

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 16-03

**In the Matter of the Petition to Amend
SCRs 40.075 and 22.28**

FILED**MAR 21, 2017**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On September 15, 2016, the Board of Bar Examiners (BBE), by its director, Jacquelynn B. Rothstein, filed a rule petition asking the court to amend SCR 40.075, the "conditional admission" rule. The petition also proposed amending SCR 22.28 to include a mechanism to reinstate a lawyer whose license to practice law was suspended or revoked for failure to comply with the terms of conditional admission.

The court discussed this petition at open rules conference on November 7, 2016 and voted to schedule a public hearing. On December 19, 2016, a letter was sent to interested persons seeking input. On January 24, 2017, the State Bar of Wisconsin submitted a letter stating that the Board of Governors supports the petition.

The court conducted a public hearing on February 16, 2017. Jacquelynn B. Rothstein, director, appeared and presented the petition on behalf of the BBE.

At the ensuing open rules conference, the court discussed the petition and voted (5-2) to approve the petition with certain changes. Specifically, the court discussed its original intent when adopting the conditional admission rule and voted to remove references to suspension of a law license for failure to comply with the terms of conditional admission. Justice Shirley S. Abrahamson and Justice Rebecca Grassl Bradley opposed, stating they favored retaining reference to both suspension and revocation. The court discussed the petition again at open rules conference on March 16, 2016, and Justice Ann Walsh Bradley stated her intent to write separately. Therefore,

IT IS ORDERED that:

SECTION 1. Supreme Court Rule 40.075 (7) is amended to read:

(7) FAILURE. A conditionally admitted lawyer's license to practice law is expressly conditioned upon compliance with the terms of the conditional admission agreement. If the board determines that a conditionally admitted lawyer has failed~~Failure of a conditionally admitted lawyer to fulfill the terms of a conditional admission agreement~~ the board may result in a modification, extension, or revocation of the~~modify, extend or revoke the conditional admission agreement, or take~~ such other action as may be appropriate, including notice to the office of lawyer regulation.

SECTION 2. Supreme Court Rule 40.075 (7m) is created to read:

(7m) REVOCATION OF CONDITIONAL ADMISSION AGREEMENT. Upon the board's decision to revoke a conditional admission agreement, the board shall file a motion with the supreme court requesting the court to order the conditionally admitted lawyer to show cause why his or her

license to practice law should not be revoked for failure to fulfill the terms of the conditional admission agreement. The conditionally admitted lawyer may file a response to the motion within 20 days after the filing of the board's motion. The court may decide the matter on written submissions without a hearing. The court may, in its discretion, refer the matter to a referee.

SECTION 3. Supreme Court Rule 40.075 (9)(h) is created to read:

(h) When the court issues an order revoking a conditionally admitted lawyer for failure to fulfill the terms of a conditional admission agreement.

SECTION 4. Supreme Court Rule 40.075 (12) is created to read:

(12) REINSTATEMENT. A conditionally admitted lawyer whose license to practice law is revoked for failure to fulfill the terms of a conditional admission may file a petition for reinstatement under SCR 22.29.

SECTION 5. Supreme Court Rule 22.28 (3) is amended to read:

(3) The license of an attorney that is revoked or suspended for misconduct for six months or more, or revoked for failure to fulfill the terms of a conditional admission agreement under SCR 40.075, shall be reinstated pursuant to the procedure set forth in SCR 22.29 to 22.33 and only by order of the supreme court.

IT IS FURTHER ORDERED that that the amendment adopted pursuant to this order shall be effective as of July 1, 2017, and shall apply to proceedings commenced after the effective date of this rule and, insofar as is just and practicable, to proceedings pending on the effective date.

IT IS FURTHER ORDERED that notice of this amendment of Supreme Court Rules 40.075 and 22.28 be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 21st day of March, 2017.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 ANN WALSH BRADLEY, J. (*concurring*). SCR 40.075(7m) and 22.28(3) state that upon revocation of the conditional admission agreement, the court may revoke the license of the attorney. These provisions don't tell the full story.

¶2 I write separately to emphasize that this court retains supervisory authority over the bar in Wisconsin and can always exercise that authority as the facts of a particular case dictate, including allowing for a waiting period before admission or admission with conditions.

¶3 Although this order is consistent with the intent upon adoption of conditional admission, I remain hesitant to inexorably tie the court's hands in unique factual circumstances.

¶4 Accordingly, I respectfully concur.

¶5 I am authorized to state that Justices SHIRLEY S. ABRAHAMSON and REBECCA GRASSL BRADLEY join this concurrence.

