

Viola Romero Wright, Bar No. 015989  
Lee Holtry, Bar No. 016553  
Co-Chairs  
Arizona Supreme Court Committee on Character and Fitness  
1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007-3222  
Telephone: (602) 452-3971

IN THE SUPREME COURT  
STATE OF ARIZONA

PETITION TO AMEND	)	Supreme Court No. R-10-0019
RULES 36(e), 36(f), AND	)	
37(c), RULES OF THE	)	COMMENT
SUPREME COURT	)	
	)	
_____	)	

Pursuant to Rule 28, Rules of the Supreme Court, the Committee on Character and Fitness respectfully submits this comment to the Rule Petition R-10-0019, submitted by David K. Byers, Administrative Director, Administrative Office of the Courts, proposing amendments to Rules 36, and 37, Rules of the Supreme Court.

On September 2, 2010, the Court adopted amendments to Rules 34-37 and continued consideration of Rules 36(c)(7) and 36(f)(7) for further study. Staff of the Supreme Court proposed revisions to the rules and on December 10, 2010, the court ordered the matter reopened for public comment on proposed revisions to Rules 36(e), 36(f) and 37(c), Rules of the Supreme Court, titled “Alternative Proposal”.

The Committee appreciates the opportunity to comment on the proposed revisions to Rules 36(e), 36(f) and 37(c). Additionally, the Committee respectfully requests the court consider the suggested language changes attached hereto, as Appendix A.

Since the filing of R-10-0019 on January 11, 2010, as well as the close of the initial comment period, May 20, 2010; the Committee has encountered numerous challenges in the conduct of both informal and formal hearings and has determined certain amendments to the rules would aid the Committee in its task of determining character and fitness qualifications for applicants seeking admission to the practice of law in the State of Arizona. The Committee respectfully submits these comments to R-10-0019, "Alternative Proposal" to provide the Committee's response and proposed remedies.

In order to provide the most informed comments possible to R-10-0019, Alternative Proposal, the Committee reviewed attorney admissions rules in other jurisdictions. The Committee sought to determine how "permissible evidence" and "discovery" were defined and used in hearings in other states. A summary of informative examples is contained in Appendix B. The proposed edits to the rules set forth in the "Alternative Proposal" are based upon this review of admissions rules from other states and a determination of "best practices".

The Committee respectfully disagrees with the changes recommended in Rule 37(c), and urges that the rule remain as it is with the exception of the addition of the Committee on Examinations to the list of entities the custodian of record may disclose to. Proposed changes also reflect anticipated revisions to Rules 36(e) and 36(f). The addition is set forth in Appendix A. The term "*confidential*" is essential to the workings of the committee both in the title and substance of the rule. The use of the term "*confidential*" is universal in other state's rules regarding attorney admissions, as evidenced in part by Exhibit B. Further, the ABA Model Rule for Conditional Admission, in addressing access to admission records, finds that confidentiality is essential to the admission process. The Rule states: "In recommending confidentiality, the Commission was aware of and discussed the inherent tension between the benefits of

confidentiality and the public's (including potential clients) interest in access to all material information about the applicant's fitness to practice."

The language submitted in this comment provides an alternative to the "Alternative Proposal" and seeks to balance the operational needs of the committee with the need of an applicant, in the hearing process, to receive necessary information to carry their burden of proving good moral character by clear and convincing evidence as required by Rule 36(b).

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

---

Viola Romero Wright  
Co-Chair

---

Lee Holtry  
Co-Chair

## APPENDIX A

### Rule 36(e) Informal Hearings

1. [No change in text.]
2. [No change in text.]

3. *Permissible Evidence, Disclosure, Discovery.* Applicants who have received notice as set forth in paragraph (e)(1) of this rule may make written request to the custodian of record for a copy of all information in the applicant's Character and Fitness file, excluding the following materials: work product, information provided by individuals who request their information remain confidential, and documents submitted by applicant. Information provided by individuals requesting their information remain confidential shall not be presented at the hearing or otherwise considered by the Committee. Applicants shall not disclose, share or disseminate information to any party other than counsel, for use at the hearing. At least twelve (12) days prior to the informal hearing, or otherwise as agreed by the parties, the Committee and the applicant shall simultaneously disclose documents and other information to be used at the hearing, excluding documents previously provided under Rule 36(e)(3). The parties shall also exchange a List of Witnesses and Exhibits, with copies of exhibit documents attached. Information disclosed within twelve (12) days of the hearing and without agreement of both parties may be admitted at the discretion of the Chair with good cause shown.

43. [No change in text.]
54. [No change in text.]
65. [No change in text.]
76. [No change in text.]

### Rule 36(f) Formal Hearings

1. [No change in text.]
2. [No change in text.]

