



October 22, 2019

To: Members of the House of Delegates

Re: November 2, 2019 meeting

Enclosed are the agenda and related background materials for the upcoming meeting of the House of Delegates scheduled to begin at **9:00 a.m.** on Saturday, November 2, 2019 at the Bar Center in Albany, New York. The enclosed background materials cover agenda items 1-4, 8, 9, 12 and 13

We look forward to seeing you in Albany.

Henry M. Greenberg
President

Scott M. Karson
President-Elect



**NEW YORK STATE BAR ASSOCIATION
MEETING OF THE HOUSE OF DELEGATES
BAR CENTER, ALBANY, NEW YORK
SATURDAY, NOVEMBER 2, 2019 – 9:00 A.M.**

AGENDA

1. Approval of minutes of June 15, 2019 meeting 9:00 a.m.
2. Report of Treasurer – Mr. Domenick Napoletano 9:05 a.m.
3. Report and recommendations of Finance Committee re proposed 2020 income and expense budget– Mr. T. Andrew Brown 9:15 a.m.
4. Report and recommendations of Committee on Bylaws – Mr. Robert T. Schofield, IV 9:30 a.m.
5. Memorial for Past President Whitney North Seymour, Jr. – Mr. John R. Dunne 9:45 a.m.
6. [Withdrawn]
7. Memorial for Past President G. Robert Witmer, Jr.- Mr. David M. Schraver 9:55 a.m.
8. Report and recommendations of Committee on Standards of Attorney Conduct – Prof. Roy D. Simon, Jr. 10:05 a.m.
9. Report and recommendations of Committee on Diversity and Inclusion – Ms. Mirna M. Santiago 10:25 a.m.
10. Report of President – Mr. Henry M. Greenberg 10:40 a.m.
11. Report of Nominating Committee – Ms. Claire P. Gutekunst 11:00 a.m.
12. Report and recommendations of Working Group on Attorney Mental Health – Messrs. Simeon Goldman, David R. Marshall and Thomas E. Schimmerling and Ms. Lauren E. Sharkey 11:05 a.m.
13. Report and recommendations of Task Force on the Parole System – Messrs. Seymour W. James, Jr. and William T. Russell, Jr. 11:25 a.m.
14. Report of The New York Bar Foundation – Ms. Lesley Rosenthal 11:45 p.m.
15. Report of Special Committee on Strategic Communications –

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| | Mr. David P. Miranda | 11:55 a.m. |
| 16. | Report of Commercial and Federal Litigation Section – Mr. Mark A. Berman | 12:05 p.m. |
| 17. | Administrative items – Mr. Scott M. Karson | 12:15 p.m. |
| 18. | New business | 12:20 p.m. |
| 19. | Date and place of next meeting:
Friday, January 31, 2020
New York Hilton Midtown, New York City | |

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
JUNE 15, 2019
THE OTESAGA, COOPERSTOWN, NEW YORK**

