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April 9, 2026

Aaron C. Nash
Clerk, Arizona Supreme Court
1501 W. Washington Street
Suite 402
Phoenix, AZ 85007

**Re: Petition to Amend Rule 36(h), Arizona Rules of the
Supreme Court
Docket No. R-26-0023**

Dear Mr. Nash:

Per Rule 28(E)(3)(B) of the Arizona Supreme Court, I am submitting two copies and an electronic version of this comment on behalf of the Association of Professional Responsibility Lawyers ("APRL") on the petition identified above.

APRL agrees with the sentiment of this petition and urges the Court to adopt changes to Rule 36 of the Rules of the Supreme Court of Arizona, to implement the confidentiality provisions of the American Bar Association's Model Rule on Conditional Admission (adopted February 3, 2025) (enclosed).

APRL is comprised of hundreds of attorneys in 49 U.S. jurisdictions and in three foreign countries. Its membership includes lawyers who regularly represent other lawyers (and other lawyers' clients) in all aspects of legal ethics and professional responsibility matters, including issues involving admissions and other aspects of the laws governing the practice of law. It is the largest organization of private practitioners in the world devoted exclusively to this area of the law.

APRL supports the Model Rule’s approach that the terms of a conditional admission agreement and resulting court order shall be confidential. Rule 3 of the ABA’s Model Rule on Conditional Admission would automatically make “the fact that an individual is conditionally admitted and the terms of the Conditional Admission Agreement and Order” confidential. The commentary to Rule 3 explains that the agreement and any order would “remain confidential unless otherwise ordered by the Court, unless the applicant applies for admission in another jurisdiction, or is the subject of lawyer disciplinary proceedings.”

As this petition details, in Arizona, while the Committee on Character and Fitness’s report recommending conditional admission is confidential while with the Committee, the file loses that confidentiality when it is submitted to the Supreme Court for review. An applicant then bears the burden of filing a motion to seal the records. Even if that motion to seal is granted, the Terms of Conditional Admission and the Court’s order granting conditional admission are not sealed.

Making the terms of the Conditional Admission Agreement and Order confidential would not, as a practical matter, affect public transparency. Currently, if a member of the public searches the State Bar of Arizona’s online membership records, those records do not disclose any specific lawyer as having been conditionally admitted. A member of the public would find the Court’s order granting conditional admission only by researching a specific conditionally admitted lawyer or by looking through all of the Court’s orders.



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We appreciate the opportunity to make these comments and hope they are helpful.

Respectfully submitted,

David Majchrzak, Esq.

President

Association of Professional Responsibility Lawyers

Encl.

1. American Bar Association Resolution 608 (adopted February 3, 2025)

ENCLOSURE 1

AMERICAN BAR ASSOCIATION

**ADOPTED BY THE HOUSE OF DELEGATES
FEBRUARY 3, 2025**

RESOLUTION

RESOLVED, That the American Bar Association adopts the *American Bar Association Model Rule on Conditional Admission to the Practice of Law*, dated February 2025, to supplant all earlier versions of the Model Rule; and

FURTHER RESOLVED That the American Bar Association urges state, tribal, and territorial bar admission authorities to adopt and enforce the new *ABA Model Rule on Conditional Admission to the Practice of Law* to ensure the integrity of the admission process.

**AMERICAN BAR ASSOCIATION
MODEL RULE ON CONDITIONAL ADMISSION TO THE PRACTICE OF LAW
FEBRUARY 2025**

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- 1. CONDITIONAL ADMISSION**
- 2. CONDITIONS**
- 3. CONFIDENTIALITY**
- 4. LENGTH OF CONDITIONAL ADMISSION**
- 5. NOTIFICATION TO THE DISCIPLINARY AUTHORITY**
- 6. COMPLIANCE WITH CONDITIONAL ADMISSION AGREEMENT AND ORDER**
- 7. VIOLATION OF CONDITIONAL ADMISSION AGREEMENT AND ORDER**
- 8. REVOCATION, MODIFICATION, AND EXTENSION OF CONDITIONAL ADMISSION.**
- 9. EXPIRATION OF CONDITIONAL ADMISSION ORDER**
- 10. EDUCATION**

17 **1.Conditional Admission.** An applicant may be conditionally admitted to the practice of
18 law if the applicant 1) engaged in recent conduct that, if were to recur, could render the
19 applicant unfit to practice law and pose a risk to clients or the public, but otherwise
20 satisfies eligibility requirements for admission to practice law, including character and
21 fitness requirements; and 2) has provided evidence that the conduct should not
22 reasonably be expected to recur such that the Admissions Authority is assured the
23 applicant is currently fit to practice law.

