

CHAPTER 3

ATTORNEYS AND THE PRACTICE OF LAW

ARTICLE 1

ADMISSION REQUIREMENTS FOR THE PRACTICE OF LAW

Section.

- 3-101. Admission of attorneys; time of examination; filing of application.
 - 3-102. Application and showing; character affidavits.
 - 3-103. Standard of character and fitness.
 - 3-104. Other proof of character; qualifications of applicant; report of Committee on Inquiry.
 - 3-105. Admission qualifications.
 - 3-106. Admission, pro hac vice, of attorneys of good moral character who are admitted to practice in another state, the District of Columbia, or a territory.
 - 3-107. Fees; payment and disbursement; per diem of bar commission.
 - 3-108. Bar examination; subjects.
 - 3-109. Bar commission; appointment; duties.
 - 3-110. Review by commission.
 - 3-111. Bar commission; reports.
 - 3-112. Bar commission; rules and regulations.
 - 3-113. Bar commission; administration of oaths; power of subpoena.
 - 3-114. Resignation; readmission.
 - 3-115. Appeal to Supreme Court; procedure.
 - 3-116. Passing standards.
 - 3-117. Examination costs.
 - 3-118. Communications in official confidence; immunity.
 - 3-119. Fingerprint record checks.
- Appendix A.
Appendix B.
Appendix C.

§ 3-101. Admission of attorneys; time of examination; filing of application.

Examination of applicants for admission to the bar will be held on the days set for the National Multistate Bar Examination and for the Multistate Essay Examination; provided, however, that the commission may hold examinations at such other times and places as it may deem advisable. The application for examination must be filed with the secretary of the bar commission as provided in § 3-102.

Commencing in 1991, and thereafter, each candidate for admission on examination in Nebraska must have passed the Multistate Professional Responsibility Examination as a requirement for admission to practice law in Nebraska. The passing score will be established from time to time by the Nebraska Supreme Court. The examination may be taken by the applicant at any location where it is administered.

Rule 1 amended February 10, 1993. Renumbered and codified as § 3-101, effective July 18, 2008.

§ 3-102. Application and showing; character affidavits.

Each applicant must file with the secretary of the bar commission a written request for admission and a personal affidavit as to the applicant's age, residence, and time and place of study and degree, or admission and period of practice in courts of record in another state, the District of Columbia, or a territory, together with the certificates or affidavits of at least two citizens of good standing in the community where the applicant resides, or formerly resided, and such other information as the bar commission may require. These certificates or affidavits must show that the parties making them are well acquainted with the applicant, that the applicant is of good reputation in that community, and that they believe the applicant to be of good moral character. In case the applicant seeks admission on examination, he or she must file an application, in the form provided by the bar commission, on or before November 1 to be eligible to sit for the following February examination and on or before April 1 to be eligible to sit for the following July examination. If the applicant is under suspension or disbarment, the applicant will not be eligible to be admitted or eligible to take the bar examination in Nebraska.

Rule 2 amended December 29, 1993; effective March 1, 1994. Renumbered and codified as § 3-102, effective July 18, 2008.

§ 3-103. 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 by an applicant in one or more of the following essential eligibility requirements for the practice of law may constitute a basis for denial of admission. In addition to the admission requirements otherwise established by these rules, the essential eligibility requirements for admission to the practice of law in Nebraska are:

(A) The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;

(B) The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;

(C) The ability to conduct oneself with respect for and in accordance with the law and the Nebraska Rules of Professional Conduct;

(D) The ability to communicate clearly with clients, attorneys, courts, and others;

(E) The ability to reason, analyze, and recall complex factual information and to integrate such information with complex legal theories;

(F) The ability to exercise good judgment in conducting one's professional business;

(G) The ability to avoid acts that exhibit disregard for the health, safety, and welfare of others;

(H) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;

(I) The ability to comply with deadlines and time constraints;

(J) The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

See Appendix A, Character and Fitness Standards.

Rule 3 amended July 28, 1998; Rule 3(C) amended July 13, 2005, effective September 1, 2005. Renumbered and codified as § 3-103, effective July 18, 2008.

§ 3-104. Other proof of character; qualifications of applicant; report of Committee on Inquiry.

