part to another Part.

**102:4 Statewide Panel.** The Statewide Chair together with the individual Part Chairs shall comprise the Statewide Panel, which shall be the policy board of the Committee and shall perform such other duties as are set forth in these Regulations.

a. Quorum. Four members of the Statewide Panel shall constitute a quorum and all administrative determinations shall be made by a majority of the quorum.

b. Operations. The Statewide Panel shall, consistent with these Regulations, establish procedures, publish forms, and maintain records as required for the conduct of the Committee's operations.

**102:5 Secretary.** The Secretary of the Board of Bar Examiners shall serve as the Secretary to the Committee on Character. The Secretary shall maintain the files of the Committee and shall be authorized to receive the Statement of each candidate for admission to the bar, together with any other materials the Committee shall deem relevant. The Secretary shall be responsible for the transmission of the record on every candidate who has applied to sit for the bar examination a member of the appropriate Part.

### **REGULATION 103. Committee Purpose and Authority**

**103:1 Purpose.** It shall be the purpose and duty of the Committee on Character to determine the fitness to practice law of each candidate for admission to the Bar of the State of New Jersey and thereby to promote the public interest and to protect the integrity of the legal profession. The Committee shall review the record established pursuant to these Regulations and shall certify each candidate's fitness to the Supreme Court or shall recommend the withholding of such certification or admission subject to conditions.

**103:2 Authorization.** One member may exercise the full jurisdiction and authority of the Committee as to certification pursuant to RG. 302. Withholding of certification and admission with conditions shall be in accordance with RG. 303 and RG. 304. Review of the decisions by RG. 303 hearing panels shall be in accordance with RG. 304.

**103:3 Discretion of Committee.** Except as provided by these Regulations, the Committee shall have complete discretion over its procedures.

## **PART II - REQUIREMENTS OF CANDIDATES**

### **REGULATION 201. Submissions**

**201:1 Statement of Candidate.** Each candidate shall file a Certified Statement of Candidate with the Secretary to the Committee on Character on or before a date set by the Committee. The Statement shall be in the form prescribed by the Committee.

**201:2 References.** The Secretary or any member of the Committee before whom an application is pending may request that the references listed by the candidate in the Certified Statement supply information on forms prescribed by the Committee. The responses of any named references are confidential and will not be released to the applicant, except when they are to be used as evidence pursuant to RG. 303 or RG. 304 of these Regulations.

**201:3 Additional Investigation.** The Secretary or any member of the Committee may request information or documentation from candidates and appropriate sources including, but not limited to, named references, current or former employers, Federal and State regulators or agencies, law enforcement agencies, educational institutions, financial institutions, or medical personnel.

**201:4 Waivers.** Candidates shall submit such written waivers, releases, or consents as the Committee may require to enable it to have access to all records involving conduct, past and present.

### **REGULATION 202. Duties of Candidates**

**202:1 General Duty of Candidate.** It shall be the duty of each candidate for admission to the Bar of the State of New Jersey to disclose all available information requested by the Committee on Character. Candidates shall be required to demonstrate their fitness to practice law in this State and their possession of the requisite traits of honesty, integrity, financial responsibility, and trustworthiness.

**202:2 Time Limitation on Candidate Response to the Committee.** Each candidate must diligently pursue his or her certification by the Committee. Candidates must respond in writing to inquiries and forward requested documentation to the reviewing member or appropriate staff for the Committee within thirty days of the inquiry, unless an extension of time for good cause is

requested in writing prior to the expiration of the thirty days. A grant of an extension shall be for a date certain.

**202:3 Failure to Respond in a Timely Manner.** In the absence of good cause shown to the contrary, failure to respond to inquiries by the Committee or to make a timely request for an extension of time to respond shall result in a declaration that the application for admission of the candidate has been abandoned. The Secretary of the Board of Bar Examiners shall notify the candidate in writing at the candidate's last known address. In no event shall the candidate's eligibility terminate sooner than ninety days after the release of the examination results.

**202:4 Continuing duty to disclose.** A candidate shall have a continuing duty to disclose changes that occur with respect to information given in response to questions on the Statement until the attorney oath has been administered. All additional information shall be promptly communicated by the candidate to the Secretary in a certified statement.

**202:5 Failure to cooperate.** A candidate's failure or refusal to supply information deemed relevant by the Committee or otherwise to cooperate with the Committee may be grounds for the withholding of certification.

