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ACTING CLERK SUPREME COURT
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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-12-0011
PETITION TO AMEND)	
RULES 33, 34, 35, 36 AND 37)	AMENDED PETITION
)	TO AMEND RULES
)	33, 34, 35, 36 AND 37
)	

I. Background and Purpose of the Proposed New Rules

On September 20, 2011 a petition was filed (R-11-0030) seeking to amend Rules 34, 35, 37 and 38 to recognize the Arizona bar examination as the Arizona Uniform Bar Examination and to allow for a new third path for admission to practice law in Arizona: transfer of a Uniform Bar Examination (UBE) score. This petition's requested effective date is January 1, 2012 to allow for UBE testing for the July 2012 Arizona bar examination

On May 4, 2011 Chief Justice Rebecca White Berch signed administrative order No. 2011-44 establishing the Attorney Regulation Advisory Committee. The Committee's charge is to "review rules governing attorney examination, admissions, reinstatement, and the disability

and disciplinary process and make recommendations to the Supreme Court on how these rules can be revised to reinforce lawyer competency and professionalism and strengthen the Supreme Court's oversight of the regulation of the practice of law in this state." As part of the committee process, several subcommittees were established, met, took testimony and discussed the admissions process, and in particular discussed changes that would need to be implemented in the event that Arizona becomes a UBE jurisdiction.

During meetings of the Subcommittee on Admissions, it was determined that additional technical amendments would be necessary if petition R-11-0028 is adopted. Additionally, there are a number of areas in the examinations and character and fitness realms that could benefit from a thorough review and clean-up. The changes contemplated by this petition are a start.

II. Contents of the Proposed Rule Amendments and New Rules

The proposed amendments in this petition to Rules 33, 34, 35, 36 and 37 make additional conforming changes that are in harmony with, and necessitated by, R-11-0028. This petition also makes additional substantive changes that strengthen the Court's oversight of the admissions process and proposes amendments that will allow both the Examinations Committee and the Character and Fitness Committee to complete their respective charges. Appendix A contains the complete text of the proposed amendments, which are briefly summarized as follows:

- Rule 33(a) is amended to further define composition and service of the Examinations and Character and Fitness Committees, similar to Rules 50(a) and 52(c) defining Probable Cause Committee and hearing officers. Each committee will have members serving as ex-officio members on the other committee to facilitate dialogue and interaction between the two committees.

- Rule 34(f)(4) clarifies that admission on motion is not available if the applicant, within 5 years, failed an Arizona exam or passed a UBE exam in another jurisdiction but failed to achieve a passing scaled Arizona score.
- Rule 34(h)(1)(C) clarifies that for applicants seeking admission by transfer a passing score, within 5 years, on the MPRE must be submitted.
- Rule 34(j) is clarified to include that a deficiency in the application and supporting documentation can include false statements.
- Rule 35(b)(3) clarifies that passing the UBE in another jurisdiction makes an applicant eligible for admission by transfer only if the score meets or exceeds the scaled Arizona requirement. Additionally, and throughout, makes a UBE attempt in another jurisdiction the equivalent of an Arizona attempt.
- Rule 35(b)(10) clarifies, while inherent, that the Examinations Committee can set conditions, practices and procedures for the exam.
- Rule 36(a)(3) clarifies that the Committee Chair is empowered to issue subpoenas.
- Rule 36(f) and (e) strongly encourages physical attendance as opposed to telephonic participation for informal and formal hearings.
- Rule 36(f)(5) clarifies that a majority of the Panel and not a majority of the entire Committee is to ultimately make decisions in formal hearings, as soon as practicable.
- Rule 37 clarifies that prior examination attempts are the equivalent of an attempt of the Arizona Uniform Bar Exam.