24

25

Commentary

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27 The purpose of conditional admission is to allow the Admissions Authority to recommend
28 individualized, tailored conditions for the applicant for a set period of time to ensure that
29 the relevant conduct that could pose a risk to clients or the public does not recur. The
30 character and fitness process is intended to evaluate whether an applicant has the
31 requisite character and fitness to be admitted to the bar and serve the public. In some
32 instances, applicants have engaged in recent conduct [five years or as otherwise
33 specified by the admissions authority] which might otherwise call into question their
34 fitness to practice law but have been able to demonstrate to the Admissions Authority
35 reasonable evidence of rehabilitation from this conduct. Examples include conduct prior
36 to admission relating to an incident arising from the misuse of alcohol or controlled
37 substances and subsequent treatment and demonstrated rehabilitation; financial
38 irresponsibility in recent years demonstrating disregard for legal obligations (such as
39 bankruptcy, failure to pay consumer debt, or failure to pay taxes) and subsequent
40 demonstration of fiscal responsibility such as compliance with payment plans; or arrest or
41 other legal issues.

42

43 Conditional admission is only intended for applicants whose demonstrated rehabilitation
44 from the relevant conduct is sufficiently recent that protection of the public requires
45 monitoring of the applicant's fitness to ensure the applicant does not return to the prior
46 conduct. Conditional admission is not intended to apply to applicants who have
47 rehabilitated themselves from distant prior conduct or whose rehabilitation from the
48 conduct has been successful for a sustained time period predating the applicant's
49 admission to law school. "Recent" for purposes of this rule relates only to conduct in the
50 prior [five] years. This aligns with the trend in most jurisdictions' character and fitness
51 processes of requesting disclosure of conduct that might impact on a candidate's fitness
52 to practice law occurring in the previous five years.

53

54 The Rule calls for conditional admission to the practice of law when an applicant
55 demonstrates successful rehabilitation from recent conduct that if it recurs could render
56 the applicant unfit to practice law and pose a risk to the public. Jurisdictions that have
57 adopted conditional admission rules have set different standards of proof to establish an
58 applicant's successful rehabilitation. This Rule recognizes that jurisdictions have the
59 discretion to make their own determinations of a standard of proof for conditional
60 admission in their jurisdiction.

61

62 **2.Conditions.** The Admissions Authority may recommend that an applicant's admission

63 be conditioned on compliance with conditions designed to detect recurrence of conduct
64 that could render the applicant unfit to practice law by posing a risk to clients or the public.
65 Conditions may include continued participation in treatment and other activities that
66 contributed to the applicant’s rehabilitation from the conduct and that help prevent
67 recurrence of the conduct at issue. Conditions should be narrowly tailored to address the
68 recent conduct that, if it were to recur, could render the applicant unfit to practice law and
69 a risk to the public. Conditions should be based on the recommendations of qualified
70 professionals, when appropriate, and must protect the privacy interests of the
71 conditionally admitted lawyer as required in this Rule. For example, conditions may
72 include participation in a lawyer assistance program, random chemical screening, debt
73 management counseling, or trust account monitoring. The costs of compliance with these
74 conditions should be reasonable and not place additional burdens on an applicant. The
75 terms shall be set forth in a Conditional Admission Agreement. The Conditional Admission
76 Agreement shall be made a part of the conditionally admitted lawyer’s application file and
77 shall remain confidential, except as provided in this Rule and any other applicable rules
78 of this jurisdiction’s Admissions Authority and the Lawyer Disciplinary Authority.

