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April 13, 2010

Janis Thibault
Lawyer Assistance Program
State Bar of California
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Dear Ms. Thibault:

While many states already have in place a version of the Model Rule on Conditional Admission to Practice Law adopted by the ABA in August, 2009, the Commission believes it is important for all 50 states to adopt policy embracing conditional admission.

The purpose of this letter is to reach out and offer assistance to the LAP directors of those states who have not yet adopted a rule on conditional admission. The Commission is interested in working in a collaborative effort with those who may be in the discussion stage and might need additional assistance to advance their plan.

Please pass along the name and contact information of those leaders you know who may be interested in endorsing or supporting a conditional admission rule and we will contact them to offer our support.

Please contact me at Robert.Childers@shelbycountyttn.gov if you have questions. I look forward to hearing from you. Thank you very much for your consideration.

Sincerely yours,

Robert L. Childers
Chair, Commission on Lawyer Assistance Programs

cc: Will Hornsby



Model Rule on Conditional Admission to Practice Law

as Adopted by the ABA House of Delegates
August 2009

1. Conditional Admission. An applicant who currently satisfies eligibility requirements for admission to practice law, including fitness requirements, and who possesses the requisite good moral character required for admission, may be conditionally admitted to the practice of law if the applicant demonstrates recent successful rehabilitation from chemical dependency or successful treatment for mental or other illness, or from any other condition this Court deems appropriate, that has caused conduct that would otherwise have rendered the applicant currently unfit to practice law. The [Admissions Authority] shall recommend appropriate conditions that the applicant to the bar must comply with during the period of conditional admission.

Commentary

Conditional admission is not intended to apply to all applicants who have rehabilitated themselves from prior conduct or other matters of concern to bar admissions authorities, but only to those whose rehabilitation or treatment is sufficiently recent that protection of the public requires monitoring of the applicant for a specified period. The availability of conditional admission does not preclude unconditional admission in cases where rehabilitation or treatment has been successful for a sustained time period; nor does it preclude denial or deferral of admission in cases where rehabilitation or treatment has been of shorter duration.

Conditional admission is also not intended to apply where an applicant has engaged in conduct that is not subject to rehabilitation. The Rule calls for conditional admission to the practice of law when an applicant demonstrates recent successful rehabilitation. Those states that have adopted conditional admission rules have set differing standards of proof to make the determination about an applicant's successful rehabilitation. This Rule, therefore, does not set out a standard of proof, but recognizes that states will make their own determination of a standard of proof for conditional admission in the jurisdictions.

The Rule focuses on rehabilitation from conduct or behavior or effective treatment of a condition which was associated with a previous lack of fitness. In this context, unfitness means that an applicant does not meet functional requirements necessary to practice law. The existence of a condition of chemical dependency, mental or other illness does not indicate an applicant's lack of character or fitness solely for that reason. Such a rule is consistent with ABA Resolution 110 (1994), which directs that fitness determinations be made on the basis of specific, targeted questions about an applicant's behavior, conduct, or any current impairment of the applicant's ability to practice law and recommends admissions processes be tailored to protect privacy of bar applicants and avoid discouraging individuals from seeking mental health treatment. 18 MPDLR 5, 598 (Sept/Oct 1994). In addition to discouraging treatment and full

disclosure, bar admission determinations made on the basis of diagnosis or treatment of chemical dependency, mental illness, or other medical conditions that do not impair functional ability may also run afoul of the Americans with Disabilities Act, which has been interpreted to prevent licensing authorities from placing additional burdens on qualified persons with a disability. See “Bar Application Mental Health Inquiries: Unwise and Unlawful. The Position of the American Bar Association,” 24 Human Rights 1 (Winter 1997) www.abanet.org/irr/hr/welobob2.html; Clark v. Virginia Board of Bar Examiners, 880 F.Supp. 431 (E.D. Va. 1995)(striking down question requiring disclosure of treatment or counseling for any mental, emotional, or nervous disorders within the past five years as impermissible under Title II); Medical Society of New Jersey v. Jacobs, 62 USLW 2238, 1993 WL 413016 (D.N.J. 1993)(prohibiting extra burdens on qualified individuals with disabilities seeking medical licensure when those burdens are unnecessary). But see, Applicants v. Texas State Board of Law Examiners, 1994 WL 93404 (W.D. Tex. 1994)(permitting narrowly drawn questions about treatment for particular disorders). The focus on current conduct and fitness may also avoid disclosure of more health treatment information than is necessary to the admissions inquiry, serving both privacy concerns and avoiding potentially unlawful burdens on qualified disabled persons.