RESPECTFULLY SUBMITTED this ____ day of _____, 20__

By Jim Drake

Jim Drake, Chair, Committee on Examinations

By John Tuchi

John Tuchi, Chair, Committee on Character and Fitness

by JS

Rule 33. Committees; Practice

(a) Committees; Powers and Duties. The examination of applicants and their admission to the practice of law shall conform to this rule. For such purposes, there shall be two committees, the Committee on Examinations, and the Committee on Character and Fitness. The Committee on Examinations shall consist of twelve or more members in good standing of the state bar, and the Committee on Character and Fitness shall consist of eleven or more members in good standing of the state bar and four or more nonlawyer members of the public. Members of each committee shall be appointed by the Court upon the recommendation of the Board of Governors of the State Bar of Arizona, which shall recommend at least three names for each appointment to be made. Members of the two committees shall serve for seven year terms. Nonlawyer members shall have the all the same powers and duties of the lawyer members, as provided in these rules. The Court shall appoint the members of the Committees considering geographical, gender and ethnic diversity. The members of the Committees shall serve at the pleasure of the Court and may be removed from a Committee at any time by order of the Court. A member of the Committee may resign at any time. The Chair of the Committee on Examinations and the Chair of the Committee on Character and Fitness shall each serve as ex-officio members of the other Committee. A member shall continue to serve until the member's term expires and a replacement is appointed, or until the member's participation in all matters begun during the member's term have been concluded. Upon the expiration of a member's term, the Court shall appoint a new member to serve for a term of seven years. As to each committee, in the event of a resignation or inability of a committee member to serve, the Court shall appoint another person to serve the unexpired term. The Committee on Examinations shall examine applicants and advise this Court and the Committee on Character and Fitness of those who have passed the examination or examinations required for admission to the state bar. The Committee on Character and Fitness shall recommend to this Court for admission to the state bar those individuals who, having passed the examination or examinations required for admission to the state bar, are deemed by the Committee to be qualified on the basis of character and fitness. The Court will then consider the recommendations and either grant or deny admission.

(b) no change

(c) no change

Rule 34. Application for Admission

(a) no change

(b) no change

(c) no change

(d) no change

(e) no change.

(f) Admission on Motion.

1. An applicant who meets the requirements of (A) through (H) of this paragraph (f)(1) may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

A. have been admitted by bar examination to practice law in another jurisdiction allowing for admission of licensed Arizona lawyers on a basis equivalent to this rule;

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;

C. have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;

D. submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction;

E. establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

F. establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

G. establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

H. submit evidence of successful completion of the course on Arizona law described in paragraph (j) of this rule.

2. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities that were performed in advance of bar admission in some state, territory or the District of Columbia be accepted toward the durational requirement:

A. representation of one or more clients in the practice of law;

B. service as a lawyer with a local, state, or federal agency, including military service;

C. teaching law full-time at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;

- D. service as a judge in a federal, state, territorial, or local court of record;
- E. service as a judicial law clerk;
- F. service as corporate counsel; or
- G. service as corporate counsel in Arizona before January 1, 2009 or while registered pursuant to Rule 38(h).

3. For purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. The “active practice of law” is further defined to require that at all times in the durational period the applicant has:

- A. held a law license in “active” status;
- B. spent one thousand (1,000) hours or more per year engaged in the practice of law, for each of the required five years in the durational period; and
- C. derived at least fifty percent (50%) of non-investment income from the practice of law.

4. An applicant who has failed a bar examination administered in this jurisdiction or who has passed the uniform bar examination in another jurisdiction but failed to achieve the Arizona scaled score within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

5. The Court shall approve jurisdictions considered “reciprocal” to Arizona, and the Committee shall publish and make available a list of reciprocal jurisdictions.

(g) no change

(h) Admission by Transfer of Uniform Bar Examination Score.

1. An applicant who has taken the uniform bar examination in another jurisdiction and who meets the requirements of (A) through (G) of this paragraph (h)(1) may be admitted to the practice of law in this jurisdiction.