79
80 **Commentary**

81
82 Conditional admission includes two components: a Conditional Admission Agreement
83 and a Conditional Admission Order. The Conditional Admission Agreement contains the
84 terms and conditions of conditional admission with which the applicant agrees to comply
85 and may include relevant documentation gathered in the course of the character and
86 fitness investigation. Terms of the Conditional Admission Agreement should be based
87 upon best practices for supporting the fitness of the attorney to practice law. A resource
88 for Admissions Authorities relating to such best practices is the American Society of
89 Addiction Medicine Treatment Criteria for Addictive, Substance-Related and Co-occurring
90 Conditions, Fourth Edition (“ASAM Criteria”). The Conditional Admission Order is the
91 document filed with the state’s highest court of appellate jurisdiction (the “Court”), in
92 jurisdictions that require Court approval for conditional admission.

93
94 **3. Confidentiality.** Except as otherwise provided in this Rule, or the Court orders
95 otherwise, the fact that an individual is conditionally admitted and the terms of the
96 Conditional Admission Agreement and Order shall be confidential. The Admissions
97 Authority shall use reasonable efforts to structure the conditional admission to ensure that
98 the record of admissions, conditional admission terms, conditions, and monitoring remain
99 confidential. These provisions for confidentiality shall not prohibit or restrict the ability of
100 the applicant to disclose to third parties that the applicant has been conditionally admitted
101 under this Rule. The applicant shall disclose the existence of any Conditional Admission
102 Agreement and Conditional Admission Order to the admissions authority in any
103 jurisdiction where the applicant applies for admission to practice law consistent with the
104 obligations of candor and disclosure.

105
106 **Commentary**

107
108 The Conditional Admission Agreement and any Conditional Admission Order should

109 remain confidential unless otherwise ordered by the Court, unless the applicant applies
 110 for admission in another jurisdiction, or is the subject of lawyer disciplinary proceedings.
 111 Admissions Authorities and Courts must maintain the confidentiality of medical
 112 information as required by law. In addition, legal records that have been sealed or
 113 expunged by any courts, and are therefore not available to the public, should also be kept
 114 confidential by the Admissions Authority.

115

116 **4.Length of Conditional Admission.** The Conditional Admission Agreement and any
 117 Conditional Admission Order shall set forth the length of the conditional admission. The
 118 Admission Authority's and Court's determination of the length of the conditional
 119 admission should be based on an individualized assessment of the applicant's situation
 120 in light of prevailing scientific information but not exceed sixty (60) months unless
 121 extended as set forth in Section 8.

122

123

Commentary

124

125 The Rule provides for a maximum length of a Conditional Admission Agreement and any
 126 Conditional Admission Order in recognition of the fact that applicants eligible for
 127 conditional admission have a wide range of individualized needs and circumstances. The
 128 length of the Conditional Admission Agreement and any Conditional Admission Order
 129 should be commensurate with the nature and recency of the relevant conduct, the
 130 duration of rehabilitation from the conduct at the time of conditional admission, and the
 131 potential for serious risk to clients or the public should the applicant's conduct recur. If the
 132 relevant conduct has occurred in the past, consideration may be given to monitoring that
 133 may have occurred during law school or prior to conditional admission. For example,
 134 applicants who agree to monitoring during law school may be given consideration of the
 135 time spent subject to such monitoring in evaluating the appropriate length of the
 136 conditional admissions order. In some instances, twenty-four months or thirty-six months
 137 may be appropriate, but in no event shall the term be longer than sixty months.

138

139 **5.Notification to the Disciplinary Authority.** Upon issuance of a Conditional
 140 Admission Agreement and any Conditional Admission Order, the Admissions Authority
 141 shall transmit a confidential copy of Conditional Admission Agreement, any Conditional
 142 Admission Order, and the bar application file to the Lawyer Disciplinary Authority.

143

144

Commentary

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146 This Section ensures that the Lawyer Disciplinary Authority is aware of the Conditional
 147 Admission Agreement and any Conditional Admission Order in the interest of public
 148 protection and allows the Lawyer Disciplinary Authority to promptly take action on any
 149 reports of noncompliance with the Conditional Admission Agreement and any Conditional
 150 Admission Order by the Monitoring Authority or complaints of misconduct filed with the
 151 Lawyer Disciplinary Authority.

