

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

MEMORANDUM

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The petitioner, the Wisconsin Board of Bar Examiners (BBE), seeks to amend SCR 40.075 and SCR 22.28 relating to conditional bar admission. Conditional admission became effective in June of 2011. See S.Ct. Order 08-13, 2011 WI 40 (issued June 8, 2011, eff. June 8, 2011). Since that time, approximately thirty-four individuals have been extended an offer of conditional admission, with the vast majority choosing to accept such offers.

The BBE and the Wisconsin Lawyer's Assistance Program (WisLAP) often work in concert to ensure successful outcomes for those on conditional admission. Occasionally, there are individuals who have minor infractions or relapses and therefore fall out of compliance with their agreements. In those instances, the BBE and WisLAP make every effort to redirect those individuals back into compliance. Despite those efforts, there have been a handful of individuals who have become substantially non-compliant with their conditional admission agreements. When that has occurred, the BBE voted to revoke those agreements.

Once a conditional admission agreement is revoked the attorney in question should no longer be eligible to practice law. However, SCR 40.075 neither includes a provision nor contains an express mechanism to effectuate that end. When those situations arose, the BBE filed a Notice of Motion and Motion to Show Cause as to why that attorney's law license should not be suspended by the Court. The Court then issues the order to show cause, providing the lawyer with an opportunity to respond. The proposed revisions in this petition would comport with the Court's current practice in that regard and provide clear guidance for handling future matters of this kind. Typically, the Court has decided these matters on written submissions. Often, conditionally admitted lawyers admit they are in violation of their conditional admission agreement. The proposed revision is structured so that the Court may consider the matter on written filings but preserves the option of appointing a referee in the event there are factual issues to be resolved.

It is important that this process move quickly and efficiently in order to balance the rights of the lawyer while simultaneously ensuring the protection of the public, particularly when the lawyer in question is not functioning properly.

Additionally, SCR 40.075 does not contain a clear means for those attorneys who are interested in becoming reinstated after they have been suspended or revoked by the Court for failing to comply with their conditional admission. This petition also includes a mechanism to address that matter, namely that the attorney may seek reinstatement through the OLR, using the existing formal reinstatement procedure in SCR 22.29, regardless of the length of any suspension or in the event of revocation. Therefore, if the Court decides to revoke a conditionally admitted attorney's license to practice law, that attorney may petition for reinstatement five years after the date of the revocation. OLR Director Keith Sellen has advised that he does not oppose this amendment.

Finally, and also consistent with the Court's current practice, the petition creates an exception to the confidentiality rule in the event that a conditionally admitted lawyer's license is suspended or revoked, as the suspension or revocation must be reported to the State Bar, to judges, and will be reflected on the State Bar website.

The rules would therefore be amended as follows:

Section 40.075 (7) clarifies that when the BBE determines that a lawyer has failed to fulfill the terms of a conditional admission agreement, the Board may modify, extend, or revoke the agreement. The BBE may also take other action as appropriate, including notice to the Office of Lawyer Regulation.

Section 40.075 (7M) requires that after the BBE has voted to revoke or suspend a conditional admission agreement, it must file a Motion and Order to Show Cause as to why that lawyer's law license should not be revoked or suspended for failure to comply with his or her conditional admission agreement. The conditionally admitted lawyer has 20 days thereafter to file a response. The Court may decide the matter on written submissions without a hearing or refer the matter to a referee.

Section 40.075 (9) (h) provides that once the Court issues an order revoking or suspending a conditionally admitted lawyer the fact that the lawyer was conditionally admitted is no longer confidential.

Section 40.075 (12) informs a lawyer who was revoked or suspended for failing to fulfill the terms of conditional admission that the lawyer may seek reinstatement under SCR 22.29.

Section 22.28 (3) permits a lawyer who was revoked or suspended for failing to fulfill the terms his or her conditional admission to petition for reinstatement under the procedure set forth in SCR 22.29 to 22.33 and only by order of the Supreme Court.

Attached for the Court's review is new text.