The applicant shall:

- A. have achieved a scaled score on the uniform bar examination that is equal to or greater than the minimum acceptable score established by the Committee on Examinations and that was earned within five years prior to the applicant’s taking the oath of admission and being admitted to the practice of law in Arizona;

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;

C. submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction, earned within five years of the date of application;

D. establish that the applicant is currently a member in good standing in every jurisdiction, foreign or domestic, wherever admitted to practice law; if the applicant is not presently in good standing, establish that the applicant resigned in good standing or is capable of achieving good standing;

E. establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

F. establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

G. submit evidence of successful completion of the course on Arizona law described in paragraph (j) of this rule.

2. For the purpose of paragraph (h)(1)(a) of this rule, a score is considered to have been earned on the date of administration of the uniform bar examination that resulted in the score.

3. An applicant who failed to earn the minimum acceptable score established by the Committee on Examinations in three or fewer attempts, regardless of where the uniform bar examination was taken, shall not be eligible for admission by transfer of uniform bar examination score under this paragraph.

4. Before being admitted by transfer of uniform bar examination score, the applicant must complete a course on Arizona law, the content and method of delivery of which shall be approved by the Supreme Court.

(i) no change

(j) no change

(k) Deficiency in Application and Supporting Documents. If the Committee on ~~Character and Fitness~~ Examinations finds that an application is deficient or false, or the required supporting documents are deficient or false, or both, the Committee shall advise the applicant in writing of the deficiency, and the assessment of applicable late fees as established by the Court. The Committee shall allow the applicant either to supply additional information or to correct, explain in writing, or otherwise remedy the defects in the applicant's application, supporting documents, or fees up until the filing deadline. If such deficiencies or falsehoods in an examination application are not cured by the examination deadlines established by the Court, and if the Committee's reasons for refusing to grant permission for the applicant to take an examination are of record as a part of the applicant's file,

the Committee shall withdraw the application and advise the applicant of such withdrawal and the reasons therefor.

(l) no change

(m) no change

(n) no change

Rule 35. Examination Requirements

(a) no change

(b) Examination Subjects; Grading.

1. The examination shall be the uniform bar examination prepared by the National Conference of Bar Examiners, which consists of six Multistate Essay Examination questions, two Multistate Performance Test tasks, and the Multistate Bar Examination. The Multistate Essay examination shall be weighted 30%, the Multistate Performance Test shall be weighted 20%, and the Multistate Bar Examination shall be weighted 50% in calculating uniform bar examination scores. Applicants may be tested on any subject matter listed by the National Conference of Bar Examiners as areas of law to be tested on the uniform bar examination. Questions will be not be labeled and may include more than one subject matter.

2. The Committee on Examinations may use such grading or scoring system for the Multistate Essay Examination and Multistate Performance Test as the Committee on Examinations, in its discretion, deems appropriate. Answers to the Multistate Essay Examination shall be graded according to generally applicable principles of law. Raw scores on the Multistate Essay Examination and the Multistate Performance Test shall be scaled to the Multistate Bar Examination scores according to the method approved by the National Conference of Bar Examiners for jurisdictions that administer the uniform bar examination.

3. An applicant who takes the uniform bar examination in Arizona or seeks to transfer a uniform bar examination score from another uniform bar examination jurisdiction will be deemed to have satisfied the requirements of the Arizona uniform bar examination if the applicant, either during the examination session or by transfer, achieves a scaled score equal to or greater than the minimum acceptable score established by the Committee for such administration, under conditions consistent with the practices and procedures of the Committee on Examinations and the National Conference of Bar Examiners. The passing score for each test administration shall be posted on the Supreme Court Website. Results of the bar examination will be published and mailed or e-mailed at such dates and times as the Committee deems appropriate. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar exam examination for purposes of these rules.

