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IN THE MATTER TO AMEND ss. SCR 40.075 and 22.28  
Relating to the Conditional Bar Admission

PETITION

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To: Chief Justice Patience D. Roggensack  
Justice Shirley Abrahamson  
Justice Ann Walsh Bradley  
Justice Annette Kingsland Ziegler  
Justice Michael J. Gableman  
Justice Rebecca G. Bradley  
Justice Daniel Kelly  
16 East State Capitol  
Madison, WI 53701

The Board of Bar Examiners, by its director Jacquelynn B. Rothstein, hereby petitions the Supreme Court of Wisconsin for an order to amend SCR 40.075 and SCR 22.28 as follows:

TEXT OF RULE

SECTION 1. SCR 40.075 is amended to read:

**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. A conditionally admitted lawyer's license to practice law is expressly conditioned upon compliance with the terms of the conditional admission agreement. If the board determines that a conditionally admitted lawyer has failed ~~Failure of a conditionally admitted lawyer to fulfill the terms of a conditional admission agreement the board may result in a modification, extension, or revocation of the modify, extend or revoke the conditional admission agreement, or take~~ such other action as may be appropriate, including notice to the office of lawyer regulation.

(7M) Revocation of Suspension of Conditional Admission Agreement. Upon the board's decision to revoke or suspend a conditional admission agreement, the board shall file a motion with the supreme court requesting the court to order the conditionally admitted lawyer to show cause why his or her license to practice law should not be revoked or suspended for failure to fulfill the terms of the conditional admission agreement. The conditionally admitted lawyer may file a response to the motion within 20 days after the filing of the board's motion. The court may decide the matter on written submissions without a hearing. The court may, in its discretion, refer the matter to a referee.

**(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.
- (h) When the court issues an order revoking or suspending a conditionally admitted lawyer for failure to fulfil the term of a conditional admission agreement.

**(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.

**(12) Reinstatement.** A conditionally admitted lawyer whose license to practice law is revoked or suspended for failure to fulfill the terms of a conditional admission may file a petition for reinstatement under SCR 22.29.

SECTION 2. SCR 22.28 is amended to read:

**SCR 22.28 License reinstatement.**

(3) The license of an attorney that is revoked or suspended for misconduct for six months or more, or for failure to fulfill the terms of a conditional admission agreement under SCR 40.075, shall be reinstated pursuant to the procedure set forth in SCR 22.29 to 22.33 and only by order of the supreme court.

Dated this 15<sup>th</sup> day of September, 2016.

Respectfully submitted,

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