152

153 **6.Compliance with Conditional Admission Agreement and Order.** The terms of the
 154 Conditional Admission Agreement and any Conditional Admission Order shall include

155 designation of a qualified individual to serve as the Monitoring Authority. The Admissions
156 Authority shall determine whether an individual is qualified to serve as the Monitoring
157 Authority based upon the unique facts and circumstances relating to an individual
158 applicant. During the conditional admission period, the Monitoring Authority shall monitor
159 compliance with the terms of the Conditional Admission Agreement and any Conditional
160 Admission Order and shall timely perform their duties.

162 **Commentary**

163
164 Monitoring Authorities may include a Lawyer Assistance Program, a health care
165 professional, another lawyer admitted to practice law in the jurisdiction, and any other
166 individual deemed qualified by the Admissions Authority. An individual who serves as a
167 Monitoring Authority pursuant to the Lawyer Disciplinary Authority’s existing probation
168 and conditional reinstatement rules may also serve as a monitor. The sponsor of a
169 conditionally admitted lawyer is disqualified from serving as a Monitoring Authority as their
170 obligations to the conditionally admitted lawyer may conflict with their duties as a
171 Monitoring Authority.

172
173 **7. Violation of Conditional Admission Agreement and Order.** If the Monitoring
174 Authority determines that the conditionally admitted lawyer has violated any term of the
175 Conditional Admission Agreement and any Conditional Admission Order, the Monitoring
176 Authority shall promptly notify the Lawyer Disciplinary Authority. The Lawyer Disciplinary
177 Authority shall determine whether to initiate proceedings seeking the modification,
178 extension, or revocation of the Conditional Admission Agreement and any Conditional
179 Admission Order.

180
181 **Commentary**

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183 Violation of a Conditional Admission Agreement may result in modification, extension or
184 revocation of the Conditional Admission Agreement and any Conditional Admissions
185 Order. The Monitoring Authority shall report all violations to the Lawyer Disciplinary
186 Authority. The Lawyer Disciplinary Authority shall exercise professional judgement in
187 ensuring that the consequences of the violation are proportional to the violation.

188
189
190 **8. Revocation, Modification, and Extension of Conditional Admission.**
191 Upon a determination by the Lawyer Disciplinary Authority that a conditionally admitted
192 lawyer’s violation of the terms of the Conditional Admission Agreement and any
193 Conditional Admission Order require proceedings to revoke, modify or extend the
194 conditional admission, the Lawyer Disciplinary Authority shall initiate formal proceedings
195 to be conducted pursuant to the rules for lawyer disciplinary enforcement. The burden
196 of proof in these proceedings is on the applicant to show why conditional admission
197 should not be revoked, modified, or extended. Upon the conclusion of proceedings to
198 revoke, modify or extend the conditional admission, including any appeals, the Court
199 shall enter an order setting forth the disposition of the matter.

200

201 The filing of a complaint with the Lawyer Disciplinary Authority alleging violations of the
 202 rules of professional conduct shall automatically extend the conditional admission period
 203 until final disposition by the Lawyer Disciplinary Authority and Court, if applicable and
 204 any resulting appeals.

205

206

Commentary

207

208 This Section sets forth the procedures for revocation, modification or extension of
 209 conditional admission. It is not intended to affect a Disciplinary Authority's ability to
 210 discipline a conditionally admitted lawyer for misconduct during the term of the conditional
 211 admission.

212

213 **9.Expiration of Conditional Admission Order.** Unless conditional admission is
 214 revoked, modified, or extended, upon completion of the period of conditional admission,
 215 the conditions and obligations imposed by the Conditional Admission Agreement and any
 216 Conditional Admission Order shall expire. The lawyer shall be considered fully admitted
 217 upon successful completion of conditional admission upon the filing of an affidavit
 218 confirmed and verified by the Monitoring Authority.

219

220 **10.Education.** The Admissions Authority shall make information about its conditional
 221 admission process publicly available, including the frequency of its use. The information
 222 should include 1) assurances that the Admissions Authority makes its determinations on
 223 the basis of conduct, and not on an applicant's condition, disability, medical treatment,
 224 or status which are protected conditions under the Americans with Disabilities Act; and
 225 2) that seeking treatment for a condition is encouraged and is not indicative of a lack of
 226 character or fitness.

