



December 4, 2008

Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

RECEIVED

DEC - 5 2008

CLERK OF SUPREME COURT
OF WISCONSIN

RE: Petition 08-13 (relating to Conditional Admission to the Bar)

Dear Honorable Justices:

At its meeting on September 12-13, 2008, the State Bar of Wisconsin's Board of Governors voted by a voice vote of greater than 60% to oppose petition 08-13, relating to conditional admission to the Bar, unless the petition is modified in the manner described below to provide for confidentiality.

The Board of Bar Examiners filed petition 08-13 on May 1, 2008, and the court has scheduled this petition for public hearing on March 9, 2009.

The State Bar's Board of Governors voted to oppose this petition unless it is amended by inclusion of the following language:

“(7) Confidentiality. The fact of conditional bar admission and the written agreement required by sub (3) shall be confidential.”

If the Court added this language, the State Bar would not oppose the petition.

In taking this position, the Board of Governors acted upon the advice of the State Bar's Wisconsin Lawyers Assistance Program (WisLAP) Committee. The WisLAP Committee's report to the Board of Governors is attached to this letter for your reference.

Thank you for your consideration.

Sincerely,

Diane Diel
President, State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158

Cc: John E. Kosobucki, Director, BBE

Attachment

State Bar of Wisconsin

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The Wisconsin Lawyers Assistance Program is pleased to present this Position Statement in support of Wisconsin Board of Bar Examiner's Petition for an order creating Supreme Court Rule 40.075 pertaining to Conditional Admission to the State Bar of Wisconsin, subject to the necessary addition of a proposed amendment that addresses necessary protections for the confidentiality of the conditionally admitted applicant.

Background

Many attorneys and law students suffer from untreated addiction and mental health issues. Recent studies suggest that a significant number of law students abuse substances, including alcohol. Another study indicates that many law students (40%) are depressed by the time they complete law school. Given the established correlation between untreated addiction, mental health issues and bar discipline, the State Bar of Wisconsin is in a position to encourage early treatment, protect the public and improve the image of our profession by endorsing the current proposal for conditional admission.

An applicant for admission to the State Bar of Wisconsin must pass a character and fitness review that is conducted by the Board of Bar Examiners ("BBE"). Historically, the BBE has had two options when its review of an applicant uncovers questionable past conduct: reject or accept the applicant. For an applicant with a past record of questionable conduct but a current record of rehabilitation, the BBE has been forced to decide whether such candidates are presently fit to practice law when their track record raises the prospect of potential harm to the public. Meanwhile, applicants—particularly law students—are dissuaded from seeking appropriate treatment for addiction or mental health issues because they fear that their application will be rejected or delayed after their treatment is disclosed.

The Benefits of Conditional Admission

Conditional admission strikes a balance between the BBE's obligation to protect the public and the applicant's right to become an attorney if he or she is presently fit to practice law. When an applicant is admitted conditionally, he or she agrees to specific conditions, which may include counseling, participation in a medication regime, or monitoring for a period of time. If the applicant violates a condition, his or her license can be suspended or revoked. Once the probationary period has ended, the applicant receives an unconditional license to practice law.

With this framework in mind, conditional admission provides bar examiners with an additional tool to protect the public in "close cases" while encouraging law students to seek help for substance abuse, depression and other mental health issues. Ultimately, conditional admission provides oversight and added protection to the public in close cases when an applicant could otherwise be admitted without restrictions. For these reasons, the American Bar Association recently endorsed a Model Rule on Conditional Admission, which is attached as "**Exhibit A.**"

Conditional admission recognizes that compassion and meaningful oversight can work together and create a “safety net” to increase the likelihood of the conditionally admitted lawyer’s continuing fitness—not as a means of achieving fitness. This “safety net” provides the added benefit of heightened surveillance and easy revocation, and it allows for more consistent decisions regarding the fitness of an application based on clearly relevant improper and unprofessional conduct. At the same time, meaningful surveillance may facilitate recovery by providing conditionally admitted lawyers with an incentive to pursue treatment and make appropriate decisions during the early stages of their career.

