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Supreme Court of Wisconsin

BOARD OF BAR EXAMINERS
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08-13

August 5, 2010

RECEIVED
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CLERK OF SUPREME COURT
OF WISCONSIN

Chief Justice Shirley Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gablemen
16 East State Capitol
Madison, WI 53701

Dear Honorable Justices:

At its June meeting, the Board of Bar Examiners (BBE) reviewed the matter of conditional admission. More specifically, the BBE reviewed changes to Rule Petition 08-13 (conditional admission) that Commissioner Julie Anne Rich drafted following the public hearing in the matter and after the court's open administrative conference held on March 9, 2009. By Order dated August 3, 2009, the court held the revised draft petition regarding conditional admission in abeyance pending the completion of the State Bar/OLR monitoring petition (08-28). The monitoring petition has since been successfully resolved and the BBE therefore revisited the revised conditional admission draft.

After reviewing the revised petition, the BBE agreed to accept and forward it to the court for further action. The Board strongly believes that the time is ripe to adopt a rule for conditionally admitting individuals into the Wisconsin bar. With frequency, the BBE reviews applicants whose histories would warrant conditional admission. Regrettably, however, they are only able to admit or deny applicants, rather than imposing conditions upon their admission, which would often be a more fitting option and one that would ensure greater protection of the public.

Letter to the WI Supreme Court re Conditional Admission

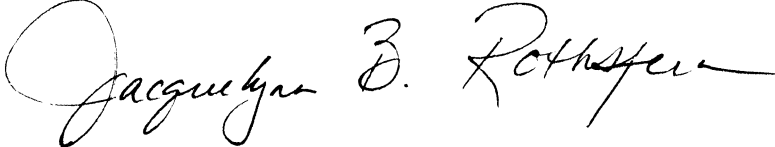
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Indeed, the BBE recently denied an applicant who was conditionally admitted in a neighboring state, but who otherwise would have been an ideal candidate for conditional admission had that option existed. Therefore, the BBE respectfully submits the revised Rule Petition 08-13 to the court and requests that the petition be adopted forthwith.

Very truly yours,

BOARD OF BAR EXAMINERS

A handwritten signature in black ink that reads "Jacquelynn B. Rothstein". The signature is written in a cursive style with a large initial 'J' and a distinct 'B'.

Jacquelynn B. Rothstein

Director

Attachment

cc: Members of the Board of Bar Examiners
Commissioner Julie Anne Rich

This draft reflects the changes from the petition as originally submitted and the document presently before the court.

SCR 40.075 Conditional Bar Admission.

(1) Eligibility. ~~The Board may recommend conditional bar admission if it concludes that an otherwise qualified applicant may have substantial difficulties in performing the essential responsibilities of a lawyer due to the applicant's circumstances, including but not limited to: alcohol or other drug abuse, criminal record, financial mismanagement, mental or emotional instability.~~

An applicant who currently satisfies all essential 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 a record of rehabilitation from chemical dependency or successful treatment for mental or other illness, or for any other reason the board deems appropriate, that has resulted in conduct or behavior that would otherwise have rendered the applicant currently unfit to practice law, and the conduct or behavior, if it should recur, would impair the applicant's current ability to practice law or pose a threat to the public.¹

(2) Conditions. The board may offer to impose any reasonable conditions upon a conditionally admitted applicant that will address the applicant's individual circumstances and the board's concern regarding the performance of those essential responsibilities of the applicant to a client or the public, including but not limited to any of the following²:

- (a) Pprofessional medical, psychological or other treatment;
- (b) Pprohibiting or limiting the use of alcohol or other drugs;
- (c) Rrandom alcohol or other drug testing;
- (d) Ssupervision;
- (e) Pperiodic reporting by the applicant;
- (f) Ffinancial, business, or law office management counseling or supervision (including inspection of records); ~~and~~
- (g) Any other condition tailored to meet the circumstances of the applicant.

(3) Written Agreement; non-acceptance; hearing. The terms of a conditional bar admission shall be incorporated in a written agreement signed by the applicant and approved by³ the board. If the applicant does not accept conditional bar admission, the Board shall decide whether to certify or deny unconditional bar admission and advise the applicant of its decision. Prior to issuing its final decision, the Board shall notify the

¹ At OAC on March 9, 2009 the Court voted to use the ABA Model Rule language as amended by the use of the phrase "demonstrates a record of rehabilitation."

