

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. 08-13

In the matter of creation of Supreme Court Rule 40.075 relating to conditional admission to the Bar.

FILED**JUN 8, 2011**

A. John Voelker
Acting Clerk of Supreme
Court
Madison, WI

On May 1, 2008, the Board of Bar Examiners (BBE) filed a petition requesting this court create a supreme court rule permitting conditional admission to the bar. A public hearing was conducted on March 9, 2009. At the ensuing open administrative conference the court considered the proposal and discussed the ABA Model Rule on Conditional Admission to Practice Law as well as Minnesota's conditional admission rule, Minnesota Rule Bar Admission 16. The court discussed whether conditional admission should be confidential and concluded that confidentiality is appropriate because the public is adequately protected by oversight mechanisms in the proposed rule. The court also discussed various other aspects of the proposed rule. However, the Board of Administrative Oversight opposed the petition because a monitoring program for conditional admission had not yet been established. Accordingly, the court held this petition in abeyance pending its consideration of Rule No. 08-28, In the Matter

of the Petition for Lawyer Support and Monitoring and Procedures for Referrals from the Office of Lawyer Regulation ("the Monitoring Petition"). See S. Ct. Order 08-13 (issued Aug. 3, 2009).

On October 29, 2009, the court conducted a public hearing on the Monitoring Petition. The court permitted public comment on Rule No. 08-13 ("the Conditional Admission Petition") and discussed both matters at the open administrative conference. Both petitions were then held pending resolution of certain issues related to the Monitoring Petition. Following the public hearing a working draft of the proposed conditional admission rule was prepared by court staff and provided to the BBE. This draft reflected changes and additions discussed and tentatively approved by the court in open conferences.

The court approved the Monitoring Petition by order dated May 14, 2010. See S. Ct. Order 08-28, 2010 WI 36 (issued May 14, 2010, eff. July 1, 2010).

The BBE discussed the Conditional Admission Petition at its June 2010 meeting. By letter dated August 5, 2010, the BBE asked the court to adopt the petition including the changes made by the court as reflected in the working draft. By order dated November 1, 2010, the court scheduled the matter for public hearing on January 12, 2011. A letter to interested parties was circulated on November 12, 2010.

The court conducted a second public hearing on the Conditional Admission Petition on January 12, 2011. BBE Director Jacquelynn B. Rothstein presented the petition to the court. At the ensuing open administrative conference the court discussed the matter and decided to revise aspects of the proposed rule to ensure greater protection

of the public, including terms relating to the eligibility criteria for conditional admission, the scope of the confidentiality afforded an applicant, and the procedure in the event an OLR grievance is filed against the conditionally admitted attorney.

IT IS ORDERED that, effective the date of this order, Supreme Court Rule 40.075 is created to read as follows:

SCR 40.075 Conditional Bar Admission.

(1) ELIGIBILITY. An applicant whose record shows conduct that may otherwise warrant denial may consent to be admitted subject to certain terms and conditions set forth in a conditional admission agreement. Only an applicant whose record of conduct demonstrates documented ongoing recovery and an ability to meet the competence and character and fitness requirements set forth in SCR 40.02 may be considered for conditional admission.

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

- (a) Professional medical, psychological or other treatment.
- (b) Prohibiting or limiting the use of alcohol or other drugs.
- (c) Random alcohol or other drug testing.
- (d) Supervision.
- (e) Periodic reporting by the applicant.
- (f) Financial, business, or law office management counseling or supervision including inspection of records.

(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 by 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 challenge the determination by filing a written request for a hearing pursuant to SCR 40.08.

(4) MONITORING. If supervision is to be a condition of the conditional admission agreement, the board may designate itself, the state bar of Wisconsin, an appropriate person, a state bar lawyer assistance program or any combination thereof, as the supervising party. The board and the supervising party may exchange relevant information about the applicant as set forth in the conditional admission agreement.

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

(6) DURATION OF CONDITIONAL ADMISSION. (a) The initial period of conditional bar admission may be up to 60 months. At the end of that period, conditional admission may be extended by the board in writing for good cause, but not to exceed one additional year. At the end of the initial period 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 issue an intent to deny admission letter. In the event of the issuance of an intent to deny letter, the provisions of SCR 40.08 shall apply.

(b) The board shall review an applicant's conditional admission annually.

(c) The board may consider early release from conditional admission.

(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) GRIEVANCE. Notwithstanding sub. (6), when a grievance is filed with the office of lawyer regulation against a conditionally admitted applicant, the board may extend the conditional admission until disposition of the grievance and any resulting complaint and appeal.

(9) CONFIDENTIALITY. The fact that an individual is conditionally admitted and the terms of the conditional admission agreement shall be confidential and shall not be disclosed, except to the office of lawyer regulation or in any of the following circumstances:

(a) With the express consent of the person conditionally admitted.

(b) When required as a condition for monitoring as set forth in the conditional admission agreement.

(c) When reasonably necessary to prevent death or substantial bodily harm to the person conditionally admitted or to another.

(d) When reasonably necessary to prevent child abuse or elder abuse.

(e) When reporting is mandated by other law.

(f) When disclosure is ordered by the court.

(g) If the applicant applies for admission to practice law in another jurisdiction, the applicant shall disclose the entry of any conditional admission agreement to the admission authority of that jurisdiction.

(10) NOTICE TO THE OFFICE OF LAWYER REGULATION. The board shall 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) 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.

Dated at Madison, Wisconsin, this 8th day of June, 2011.

BY THE COURT:

A. John Voelker
Acting Clerk of Supreme Court