4. Examination grades of an applicant will not be disclosed to the public. The Committee is authorized to

- A. release statistical results of the examination;
 - B. disclose to the law school from which the applicant graduated the applicant's status as pass/fail/withdrew;
 - C. certify, upon an applicant's request, an applicant's Multistate Bar Examination score to other jurisdictions in which the applicant seeks admission; and
 - D. disclose an applicant's scores on the uniform bar examination to the National Conference of Bar Examiners.
5. Testing accommodations will be provided for an Arizona uniform bar examination applicant demonstrating a disability to the extent such accommodations are reasonable, consistent with the nature and purpose of the examination, and necessitated by the applicant's disability. An applicant seeking an accommodation shall file a request for testing accommodation in such form as prescribed by the Committee. A fully completed request for accommodation, including supporting documentation, shall be submitted with the application for the examination in accordance with filing deadlines as set by the Court.
6. Before being recommended by the Committee on Character and Fitness for admission to the practice of law in Arizona, an applicant must pass a professional responsibility examination, which shall be the Multistate Professional Responsibility Examination prepared and administered by the National Conference of Bar Examiners. An applicant seeking to take the Multistate Professional Responsibility Examination shall file an application directly with, and pay the fees specified by, the National Conference of Bar Examiners.
7. The Committee on Examinations will file with the Court thirty (30) days before each administration of the Multistate Professional Responsibility Examination that score which will be the minimum acceptable score for that administration of the examination.
8. An applicant by Arizona uniform bar examination or transfer of uniform bar examination score from another jurisdiction must submit proof satisfactory to the Committee on Examinations that the applicant has taken the Multistate Professional Responsibility Examination and received a minimum acceptable score within ~~two (2)~~ five (5) years before the successful bar examination or within the time frame for taking the oath of admission after the successful bar examination in order to have the applicant's score accepted by the Committee on Examinations.
9. All applicants who receive a passing grade on the examinations and who are found to be otherwise qualified under these rules shall be recommended for admission to the practice of law.
10. The Committee on Examinations may take action, by majority vote, to enforce conditions, practices and procedures consistent with the Committee on Examinations and the National Conference of Bar Examiners, including expulsion from the examination, temporary withholding of a score, or nullification of a score.

(c) Subsequent Examinations; Role of Committee on Character and Fitness.

1. An applicant failing to pass one uniform bar examination in any jurisdiction may apply for two subsequent uniform bar examinations in Arizona if the applicant meets all requirements listed in Rule 34(b). The application, in the form specified by Rule 34(c), shall be accompanied by the application and examination fees established by the Court, all supporting documents specified in Rule 34(d) or as the Committee on Character and Fitness may request and, if required by the Committee, such additional investigation fee as the Committee may determine is reasonably required to properly investigate the qualifications of such applicant. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar exam examination for purposes of these rules.

2. An applicant who files an application to sit for the Arizona uniform bar examination, and who withdraws such application or fails to appear for or complete such examination and who desires to sit for a subsequent examination, shall make the same filings as if such applicant had written and failed the examination. Any applicant who fails the Arizona uniform bar examination, withdraws from the examination, fails to complete the examination, or does not appear for and write the examination, and who does not apply for and write the next succeeding examination, shall, if applying for any subsequent examination, file a new application with fees required for an original filing as if such applicant had never presented an application to the Committee on Character and Fitness.

3. An applicant taking the uniform bar examination three times in any jurisdiction and failing to earn the minimum acceptable score established by the Committee on Examinations will not be permitted to take a further examination, unless all requirements listed in Rule 34(b) are met, and the Committee on Examinations grants permission for the applicant to write another examination in Arizona. The applicant shall submit a written request to the Committee on Examinations stating the additional study and preparation that the applicant has made to qualify for further examination. If the Committee finds reasonable cause to believe the applicant may successfully pass a further examination, it shall grant permission to sit for the additional Arizona uniform bar examination. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar exam examination for purposes of these rules.

4. An applicant aggrieved by any decision of the Committee on Examinations may file a petition for review by the Court as directed and within the time limits set forth in Rule 36(g)(1); however, the Committee on Examinations' decision regarding an applicant's grade score is final and will not be reviewed by the Court absent extraordinary circumstances.

Rule 36. Procedure before the Committee on Character and Fitness

(a) General Provisions

1. *Nature of Proceedings.* Informal or formal proceedings before the Committee on Character and Fitness are neither civil nor criminal, but are sui generis. Proceedings shall be styled as follows:

BEFORE THE COMMITTEE ON CHARACTER AND FITNESS
OF THE SUPREME COURT OF ARIZONA

In the Matter of the Application of _____)
To be Admitted to the Practice of Law)

2. *Representation by Counsel; Duties of Bar Counsel.*

A. *Representation of the Applicant.* The applicant may be represented by counsel of the applicant's choosing in any proceedings before the Committee.