**202:6 Child support obligations.** Each candidate must certify as part of the Certified Statement of Candidate that he or she is not the obligor of a child support order, or that the candidate is the obligor of a child support order but does not owe past-due support in an amount equal to or exceeding the amount of child support payable for six months and has complied with all health insurance provisions related to the child, and that the candidate is not the subject of a child-support related warrant. If the candidate cannot or does not so certify, certification for admission to the bar shall be withheld.

**202:7 Student loan obligations.** Each candidate must certify as a part of the Certified Statement the loan number, lender, and the amount of each student loan and that he or she is not in default of any state, federal, or governmentally guaranteed student loan. If a candidate does not so certify, or if the candidate does not provide satisfactory proof of arrangements to cure the default after having been requested to do so by the Committee, a RG. 303 hearing shall be held to determine whether certification should be withheld.

## **202:8 Probation and parole ineligibility.**

**(a) Criminal Offenses.** A candidate who is on probation or parole from a sentence for a criminal offense shall not be eligible for consideration by the Committee until the probation or parole has been successfully completed. A candidate who is subject to the terms of this Regulation shall have the right to petition the Statewide Panel for a waiver of the ineligibility provision based on the demonstration of exceptional circumstances. If the Statewide Panel grants the petition, the Committee shall conduct a hearing before a RG. 303 Panel to consider the candidate's current character and fitness to be admitted to practice.

**(b) Motor Vehicle Violations.** Paragraph (a) of this regulation shall not apply either to motor vehicle violations under Title 39, including driving while intoxicated, or to a conviction in another jurisdiction for a criminal offense that would constitute a motor vehicle violation under Title 39 in New Jersey.

## **PART III - CERTIFICATION PROCEDURES**

### **REGULATION 301. Investigations**

**301:1 Investigation assistance.** A Committee on Character member may request a detailed investigation of facts and circumstances bearing on a candidate's fitness to practice law. Staff of the Committee shall, to the extent practicable, provide investigative assistance as needed. The Secretary may arrange for additional investigation or other assistance from the Administrative Office of the Courts or such other agency as may be appropriate.

**301:2 Special Master.** When, in the discretion of the Statewide Panel, the issues involving the fitness of a candidate for admission to the bar require extensive interviews or additional resources, the Panel may apply to the Supreme Court for the appointment of a Special Master to make findings of fact and recommended conclusions. The report will be submitted to the Statewide Panel for decision before being forwarded to the Supreme Court. Special Masters shall conduct their hearings in accordance with the provisions of RG. 303:5. Retired judges may serve pro bono or, if they are on recall, may be paid at the rate in effect for judges on recall service. Special counsel may serve pro bono or may be paid the per diem rate in effect for single arbitrators under Rule 4:21A-5.

## **REGULATION 302. Initial Review and Certification**

**302:1 Conduct Requiring Investigation.** The appropriate Part of the Committee, or such member or members thereof so assigned, shall review the Statement of Candidate and related documents. If, on such review, further information is deemed desirable, a request therefore may be made of the candidate or any other appropriate source. The request may be made in person or by telephone or mail. Conduct requiring additional action may include, but is not limited, to the following:

- a. Nondisclosure of information;
- b. Academic dishonesty;
- c. Unlawful conduct, including arrests, whether resulting in conviction, dismissal, or expungement;
- d. Failure to file required federal, state, or local tax returns or to pay tax obligations;
- e. Financial misrepresentation, mismanagement, irresponsibility, or neglect;
- f. Default or arrearages in the payment of student loans;
- g. Allegations of fraud, perjury, or false swearing;
- h. Misconduct in employment;
- i. Evidence of moral turpitude;
- j. Having been disciplined as a member of a profession, trade or occupation, including but not limited to the practice of law;
- k. Failure to comply with Court orders, such as support and alimony orders;
- l. Domestic violence;
- m. Abuse of legal process or history of vexatious lawsuits;
- n. Current substance abuse; or
- o. Evidence of current psychotic disorders including paranoia, bi-polar disorder, or schizophrenia.

**302:2 Interview Procedures.** A candidate and any other persons with knowledge relevant to the candidate's character and fitness to practice law may be asked to appear for an informal interview before the member or members. The interview shall be conducted in private unless the candidate requests otherwise. The candidate has the right to be represented by counsel. Testimony may be given under oath, and a verbatim record may be taken at the request of either the Committee or the candidate.