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PRESENT: Alcott; Alomar; Arenson; Baum; Berman; Billings; Braunstein; Braverman; Brown, E.; Brown, T.A.; Buholtz; Burke; Chang; Christenson; Christopher; Coffey; Cohen, D.; Cohen, M.; Connery; Crawford; Dean; Disare; Doerr; Doxey; Doyle; Effman; Eng; Engel; Entin Maroney; Fallek; Fay; Fernandez; Finerty; First; Fishberg; Fox; Freedman, H.; Friedman; Gilmartin; Goldberg; Graves-Poller; Greenberg; Griesemer; Grimaldi; Grimmick; Gross; Gutekunst; Gutenberger Grossman; Gutierrez; Hack; Haig; Hamid; Harper; Horan; Hurteau; Jaglom; James; Kamins; Karson; Kean; Kearns; Kelly, K.; Kelly, M.; Kendall; Kiernan; Koch; Krajewski; Lau-Kee; Lawrence; Leventhal; Levin Wallach; Levy; Lewis; Lindenauer; MacLean; Madden; Madigan; Maldonado; Marinaccio; Markowitz; Martin; Matos; May; McCann; McNamara, C.; McNamara, M.; Meyer; Miller, C.; Miller, M.; Minkoff; Minkowitz; Miranda; Montagnino; Mulry; Murphy; Napoletano; Nowotarski; O'Connell; O'Donnell; Onderdonk; Ostertag; Pappalardo; Perlman; Pleat; Purcell; Radick; Richter; Rivera Agosto; Rivera; Robinson; Rosenthal; Rosner; Russell; Ryan; Ryder; Scheinkman; Schofield; Schrauer; Schriever; Scott; Sen; Shafer; Shamoon; Champnoi; Sharkey; Sheldon; Sigmond; Silkenat; Silverman; Singer; Skidelsky; Slavitt; Sonberg; Stancliff; Standard; Starkman; Stoeckman; Sweet; Taylor; Tennant; Tesser; van der Meulen; Warner; Weiss; Welch; Westlake; Weston; Wimpfheimer; Witmer; Wolff; Yeung-Ha; Young.

Mr. Karson presided over the meeting as Chair of the House.

1. Call to order, introduction of new members. The meeting was called to order and the Pledge of Allegiance was recited, and Mr. Karson welcomed the new members of the House.
2. Minutes of April 13, 2019 meeting. The minutes were accepted as previously distributed.
3. Report of the Treasurer. Domenick Napoletano, Treasurer, updated the House with respect to the results of operations for the first four months of 2019. Through April 30, 2019, the Association's total revenue was \$15.5 million, a decrease of approximately \$526,000 from the previous year, and total expenses were \$8 million, an increase of approximately \$37,000 over 2018. The report was received with thanks.
4. Installation of President. Mr. Greenberg was formally installed as President. The oath of office was administered by Hon. Howard A. Levine, retired Associate Judge of the Court of Appeals. Mr. Greenberg then addressed the House with respect to his planned initiatives for his term as President, including the development of the "Virtual Bar Center."
5. Report of President. Mr. Greenberg highlighted the information contained in his printed report, a copy of which is appended to these minutes.

6. Address by Judy Perry Martinez – President-Elect, American Bar Association. Judy Perry Martinez, President-Elect of the American Bar Association, addressed the House, focusing on collaboration between the ABA and NYSBA, and ABA initiatives. The Chair received the report with thanks.
7. Report and recommendations of Committee on Immigration Representation. Camille Mackler and Prof. Sarah Rogerson, co-chairs of the Committee, presented the committee's report recommending the enactment of a right to counsel in immigration proceedings. After discussion, a motion to amend the resolution offered by the committee was approved, after which the following resolution was adopted:

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, as well as through partnerships with Governor Cuomo's Liberty Defense Project; and

WHEREAS, a national study of immigration court data published by the American Immigration Council shows the great disparities in outcomes between cases that have legal representation and those that don't, including a 78% success rate for never-detained represented immigrants compared to 15% for their never-detained non-represented counterparts; and

WHEREAS, a similar study done through the evaluation of the first years of the New York Immigrant Family Unity Project (NYIFUP), the pioneering public defender system that provides universal representation to detained immigrants appearing before the Varick Street immigration court in New York City, shows that detained immigrants have a 48% chance of success with a NYIFUP attorney, compared to 4% before NYIFUP was created; and

WHEREAS, the American Bar Association has called for both a federally funded system of appointed counsel for indigent respondents in removal proceedings as well as for states and localities to provide such counsel until the federal government does so; and

WHEREAS, recent policies and immigration enforcement trends have greatly increased removal risks to immigrant New Yorkers and our immigration courts backlogs have reached historical highs; and

WHEREAS, NYSBA believes that true access to justice includes ensuring due process is served and principles of fundamental of fairness are observed in any judicial setting;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges the New York State Governor and the New York State Legislature to enact a right to counsel in immigration proceedings as a statutory requirement under New York State law; and it is further

RESOLVED, that the New York State Bar Association supports the position articulated by the American Bar Association that there should be a Federally funded system of appointed counsel for indigent respondents in removal proceedings but urges the New York State Legislature to act in the meantime in light of the significance of the rights and principles involved.

