

NOTICE OF COMMENT PERIOD

On August 26, 2020, the Nebraska Supreme Court considered proposed amendments to Neb. Ct. R. § 3-100 et seq., Admission Rules for the Practice of Law relating to review and appeals of adverse decisions of the Nebraska State Bar Commission. The Supreme Court directed that the proposed amendments be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments. Anyone desiring to comment on the proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to wendy.wussow@nebraska.gov, with the rule section(s) listed in the subject line, no later than October 1, 2020.

The full text of the proposed amendments is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

CHAPTER 3: ATTORNEYS AND THE PRACTICE OF LAW

Article 1: Admission Rules for the Practice of Law.

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§ 3-101. Definitions.

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(B) **Adverse decision.** “Adverse decision” means

(1) a denial by the Bar Commission of an applicant’s request for admission or permission to sit for a bar examination; ~~or~~

(2) a denial by the Bar Commission of a request for special testing accommodation; or

(3) a failure to meet the required character and fitness as determined by the Bar Commission upon an application:

(a) for reinstatement after an administrative suspension under § 3-803(F)(2),

(b) for reinstatement after resignation under § 3-119(E), or

(c) to move from inactive membership to active membership status under § 3-803(B)(2).

(4) An adverse decision does not include a failure to achieve a passing score on the bar examination.

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§ 3-121. Application for waiver of provisions.

The Court, upon application made to the Clerk of the Supreme Court, may in its discretion vary the application or waive any provision of these rules where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's qualifications, character and fitness, and the facts relied upon and a request for waiver of a specific qualification. This section shall not be used where an applicant has received an adverse decision under § 3-101(B).

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§ 3-123. Review by Commission.

(A) Any applicant who has had an adverse decision, as defined in § 3-101(B), may within 30 days after mailing of the adverse decision request a hearing before the Commission.

(B) The applicant ~~must~~ shall:

(1) appear at the hearing and make an oral presentation and

(2) present a concise written brief 7 days prior to the hearing setting forth the reasons why the adverse decision or other challenged ruling of the Commission should be altered.

(C) The applicant may, at the applicant's expense, arrange to have the proceeding recorded for use by the Commission or by the Court on appeal.

(D) Both the Commission and the applicant may present evidence in the form of witnesses and documents. The Commission may limit argument, request briefing on specific matters and subpoena documents or witnesses. Without waiving any rules of confidentiality stated in these Rules, the Commission may, in its discretion, provide to the applicant copies of any of its documentary evidence in advance of the hearing.

(E) The Commission will advise the applicant of its decision in writing. In the event that the applicant is dissatisfied with the decision of the Commission, the applicant may, within 30 days from the date of the written decision of the Commission, appeal the decision to the Supreme Court as provided in § 3-126.

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§ 3-126. Appeal to Supreme Court; procedure.

(A) Any applicant entitled to appeal from a final adverse decision of the Commission in accordance with § 3-123 must file a notice of appeal with the Clerk of the Supreme Court within 30 days following the date notice of the decision was mailed to the applicant at the address given to the Commission by the applicant at the time of the hearing before the Commission.

(B) The notice of appeal shall be accompanied by a written statement setting forth the nature of the case, the reason for the appeal, and the facts and pertinent authorities upon which the applicant relies. No fee will be charged for filing the appeal.

~~(C) The Supreme Court will consider the matter de novo on the record made at the hearing before the Commission, including such proceedings as may have been recorded pursuant to § 3-123; provided, however, that the~~ The Supreme Court may appoint a master, who, after hearing the arguments of the applicant and the Commission, shall make findings and report them to the Court, together with a recommended disposition. A copy of such report shall be forwarded to the applicant on the same day the report is filed with the Court. The applicant shall have 14 days from the filing of the report within which to file a response, if any, as the applicant may wish to make.

(D) If no hearing before a master occurs, the Supreme Court shall consider the matter de novo on the record made at the hearing before the Commission, including such proceedings as may have been recorded pursuant to § 3-123.

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