3. *Permissible Evidence, Disclosure, Discovery.* Applicants who have received notice as set forth in paragraph (f)(1) of this rule may make written request to the custodian of records for a copy of all information in the applicant's Character and Fitness file, excluding the following materials: work product, information provided by individuals who request their information remain confidential, and documents submitted by applicant. Information provided by individuals requesting their information remain confidential shall not be presented at the hearing or otherwise considered by the Committee. Applicants shall not disclose, share or disseminate

information to any party other than counsel, for use at the hearing. At least twelve (12) days prior to the formal hearing, or otherwise as agreed by the parties, the Committee and the applicant shall simultaneously disclose documents and other information to be used at the hearing, excluding documents previously provided under Rules 36(e)(3) or 36(f)(3). The parties shall also exchange a List of Witnesses and Exhibits, with copies of exhibit documents attached. Information disclosed within twelve (12) days of the hearing and without agreement of both parties may be admitted at the discretion of the Chair with good cause shown.

43. [No change in text.]

54. [No change in text.]

65. [No change in text.]

76. [No change in text.]

### **Rule 37. Miscellaneous Provisions Relating to Admissions**

(a) [No change in text.]

(b) [No change in text.]

**(c) Retention and Confidentiality of Records of Applicants for Admission.** The records of applicants for admission to the practice of law shall be maintained and may be destroyed in accordance with approved retention and disposition schedules pursuant to administrative order of the Court, pursuant to Rule 29, Rules of the Supreme Court. The records of applicants and proceedings for admission and the proceedings of the Committee on Character and Fitness concerning an application for admission shall remain confidential, except as otherwise provided in these rules. Bar counsel shall be allowed access to the records of applicants for admission and the proceedings of the Committee concerning an application for admission in connection with the duties set forth in Rule 36(a)(2)(C). In addition, the ~~Committee on Character and Fitness~~ custodian of the record may

1. disclose the records of an applicant to
  - A. the National Conference of Bar Examiners;
  - B. the admitting authority of any other state to which the applicant seeks admission;
  - C. an attorney discipline enforcement agency;
  - D. an agency authorized to investigate the qualifications of judicial candidates;
  - E. a law enforcement agency, upon subpoena or good cause shown; or

F. the Arizona Committee on Examinations and other court agencies or regulatory boards,  
for good cause shown;

2. [No change in text.]

3. [No change in text.]

4. disclose to an applicant, ~~at the commencement of hearing~~ as required by rules 36(e) and 36(f), evidence to be used at the hearing, ~~as permitted by rules 36(e) (7) and 36 (f) (7).~~

**(d) – (e)** [No change in text.]

## APPENDIX B

- 1) Minnesota Board of Law Examiners Policy B.013 and Rule 14 of the Rules for Admission state: "...the Board is required to keep information it collects on applicants ...confidential, with a few exceptions. Rule 14A permits the Board to release the contents of an applicant's or former applicant's application file to the applicant or former applicant, except for the work product of the Board."
- 2) Texas Government Code section 82.003(c) states: "On the written request of an applicant, the applicant is entitled to: (1) have the applicant's character and fitness hearing open to persons designated by the applicant; or (2) have disclosed to the applicant records relating to the applicant's own moral character and fitness unless the person who supplied the information has requested that it not be disclosed. The Board shall not inquire of a person who supplies information relating to an applicant's moral character and fitness whether the person objects to disclosure nor inform the person of the right to object."
- 3) Colorado, the Rules Governing Admission to the Bar, Rule 201.10(c) states: "A hearing before a hearing panel shall be confidential unless the applicant shall request that the hearing be public. An applicant may not be required to testify or produce records over his objection if to do so would be in violation of his constitutional privilege against self-incrimination. The hearing panel shall not be bound by the formal rules of evidence. The hearing panel in its discretion may take evidence other than in testimonial form, having the right to rely upon records and other material furnished to it in response to its request for assistance in its inquiries or in response to its subpoena powers. The hearing panel in its discretion may determine whether evidence to be taken in testimonial form shall be taken in person or upon deposition, but in either event all testimonial evidence shall be taken under oath."
- 4) Michigan, Committee on Character and Fitness Rule C.4 states: "Upon written request and upon advance payment of the per page copy fee in effect, the applicant or applicant's counsel will be provided a copy of all information in the Character and Fitness Department's possession concerning the applicant with the exception of the following materials: work product; addresses and phone numbers of witnesses who request that this information be kept confidential; and confidential tape recordings of District Committee interviews, absent showing of good cause upon motion to the Presiding Committee Member."
- 5) Georgia's Rules Governing Admission to the Practice of Law includes Section 8. Hearings.(c) which states: "At the hearing, the hearing officer shall not be bound to strictly observe the rules of evidence but shall consider all evidence deemed relevant to the specifications and the answers, affirmative defenses and matters in mitigation raised by the Board and the applicant in an effort to discover the truth without undue embarrassment to the applicant; provided, however, the Board's investigatory file with respect to matters not placed in issue by the specifications, answers, affirmative defenses and matters in mitigation shall not be subject to discovery or introduction into evidence."