March 5, 2009

William J. Weigel
603 Jenna Drive
Verona, Wisconsin 53593

David Schanker
Clerk of Supreme Court
110 East Main Street (#215)
Madison, WI 53703

Re: Petition to Create SCR 40.075 (Conditional Admission)

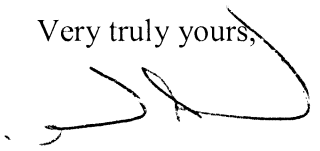
Dear Mr. Schanker:

Enclosed please find an original and eight copies of my letter to the Court concerning the proposed conditional admission rule.

I apologize that this is being filed so close in time to Monday's public hearing. I completed it after hours on Thursday evening. I'll be out of the office Friday morning, so someone else will be hand-filing this for me and delivering courtesy copies to John Kosobucki, Theresa Owens and Julie Rich.

Thank you.

Very truly yours,



WILLIAM J. WEIGEL

Enclosures
cc(w/encl): John Kosobucki
Theresa Owens
Julie Rich

RECEIVED
MAR - 6 2009
CLERK OF SUPREME COURT
OF WISCONSIN

March 5, 2009

William J. Weigel
603 Jenna Drive
Verona, Wisconsin 53593

Supreme Court of Wisconsin
16 East State Capitol
Madison, WI 53701

Re: Petition to Create SCR 40.075 (Conditional Admission)

Dear Chief Justice and Justices:

I write personally on the proposed conditional admission rule, not as a spokesperson for any agency or group. The position of my employer, the Office of Lawyer Regulation (OLR) is neutral – that is, OLR takes no position on the merits of whether there should be conditional admission or how it should be implemented, but instead defers to the admission authorities.

I don't vehemently disagree, and I don't have a horse in this race. This letter is provided informationally, in the hope that it might assist the Court as you consider thorny issues pertaining to conditional admission. I apologize that this letter is provided so close in time to the public hearing.

My experience and perspective, in addition to prosecuting or supervising the prosecution of Wisconsin attorney disciplinary actions for the past 12+ years, is that I am currently an officer of the National Organization of Bar Counsel (NOBC), a national organization whose members enforce ethics rules; a member of the American Bar Association's Center for Professional Responsibility (CPR); a liaison to both the ABA's Standing Committee on Professionalism and the ABA/SOC's Joint Committee on Ethics and Professionalism; and a member of a related ABA subcommittee addressing law school professional responsibility instruction. I've taught the professional responsibility course at UW's law school, and I've presented well over 100 ethics programs - roughly 20 of which were sponsored by WisLAP.

A threshold question is whether the concept of conditional admission makes sense. Perhaps if it is not deemed prudent to admit an applicant unconditionally, the applicant should not be admitted. Proponents of this position argue that the practice of law is a privilege, fitness to practice is a necessity, not everyone is suited to practice, and either the admissions authority should admit or not admit an applicant.

Back in February of 2008, when the ABA's Model Rule on Conditional Admission was being debated and NOBC was asked to weigh in, NOBC found its members so divided that after lengthy debate the organization could not take a position either supporting or opposing the concept of conditional admission.

Today, the majority of jurisdictions do not provide for conditional admission. The latest official information I could find was that 20 states or territories provided for some form of conditional admission, but 36 did not.[1]

Personally, I tend to guardedly favor the concept of conditional admission – as long as the rule is written to properly safeguard the public, provides flexibility for a more extended period of being subject to conditions, and offers clearer guidance on enforcement. If there is to be conditional admission, at least these three sticky wickets merit careful consideration.

Confidentiality is a huge issue. If the purpose of certifying fitness is ultimately protection of the public, it can be difficult to reconcile withholding from clients the information that an attorney was admitted with specified reservations. Although the ABA's Model Rule provides for confidentiality, it passed their House of Delegates only after language was added to the rules' commentary specifically recognizing that there are different approaches to confidentiality and deferring to the states' high courts "to make this ultimate decision." One counter-argument to those who disfavor confidentiality is that allowing public access to an attorney's conditions may have a chilling effect on applicants disclosing their situations (e.g., being in recovery) to bar admissions authorities. On the other hand, some expressed that an applicant who would lie to avoid a public conditional admission would likely lie to avoid a confidential one. Others questioned whether the recommended confidentiality in the proposed ABA conditional admission Model Rule may have been, to some extent, concern with protection of applicants, as opposed to protection of the public.[2] Philosophically, I favor disclosure; however, this Court has provided for resolutions in disciplinary matters that remain confidential, including diversions and private reprimands with conditions.

Another important issue is the potential length of a conditional admissions period. The original ABA proposals called for a two-year term, with some possibility of extensions. That was found inadequate by many who weighed in, and the ABA Model Rule was passed with a maximum conditional term of sixty months (i.e., five years). Clearly, the appropriate time frame will vary case-by-case. My personal opinion is that the current Wisconsin proposal (for only a one-year period, to be extended only on good cause found by the BBE and only for a maximum of another year) is inadequate as a blanket deadline. In the only medical incapacity reinstatement case I directly litigated, *Disciplinary Proceedings Against Kerscher*, 2004 WI 11, this Court imposed conditions on

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[1] Comprehensive Guide to Bar Admission Requirements 2009, published by the National Conference of Bar Examiners and the ABA Section of Legal Education and Admissions to the Bar, at Chart II.

[2] The original proponent of the ABA's Model Rule was CoLAP – the Commission on Lawyer Assistance Programs.

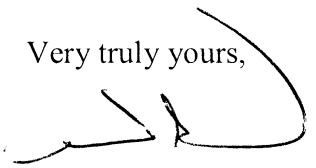
reinstatement relating to the attorney's sobriety and compliance with his medication regimen for five years, a length of time that was supported by medical evidence in the record that a five year period was more appropriate than a lesser time frame.

There are probably other issues that different and wiser minds will raise; my last ones relate to whether the current proposal adequately provides enough structure or guidance for a monitoring entity, and whether the best enforcement mechanism is the proposed rule's referral back to SCR 40.08 at the end of an unsuccessful conditional admission term.

John Kosobucki and the BBE are to be commended for bringing the issue of conditional admission to the Court's attention. Should it be adopted? As always, the devil is in the details.

Thank you for the opportunity to present issues and information to the Court pertaining to the pending conditional admission petition.

Very truly yours,



WILLIAM J. WEIGEL