The qualifications of an applicant for admission are not necessarily established by the foregoing. In addition thereto the applicant will, in the application, give the names and addresses of at least three persons, other than those whose certificates or affidavits the applicant presents, of whom inquiry can be made in regard to the applicant's character and other qualifications.

§ 3-105. Admission qualifications.

(A) Classification of Applicants.

(1) Class I-A applicants who may be admitted to practice in Nebraska upon approval of a proper application are those:

(a) who, as determined by the bar commission, have been admitted to, and are active and in good standing in, the bar of another state, territory, or district of the United States, and

(b) who at the time of their admission had attained educational qualifications at least equal to those required at the time of application for admission by examination to the bar of Nebraska, and

(c) who have passed an examination equivalent to the examination administered in the State of Nebraska, and, beginning in 1991, who have passed the Multistate Professional Responsibility Examination with the score required by Nebraska.

(2) Class I-B applicants who may be admitted to practice in Nebraska upon approval of a proper application are those:

(a) who have been licensed and are active and in good standing in the practice of law in another state, territory, or district of the United States preceding application for admission to the bar of Nebraska and have actively and substantially engaged in the practice of law in another state, territory, or district of the United States for 5 of the 7 years immediately preceding application for admission, and

(b) who at the time of their admission had attained educational qualifications at least equal to those required at the time of application for admission by examination to the bar of Nebraska.

(3) For purposes of these rules, "practice of law" means:

(a) The private practice of law as a sole practitioner or as an attorney employee of, or partner or shareholder in, a law firm, professional corporation, legal clinic, legal services office, or similar entity; or

(b) Employment as an attorney for a corporation, partnership, trust, individual, or other entity with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law; or

(ii) Preparing cases for presentation to or trying before courts, executive departments, or administrative bureaus or agencies; or

(c) Employment as an attorney in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law; or

(ii) Preparing cases for presentation to or trying cases before courts, executive departments, or administrative bureaus or agencies; or

(d) Employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory, or municipality of the United States, with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to an attorney; or

(e) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or

(f) In the event that the applicant has not served for a full 5 of the last 7 years with any of the entities listed in subparagraphs (a) through (e) above, for purposes of this paragraph, the applicant may use any combination of subparagraphs (a) through (e) above.

(4) All other applicants are Class II applicants, who must take a written examination.

(5) Applicants with the qualifications to be classified as Class I-A or Class I-B applicants shall not be permitted to apply for the written examination taken by Class II applicants without the prior approval of the bar commission, which approval may be given on good cause shown.

(B) Applications.

(1) All applications must be made on forms furnished by the commission.

(2) Fees are required by all applicants in an amount fixed by the Supreme Court and must be paid in cash, bank cashier's check, or money order. Fees may be refunded in accordance with guidelines adopted by the commission.

(C) Education Qualifications; Class II Applicants. All applicants must have received at the time of the examination their first professional degree from a law school approved by the American Bar Association. An applicant without a first degree from an approved law school shall be permitted to take the examination if such applicant will receive a first degree from an approved law school within 60 days after the date of the examination taken. In cases of hardship, the Supreme Court may, upon written application stating the nature and reason for the hardship to the applicant, permit the examination to be taken by an applicant before all other requirements have been fulfilled.

(D) Policy on Applicants with a Disability. The bar commission will follow special rules set forth in the Policy on Applicants with a Disability, Appendix C.

(E) Oath of Admission. No applicant will be admitted to the bar of Nebraska until such time as he or she has taken the oath of admission prescribed by the Supreme Court. No Class I applicant will be permitted to take such oath later than 18 months subsequent to the date upon which his or her application has been approved. No Class II applicant will be permitted to take such oath later than 18 months subsequent to the date of the announcement by the Court that he or she has passed the examination. Nothing precludes reapplication for admission. Admission of all applicants, including applicants who are being admitted with conditions set by the Supreme Court, will be by order of the Court, and certificates of admission issued to applicants will be signed by a Judge of the Court.