227

Commentary

228

229 The Admissions Authority should inform bar applicants that in the absence of related
 230 conduct demonstrating a lack of fitness, medical diagnoses and treatment, including but
 231 not limited to substance use disorders and mental health conditions, do not indicate a
 232 lack of character and fitness which precludes admission to practice law. This encourages
 233 law students and bar applicants to pursue treatment when needed and promotes candor
 234 in the admissions process. The Admissions Authority should recognize the Lawyer
 235 Assistance Programs (LAP) and other bar or legal organizations that support law students
 236 and legal professionals as resources for educating law students, law school
 237 administrators, and bar applicants about the importance of seeking treatment for medical
 238 conditions that disproportionately affect law students and lawyers, how to recognize
 239 substance use disorders and mental health conditions, and to provide referrals to
 240 available resources. The Admissions Authority should cooperate with such organizations
 241 to ensure that accurate information about the conditional admission process is available
 242 to all interested persons.

REPORT

The Commission on Lawyer Assistance Programs (COLAP) submits this Resolution seeking House of Delegates approval to amend the Model Rule on Conditional Admission to Practice Law and for the amended version to supplant all earlier versions of the Rule. CoLAP's Law School Committee, which is comprised of deans and law student representatives from law schools around the country, urges the ABA to adopt this Model Rule to better align with current understandings of treating and monitoring recovery from mental health issues and the evolution of law under the Americans with Disabilities Act (ADA). Also, this Model Rule advances goals of the ABA such as promoting the highest quality legal education, promoting competence and ethical conduct in the profession and eliminating bias in the legal profession to promote full and equal participation. The [2009 Model Rule](#) has since been outdated.

I. Introduction and Executive Summary

The ABA has a fundamental role in articulating professional norms for the next generation of lawyers, particularly those currently enrolled in law schools. The ABA is uniquely placed to advocate for law students pursuing admission to the bar. Through councils and commissions, such as the Council on Legal Education and Admissions to the Bar which reviews the accreditation standards of American law schools, and CoLAP which focuses primarily on the well-being of law students, lawyers and judges, the ABA remains at the forefront of the evolving needs of the legal profession.

CoLAP has long advocated for an evolved character and fitness process. We seek to ensure that requests of applicants are in line with the goals of the ABA, but also align with the ADA, especially when asking about conditions relating to mental health or substance misuse. We recognize that some applicants may have significant and recent conduct that raises legitimate concerns. This conduct may be related to substance misuse, other mental illness, or other past conduct that indicates a lack of financial responsibility. Given the duty of regulatory bodies to protect the public, those concerns might prevent a full bar admission. The Model Rule on Conditional Admission to Practice Law encourages applicants to seek early assistance without fear that doing so will disqualify them from practicing law. This Model Rule permits a bar applicant to be conditionally admitted to practice with conditions implemented, including a limited period of time to be monitored and reviewed, in order to serve as a safeguard for the public. Conditional Bar Admission is intended to provide a pathway for such applicants. This resolution is intended to grant applicants, who have already demonstrated successful rehabilitation from recent conduct (within five years), conditional bar admission with individualized and narrowly tailored conditions proposed by licensing authorities, who are encouraged to seek input from their state's Lawyer Assistance Program. This resolution also intends to give licensing authorities a framework to review and monitor such applicants.

The National Conference of Bar Examiners tracks and reports to the public on relevant rules impacting bar admission in all U.S. Jurisdictions. Chart 2 of the publication known as Comprehensive Guide to Bar Admission Requirements summarizes which states

currently have rules providing for conditional bar admission.¹ According to Chart 2, currently 26 jurisdictions provide for some version of Conditional Bar Admission. This Chart is attached as Appendix 1.

Given the widespread and well-documented concerns about anxiety and other mental health concerns in the legal profession and in law schools, it is clear that this is pressing issue for our Association and a time to take action. CoLAP expects that many jurisdictions will adopt the new Model Rule on Conditional Admission in order to provide a clearer pathway for Conditional Bar Admission to this population of applicants.

II. Historical Background

A Model Rule on Conditional Admission to Practice Law was adopted by the American Bar Association House of Delegates on February 11, 2008.² After adoption by the House of Delegates, more recommendations were suggested. Resolution 09A108 included these changes. The Model Rule now in effect was adopted in August 2009 by the House of Delegates.

