

NOTICE OF COMMENT PERIOD

The Attorney Services Division submitted to the Nebraska Supreme Court proposed rule amendments to Neb. Ct. R. § 3-803 entitled “Membership.” The Nebraska Supreme Court determined the proposed rule amendments should be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments. Anyone desiring to comment on the proposed rule 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, no later than March 1, 2019.

The full text of the proposed rule 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

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Article 8: State Bar Association; Creation; Control; and Regulation.

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§ 3-803. Membership.

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(B) Classes. Members of this Association shall be divided into ~~four~~ five classes, namely: Active members, Inactive members, Disability Inactive members, Law Student members, and Emeritus members.

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(2) Any member who is not actively engaged in the practice of law in the State of Nebraska, or who is a nonresident of the State of Nebraska and not actively engaged in the practice of law in Nebraska, and who is not an Emeritus member, may, if he or she so elects, be placed in Inactive membership status; in the event the member has an impairment which prevents an active law practice, the member may apply for Disability Inactive membership which alleviates the need to pay annual inactive dues during the period of disability.

A member desiring to be placed in any Inactive membership status shall file a written application therefor with the Administrator of Attorney Services Division and, if otherwise qualified, shall be placed in such inactive status classification. No Inactive members shall practice law in Nebraska, or vote or hold office in this Association. Any Inactive member may, on filing application with the Administrator of Attorney Services Division and upon payment of the required fees and dues, and compliance with such requirements as may be imposed by the Supreme Court to show fitness to engage in the active practice of law in this State as provided in § 3-803(F), become an Active member. The State Bar Commission shall conduct a review of the member’s character and fitness and make a recommendation to the Court evincing the member’s fitness to become an Active member. (Appendix A).

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(E) Delinquency and Reinstatement. All mandatory membership assessments not paid by April 1 of the current calendar year shall be considered delinquent; and the Administrator of Attorney Services Division shall send written notice, by certified mail, to each member then delinquent in the payment of his or her assessments, which notice shall be addressed to such member at his or her last reported address, and shall notify such member of such delinquency. All members who shall fail to pay delinquent assessments within 30 days thereafter shall be reported to the Supreme Court by the Administrator of Attorney Services Division, and the Supreme Court shall enter an order to show cause why such member shall not be suspended from membership in this Association. The Supreme Court shall, after hearing thereon, enter such an order as it may deem appropriate. If an order of suspension shall be entered, such party shall not practice law until restored to good standing. Whenever a member suspended for nonpayment of mandatory membership assessments shall make payment of all arrears, and shall satisfy the Supreme Court of his or her qualification to then return to the active practice of law utilizing the process set forth in § 3-803(F), such member shall be entitled to reinstatement upon request the attorney may request reinstatement. The Administrator of Attorney Services Division shall keep a complete record of all suspensions and reinstatements. No person, while his or her membership is suspended, shall be entitled to exercise or receive any of the privileges of membership in this Association.

(F) Suspension or Disbarment. Any member who shall be suspended or disbarred from the practice of law by the Supreme Court shall, during the period of such suspension or disbarment, be likewise suspended or barred from membership in this Association.

(1) Upon application for admittance after a suspension or disbarment lasting longer than 8 months, the member shall submit to a character and fitness review before the State Bar Commission consisting of updating information the State Bar Commission uses to determine character and fitness to practice during the time of suspension or disbarment (Appendix A). The State Bar Commission shall collect a \$150 fee for its character and fitness investigation of each application for reinstatement.

(2) The State Bar Commission director shall make a character and fitness recommendation to the Court upon completion of the application process for each member applying for reinstatement from a gap in licensure of more than 8 months. In the event further inquiry as provided for in § 3-116(F) or a hearing before the State Bar Commission is required to determine a character and fitness recommendation, costs shall be taxed to the applying party.

(3) On reinstatement to practice by the Supreme Court, such party shall pay mandatory membership assessments for the year in which he or she is readmitted and all past due mandatory assessments and late fees owed at the time of the suspension or disbarment and complete any CLE requirements pursuant to Neb. Ct. R. § 3-401.12 prior to being restored to membership in this Association. Voluntary membership dues shall not be collected or assessed during suspension or disbarment periods or while an attorney is in retired/resigned status.

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(I) Reinstatement Following Resignation. Whenever a former member of this Association who resigned is readmitted to the practice of law in Nebraska by the Supreme Court pursuant to the process set forth in § 3-119(E), the member shall not pay mandatory membership assessments for the year in which he or she

is readmitted, as the reinstatement application fee includes the mandatory assessment for the year of reinstatement.

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APPENDIX A

CHARACTER AND FITNESS STANDARDS

PURPOSE. The primary purposes of character and fitness screening before admission to the bar of Nebraska are to assure the protection of the public and to safeguard the justice system. The attorney licensing process is incomplete if only testing for minimal competence is undertaken. The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys.

ORGANIZATION. The bar commission will administer character and fitness screening. It will perform its duties in a manner that assures the protection of the public by recommending for admission only those who qualify.

THE INVESTIGATIVE PROCESS. The rules of the bar commission place on the applicant the burden of proving good character by producing documentation, reports, and witnesses in support of the application. Each investigation will be initiated by requiring the applicant to execute under oath a thorough application, and to sign an authorization and release form that extends to the bar commission and to any persons or institutions supplying information thereto. The applicant will be informed of the consequences of failing to produce information requested by the application and of making material omissions or misrepresentations.

STANDARD OF CHARACTER AND FITNESS. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission.

RELEVANT CONDUCT. The revelation or discovery of any of the following should be treated as cause for further inquiry before the bar commission decides whether the applicant possesses the character and fitness to practice law:

1. misconduct in employment;
2. acts involving dishonesty, fraud, deceit, or misrepresentation;
3. abuse of legal process, including the filing of vexatious lawsuits;
4. neglect of financial responsibilities;
5. neglect of professional obligations;
6. violation of an order of a court, including child support orders;
7. evidence of mental or emotional instability;
8. evidence of drug or alcohol dependence or abuse;

9. denial of admission to the bar in another jurisdiction on character and fitness grounds;

10. disciplinary action by an attorney disciplinary agency or other professional disciplinary agency of any jurisdiction.

USE OF INFORMATION. The bar commission will determine whether the present character and fitness of an applicant qualify the applicant for admission. In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

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. the evidence of rehabilitation;

8. the applicant's positive social contributions since the conduct;

9. the applicant's candor in the admissions process;

10. the materiality of any omissions or misrepresentations.

The investigation conducted by the bar commission will be thorough in every respect and will be concluded expeditiously.