8. Report of Special Committee on Association Structure and Operations. Glenn Lau-Kee, chair of the committee, discussed the committee's planned review of issues relating to structure, operations, and leadership, observing that the committee has no preconceived ideas and that it plans an open process in its review. The Chair received the report with thanks.
9. Report of Women in Law Section. Susan L. Harper, immediate past chair of the section, reviewed the section's activities since its creation in June 2018. She observed that the section currently has over 700 members. The report was received with thanks.
10. Report of The New York Bar Foundation. Lesley Friedman Rosenthal, President of The Foundation, presented an informational report on The Foundation's financial status, its current fundraising and grantmaking activities, and progress on The Foundation's three-year strategic plan. The report was received with thanks.
11. Report and recommendations of the Task Force on the Role of the Paralegal. Vincent Ted Chang and Prof. Margaret Phillips, co-chairs of the Task Force, reviewed the Task Force's recommendations with respect to updated and amended "Guidelines for the Utilization of Paralegals"; its recommendations with respect to voluntary certification and future study of licensing; exploration of methods of providing alternate means of delivering legal services; and the creation of a non-voting membership category for paralegals and legal assistants. Amendments to Guidelines I and VI were approved on motion, after which a motion was adopted to approve the report and recommendations as amended. Ms. Buholtz abstained from participating in the discussion and vote.
12. Report re Nominating Committee. Nominating Committee Chair Claire P. Gutekunst reviewed the Nominating Committee process and criteria for candidates and encouraged interested members to submit nominations. The chair received the report with thanks.
13. Administrative items. Mr. Karson reported on the following:

- a. New Audit Committee members. At its June 13-14, 2019 meeting, the Executive Committee had confirmed the appointment of Bryan Hetherington and Naomi K. Hills as new members of the Audit Committee and Elizabeth J. Champnoi as chair of the committee. Pursuant to the Bylaws, the House is required to ratify the selection of these members. A motion was adopted to ratify the members' selection.
 - b. Following the meeting, the Committee on Leadership Development will host a luncheon for first-time House members to review the House meeting.
14. New Business.
- a. 2020 Gala. John H. Gross, chair of the gala planning committee, updated the members on work in planning the gala scheduled for January 30, 2020 at the Museum of Natural History in New York City, and encouraged members to sponsor and attend.
 - b. Committee on Standards of Attorney Conduct. Gordon Eng, a member of the committee, advised that the committee had published for comment proposed amendments to the Rules of Professional Conduct, with a comment deadline of August 9, 2019. He encouraged members to submit comments to the committee.
15. Date and place of next meeting. Mr. Karson announced that the next meeting of the House of Delegates would take place on Saturday, November 2, 2019 at the Bar Center in Albany.
16. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Sherry Levin Wallach
Secretary



Henry M. Greenberg

President

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June 9, 2019

**President's Report
to the House of Delegates
June 15, 2019**

I am honored to serve as the 122nd President of the New York State Bar Association. We have a proud history of serving as the voice of the profession, working to support the rule of law, improve the administration of justice and guarantee the vitality of the legal profession.

On the wall of the 1837 Chenango County Courthouse is an inscription in large Roman Letters: "FIAT JUSTITIA RUAT CAELUM." It means: "Let justice be done though the heavens may fall." The idea of Justice is eternal. We see it in the biblical passage commanding: "Justice, Justice, you shall pursue."

That is the lawyers' credo. It is in our DNA. It is who we are. It is what we do. It is also what the New York State Bar Association has stood for since its founding in 1876.

From the inception, this Association has led. We have fought for things that matter for our profession and the public. Leadership is our legacy. It is also our duty and responsibility.