Rule 5(B)(3) eliminated February 10, 1993; Rule 5(C) amended May 22, 1996; Rule 5(D) and (E) amended July 28, 1998; Rule 5(E) amended May 23, 2001; Rule 5(C) amended January 29, 2003; Rule 5(A)(1) amended May 13, 2004; Rule 5(A)(5) adopted February 9, 2005. Renumbered and codified as § 3-105, effective July 18, 2008.

§ 3-106. Admission, pro hac vice, of attorneys of good moral character who are admitted to practice in another state, the District of Columbia, or a territory.

Any attorney of good moral character who is admitted to and engaged in the practice of law in the courts of record of another state, the District of Columbia, or a territory, having professional business in the courts of this state, may on motion to such court, in the discretion of the court, be admitted for the purpose of transacting such business. In order to be admitted, the applicant shall file with the court where the case is pending as soon as possible, but no later than the date the applicant files any pleading or appears personally, a motion, see Appendix B, with the following:

(A) A statement identifying the party or parties being represented.

(B) A list of all jurisdictions where the applicant is licensed to practice law with applicable bar or registration numbers.

(C) An affirmative statement that the applicant is in good standing and eligible to practice law in the aforementioned jurisdictions and is not the subject of a disciplinary action or investigation. If the applicant is the subject of a disciplinary action or investigation, the name and address of the disciplinary authority for the jurisdiction and a brief description of the nature and status of the action or investigation shall be provided.

(D) An affirmative statement that the applicant is subject to the Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond. §§ 3-501.0 to 3-508.5, upon admission pro hac vice.

(E) Unless exempted by Neb. Rev. Stat. § 7-103, a statement, including contact information, that the applicant has associated and is appearing with an attorney who is a resident of Nebraska, duly and regularly admitted to practice in the courts of record of this state, and upon whom service may be had in all matters connected with the action with the same force and effect as if personally made on such foreign attorney within this state. The associating attorney, or his or her designee, shall sign all pleadings, motions and papers filed in the case, as well as personally appear at all proceedings before the court, unless excused by the court.

(F) A \$250 fee payable to the Clerk of the Court. The Clerk of Court shall remit the fee to the State Treasurer for credit to the Nebraska Supreme Court's Counsel for Discipline Cash Fund not later than the 15th day of the month following the calendar month in which the fee was received. If the motion for pro

hac vice admission is not granted, the Clerk of the Court shall refund the \$250 fee. A court may, in its discretion and upon written motion, waive the fee for applicants who are representing governmental entities or providing pro bono representation of an indigent client.

Once the motion is granted, the applicant shall take and subscribe the oath required to be taken by individuals regularly practicing before the courts of this state as set forth in Neb. Rev. Stat. § 7-104 and the subscribed oath shall be filed by the applicant with the Clerk of the Court in which the applicant is appearing. The subscribed oath shall be made part of the court record. See Appendix B.

§ 3-106 amended April 13, 2011, effective July 1, 2011; § 3-106(F) amended July 13, 2011.

§ 3-107. Fees; payment and disbursement; per diem of bar commission.

Each applicant, with the filing of the application, must pay the fee prescribed by the Nebraska Supreme Court. Application fees will be used for administrative expenses and costs incurred by the bar commission in carrying out its duties. As an expense of the commission, the attorney members will be entitled to receive reimbursement for all reasonable expenses incurred in the performance of their duties and a per diem allowance to be fixed by the Court. Each year, the bar commission will submit a budget to the Court for the purpose of establishing the application fee to be charged.

§ 3-108. Bar examination; subjects.

The bar commission will publish the subjects to which examination will conform. The subjects will be those the members of the bar commission deem necessary to properly prepare for the practice of law in this state, including the subject of legal ethics.

§ 3-109. Bar commission; appointment; duties.

On October 23, 1985, the Nebraska Supreme Court appointed a commission composed of six persons, learned in law, to make recommendations to the Court with reference to applicants for admission and to conduct examinations for the ensuing years. One commissioner was selected from each Supreme Court judicial district. In order to create staggered terms, commissioners first appointed on October 23, 1985, were selected so that one was appointed for a term of 1 year, one for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, and one for a term of 6 years, the terms beginning November 1, 1985. Thereafter, each commissioner is appointed for a term of 6 years. The Court appoints a secretary to the bar commission, who serves under the supervision of the Court and the bar commission. The commission so appointed will, prior to the examinations, examine the proofs of qualifications filed in accordance with these rules and may make further investigation as to the qualifications of any applicant as it deems expedient. On the day appointed, it will commence the examination of applicants upon the subjects as published. The method of conducting the examinations will be left to the discretion of the commission. The purpose of the examination will be to determine whether any individual seeking admission is unqualified and incompetent to be permitted to practice law within the State of Nebraska. The standards for passing the examination will be established by the commission with the approval of the Court.