The Rule, as it was adopted, provoked debate in the legal community as to the approach and scope of the rule. In 2011, Justice Janice Holder, a former member of CoLAP, authored a law review article discussing her concerns with the rule including its possible infringement on the ADA. The purpose of the ADA is to prevent discrimination in employment and other endeavors based on a disability. Justice Holder surveyed the approaches in various states. Her findings led her to advocate for the Conditional Admission Rule adopted in Tennessee.³ In Tennessee, they successfully created a system of discipline that focused on “previous conduct or behavior” of the applicant and provided “the conditions shall be tailored to detect and deter conduct, conditions or behavior.”⁴ This approach foreshadowed the changes that we recommend today.

In 2014, the United States Government entered into a Settlement Agreement with the Louisiana Supreme Court regarding the procedures for evaluating applicants for bar admission with mental health disabilities.⁵ The Settlement Agreement clarified that the ADA requires that the Louisiana Court refrain from inquiring into mental health diagnoses or treatment of prospective bar applicants unless voluntarily disclosed by the applicant or raised as an explanation for conduct or behavior that might warrant denial of admission. The Settlement Agreement further directed that the Louisiana Court “not recommend or impose conditional admission solely on the basis of mental health diagnosis or treatment”

¹ Comprehensive Guide to Bar Admission Requirements, National Conference of Bar Examiners (2024). Available online at <https://reports.ncbex.org/comp-guide/charts/chart-2/>.

² 19A108

³ See Holder, *Completing the Puzzle: Lawyer Assistance and Conditional Admission*, 49 Duq. L. Rev. 439 (2011).

⁴ Conditional Admission, Tennessee R. Sup. Court, 10.05 (2024)

⁵ Settlement Agreement between The United States Of America and the Louisiana Supreme Court Under The Americans With Disabilities Act (Aug. 14, 2014), available at https://www.ada.gov/louisiana-supreme-court_sa.htm.

and further that any conditions including the duration of conditional admission be “individually tailored to address the conduct or current impairment of the applicant’s ability to practice law.”

Following this Settlement Agreement, the American Bar Association has twice acted to adopt and integrate its findings.⁶ It is against the backdrop that we now look to update the 2009 Model Conditional Admissions Rule.

III. Brief Summary of Updates

The principal updates to the Model Rule:

- 1) Focuses the rule on “conduct” rather than any diagnosis or condition;
- 2) Updates the definition of “recent conduct” that should be considered in relation to applicant’s conditional admission to the prior five years and provides concrete examples in the commentary;
- 3) Clarifies examples of relevant and narrowly tailored conditions and that the cost of compliance should be reasonable to the applicant;
- 4) Continues to maintain the confidentiality of the conditionally admitted lawyer, but clarifies exceptions for an applicant seeking admission in another jurisdiction, or in response to a court order;
- 5) Determines that the appropriate length of the conditional admission period should be an individualized assessment based upon scientific information, but should not initially exceed sixty months; and notes that relevant monitoring or other good conduct during law school may be given consideration;
- 6) Expands and clarifies the notice to the Disciplinary Authority, the monitoring authority, and the requirement of notice to the Disciplinary Authority in the event of any violation of terms;
- 7) Clarifies the process for confirming completion of the Conditional Admission Agreement;
- 8) Encourages education about the Conditional Admissions process to applicants, further de-stigmatizing treatment and promoting candor.

IV. Analysis

Bar admission determinations in the absence of conduct and made solely because of diagnosis or treatment for behavioral and mental health conditions violate the Americans with Disabilities Act, which has been interpreted to prevent licensing authorities from placing additional burdens on qualified persons with a disability.⁷

⁶ See ABA Resolution 15A102 on bar admissions, requiring appropriate focus on conduct and behavior, and ABA Resolution 18M105 adopting the recommendations of *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.

⁷ See *ACLU of Indiana v. Individual Members of the Indiana State Bd. of L. Examiners*, No. 1:09-CV-842-TWP-MJD, 2011 WL 4387470, at *7 (S.D. Ind. Sept. 20, 2011); *Brewer v. Wisconsin Bd. of Bar Examiners*, No. 04-C-0694, 2006 WL 3469598, at *10 (E.D. Wis. Nov. 28, 2006)(holding that additional screening

Prior to introducing this Resolution, COLAP worked to advocate for reform to the bar admission process in light of ongoing documented concerns by law students around mental health and substance use issues.⁸ A survey of 3,300 law students in 2016 found that 45% of students believed that seeking help or mental health treatment would threaten their ability to be admitted to the bar and 63% said threats to the bar exam would deter them from seeking help for substance abuse.⁹ These issues were only exacerbated during the global pandemic.