Why us? Why must lawyers lead public opinion — not follow it? The answer is because lawyers built the institutions that keep us free and fashioned the framework of our government.

As lawmakers in the Legislature, lawyers write laws. As advocates and judges in courtrooms, lawyers administer justice according to law. And, today, more than ever, the voice of lawyers is needed.

There is an ancient curse, "May you live in interesting times." This expression is intended to be ironic. It reflects anxiety and fear about current events. Well, we are living in "interesting times."

Don't get me wrong — wondrous things are happening all around the world. Health, prosperity, peace, and happiness are rising. Starvation and extreme poverty are declining. Plagues that wiped out civilizations have been eradicated.

At the same time, though, there is much about which to be concerned.

Whatever your beliefs, we should all be concerned about the partisanship and tribalization that is dividing our nation.

We should all be concerned about the anger and incivility that has turned public discourse into a blood sport.

We should all be concerned when public officials mock the principles our nation's founders held to be self-evident.

Some say we live in a "post-truth" world, where facts and experts are no longer trusted. I don't believe it, but some people do.

But this much is beyond dispute: The public is losing confidence in the capacity of the institutions lawyers built to solve problems.

Worse, untold millions of Americans know nothing about the constitutional history of our government. Too many of our fellow citizens do not know or care about constitutional traditions and norms.

All of this imposes a special duty on our profession. It also provides an opportunity to perform important public service.

Our communities need us. They need our wisdom. They need our expertise. They need our ability to see both sides of an issue, find common ground, and bring people together.

Most of all, our country needs us to remind it why the rule of law has kept us free for over two centuries.

We must explain to the public why we need: an independent judiciary; the apolitical administration of justice; and equal justice under law.

When the cynics say our institutions are failing, here's what you should tell them: "Look at the American legal system." It's working.

Day in and day out, lawyers and judges are defending our rights and protecting the rule of law.

Never forget this: We belong to the most influential, consequential, impactful profession in American life. Lawyers right wrong, improve lives, make society better.

We are society's problem solvers. We are the foot soldiers of the Constitution. The freedom we enjoy means nothing without lawyers to champion it.

This is a great time to be a lawyer. And we, the 72,000 members of this Bar Association, are bound together by the singular purpose of attaining justice.

It is a privilege to represent the profession I love in these challenging times. And, I will do everything in my power to support and strengthen the bench and bar, our justice system, and our Association.

* * *

The New York State Bar Association's strength is dependent on the support of our dedicated members. In the coming year, therefore, we will take steps to improve the practice of law and guarantee the vitality of the profession. In furtherance of that and other goals, we are undertaking the following initiatives this year:

Task Force on Autonomous Vehicles and the Law

Autonomous vehicles raise novel and potentially far-reaching challenges to the law in a variety of areas, including liability and insurance, privacy and data protection, infrastructure and transportation, licensing and regulation. Accordingly, we have created the Task Force on Autonomous Vehicles and the Law — an expert-led task force to study the pressing legal issues raised by the advent of autonomous vehicles and to make recommendations on how New York State and its legal institutions can prepare for this revolutionary technological change.

Task Force on Free Expression in the Digital Age

The decade-long decline in local journalism has been driven by dramatic changes in technology and the economics of advertising. There is a compelling need to consider whether there are appropriate legal responses to this crisis. The Task Force on Free Expression in the Digital Age will examine how changes in the law may help assure local government transparency and accountability even as the economic landscape of local journalism is fundamentally altered. The Task Force will make recommendations on how to maintain and strengthen the public's ability to engage in appropriate oversight of the institutions of local government amidst the challenges of our ever-changing digital age.

