
In the Matter of the Petition to Create
Supreme Court Rule SCR 40.075 Relating
to Conditional Admission to the Bar

PETITION

To: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David Prosser, Jr.
Justice Patience D. Roggensack
Justice Louis B. Butler
Justice Annette Kingsland Ziegler

Filed with the Clerk of Court David R. Schanker
Clerk of Supreme Court Office
110 East Main Street, Suite #215
Madison, WI 53703

The Board of Bar Examiners, by its director John E. Kosobucki, hereby petitions the Supreme Court of Wisconsin for an order creating Supreme Court Rule 40.075 pertaining to Conditional Admission to the Bar. The new rule would allow applicants with issues such as substance abuse problems, mental health conditions, financial management difficulties, or criminal history to be admitted conditionally to the State Bar of Wisconsin under terms and conditions established by the Board of Bar Examiners.

PROPOSED RULE

SCR 40.075 CONDITIONAL ADMISSION TO THE BAR

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.

(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: professional medical, psychological or other treatment; prohibiting or limiting the use of alcohol or other drugs; random alcohol or other drug testing; supervision; periodic reporting by the applicant; financial, business, or law office management counseling or supervision (including inspection of records); and 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 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 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 agreement, the board, after consultation with the applicant, may designate itself, the State Bar, an appropriate person, or any combination thereof, as the supervising party.

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

(6) Length of Conditional Admission. The period of conditional bar admission shall be up to one year. At the end of that year, the period may be extended by the board in writing for good cause, but not to exceed one additional year. At the end of the initial term of conditional bar admission, or any extension thereof, the board shall either certify the applicant for unconditional admission or issue an intent to deny admission letter to the applicant. In the latter event, the provisions of SCR 40.08 shall apply.

JUSTIFICATION

Under current Supreme Court Rules the Board of Bar Examiners has only two options when considering an applicant for admission to the bar: certify the applicant or deny certification. There may be circumstances of an applicant who currently satisfies all requirements for admission to practice law, including character and fitness requirements, and possesses the requisite good moral character for admission, but whose recent history demonstrates rehabilitation from past chemical abuse or dependency, treatment for a mental health condition, or other conduct or condition that, if it should recur, would impair the applicant's ability to practice law or pose a threat to the public. A conditional admission rule would allow the Board of Bar Examiners the leeway of admitting the applicant under conditions whereby the applicant would be monitored or until the applicant demonstrates rehabilitation from the conduct which gave rise to the Board's concerns. A conditional admission rule would protect the public and allow conditionally admitted attorneys the opportunity to demonstrate that they deserve full admission to the bar.

A conditional admission rule recognizes past difficulties and encourages rehabilitation. A conditional admission process can remove impediments to early diagnosis and treatment, reduce the apprehension of full disclosure, and thereby increase candor in the admission process and potentially provide for a more solid foundation on which to make an accurate assessment of character and fitness, and assure continuing fitness through a contract with the applicant and official monitoring of the applicant's compliance.

NOTE: Language in paragraphs 3 and 6, above, refer to the Board's "intent to deny." The Board has previously submitted a petition to amend SCR 40.08 to specify that an application is "at risk of being denied," which more accurately reflects the Board's preliminary determination. If the petition to amend SCR 40.08 is approved, then the corresponding "intent to deny" language in this petition should also be changed to "at risk of being denied."

Dated this 1st day of May, 2008.

Respectfully submitted,

// Original signed //

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