

NOTICE TO THE BAR

SUPREME COURT LIMITS INQUIRIES ABOUT MENTAL HEALTH ON THE CHARACTER AND FITNESS QUESTIONNAIRE

On September 19, 2023, the Supreme Court adopted changes to the Character and Fitness Questionnaire to narrow the scope of inquiry into candidates' mental health in the bar admissions process (as attached).

After careful study, the Court reframed the question (previously “Question 12B”) to state the inquiry more explicitly in terms of conduct and behavior, rather than treatment or diagnosis. The Court also expressly exempted from disclosure any conduct or behavior related to a mental health diagnosis, addiction, or condition that is or has been treated effectively under the care of a health care provider or other medical professional, or through consistent participation in an established treatment program.

The revised preamble to the question explains the limited nature of the inquiry and encourages candidates to seek support and treatment when necessary.

The Court added a question about whether candidates have asserted any condition or impairment as a defense, in mitigation, or as an explanation for

their conduct in the course of any inquiry, investigation, or administrative or judicial proceeding.

The modifications will take effect on October 1, 2023 – the date that applications open for the upcoming bar examination.



Stuart Rabner
Chief Justice

Date: September 21, 2023

Added text is underlined
Deleted text is in [brackets]

Section 12 “Health”

Preamble

Section 12 addresses recent conduct or behavior that could call into question a candidate’s ability to practice law in a competent, ethical, and professional manner, meaning in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable authority.

Section 12’s inquiry includes, but is not limited to, conduct and behavior related to a candidate’s mental health, addiction or dependency, or other condition. The purpose of these questions is to determine the current fitness of an applicant to practice law. To that end, a candidate need not disclose any conduct or behavior related to a mental health diagnosis, addiction, or condition that is or has been treated effectively under the care of a health care provider or other medical professional, or through consistent participation in an established treatment program.

The Supreme Court and the Committee on Character encourage candidates to seek support and treatment, and candidates should not view the attorney licensure process as a deterrent to pursue treatment. The Committee regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health, addiction, and dependency matters.

This guidance applies to Question 12A. Candidates must provide full and complete responses to all other questions in the Character and Fitness Questionnaire, including Section 8B (regarding criminal charges).

[Section 12 addresses recent mental health, chemical, alcohol, and/or psychological dependency matters. The Committee on Character ("Committee") asks these questions because of its responsibility to protect the public by determining the current fitness of an applicant to practice law, and the purpose of these questions is to determine the current fitness of an applicant to practice law. Each applicant is considered on an individual basis. The mere fact of treatment for mental health problems or chemical, alcohol, or psychological dependency is not, in and of itself, a basis on which an applicant is ordinarily denied admission to the New Jersey bar. The Committee regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical, alcohol, or psychological dependency issues. The Committee encourages applicants who may benefit from treatment to seek it and the Committee views such treatment as a positive factor in evaluating an application. As indicated in the Regulations Governing the Committee, all information is treated confidentially by the Committee and the Committee's Offices and all proceedings are confidential.]

On occasion, a license may be denied when an applicant's ability to function is impaired in a manner that indicates that the applicant is currently unfit to practice law at the time the licensing decision is made, or when an applicant demonstrates lack of candor and/or credibility by his or her responses. Each applicant is responsible for demonstrating that he or she possesses the qualifications necessary to practice law. Your responses may include information as to why, in your opinion or that of your treatment provider, your condition will not affect your ability to practice law in a competent and professional manner.

The Committee does not, by its questions, seek information that is characterized as situational counseling, such as stress counseling, domestic counseling, and grief counseling. Generally, the Committee does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.]

Modifications to Questions:

A. [Addiction to Alcohol or Drugs -]Have you, within the last five (5) years, exhibited conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner? In responding, you need not disclose any conduct or behavior related to a mental health diagnosis, addiction to alcohol or drugs, or other condition that is or has been treated effectively by a health care provider or other medical professional, or through consistent participation in an established treatment program.

If you answered “yes” to this question, furnish a thorough explanation in the space provided, and upload related documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

[B. Other Disorders – Do you CURRENTLY have any condition or impairment (including but not limited to substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner and in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable case law?

If yes, please describe any ongoing treatment programs you receive to reduce or ameliorate the condition or impairment.]

B. Within the past five (5) years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?

If you answered “yes” to this question, furnish a thorough explanation in the space provided, and upload related documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.