§ 3-110. Review by commission.

Within 10 days following the bar examination, the commission will file a copy of the examination questions (excluding any Multistate Bar Examination questions which have not been made available to the bar commission) with the secretary of the commission, which copy will be a public record. The secretary of the commission will furnish a copy of any such examination questions to any person for the prescribed fee.

Immediately following the examination, the commission will file the examination papers (excluding any Multistate Bar Examination papers) of all applicants who fail the examination with the secretary of the commission, but no examination papers will become a public record. Within 10 days after the examination results have been announced, any applicant who fails may personally inspect his or her paper in the presence of the secretary of the commission.

Any applicant who has failed to pass the bar examination or to be admitted on motion, who has been denied admission on the basis of fitness or character, or who has been refused permission to take the examination, may, within 30 days after the mailing of the notice of failure, refusal of permission, denial of admission on motion, or denial of admission on the basis of fitness or character, request a hearing before the bar commission. The applicant must appear at the hearing for an oral presentation and present a concise written brief setting forth the reasons why the applicant should pass, be permitted to take the examination, be admitted on motion, or be admitted on fitness or character. The applicant may, at the applicant's expense, make arrangements to have the proceeding recorded for use by the commission or the Supreme Court on appeal. The commission will then review and consider the reasons presented. Upon reaching a determination, 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 letter from the commission, appeal the decision to the Supreme Court. The appeal must be taken and perfected in accordance with § 3-115.

Rule 10 amended May 22, 1996. Renumbered and codified as § 3-110, effective July 18, 2008.

§ 3-111. Bar commission; reports.

As soon as practicable after the conclusion of the examination, the commission will make a written report to the Court of its recommendations. All applicants who are approved by the Court will be admitted to practice upon taking the oath prescribed by law.

§ 3-112. Bar commission; rules and regulations.

The bar commission is authorized to make, subject to the approval of the Supreme Court, such further rules and regulations as it deems necessary or expedient to carry out the intent and purpose of these rules.

§ 3-113. Bar commission; administration of oaths; power of subpoena.

Each member of the bar commission is hereby authorized to administer oaths in any proceeding before the bar commission on matters relative thereto, and has power in such matters to subpoena witnesses and take depositions.

§ 3-114. Resignation; readmission.

Any attorney admitted to practice law in the State of Nebraska who resigns membership in the Nebraska State Bar Association, as provided in Neb. Ct. R. § 3-803(I), will no longer be a member of the Nebraska bar, and if thereafter such person desires to be readmitted to the Nebraska bar, the applicant must comply with the applicable provisions of this article.

§ 3-115. Appeal to Supreme Court; procedure.

Any applicant entitled to appeal from a final adverse determination of the bar commission in accordance with § 3-110 must file an original and seven copies of 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. The notice of appeal shall be accompanied by a written statement, an original and seven copies, 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. 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 § 3-110; provided, however, that 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 an original and seven copies are filed with the Court. The applicant shall have 14 days from the filing of the report within which to file an original and seven copies of such response, if any, as the applicant may wish to make.

§ 3-116. Passing standards.

The passing standard for the bar examination is a grade of 135 on a single administration of the examination, determined by averaging the scaled score on the MBE (multiple choice) and the scaled score on the MEE (essay). The passing score for the Multistate Professional Responsibility Examination is 85.

Rule 16 adopted May 22, 1996; Rule 16 amended May 13, 2004. Renumbered and codified as § 3-116, effective July 18, 2008.

§ 3-117. Examination costs.

Applicants shall also pay to the commission all charges for examinations prepared by the National Conference of Bar Examiners on behalf of the commission.

Rule 17 adopted May 22, 1996; Rule 17 amended July 28, 1998. Renumbered and codified as § 3-117, effective July 18, 2008.