**302:3 Determination of Certification.** On a determination for the Committee that a candidate is fit to practice law, the member or members of the Committee shall so certify to the Supreme Court.

**302:4 Consequences of failure to certify.** If a candidate has not been certified by the Committee at the time the Board of Bar Examiners reports the results of the bar examination, such results shall not be withheld pending final Committee action. The attorney oath, however, shall not be administered to any candidate nor shall admission to the bar be given effect prior to a certification of fitness by the Committee.

**302:5 Revocation of Certification.** Certification of a candidate may be revoked by the Committee at any time prior to the administration of the oath on the receipt of information warranting further review.

### **REGULATION 303. Part Hearing**

**303:1 When Held.** If a single member of the Committee determines not to certify a candidate as fit to practice law or desires to have a determination made by a Panel, a hearing shall be conducted by three members of the Committee. In the discretion of the assigned member and subject to the approval of the Part Chair, the candidate may waive entitlement to a three-member Panel and proceed with a hearing before the assigned member of the Committee.

**303:2 Reasons for a hearing.** Reasons for a hearing may include, but are not limited to, evidence of the conduct specified in RG. 302:1.

If a factual question arises in respect of the candidate's certification pursuant to RG. 202:6 or RG. 202:7, a hearing shall be held. The Panel shall make findings of fact on whether the candidate is in violation of one or more of the conditions contained in the Regulations. If the Panel determines that the candidate has failed to meet or comply with one or more of the conditions of the Regulations, the Panel shall report same for final decision on the candidate's eligibility for admission pursuant to RG. 304:2.

A determination that the candidate is not currently in violation of the requirements of RG. 202:6 in respect of child support obligations shall not prohibit the Committee from inquiring into the impact of past violations of child support orders on the current fitness and character of the candidate.



**303:3 Presumption from Nondisclosure.** There shall be a rebuttable presumption that nondisclosure of a material fact on the Statement of Candidate is prima facie evidence of the lack of good character.

- a. The presumption shall be the same whether the nondisclosure is discovered prior or subsequent to the applicant's admission to the bar.
- b. The presumption may be rebutted by clear and convincing evidence of mistake or of rehabilitation and current good character.

**303:4 Notice.** The hearing shall be conducted on at least seven days' written notice to the candidate. The notice shall state the reasons for the hearing. When possible, the Committee shall schedule the hearing within ninety days of the official date for the admission of successful applicants.

**303:5 Procedures.** A candidate has the right to be represented by counsel, to present witnesses, and to cross-examine witnesses. The hearing shall be conducted in private unless the candidate requests otherwise. All testimony shall be given under oath. Any member of the Committee is authorized to administer oaths to the candidate and such witnesses as may appear before the Committee. Testimony and written documentation need not be presented in strict accordance with the Rules of Evidence. A verbatim record may be made at the request of either the candidate or the Committee. Whenever a transcript of the record is ordered by the Committee, a copy shall be furnished to the candidate. The Committee may issue subpoenas in the same manner as provided by Rule 1:20-7(i).

**303:6 Burden of Proof.** The candidate shall have the burden to establish by clear and convincing evidence his or her good character and current fitness to be admitted to the practice of law in this State. Among the factors the Committee shall take into consideration are the:

- a. Severity of the conduct;
- b. Cumulative nature of the conduct;
- c. Candidate's candor and honesty before the Panel;
- d. Age of the candidate at the time of the alleged misconduct; and
- e. Any rehabilitation evidence presented by the candidate.

**303:7 Rehabilitation Evidence.** The candidate may present rehabilitation evidence including, but not limited to:

- a. Positive social conduct and community service;
- b. Absence of recent misconduct;

- c. Reputation testimony;
- d. Demonstration of the candidate's understanding of responsibility to the administration of justice and the practice of law.

Substance abuse or mental illness may not be considered a defense or justification for misconduct, but evidence of treatment and recovery may be offered to support a claim of rehabilitation.

**303:8 Determination; Report and Recommendations.** On the conclusion of the hearing, if the evidence adduced clearly and convincingly demonstrates that the matter could have been resolved appropriately through the informal interview process set forth in RG. 302, the Panel may certify the candidate pursuant to RG. 302:3. In all other matters, the Panel shall issue a report. The vote of each member shall be expressly noted. Any Panel member who does not join in the report may prepare a separate report.

