

I. Explanation of DLSA & NDLSA's Mission

The Disabled Law Students Association (DLSA) at Arizona State University is a student-led organization dedicated to supporting law students with disabilities and health-related conditions throughout their legal education and transition into the profession. DLSA serves as both a peer network and an advocacy body, working to identify barriers within legal education and licensure processes while promoting policies that foster accessibility, inclusion, and equal opportunity.

DLSA is a member organization of the National Disabled Law Students Association (NDLSA), a national nonprofit that operates through a disability justice framework to support disabled individuals before, during, and after law school. NDLSA's mission is to increase the number of attorneys with disabilities and other historically excluded identities in the legal profession by ensuring that law students have the accommodations, resources, and institutional support necessary to succeed.

Within this framework, DLSA's role in providing input on proposed rule changes is consistent with its mission and the broader objectives of NDLSA. These comments reflect not only individual experiences, but also collective insights informed by ongoing engagement with students navigating the intersection of disability, legal education, and professional licensure.

II. Obstacles Law Students with Health-Related Conditions Face

Law students managing disabilities or health-related conditions encounter a set of structural and cultural barriers that extend beyond the classroom and into the licensure process. These barriers are often cumulative, arising at the intersection of academic expectations, institutional policies, and professional licensing requirements.

One recurring challenge is the need to navigate multiple systems simultaneously. Students must coordinate academic accommodations, manage treatment or recovery, and anticipate future disclosure obligations in the character and fitness process. These obligations are often not clearly defined at the outset, leaving students to make decisions about documentation, treatment, and disclosure without full information about how those choices will be evaluated later.

Uncertainty plays a central role. The character and fitness process requires broad disclosure of past conduct and health-related history, but provides limited predictability regarding how that information will be interpreted or used. This lack of clarity can create anxiety around routine decisions such as whether to seek care, how long to remain in treatment, or how extensively to document a condition. For students already balancing rigorous academic demands, this additional layer of uncertainty can be significant.

There is also a structural imbalance in how information is gathered and assessed. Students may be required to produce detailed medical or psychological documentation, often at their own expense, while having limited visibility into how that information will be weighed. This can create a perception that the process is less about current fitness and more about

compiling a record, which may not always align with individualized or contextualized assessment.

Timing is another important factor. Many students first confront the implications of the character and fitness process late in their legal education, often during bar application preparation. At that point, decisions about treatment and documentation have already been made, sometimes years earlier, without the benefit of clear guidance. This retrospective evaluation can heighten the stakes of past decisions and limit the ability to mitigate potential concerns.

Cultural factors also contribute to these barriers. Despite growing attention to wellness in legal education, stigma surrounding mental health and substance use persists within the profession. Students may internalize concerns about how their records will be perceived by licensing authorities, employers, or peers. This can influence not only disclosure decisions, but also broader participation in academic and professional opportunities.

Finally, these challenges are not evenly experienced. Access to knowledgeable advisors, financial resources, and informal guidance networks can significantly shape how effectively a student navigates the process. Students without these supports may face greater difficulty understanding requirements, preparing documentation, or responding to follow-up inquiries.

Taken together, these obstacles form the backdrop against which Rule 36(h) operates. The rule does not exist in isolation; it interacts with these existing pressures and can either mitigate or exacerbate them depending on how confidentiality and disclosure are structured.

III. How Our Constituents Are Affected by This Rule

Against this backdrop, Rule 36(h) actively shapes how law students approach both their health and the admissions process, often in ways that carry unintended consequences.

First, the rule alters decision-making at an early stage, well before a bar application is submitted. Students who are aware that sensitive information may later become publicly accessible may adjust their behavior accordingly. This can include delaying treatment, limiting documentation, or approaching disclosure with caution rather than candor. These decisions are not made in isolation; they are shaped by perceived risks embedded in the structure of the rule.

Second, the rule introduces a layer of uncertainty at a critical transition point. For students already managing complex application requirements, the possibility that highly personal information may become public adds an additional dimension of risk. This uncertainty can affect how applicants plan their entry into the profession, including when to apply, whether to pursue certain opportunities, or how to prepare for potential character and fitness review.

Third, the rule has practical consequences for early career opportunities. Because conditional admission occurs at the outset of a legal career, any associated disclosures, whether direct or indirect, can influence hiring decisions, clerkship prospects, and professional relationships. Even the perception that sensitive information may be accessible can shape how applicants present themselves and how they are evaluated by others.

Fourth, the rule creates uneven outcomes among similarly situated applicants. Those with access to legal guidance or institutional support are better positioned to anticipate confidentiality issues and take steps to mitigate exposure. Others may not recognize the need to act or may lack the resources to do so effectively. As a result, the impact of the rule is not uniform, and its consequences may depend as much on access to information as on the underlying facts of an applicant's record.

Finally, the rule contributes to a broader environment in which the costs of participation in the admissions process are heightened. For some students, these costs may be manageable. For others, they may be significant enough to influence whether to proceed with an application at all. In this way, the rule has implications not only for individual applicants, but for the overall accessibility of the profession.