² All changes in this provision suggested by the LRB.

³ Suggested by BBE Board Member.

applicant of its intent to deny unconditional admission. Within 30 days of receiving the Board's notice of intent to deny unconditional admission, the applicant may request a hearing pursuant to SCR 40.08.

(4) Monitoring. If supervision is to be a condition of the ~~written~~ conditional admission agreement, the board, after consultation with the applicant, may designate itself, the ~~State Bar of Wisconsin~~, an appropriate person, the Wisconsin Lawyers Assistance Program, or any combination thereof, as the supervising party. The board and the supervising party may, with notice to the applicant, exchange relevant information about the applicant.⁴

(5) Costs. All costs of conditional bar admission, including monitoring, shall be borne by the applicant.

(6) Length Duration of Conditional Admission. The initial period of conditional bar admission shall be up to ~~one year~~ 60 months.⁵ At the end of that ~~year~~, the period conditional admission may be extended by the board in writing for good cause, but not to exceed one additional year. The board shall review an applicant's conditional admission annually.⁶ At the end of the initial term of conditional bar admission, or any extension thereof, the board shall either permit the conditional admission agreement to expire and certify the applicant for unconditional admission or advise the applicant in writing that it will conduct a hearing to determine whether to⁷ issue an intent to deny admission letter to the applicant. In the event of the issuance of an intent to deny letter, the provisions of SCR 40.08 shall apply.

(7) Failure. Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Agreement may result in a modification, extension, or revocation of the agreement, or such other action as may be appropriate, including notice to the office of lawyer regulation.⁸

(8) Grievance. Notwithstanding sub. (6), the filing of a grievance against a conditionally admitted applicant shall automatically extend the conditional admission

⁴ Recommended after review of the OLR Monitoring petition and consultation with BBE Board Members.

⁵ Approved by the Court at the 3/9/09 OAC.

⁶ Suggested after consultation with BBE Board Members.

⁷ The Court indicated it wanted some reference to expiration of the Agreement. The BBE Board Members suggest this language, providing an opportunity for either simply letting the Agreement expire if all is going well or affording the applicant a hearing if it is likely admission will be denied.

⁸ At the 3/7/09 OAC the Court indicated it wanted a reference to what happens if a lawyer failed to comply with an Agreement. This language is derived from the ABA Model Rule as amended after discussion with BBE Board Members.

until disposition of the grievance by the office of lawyer regulation and any resulting complaint and appeal.⁹

(9) Confidentiality. Except as otherwise provided herein, and unless the court orders otherwise, the fact that an individual is conditionally admitted and the terms of the Conditional Admission Agreement shall be confidential provided the applicant shall disclose the entry of any Conditional Admission Agreement to the admissions authority in any jurisdiction where the applicant applies for admission to practice law, and the board shall disclose the entry of any Conditional Admission Agreement to the office of lawyer regulation. The board 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.¹⁰

(10) Notice to the office of lawyer regulation. The board will notify the office of lawyer regulation when a conditional admission agreement is approved, modified, extended, revoked, or expires. The board and the office of lawyer regulation may exchange relevant information regarding a conditionally admitted applicant.¹¹

(11) Immunity. The director, staff, members of the board, and persons designated by the board to monitor compliance with conditional admission agreements or with conditions imposed on the applicant shall be immune from suit for any conduct in the course of their official duties.

⁹ At the 3/9/09 OAC the Court indicated it wanted the BBE to have notice if a complaint was filed against a conditionally admitted applicant. The OLR suggested changing this language to “grievance” to permit earlier notification.

¹⁰ The Court voted at the 3/9/08 OAC to include a confidentiality provision and directed me to use the ABA Model Rule as a template. It was amended slightly to fit Wisconsin’s administrative structure and to explicitly permit sharing of information with the OLR.

¹¹ The Court, the BBE and OLR all agree it is appropriate for the BBE and OLR to share information about a conditionally admitted applicant. This provision seeks to accomplish that shared objective.