- a. If the Panel determines to certify the candidate, it shall file a report with the Secretary and the Statewide Panel. A copy shall be sent forthwith to the candidate.
- b. If the Panel determines to recommend that certification be withheld, it shall file a report with the Secretary and the Statewide Panel. A copy shall be sent forthwith to the candidate. On receipt thereof, a candidate may file an appeal pursuant to RG. 304:1. Reasons for withholding certifications may include, but need not be limited to, the criteria listed in RG. 302:1.
- c. In cases in which the Panel determines that inappropriate conduct has resulted from substance abuse, mental illness, psychological disorder, or such other grounds as the Committee, with good cause, may determine or when the candidate has been treated for substance abuse or bipolar disorder, schizophrenia, paranoia, or other psychotic disease within the twelve months preceding the submission of the Statement, the Panel may recommend certification subject to conditions. If the Panel determines to certify with conditions, it shall file a report with the Secretary and the Statewide Panel. A copy shall be sent forthwith to the candidate, who may file an appeal pursuant to RG. 304:1.

#### **REGULATION 304. Review of RG 303 Hearing Report and Recommendations**

**304:1 Appeal by Candidate.** A candidate may appeal a recommendation by a RG. 303 Hearing Panel to withhold certification or to certify with conditions. The

appeal shall be to an Appeal Panel of three persons, at least one of whom shall be a member of the Statewide Panel.

- a. Time for Appeal. A candidate shall initiate the appeal by filing a written notice of appeal with the Secretary within fifteen days of the filing date of the report by the Hearing Panel. The notice of appeal shall state specific exceptions to the recommendation of the hearing panel, identifying the errors allegedly committed.
- b. Record on Appeal. The appeal shall be decided on the record before the Hearing Panel. No additional testimony, exhibits, documents or other proofs, or oral argument shall be considered unless the Appeal Panel, in its discretion, so directs.
- c. Briefing on Appeal. No later than thirty days after the filing of the notice of appeal, the candidate shall submit an original plus four copies of a brief in support of the appeal. The Appeal Panel may direct the Hearing Panel to submit a written response to the candidate's brief.
- d. Report of Appeal Panel. After consideration of the written arguments, the Appeal Panel shall file its report and recommendation with the Secretary and the Supreme Court for approval pursuant to RG. 304:3. A copy shall be sent forthwith to the candidate. The Appeal Panel may remand the case to the Hearing Panel for further proceedings. If the Appeal Panel's recommendation is to withhold certification, or to certify with conditions, the candidate shall have fifteen days from the filing date of the report within which to submit an original plus eight copies of written exceptions to the Supreme Court.

**304:2 Review by Statewide Panel.** The Statewide Panel shall review every report and recommendation made by a Hearing Panel pursuant to RG. 303, unless an appeal is taken pursuant to RG. 304:1. The Statewide Panel shall have plenary powers to:

- a. Approve the recommendations of the Hearing Panel;
- b. Modify the recommendation, including recommending, rejecting, or modifying proposed conditions;
- c. Recommend the withholding of certification; or
- d. Remand the matter to the Hearing Panel for further proceedings.

The Statewide Panel shall file its report and recommendation with the Secretary who shall refer the report to the Supreme Court for final approval pursuant to RG. 304:3. A copy shall be sent forthwith to the candidate. If the Statewide Panel's recommendation is to withhold certification, or to certify with conditions, the

candidate shall have fifteen days from the filing date of the report within which to submit an original plus eight copies of written exceptions to the Supreme Court.

**304:3 Determination by Supreme Court.** The Supreme Court shall make the final determination on the papers submitted unless the Court directs additional filings or oral argument. The decision of the Supreme Court shall be transmitted by the Clerk of the Supreme Court to the candidate and to the Committee on Character.

The Court shall withhold the certification of any candidate found to be in violation of one or more of the conditions contained in RG. 202:6.

**304:4 Request to Reopen.** Following a final decision to withhold certification, a candidate may reapply for admission when the candidate can demonstrate clear and convincing evidence of rehabilitation and current fitness to practice law, but no earlier than one year from the date of the final decision. The Supreme Court may require a candidate seeking to reopen his or her application to retake the bar examination if the examination on which admission would otherwise be based occurred more than two years prior to the date the candidate is eligible to reapply for admission.