Conditional admission is intended to act as a “safety net” to increase the likelihood of the conditional lawyer’s continuing fitness—not as a method of achieving fitness. The conditional admissions process is particularly useful when dealing with recent recovery from or treatment for chemical abuse, dependency, or mental illness since it recognizes the importance of rehabilitation from dependency or treatment of a condition that resulted in previous conduct or behavior that, if unaddressed, would have rendered an applicant unfit, avoids denial of admission because rehabilitation or treatment is recent, encourages applicants not to delay getting help they need, and provides continuing assurances of fitness. A jurisdiction may also provide for conditional admission in cases involving rehabilitation from other misconduct or unfitness that concerns admissions authorities that does not result from chemical abuse, addiction or mental or other illness, such as neglect of financial responsibilities.

The terms “Admissions Authority”, “Monitoring Authority” and “Disciplinary Authority” are used to describe the nature of the functions being performed rather than the particular agency performing them. This permits each jurisdiction to determine which entity in its jurisdiction is best suited to perform these functions.

2. Conditions. The [Admissions Authority] may recommend to the court that an applicant’s admission be conditioned on the applicant’s complying with conditions that are designed to detect behavior that could render the applicant unfit to practice law and to protect the clients and the public, such as submitting to alcohol, drug, or mental health treatment; medical, psychological, or psychiatric care; participation in group therapy or support; random chemical screening; office practice or debt management counseling; and monitoring, supervision; mentoring or other conditions deemed appropriate by the Admissions Authority. The conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to

practice law or pose a risk to clients or the public and to encourage continued abstinence, treatment, or other support. The conditions should be established on the basis of clinical or other appropriate evaluations, take into consideration the recommendations of qualified professionals, when appropriate, and protect the privacy interests of the conditionally admitted lawyer to professional treatment records to the extent possible. The terms shall be set forth in a confidential order (the “Conditional Admission Order”). The Conditional Admission Order shall be made a part of the conditionally admitted lawyer’s application file and shall remain confidential, except as provided in this and any other applicable rules of the [Admissions Authority] and the [Disciplinary Authority].

Commentary

Consent agreements are used in some states as an alternative to an order. In such case, reference to a “Conditional Admissions Agreement” may replace “Conditional Admissions Order.”

3. Notification to the [Disciplinary Authority]. Immediately upon issuance of a Conditional Admission Order, the [Admissions Authority] shall transmit a copy of the order to the [Disciplinary Authority]. If the [Disciplinary Authority] or any other jurisdiction’s disciplinary authority receives a complaint alleging misconduct by the conditionally admitted lawyer, or if the [Monitoring Authority] designated pursuant to Section 5 notifies the [Disciplinary Authority] of a violation of the Conditional Admission Order, the [Disciplinary Authority] shall request a copy of relevant portions of the lawyer’s bar application file, and the [Admissions Authority] shall promptly provide the requested materials to the [Disciplinary Authority].

Commentary

This ensures that the [Disciplinary Authority] is aware of the conditional admission and can act promptly to revoke or extend the term of the conditional admission in addition to other disciplinary options it may have. The [Disciplinary Authority] may also act on a complaint of misconduct.

4. Length of Conditional Admission. The conditional admission period shall be set in the Conditional Admission Order, but shall not exceed sixty (60) months, unless a notification of a violation of the Conditional Admission Order has been filed by the [Monitoring Authority] with the [Disciplinary Authority] or a complaint of misconduct has been made against the conditionally admitted lawyer with any lawyer disciplinary authority.

Commentary

The Rule provides for a maximum conditional admission term of sixty months. Of the states that currently have a conditional admission rule that provides for a maximum term, a majority provide for a maximum term of twenty-four months. The conditional admission period may vary according to the nature of the dependency or illness requiring conditional admission, the applicant’s history of pre-admission treatment or recovery, and

any professional opinions about probability of relapse. The facts of a particular case may require a longer or shorter term than twenty-four months, but in no event should the conditional admission exceed sixty months. This Rule provides limited discretion to extend or modify the terms if the Conditional Admission Order is violated (i.e., there is a relapse or recurrence of the conduct) and provides for the conditional admission to be continued until the [Disciplinary Authority] acts upon any complaint to modify, suspend or revoke the lawyer's admission.