§ 3-118. Communications in official confidence; immunity.

The records, papers, application, and other documents containing information collected and compiled by the commission, its members, employees, agents, or representatives are held in official confidence for all purposes other than cooperation with another bar examining authority. The bar commission and its members, employees, agents, and representatives are immune from all civil liability for damages for conduct and communications occurring in the performance of and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law. Records, statements of opinion, and other information regarding an

applicant for admission to the bar communicated by any entity, including any person, firm, or institution, without malice, to the bar commission or to its members, employees, agents, or representatives are privileged, and civil suits for damages predicated thereon may not be instituted.

Rule 18 adopted July 28, 1998. Renumbered and codified as § 3-118, effective July 18, 2008.

§ 3-119. Fingerprint record checks.

The bar commission shall obtain a complete set of fingerprints from all bar applicants on a form designated by the commission as provided under Neb. Rev. Stat § 7-102(2). The commission will forward the fingerprints of all such applicants to the Nebraska State Patrol for a national criminal history record information check by the Identification Division of the Federal Bureau of Investigation. The Supreme Court may, at any time, order the commission to discontinue requesting, or to thereafter resume requesting, fingerprint record checks on all applicants that are fingerprinted pursuant to Neb. Rev. Stat. § 7-102(2).

Rule 19 adopted April 24, 2002. Renumbered and codified as § 3-119, effective July 18, 2008.

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.

APPENDIX B

MOTION FOR PRO HAC VICE ADMISSION AND OATH

IN THE _____ COURT OF _____

_____)	Case No. _____
)	
Plaintiff,)	
)	MOTION FOR PRO HAC VICE
v.)	ADMISSION
)	
_____)	
)	
Defendant.)	

_____ hereby moves this Court for admission pro hac vice in the above-captioned case, as co-counsel for the plaintiff/defendant. In support of this motion, attorney _____, states as follows:

_____ is an attorney admitted and eligible to practice law in (State(s)) and is a member in good standing in (State(s)).

_____ is not the subject of a disciplinary action or investigation. (If subject to a disciplinary action or investigation, complete next paragraph).

_____ is the subject of a disciplinary action or investigation in (State(s)) and the name and address of the disciplinary authority is: _____
_____. The nature and status of the disciplinary action or investigation is _____.

_____, upon admission pro hac vice, will be subject to the Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond. §§ 3-501.0 to 3-508.5.

_____ has associated with the following attorney who is duly and regularly admitted to practice in the courts of record of this state, and upon whom service may be had in all matters connected with the action: _____.

_____ has paid the nonrefundable fee of \$250 to the Clerk of the Court.

Wherefore, _____, respectfully moves this Court for admission pro hac vice in the above-captioned case.

IN THE _____ COURT OF _____

_____ ,)	Case No. _____
)	
Plaintiff,)	
)	OATH
v.)	
_____ ,)	
)	
Defendant.)	

I, the undersigned attorney, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Nebraska, and that I will faithfully discharge the duties of an attorney and counselor, according to the best of my ability.

Dated this _____ day of _____, 20____.

Attorney

Subscribed and sworn to before me this _____ day of _____, 20____.

Person Administering Oath Pursuant to
Neb. Rev. Stat. § 24-1002

APPENDIX C

POLICY ON APPLICANTS WITH A DISABILITY

I. POLICY. It is the policy of the Nebraska State Bar Commission to administer the bar examination in a manner that does not discriminate, on the basis of disability, against a qualified applicant with a disability. An applicant who is otherwise eligible to take the Nebraska bar examination may file a request for special testing accommodations.

II. DEFINITIONS. For the purpose of this policy, the following definitions shall apply:

A. "Disability" means any of the following:

1. A physical or mental impairment that substantially limits one or more of the major life activities of the applicant and that substantially limits the ability of the applicant to demonstrate, under standard testing conditions, that the applicant possesses the essential skills, level of achievement, and aptitudes that the Nebraska Supreme Court and the commission require for admission to the practice of law in Nebraska;

2. A record of having such an impairment;

3. Being regarded as having such an impairment.

B. "Qualified applicant with a disability" means an applicant with a disability who, with or without reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for admission to the practice of law in Nebraska.