- a. The candidate shall submit an original verified petition and four copies with appropriate supporting documentation attesting to his rehabilitation and current fitness to practice law.
- b. The State Chair or, in the event of the Chair's unavailability, the most senior Part Chair shall appoint a three-member panel to review the petition and make a recommendation on the petition to the Supreme Court.
  - 1) The panel may appoint a member of the Committee to investigate and report on the candidate's petition.
  - 2) The record before the panel shall consist of the candidate's existing file, the verified petition and supporting documentation together with such additional evidence as may be considered by the panel in its discretion.
  - 3) The panel may, in its discretion, take testimony or hear oral argument on the petition.
  - 4) The panel shall prepare and forward a report and recommendation to the Supreme Court for appropriate action.

A candidate who has had certification withheld solely because of his or her failure to meet the conditions set forth in RG. 202:6 (Child Support Obligations) may

apply for reconsideration pursuant to this Regulation on the submission of satisfactory proof of his or her compliance with all child support orders.

A candidate who has had certification withheld solely because of his or her default on state, federal, or governmentally guaranteed student loans may apply for reconsideration pursuant to this Regulation on submission of satisfactory proof that the candidate has made satisfactory arrangements for the repayment of each defaulted loan.

### **304:5 Withdrawal of Application; Reinstatement.**

- a. A candidate may withdraw his or her application at any time prior to the expiration of the time for appeal set forth in RG. 304:1a. Failure to give the Committee written notice of the withdrawal in a timely manner will result in the matter proceeding to disposition before the Supreme Court pursuant to RG. 304:3.
- b. A candidate who withdraws may not seek to reinstate his or her application for one year from the date of withdrawal. If the reinstatement request is filed more than two years after the candidate sat for the bar examination, retaking and passing the examination shall be a prerequisite for favorable consideration of the application. The Supreme Court may, for good cause shown, waive the retaking of the examination.
- c. A candidate who successfully reinstates his or her application must submit a current Certified Statement of Candidate and updated attachments. The record before the reviewing RG. 303 Panel will consist of the original file, including but not limited to all transcripts, exhibits, briefs, and reports, supplemented as may be appropriate by testimony and exhibits presented to the Panel. To the extent feasible, the Statewide Chair will appoint the original Panel members to consider the renewed application.

### **REGULATION 305. Revocation of Certification**

**305:1 Revocation of prior certification.** When the Committee receives information that is unfavorable or otherwise requires the attention of the Committee in respect of a previously-certified candidate, the original certification shall be revoked and, whenever possible, the candidate's file shall be forwarded for review to the member who previously granted certification. If the member is no longer on the Committee, the Part Chair or his or her designee will review the matter. This section shall apply whether the information is obtained from the candidate as required by RG. 202 or from a third party.

## **REGULATION 401. Confidentiality; Retention**

**401:1 Confidentiality.** All Certified Statements, reference letters, records, files, proceedings and reports of the Committee on Character shall be confidential and shall not be disclosed or attended by anyone except as authorized by these Rules or as provided by the Supreme Court and as follows:

- a. On the scheduling of oral arguments before the Supreme Court, in which event the recommendation of the Committee that is the subject thereof, together with any briefs filed pursuant to an order of the Court, shall be made public; or
- b. At the request of or with the consent of the candidate in which event the Statement of Candidate may be released; or
- c. At the request of the Disciplinary Review Board in connection with its consideration and determination of the appropriate sanctions that should be imposed on an attorney who has engaged in unethical conduct; or
- d. At the request of a jurisdiction to which the candidate has applied for admission to the bar; or
- e. By order of the Supreme Court, on notice to the candidate unless the Court otherwise orders.

**401:2 Retention.** Statements of Candidate, letters from candidate's references, and other relevant documents shall be retained permanently. All Committee records may be microfilmed after one year and the originals thereupon destroyed.

## **REGULATION 402. Miscellaneous Procedures**

**402:1 Committee on Character and Staff Immunity.** Members of the Committee on Character and their staff, committee staff, and lawfully appointed designees shall be absolutely immune from liability, whether legal or equitable in nature, for any action or omission in the performances of their official duties.

**402:2 Third-Party Immunity.** Persons disclosing information in good faith to the Committee on Character and persons supplying information to the Committee on Character pursuant to an authorization and release executed by the candidate shall be absolutely immune from liability, whether legal or equitable in nature.