5. Compliance with Conditional Admission Order. During the conditional admission period, the [Monitoring Authority] shall take such action as is necessary to monitor compliance with the terms of the Conditional Admission Order, including, but not limited to, referral for monitoring by a Lawyer Assistance Program or other monitoring authority, requiring the conditionally admitted lawyer to submit written verification of compliance with conditions, requiring an appearance before the [Monitoring Authority], and requiring responses to requests for information by the [Monitoring Authority].

Commentary

Although monitoring may be performed by a Lawyer Assistance Program or by an Admissions Authority, a Disciplinary Authority may be a proper monitor as an extension of its existing authority in probation and reinstatement matters.

6. Costs of Conditional Admission. The applicant shall be responsible for any direct costs of investigation, testing and monitoring. Other costs shall be borne in accord with the Rules of the Admissions and Disciplinary Authorities.

7. Failure to Fulfill the Terms of Conditional Admission. Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Order may result in a modification of the Order that may include extension of the period of conditional admission, suspension or revocation of the conditional admission, or such other action as may be appropriate under the Rules of the [Disciplinary Authority]. The filing of a complaint with the [Disciplinary Authority] shall automatically extend the conditional admission until disposition of the complaint by the [Disciplinary Authority] and any resulting appeals. Once a complaint is filed with the [Disciplinary Authority], the [Admissions Authority] shall have no further authority over the conditionally admitted lawyer.

Commentary

The purpose of this provision is to allow the period of conditional admission to be extended to prevent the conditional admission from expiring before the Disciplinary Authority can act on the alleged violation of the Conditional Admission Order. It is not intended to affect in any way a Disciplinary Authority's ability to seek to discipline a conditionally admitted lawyer.

8. Violation of Conditional Admission Order. If the [Monitoring Authority] determines that the terms of the Conditional Admission Order have been violated, the [Monitoring Authority] shall promptly notify the [Disciplinary Authority] which shall determine whether to initiate proceedings seeking the revocation, extension or modification of the Conditional Admission Order. Consideration and disposition of any such notice to the [Disciplinary Authority] by the [Monitoring Authority] shall be governed by the rules of the [Disciplinary Authority].

Commentary

Violation of a Conditional Admission Order will not necessarily result in revocation. The Monitoring Authority shall act on any violation by determining whether it merits notice to the Disciplinary Authority. The Monitoring Authority's role is to directly supervise the conditionally admitted lawyer in accordance with the terms of the Conditional Admissions Order and to report to the Disciplinary Authority compliance or noncompliance.

9. Expiration of Conditional Admission Order. Unless the conditional admission is revoked or extended as provided herein, upon completion of the period of conditional admission, the conditions imposed by the Conditional Admission Order shall expire. The [Monitoring Authority] shall notify the [Disciplinary Authority] of such expiration.

10. Confidentiality. Except as otherwise provided herein, and unless this Court orders otherwise, the fact that an individual is conditionally admitted and the terms of the Conditional Admission Order shall be confidential provided that applicant shall disclose the entry of any Conditional Admission Order to the admissions authority in any jurisdiction where the applicant applies for admission to practice law. In addition to ensuring that the relevant records of the [Admissions, Monitoring, and Disciplinary Authority] are confidential, the [Admissions Authority] shall structure the terms, conditions, and monitoring of conditional admission to ensure that the conditional admission does not pose a significant risk to confidentiality. These provisions for confidentiality shall not prohibit or restrict the ability of the applicant to disclose to third parties that the applicant has been conditionally admitted under this Rule, nor prohibit requiring third-party verification of compliance with terms by admission authorities in jurisdictions to which the conditionally admitted lawyer may subsequently apply.

Commentary

In recommending confidentiality, the Commission was aware of and discussed the inherent tension between the benefits of confidentiality and the public's (including potential clients) interest in access to all material information about the applicant's fitness to practice. It is assumed that, in the absence of a conditional admission rule and under current admission practices, many applicants who would qualify for conditional admission under this rule would be admitted in most jurisdictions unconditionally. Thus, observing confidentiality should result in no less information being provided to the public

than is currently the case, but on the other hand confidentiality will promote early disclosure and treatment of impairments.

The Commission recognizes that there are differences in approaches to confidentiality and defers to state courts of highest appellate jurisdiction to make this ultimate decision.