B. *Representation of the Committee at Formal Hearing.* In the event the Committee, by vote of a majority of its members, finds that a proposed formal hearing will be complex, or for other reasons deemed sufficient, the Committee may certify to this Court that in its opinion a special investigator should be appointed from active members of the State Bar of Arizona to further investigate and present the evidence bearing upon the issue of the applicant's qualifications to be admitted to the practice of law in Arizona. The chief justice of this Court may appoint such a special investigator to further investigate said matter and to present all available evidence at the formal hearing.

C. *Duties of Bar Counsel.*

i. *Court review.* Upon the Committee's request, bar counsel shall represent the Committee before the Court in any matter in which the applicant has petitioned for review of the Committee's decision after a hearing, either formal or informal. In such cases, the Committee shall be deemed bar counsel's client.

ii. *Conditional admissions.* Bar counsel shall monitor and supervise attorneys who have been admitted with conditions pursuant to paragraph (a)(4)(D) of this rule. At the end of the conditional period, bar counsel shall forward a report to the Committee regarding the attorney's compliance or non-compliance with the imposed conditions.

3. *Depositions and Subpoenas.* All of the rules of civil procedure authorizing, relating to and governing depositions in civil proceedings within and outside the state are applicable to depositions desired either by the applicant or by the Committee in connection with investigations and hearings. Either the Committee or the applicant shall be entitled to have subpoenas (including duces tecum) issued by the ~~clerk of this Court~~ Chair of the Committee to require the attendance of witnesses at a deposition, informal hearing, formal hearing, and any continuance thereof. The party desiring issuance of such subpoena shall file the application therefor with the ~~clerk of this Court~~ Chair of the

~~Committee with a brief statement of the reasons for requiring such subpoena accompanied by a form of order authorizing the clerk of this Court to issue such subpoena and the form thereof for issuance by the clerk.~~

4. *Dispositional Alternatives.* The Committee's investigation or the informal or formal hearings may result in the following range of dispositional alternatives:

A. recommendation for admission;

B. denial of admission;

C. denial of admission, accompanied by a suggestion of re-application in the future upon the occurrence of specified circumstances, which circumstances may include the requirement the applicant obtain assistance or treatment for a specified period in the case of current substance abuse or mental or emotional instability and provide appropriate evidence of the applicant's ability to engage in the practice of law;

D. recommendation for admission conditioned on compliance by the applicant with specified behavior for a specified period pursuant to paragraphs (e)(6)(C) or (f)(4) of this rule; provided however that applicants for admission on motion shall not be recommended for conditional admission.

(b) no change

(c) no change

(d) no change

(e) Informal Hearings. Informal hearings shall be held in cases involving serious allegations of conduct specified in paragraph (d)(4) above. Informal hearings may also be held in other cases as determined by the Committee.

1. *Notice.* Oral or written notice shall be provided to the applicant, which notice shall advise the applicant generally of the subject, or subjects, of the informal hearing and the time and place thereof.

2. *Informal Hearing Record.* All informal hearings shall be recorded.

3. *Permissible Evidence.* Documents or other information provided to the Committee in confidence shall remain confidential and may be used at the hearing only if the providing party agrees. Absent such agreement, confidential information shall not be presented at the hearing or otherwise considered by the Committee in determining the applicant's character and fitness for admission to practice law.

4. *Disclosure; Discovery.* Twelve (12) days before the 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. The Committee need not provide to the applicant copies of documents the applicant has submitted during the application process, and applicant need

not provide to the Committee copies of documents submitted with the application. Confidential information shall be subject to disclosure or discovery only if the providing party has agreed to its use at the hearing as set forth in paragraph (e)(3) of this rule. The chair of the Committee, in the exercise of discretion, may permit untimely disclosed information to be admitted at hearing, for good cause shown.