Conditional admission provides an added, symbolic benefit. Unfortunately, lawyers and law students suffer from addiction and mental health disorders at a staggering rate. By accepting this reality, and the fact that recovery provides advantages to the lawyer profession as a whole, conditional admission promotes accountability and rehabilitation while recognizing that mental health issues, including addiction, can be treated.

Conditional admission may reduce financial hardship for applicants who are qualified to practice law but may require additional monitoring to protect the public. Under the current rules, an applicant who is denied admission by the BBE can petition the Wisconsin Supreme Court for review. This can involve several years of expensive litigation that impairs the earning capacity of an applicant who may otherwise be qualified to practice law. Conditional admission provides an alternative that does not involve the delay and expense of publicized litigation.

Finally, conditional admission alleviates a perceived disparity between discipline that is imposed on practicing attorneys and the standard that governs the admission of prospective attorneys. At the present time, an attorney that is subject to discipline for certain violations of the Wisconsin Rules of Professional Responsibility may be eligible for diversion, which would include monitoring and supervision similar to the proposed rule governing conditional admission. Conditional admission levels the playing field by making similar oversight available to prospective lawyers who are taking responsibility for their own rehabilitation.

Recommendations

The Wisconsin Lawyers Assistance Program Committee support Supreme Court Rule 40.075 pertaining to Conditional Admission to the State Bar of Wisconsin, with one proposed amendment that includes necessary protection for the confidentiality of a conditionally admitted applicant. As noted above, one of the main reasons for conditional admission is to encourage early treatment among prospective members of the Bar. For this reason, the ABA Model Rule recognizes confidentiality as a central feature of a meaningful conditional admissions program. See **Exhibit “A.”**

Unfortunately, proposed Supreme Court Rule 40.075 does not contain an assurance of confidentiality for conditionally admitted attorneys. The undersigned committee would respectfully submit that confidentiality is a central component of a successful conditional

admissions program. By way of reference, the ABA Model Rule on Conditional Admission is designed to encourage law school graduates to find help for substance abuse and mental health issues without fear that treatment will be revealed to clients, or the public at large. In this respect, a confidential conditional admission program provides an incentive for applicants to continue their treatment, particularly when compared to a petition for review, where the Wisconsin Supreme Court issues a written opinion that may contain sensitive information about the applicant.

Conditional admission in lieu of petition to the Supreme Court should protect the applicant's privacy. Presumably, the confidentiality protection of SCR 40.12 will extend to information related to conditional admission. To ensure this necessary protection, the Wisconsin Lawyers Assistance Program Committee would request support from the Board of Governors and the Wisconsin Supreme Court for inclusion of the following amendment into proposed Supreme Court Rule 40.075:

"(7) Confidentiality. The fact of conditional bar admission and the written agreement required by sub (3) shall be confidential."

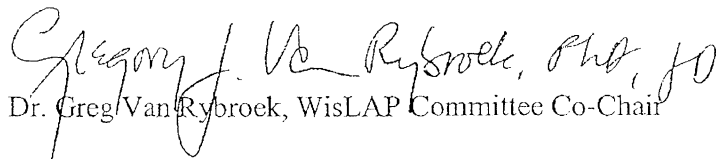
Conclusion

In summary, the Wisconsin Lawyers Assistance Program Committee is pleased to support proposed Supreme Court Rule 40.075 with the amendment referenced above. This proposed rule, with the amendment recognizing confidentiality for the conditionally admitted attorney, will effectively balance the BBE's interest in protecting the public with an otherwise qualified applicant's right to practice law. However, given the importance of confidentiality to a meaningful conditional admissions program, the Wisconsin Lawyers Assistance Program Committee would not support proposed Supreme Court Rule 40.075 without the proposed amendment. As such, the undersigned would respectfully request that the Board of Governors submit a letter to the Wisconsin Supreme Court in support of proposed Supreme Rule 40.075, but only with the added protection of confidentiality contemplated by the proposed amendment, and to place this request on its agenda as an action item for discussion during its next meeting.

Respectfully,



Attorney James Cole, WisLAP Committee Co-Chair



Dr. Greg Van Rybroek, WisLAP Committee Co-Chair