11. Education. The [Admissions Authority] shall make information about its conditional admission process publicly available. The applicable Lawyer Assistance Program (LAP), or other bar or legal organization that provides support to lawyers, should have the primary responsibility for educating law students, law school administrators and applicants for bar admission regarding the nature and extent of chemical abuse, dependency, and mental health concerns that affect law students and lawyers; aiding them to recognize chemical abuse, dependency, and mental illness; identifying resources available to address such issues; and encouraging them to seek assistance. The Admissions Authority should reasonably cooperate with such organization in making accurate information about the conditional admission process available to interested persons.

Commentary

Informing bar applicants that chemical dependency and mental illness are not necessarily indicative of a lack of character and fitness which preclude admission to practice law encouraging rehabilitation from misconduct or behavior or treatment for a condition that would otherwise render an applicant unfit, and utilizing a confidential conditional admission process in cases of recent rehabilitation or treatment, results in candor in the process and other benefits to the bar examiners and the public. The law schools and lawyer assistance programs can assist by addressing chemical abuse, dependency, and mental health concerns, but the message of how an Admissions Authority addresses these concerns and the availability of a conditional admission option may be most appropriately and effectively communicated by the Admissions Authority.

ABA Model Rule for Conditional Admission to the Bar Frequently Asked Questions

1. What is the Model Rule for Conditional Admission to the Bar?

The Model Rule adopted by the ABA House of Delegates in February 2008 permits a bar applicant who has a chemical dependency or mental health issue that otherwise would render the applicant unfit for the practice of law to receive admission to practice with conditions required to safeguard the applicant's sustained ability to practice without impairment.

2. Why is there a need for conditional admission?

Law students who develop chemical dependencies or mental illness need to feel comfortable seeking professional help. Previously, the fact that a law student had admitted having a dependency or receiving mental health counseling could be enough to disqualify him or her from ever being admitted to the bar. If a law student sought help and later lied about it, he or she would be subject to dismissal. The result is that in many cases law students did not seek the help they needed for fear of the impact on their future career. The Model Rule on conditional admission seeks to remove that fear and encourage law students to obtain professional help for dependencies and mental illness.

3. Who benefits from the new Model Rule?

The public, bar examiners and law students all benefit under this Model Rule. The public benefits because a system will be in place to ensure that applicants meet certain conditions. Bar examiners benefit because they now have an additional tool to help decide whether to admit an otherwise qualified bar applicant whose past raises concerns about recurrence of a dependency, mental illness or similar condition. Law students benefit because they can seek early assistance for dependency or mental health issues without the fear that doing so would disqualify them from acquiring a license to practice law.

4. Does the Model Rule mean that anyone who wants to can practice law?

Candidates for the bar will still need to meet state requirements for education, pass the state bar exam and demonstrate character and fitness. The Model Rule is not intended as a measure to achieve fitness, but to increase the likelihood of continuing fitness. The Model Rule is based on the best practices from the jurisdictions that have enacted a conditional admission rule. Those jurisdictions include:

Arizona	Connecticut
Florida	Idaho
Illinois	Indiana
Kentucky	Minnesota
Montana	Nebraska
Nevada	New Jersey
New Mexico	North Dakota

Oregon
Texas
Puerto Rico

South Dakota
West Virginia

5. What are the safeguards for the public?

Under the Model Rule, there are several ways the public's interests are protected. A law student who meets all other criteria for admission to the bar and has received counseling or who has joined a support group may be conditionally admitted to the bar in his or her jurisdiction. Under the terms of the conditional admission, the lawyer may be required to join a support group, such as Alcoholics Anonymous and attend weekly meetings. The new lawyer may also be required to meet with a trained monitor and undergo randomized testing. The applicant pays the costs of monitoring and testing. The conditional admission can run from a minimum of 24 months to a maximum of 60 months, depending on the admissions authority. If there are no disciplinary complaints related to the dependency or mental health issue within the conditional time period, the conditional admission becomes a full admission to practice.

6. Who knows that a lawyer has a conditional admission?

The fact that an individual is conditionally admitted, and the terms of the Conditional Admission Order are confidential although the applicant needs to disclose the Conditional Admission Order to the admissions authority in any jurisdiction where the applicant applies for admission to practice law. It is recommended that the Admissions Authority structures the terms so that conditional admission does not pose a significant risk to confidentiality. Recognizing the difference in approaches to confidentiality, the highest appellate state courts determine the level of confidentiality for new lawyers in their jurisdictions.

To read the complete Model Rule on Conditional Admission to Practice Law with commentary, report, general information and executive summary, please click [here](#).