

## Rule 723

### INVESTIGATION AND HEARING PROCEDURES

- (a) **Character and Fitness Investigation.** In an investigation of an applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the admissions attorney's responsibilities include the following:
  - (1) reviewing the application;
  - (2) using the applicant's fingerprints submitted as part of the application for admission to obtain a criminal history report;
  - (3) investigating matters that bear on the applicant's character and fitness qualifications under Rule 712;
  - (4) referring the applicant for an evaluation under Rule 713, if necessary; and
  - (5) interviewing the applicant, if necessary.
- (b) **Investigatory Authority.**
  - (1) The admissions attorney or the Attorney Admissions Review Committee may request a state or local bar association or a member of the bar of the judicial district where the applicant resides to conduct any part of the investigation and to report the results to the admissions attorney or the Review Committee.
  - (2) During the investigation, the admissions attorney or a Review Committee member may obtain information, take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of books, papers, and documents.
- (c) **Approval of Qualifications; Holding Over.** The applicant's character and fitness qualifications must be approved before the applicant will be eligible for admission to the bar.
  - (1) If an applicant elects to take the bar examination during an ongoing character and fitness investigation or hearing, the Attorney Admissions office will embargo the applicant's bar examination score until the applicant's character and fitness qualifications are approved.
  - (2) If an applicant elects not to take the bar examination due to an ongoing character and fitness investigation or hearing, the Attorney Admissions office will hold the application over for the next bar examination after the completion of the investigation or hearing.
- (d) **Approval of Applicant.** If the admissions attorney determines an applicant established the requisite character and fitness qualifications under Rule 712, the admissions attorney will approve the applicant.

- (e) **Referral to Review Committee.** The admissions attorney must refer an applicant not approved to the Review Committee for further investigation.
  - (1) If the Review Committee determines an applicant established the requisite character and fitness qualifications under Rule 712, the Review Committee will approve the applicant.
  - (2) If the Review Committee determines an applicant failed to establish the requisite character and fitness qualifications under Rule 712, the Review Committee may take any of the following actions:
    - (A) initiate remedial action by agreement with the applicant; and
    - (B) refer the applicant to the Board of Law Examiners for a formal hearing.
- (f) **Hearing Notices.** If the Review Committee refers an applicant to the Board, the admissions attorney will inform the Attorney Admissions office that a formal hearing needs to be scheduled.
  - (1) The Attorney Admissions office will inform the applicant of the date, time, and location of the hearing.
  - (2) The admissions attorney must file a notice of hearing and serve a copy on the applicant no later than 45 days prior to the formal hearing.
    - (A) The notice of hearing must include factual allegations that inform the applicant of all issues relating to the applicant's character and fitness qualifications.
    - (B) The notice must adequately inform the applicant of the nature of the evidence against the applicant. But the notice need not list every item and source of information to be presented at the hearing.
- (g) **Applicant's Response.** The applicant must file any response to the notice of hearing no later than 21 days after service and admit or deny each of the factual allegations contained in the notice of hearing. The applicant must file the response with the Attorney Admissions office and serve a copy of the response on the admissions attorney.
- (h) **Right to Counsel.** The applicant is entitled to retain counsel at any time.
- (i) **Character and Fitness Hearing.** At a character and fitness hearing, the Board may obtain information, take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of books, papers, and documents. The following provisions apply during a hearing before the Board.

- (1) **Burden of Proof.** 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.
- (2) **Presentation of Evidence.** The parties may present evidence and testimony to the Board in accordance with Rule 725(b). Either party may request that the Board issue a subpoena.
- (3) **Right to Cross-Examine.** The parties are entitled to cross-examine witnesses.
- (4) **Privilege Against Self-Incrimination.** The applicant is not required to testify or produce records over objection if doing so would violate the applicant's constitutional privilege against self-incrimination.
- (5) **Prior Judgments and Adjudications.** The following presumptions apply to the Board's consideration of the applicant's prior judgments and adjudications.
  - (A) A certified journal entry of conviction for a crime is conclusive evidence that the applicant committed the crime. A diversion agreement or other similar document is deemed a conviction of the crime.
  - (B) A certified copy of a civil judgment based on clear and convincing evidence is conclusive evidence that the applicant committed the civil wrong.
  - (C) Any other civil judgment is prima facie evidence of the findings that form the basis for the judgment. The applicant has the burden to disprove the findings.
  - (D) A final adjudication of misconduct in an attorney disciplinary proceeding in another jurisdiction conclusively establishes the misconduct for purposes of an admission proceeding in Kansas.
- (j) **Transcript.** A certified court reporter must transcribe a hearing held before the Board. After the hearing, the admissions attorney must order a copy of the hearing transcript and provide a copy to the Attorney Admissions office.
- (k) **Reopening an Investigation.** The admissions attorney may reopen an investigation and withdraw approval of the applicant if additional information is discovered relating to an applicant's character and fitness qualifications before the applicant is admitted to the bar. If necessary, the Board may hold a hearing on the matter.
- (l) **Misconduct During Examination.** If the Board has cause to believe that an applicant engaged in misconduct during the bar examination, the Board may reopen the investigation into the applicant's character and fitness qualifications. The Attorney Admissions office

will embargo the applicant's bar examination score until the matter has been resolved. If necessary, the Board may hold a hearing on the matter.

- (m) **Confidentiality.** Character and fitness investigations, hearings, and all related records are confidential and subject to release only as provided in Rule 705. The Board may hold any part of a hearing as an open hearing upon an applicant's request.
- (n) **Findings, Conclusions, and Determination.** Following a hearing, the Board must issue a written decision detailing its findings of fact, conclusions of law, and determination of whether the Board approves the applicant for admission to the bar.
  - (1) If the Board approves the applicant for admission, the Board must send a copy of its written decision to the applicant and the matter is concluded.
  - (2) If the Board does not approve the applicant for admission, the Board must refer the matter to the Supreme Court for review and decision.

**[History:** New rule adopted effective July 1, 2022.]