5. *Informal Hearing Panel.* An informal hearing panel shall consist of at least three members of the Committee. An informal hearing panel shall act for and on behalf of the Committee for all actions and decisions related to informal hearings.

6. *Attendance of Panel Members at Hearing.* In the case of an informal hearing required by ~~paragraph (d)(4)~~ of this rule, at least three members shall attend the hearing. Panel members who do not attend the hearing shall review the entire record of the informal hearing before participating in making a recommendation. Members are strongly encouraged to participate in person.

7. *Concurrence of Members.* ~~In the case of informal hearings required by paragraph (d)(4) of this rule;~~ A recommendation of admission shall require the concurrence of a majority of the panel members, but in no event less than three members. If this requirement is not met, a formal hearing shall be held pursuant to paragraph (f) of this rule. ~~In all other cases, the concurrence of a majority of the panel shall be required.~~

8. *Decision.* The Committee's decision shall be in writing.

A. *Recommendation to admit.* The Committee's recommendation to admit an applicant shall be deemed final, subject to the issuance of the certification by the clerk of this Court.

B. *Recommendation not to admit; formal hearing required.* If the Committee's decision is not to recommend admission, a copy of the record of the informal hearing shall be made a part of the applicant's file, and a formal hearing shall be held pursuant to paragraph (f) of this rule.

C. *Recommendation for admission with conditions; review by the Court.* If the Committee recommends admission with conditions, the Committee may consult with bar counsel to determine conditions of admission. The Committee's decision shall contain findings and a recommendation outlining the conditions of the admission. Such decision shall reflect that bar counsel shall monitor and supervise the conditional admittee, and that if the conditional admittee materially violates a condition or conditions of the admission, bar counsel shall commence a discipline proceeding, which may result in any sanction ranging from extension of the period of conditional admission to disbarment. The decision recommending admission with conditions shall be transmitted to the Court for review in accordance with paragraph (g)(2) of this rule.

D. *Notice to applicant.* In all cases, the Committee's decision shall be mailed to the applicant at the applicant's last known address, and a copy shall be mailed to the applicant's attorney of record, if applicable.

(f) Formal Hearings. The Committee shall hold a formal hearing, or formal hearings, as may be reasonably required and as required pursuant to this rule, to enable the Committee to pass upon the applicant's qualifications.

1. *Notice.* Written notice of such formal hearing or hearings shall be given to bar counsel and the applicant, specifying:

- A. the time, place and nature of the hearing;
- B. the legal authority and jurisdiction under which the hearing is held;
- C. a reference to the particular sections of the statutes and rules involved, if applicable;
- D. a short plain statement as to the subject, or subjects, and purpose, of the hearing;
- E. that the applicant may be represented by an attorney at the hearing, that the applicant shall be afforded an opportunity to respond and present evidence of all issues involved, and that the applicant shall have the right of cross-examination; and
- F. that the applicant shall have the burden of proving, by clear and convincing evidence, the requisite character and fitness qualifying the applicant for admission to the practice of law in Arizona.

2. *Conduct of Formal Hearings.*

- A. The applicant or the applicant's attorney shall present evidence on behalf of the applicant at the hearing. One or more members of the Committee, or an appointed special investigator, may present evidence on behalf of the Committee. The chairperson shall designate any member of the Committee hearing panel as the presiding member and such member shall make all evidentiary and procedural rulings.
- B. The formal hearing shall be recorded and may be conducted without adherence to the Arizona Rules of Evidence. Neither the manner of conducting the hearing nor the failure to adhere to the Rules of Evidence shall be grounds for reversing any decision by the Committee provided the evidence supporting such decision is substantial, reliable and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The applicant shall have the right to be represented by counsel, to submit evidence, and to cross-examination witnesses.
- C. Copies of documentary evidence may be received at the discretion of the presiding panel member. Upon request, any Committee member, an appointed special investigator, bar counsel in connection with duties set forth in Rule 36 (a)(2)(C), the applicant, or applicant's counsel shall be given an opportunity to compare the copy with the original.
- D. Notice may be taken of judicially cognizable facts.
- E. The applicant shall have the burden of proving, by clear and convincing evidence, the requisite character and fitness qualifying the applicant for admission to the practice of law.