Taken together, these effects suggest that Rule 36(h) plays a meaningful role in shaping both behavior and outcomes. Its impact extends beyond recordkeeping and into the lived experience of applicants as they navigate the transition from law school to practice.

IV. Uncertain and Potentially Far-Reaching Consequences

One of the central challenges in evaluating Rule 36(h) is that its full effects are not readily observable or measurable. The rule does not operate only at the point of disclosure; it influences behavior long before an application is submitted and long after an admission decision is made. As a result, many of its consequences are diffuse, indirect, and difficult to quantify.

At the front end, there is no reliable way to measure how many students alter their behavior in response to perceived disclosure risks. Decisions to delay treatment, limit documentation, or avoid seeking care altogether are inherently private and unlikely to be captured in formal data. Similarly, it is difficult to assess how many prospective applicants may choose not to pursue admission at all due to concerns about confidentiality. These are decisions that occur outside formal processes and therefore remain largely invisible.

The rule may also affect the completeness and accuracy of the information that reaches the admissions process. If applicants adjust their behavior to minimize the creation of records or approach disclosure more cautiously, the resulting record may not fully reflect their history or current condition. This creates an information gap that is difficult to detect from within the process itself.

At the back end, the consequences of disclosure may extend well beyond the initial licensing decision. Once information becomes publicly accessible, it may be difficult to control how it is used or interpreted over time. Employers, clients, or other third parties may draw inferences, accurate or not, based on partial information. These downstream effects are highly individualized and context-dependent, making them difficult to track or predict.

There is also a cumulative uncertainty effect. Applicants must make decisions about treatment, documentation, and disclosure without clear visibility into how information will be

evaluated or what consequences may follow. This uncertainty can itself function as a barrier, shaping behavior in ways that are precautionary rather than optimal.

Because many of these impacts occur outside formal reporting structures, the absence of clear evidence should not be interpreted as the absence of effect. Instead, it reflects the inherent difficulty of measuring how rules governing confidentiality influence private decision-making, professional opportunities, and long-term career trajectories.

For these reasons, Rule 36(h) should be evaluated not only based on its intended function, but also with an awareness that its broader consequences, particularly those affecting behavior, access, and participation, may be significant yet largely unobservable.

V. Deterrence from Seeking Treatment During Law School

A less obvious but significant concern is how the rule may influence decisions about when, or whether, to seek treatment during law school. Students are often aware that documentation of mental health treatment, substance use recovery, or other medical conditions may later become part of the character and fitness record. When there is a possibility that such documentation could enter the public domain, even indirectly, it can discourage law students from getting help when they need it most.

For some students, this creates a timing dilemma. Seeking treatment early, when symptoms first arise, is generally associated with better outcomes and greater long-term stability. However, early treatment also generates a longer and more detailed record. If that record is perceived as carrying future exposure risk, students may delay seeking care until symptoms become more acute or unavoidable. In that sense, the rule may unintentionally incentivize later intervention rather than earlier intervention, which is contrary to both public health principles and the profession's stated commitment to well-being.

There is also a documentation effect. Students may seek to minimize the formal record of treatment by limiting the duration of care, avoiding certain forms of evaluation, or declining referrals that would create additional documentation (for example, psychiatric assessments or structured treatment programs). These decisions are not necessarily driven by clinical judgment, but by anticipation of how records may be used or disclosed in the admissions process. As a result, the record that ultimately reaches the character and fitness process may be incomplete and less clinically informative.

In more acute cases, students may avoid treatment altogether while enrolled, particularly if they believe that unmanaged symptoms can be concealed but documented treatment cannot. This creates a paradox: the admissions system, which is designed to assess fitness and protect the public, may discourage the very steps that would improve an applicant's readiness to practice.

The deterrent effect is not evenly distributed. Students with greater familiarity with the admissions process, or access to advising, may be better positioned to navigate these risks and seek care in a way that mitigates downstream exposure. Others may rely on informal information

or peer anecdotes, which can amplify worst-case assumptions about disclosure and further discourage treatment.

Finally, these dynamics have institutional implications. Law schools, bar associations, and courts have increasingly invested in wellness initiatives and messaging that encourages students to seek help early and without stigma. A regulatory framework that introduces perceived penalties for documented treatment may undermine those efforts, creating a disconnect between institutional messaging and structural incentives.

VI. Unequal Impact Based on Resources and Guidance

The current requirement that applicants affirmatively move to seal records introduces variability in outcomes. Applicants with access to experienced counsel or institutional guidance are more likely to protect their confidentiality effectively. Others may not recognize the need to act, may misunderstand the process, or may act too late.

This creates an uneven landscape in which similarly situated applicants experience different levels of exposure based on factors unrelated to their fitness to practice.

Conclusion

The current rule does more than govern record access. It influences behavior, incentives, and access to the profession. Any revision should account for how confidentiality rules affect not only what is disclosed, but whether applicants feel able to seek treatment, be candid, and proceed through the admissions process without incurring disproportionate risk at the outset of their careers.