At the 2022 National Conference for Lawyer Assistance Programs (September 22, 2022), a panel discussion including individuals who were representatives of all facets of conditional admission (from bar applicants to members of the judiciary) expressed their concerns with the original Model Rule. Some of the assertions were that applicants with a history of substance use disorder were subject to conditional admission and monitoring beyond a reasonable amount of time. Others asserted that the conditions for admission were over-reaching or not directly focused on the applicants' need. Representatives of regulatory agencies asserted concern over a lack of necessary information for ongoing monitoring or discipline when an individual failed to comply with the terms of conditional admission. Since that time, the American Society of Addiction Medicine's Treatment Criteria for Addictive, Substance-Related and Co-Occurring Conditions, Fourth Edition (ASAM Criteria) was published (December 2023). Some of the afore-mentioned issues are resolved in Chapter 23 of that publication through acknowledging the medical framework for best practices in the monitoring and treatment for legal professionals including lawyers and judges.

With these concerns in mind, a working group of the ABA COLAP Law School Committee undertook the task of redrafting the Model Rule on Conditional Admission to Practice Law. We have received comments and input from multiple ABA entities in the process of drafting and preparing this rule.

V. Conclusion

This new rule maintains the general policy goals favoring a program of Conditional Admission that was present in the 2009 rule. However, in light of our changing understanding of treatment approaches, as well as the evolving law under the Americans with Disabilities Act, we request that the House of Delegates approve this

requirements placed on bar applicants because of a history of mental illness is unlawful discrimination on the basis of disability); *ACLU v. Individual Members of the Ind. State Bd. of Law Exam'rs*, No. 1:09-cv-842-TWP-MJD, 2011 U.S. Dist. LEXIS 106337 (S.D. Ind. Sep. 20, 2011); ”

⁸ See, generally, “*It is Okay not to be Okay*”: *The 2021 Survey of Law Student Well-Being*, 60 *University of Louisville Law Review* 441 (2021).

⁹ See, “*Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to seek help for Substance Use and Mental Health Concerns*”, *Journal of Legal Education*, Vol. 66, Issue 1, Pg. 116, American University (2016).

Resolution and that the updated Model Rule on Conditional Admission to Practice Law supplant the prior versions. This updated Model Rule will provide a substantially improved foundation both for the states that are currently using conditional admission, and for those who are considering its adoption.

In addition, this Resolution primarily seeks to eliminate stigma within the profession that is associated with alcoholism, other substance use disorders, and mental illness; in order to promote open conversations involving treatment without fear of professional repercussions; and also to protect law students and bar applicants from discrimination solely based upon those health issues. This corresponds to the core mission of the ABA COLAP, and the Commission respectfully requests the ABA House of Delegates adopt this Resolution.

Respectfully Submitted,

Yvette Hourigan, Chair, Esq. CEAP, CPSS, Chair
ABA Commission on Lawyer Assistance Programs

February 2025

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Lawyer Assistance Programs

Submitted By: Yvette Hourigan, Chair

1. Summary of Resolution(s).

This Resolution seeks to amend the ABA Model Rule for Conditional Admission to Practice Law. The Commission on Lawyer Assistance Programs asks that the House approve those amendments, and that, given the significant extent of those amendments, have this version of the Model Rule supplant all earlier versions. The proposed amendments, consistent with current law and science, permit a bar applicant, who participated in recent conduct that otherwise would not pass the Character and Fitness qualification of bar admission, to be conditionally admitted to practice law with conditions implemented. This Resolution recognizes that some conduct disclosed during the bar admission process is a result of substance misuse or mental illness and aims to protect these applicants from discrimination pursuant to the Americans with Disabilities Act (ADA). The Resolution provides examples of narrowly tailored terms of conditional admission, such as a limited period of time to be monitored and reviewed, and a framework for licensing authorities order to serve as a safeguard for the public.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

This Resolution seeks to advance Goal 2- improving our profession and Goal 3 - eliminating bias and enhancing diversity.