3. *Permissible Evidence.* Documents or other information provided to the Committee in confidence shall remain confidential and may be used at the hearing only if the providing party agrees. Absent such agreement, confidential information shall not be presented at the

hearing or otherwise considered by the Committee in determining the applicant's character and fitness for admission to practice law.

4. *Disclosure; Discovery.* Twelve (12) days before the 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. The Committee need not provide to the applicant copies of documents the applicant has submitted during the application process, and applicant need not provide to the Committee copies of documents submitted with the application. Confidential information shall be subject to disclosure or discovery only if the providing party has agreed to its use at the hearing as set forth in paragraph (f)(3) of this rule. The chair of the Committee, in the exercise of discretion, may permit untimely disclosed information to be admitted at hearing, for good cause shown.

5. *Formal Hearing Panel.* A formal hearing panel shall consist of at least a majority of the current members of the Committee. ~~A majority of the members of the Committee shall attend the formal hearing. Panel members may attend hearings telephonically but are strongly encouraged to participate in person. If a member of the hearing panel is not present at the hearing, the record shall be made available to all panel members and thereafter,~~ A decision shall be made by a majority of the panel, as defined above, as soon as practicable.

6. *Decision.* The Committee's final decision shall be in writing. If the Committee recommends against admission, it shall make separate findings of fact. If the Committee recommends admission with conditions, the Committee may consult with bar counsel to determine the conditions of admission. The Committee's decision shall contain findings and a recommendation outlining the conditions of the admission. Such decision shall reflect that bar counsel shall monitor and supervise the conditional admittee, and that if the conditional admittee materially violates a condition or conditions of the admission, bar counsel shall commence a discipline proceeding, which may result in any sanction ranging from extension of the period of conditional admission to disbarment. The decision recommending admission with conditions shall be transmitted to the Court for review in accordance with paragraph (g)(2) of this rule.

7. *Notice to Applicant.* The Committee's final decision shall be mailed to the applicant at the applicant's last known address, and a copy shall be mailed to the applicant's attorney of record, if applicable.

8. *Denial of Admission as Final Decision.* The decision of the Committee to deny admission is final, absent the filing of a petition for review by the applicant pursuant to paragraph (g)(1) of this rule.

(g) no change

Rule 37. Miscellaneous Provisions Relating to Admissions

(a) Time Limitation on Admission.

1. No Arizona Uniform examination applicant shall be admitted to the practice of law in Arizona until the applicant has successfully completed the Arizona uniform bar examination, satisfied the

admission by the Committee on Character and Fitness. Failure to take the oath of admission and be admitted to the practice of law in Arizona within five years of successful Arizona uniform bar examination will void all examination scores, and the applicant will be required to successfully retake all required examinations and comply with all required procedures relating to Character and Fitness determinations. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar exam examination for purposes of these rules.

2. No applicant for admission on motion shall be admitted to the practice of law in Arizona until the applicant has successfully satisfied all requirements of Rule 34, Rule 36, and Rule 37, and has been recommended for admission by the Committee on Character and Fitness. Failure to take the oath of admission and be admitted to the practice of law in Arizona within five years from the date of application will void all application and character investigation materials, and the applicant will be required to resubmit an application and comply with all required procedures relating to admission on motion.

3. No applicant for admission based on transfer of uniform bar examination score from another jurisdiction shall be admitted to the practice of law in Arizona until the applicant has successfully satisfied all requirements of Rule 34, Rule 35, Rule 36, and Rule 37, and has been recommended for admission by the Committee on Character and Fitness. Failure to take the oath of admission and be admitted to the practice of law in Arizona within five years of a uniform bar examination in another jurisdiction for which the applicant earned the minimum acceptable score established by the Committee on Examinations will void all application and character investigation materials, and the applicant will be required to resubmit an application and comply with all required procedures relating to admission to the practice of law in Arizona.

(b) no change

(c) no change

(d) no change

(e) no change