C. "Reasonable accommodation" means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability without doing any of the following:

1. Fundamentally altering the nature of the examination or the commission's ability to determine through the bar examination whether the applicant possesses the essential skills, level of achievement, and aptitudes that are among the essential eligibility requirements set forth in rule 3, that the Nebraska Supreme Court and the commission have determined are required for admission to the practice of law in Nebraska;

2. Imposing an undue burden on the commission;

3. Compromising the security of the examination;

4. Compromising the integrity, the reliability, or the validity of the examination.

III. REQUESTS FOR SPECIAL TESTING ACCOMMODATIONS

A. Requests

1. A request for special testing accommodations will be on forms prescribed by the commission and consist of all of the following:

(a) a statement from the applicant, including a description of the applicant's disability and the special accommodations requested;

(b) a statement from the applicant's appropriate health care professional(s) certifying the applicant's disability;

(c) a statement from any educational institution or employer that provided special accommodations to the applicant while the applicant attended the educational institution or was employed by the employer, certifying the accommodation provided;

(d) an authorization for release of records from the applicant's physician(s) and/or other appropriate health care professional(s) for the purpose of assessing the disability, and accommodations which may be required.

The applicant may file any additional documentation in support of the request.

2. A request for special testing accommodations for an examination must be filed with the applicant's Application to take the Bar Examination and by the deadline in § 3-102 for filing that application. A request for special testing accommodations for re-examination must be filed with the Application for Re-examination and by the deadline in § 3-102 for filing that application.

B. Availability of Request Forms

All forms necessary to complete a request for special testing accommodations will be available at no charge from the Nebraska State Bar Commission Admissions Office.

IV. COMMISSION DECISIONS

A. Procedures for Review of Requests

1. The commission will review all requests for special testing accommodations that are properly filed in accordance with this policy.

(a) Requests that are not timely filed, that are incomplete, or that otherwise do not comply with the requirements of this policy may be rejected for consideration by the commission.

(b) The commission may ask an applicant to submit additional information to support the applicant's request.

(c) The commission may seek the assistance of a medical, psychological, or other authority of the commission's choosing in reviewing a request.

(d) The commission may ask the applicant to submit to an independent evaluation conducted by an appropriate health care professional selected by the commission.

(e) The cost of the independent evaluation shall be paid by the commission.

2. In reviewing a request, the commission will follow these procedures.

(a) The commission will make a determination, and the secretary of the commission will send notification of the determination to the applicant, no fewer than 25 days before the examination.

(b) The commission's denial of a request will be in writing and sent to the applicant by certified mail to the address provided by the applicant on the request. The commission's denial will include a statement of the commission's reasons for denial. The commission will also provide the applicant with a copy of the written report of any expert it consulted in reviewing the request.

(c) The applicant may appeal the denial of a request to the Supreme Court in accordance with §§ 3-110 and 3-115.

3. The commission may delegate to a committee of bar examiners its authority to review and rule upon requests pursuant to this policy.

B. Standards for Decision on the Merits

1. The commission will grant a request and provide special testing accommodations to an applicant if it finds all of the following:

(a) the applicant has a disability and is otherwise eligible to take the bar examination;

(b) the special testing accommodations are necessary to ameliorate the impact of the applicant's disability;

(c) the special testing accommodations are reasonable accommodations.

2. The commission will have sole discretion to determine what special testing accommodations are reasonable accommodations. The commission may provide accommodations different from those requested by the applicant if the commission determines that the accommodations provided will effectively ameliorate the impact of the applicant's disability.

3. No special testing accommodation granted pursuant to this policy will alter in any manner the limitation otherwise imposed on the length of an applicant's answers.

4. If an applicant is permitted to dictate answers to the essay portion of the examination, those answers will be transcribed by personnel selected solely by the commission for that purpose.

V. CONFIDENTIALITY

All requests for special testing accommodations, supporting documentation, and information developed by the commission with respect to the requests will remain confidential; however, the commission may reveal the contents of applications to its experts in assessing and commenting on the matters contained in the applications.

Appendix C amended May 22, 1996; part II(A) and (C) amended July 28, 1998; part IV(A)1(e) amended October 16, 2003.