This Resolution improves the legal profession by updating the Model Rule to better align with current understandings of treating and monitoring recovery from mental health and substance use issues and the evolution of law under the Americans with Disabilities Act (ADA). This Resolution also facilitates the elimination of bias for the same reason.

3. Approval by submitting entity.

The ABA Commission on Lawyer Assistance Programs voted to approve this resolution on September 27, 2024.

4. Has this or a similar resolution been submitted to the House or Board previously?

No

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This Resolution, if adopted, would replace the current Model Rule on Conditional Admission to Practice Law.

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

7. Status of Legislation. (If applicable)

N/A

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Commission on Lawyer's Assistance Programs will circulate it to the various supreme courts and other rulemaking bodies, requesting their adoption.

9. Cost to the Association. (Both direct and indirect costs)

N/A

10. Disclosure of Interest. (If applicable)

N/A

11. Referrals.

(List ABA entities and use proper names)

This Resolution was distributed to all of the ABA Sections, Divisions, and Forums, as well as their staff counsel/directors. It was also distributed to all of the ABA Committees, Commissions, and Task Forces, and their staff directors/counsel. More specifically, this Resolution was referred prior to filing to the following entities:

ABA Commission on Disability Rights

ABA Commission on Interest on Lawyers' Trust Accounts

ABA Standing Committee on Ethics and Professional Regulation

ABA Standing Committee on Lawyer Referral & Information Service

ABA Standing Committee on Lawyer's Professional Liability

ABA Standing Committee on Professional Regulation

ABA Standing Committee on Professionalism

ABA Standing Committee on Public Protection in the Provision of Legal Services
Law Practice Division

ABA Section of Civil Rights and Social Justice

ABA Section of Legal Education and Admissions to the Bar

ABA Law Student Division

ABA Young Lawyers Division

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12. Name and Contact Information. (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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EXECUTIVE SUMMARY

1. **Summary of the Resolution**

This Resolution permits a bar applicant, who participated in recent conduct that otherwise would not pass the Character and Fitness qualification of bar admission, to be conditionally admitted to practice law with conditions implemented. This Resolution recognizes that some conduct disclosed during the bar admission process is a result of substance misuse or mental illness and aims to protect this applicants from discrimination pursuant to the Americans with Disabilities Act (ADA). The Resolution provides examples of narrowly tailored conditions, such as a limited period of time to be monitored and reviewed, and a framework for licensing authorities order to serve as a safeguard for the public.

2. **Summary of the Issue that the Resolution Addresses**

The Current Model Rule violates the ADA by allowing Bar admission determinations in the absence of conduct and made solely because of diagnosis or treatment for behavioral and mental health conditions. These determinations create potentially discriminatory barriers to employment by denying accommodations relating to mental health or substance misuse. The proposed amendments align ABA policy with the ADA and current science relating to the treatment and recovery from mental health and substance misuse.

3. **Please Explain How the Proposed Policy Position will address the issue**

This resolution addresses the violations to the ADA by:

 - 1) Focusing the rule on “conduct” rather than any diagnosis or condition;
 - 2) Updating the definition of “recent conduct” that should be considered in relation to applicant’s conditional admission to the prior five years and provides concrete examples in the commentary;
 - 3) Clarifying examples of relevant and narrowly tailored conditions and that the cost of compliance should be reasonable to the applicant;
 - 4) Maintaining the confidentiality of the conditionally admitted lawyer, but clarifies exceptions for an applicant seeking admission in another jurisdiction, or in response to a court order;
 - 5) Determining that the appropriate length of the conditional admission period should be an individualized assessment based upon scientific information, but should not initially exceed sixty months; and notes that relevant monitoring or other good conduct during law school may be given consideration;
 - 6) Expanding and clarifies the notice to the Disciplinary Authority, the monitoring authority, and the requirement of notice to the Disciplinary Authority in the event of any violation of terms;
 - 7) Clarifying the process for confirming completion of the Conditional Admission Agreement;

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- 8) Encouraging education about the Conditional Admissions process to applicants, further de-stigmatizing treatment and promoting candor.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

N/A