Task Force on Parole Reform

The New York State Legislature has undertaken wide-ranging criminal procedure reform in areas of bail, speedy trial guarantees, and the discovery process. These reforms, however, have focused on issues that arise prior to the trial, conviction, and sentencing. The State's parole system continues to present problems of fairness and due process for the thousands of parolees statewide. The mission of the Task Force on Parole Reform will be to study the parole system, focusing on release practices as well as revocation and reincarceration. It will seek to identify problems in the current system and propose reforms regarding the administration of the parole system and changes in the law.

Task Force on Rural Justice

Demographical trends showing the rapid decline of attorneys practicing in rural parts of the state should worry the entire profession. This is a crisis and must be addressed before the situation becomes irreversible. The Task Force on Rural Justice will investigate barriers to access to justice and develop solutions to guarantee that our rural citizens maintain the constitutional guarantees and well-being ensured to all.

Special Committee on Association Structure and Operations

We approach the 150th anniversary of NYSBA in 2026. The legal profession and the practice of law are changing — and we must be positioned to face whatever the future may hold. The Special Committee on Association Structure and Operations will make recommendations for improving the overall effectiveness and functioning of the Association and its constituent parts through a systematic review.

Special Committee on Strategic Communications

Too often the Association fails to speak as a unified voice and advocate at our full strength. The Special Committee on Strategic Communications will assist the Association to speak with one voice as a state, national and global leader for the legal profession. This will be done through coordination of our marketing efforts and a review of our external and internal communication plans.

Multi-Disciplinary Working Group to Review the New York Bar Admission Questionnaire

We will address mental health and wellness issues for attorneys from law school to retirement. In particular, I have requested the chairs of the Young Lawyers Section, the Committee on Disability Rights, the Committee on Legal Education and Admission to the Bar, the Law Practice Management's Attorney Wellness Sub-Committee, and the Lawyer Assistance Committee to appoint representatives to a multi-disciplinary work group that will review the potential removal of questions relating to mental health that now appear on the

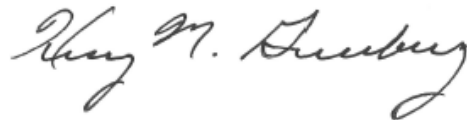
application for admission to practice as an attorney and counselor-in-law in the State of New York. We will also strengthen the Association's resources and services for attorneys in need.

Diversity Initiative

The legal profession is one of the least diverse professions in the nation. Our clients are women and men, straight and gay, of every race, color, ethnicity, national origin, and religion. Yet, the profession is not nearly as inclusive as the people we represent. Indeed, a diversity imbalance plagues law firms, the judiciary, and other spheres where lawyers work.

On diversity, the Association is leading by example. This year, through the presidential appointment process, all 59 standing committees will have a chair, co-chair or vice-chair who is a woman, person of color, or otherwise represents diversity. Additionally, we will develop and implement an Association-wide diversity and inclusion plan.

I look forward to working closely with all of you in the coming year. Please do not hesitate to call or e-mail me with your questions, comments, feedback, or suggestions for how to make our Association more responsive to the needs of the profession and the public.

A handwritten signature in cursive script, reading "Henry M. Rosenberg". The signature is written in black ink and is centered on the page.



Staff Memorandum

**HOUSE OF DELEGATES
Agenda Item # 2**

Attached for your reference are the Association's financial statements through September 30, 2019.

**NEW YORK STATE BAR ASSOCIATION
2019 OPERATING BUDGET
NINE MONTHS OF CALENDAR YEAR 2019**

REVENUE

	2019 BUDGET	ADJUST- MENTS	2019 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 9/30/2019	% RECEIVED 9/30/2019	2018 BUDGET	UNAUDITED RECEIVED 9/30/2018	% RECEIVED 9/30/2018
MEMBERSHIP DUES	10,050,000		10,050,000	9,632,215	95.84%	10,050,000	9,883,978	98.35%
SECTIONS:								
Dues	1,302,000		1,302,000	1,285,122	98.70%	1,341,574	1,292,391	96.33%
Programs	3,160,640		3,160,640	2,010,928	63.62%	2,894,561	2,372,794	81.97%
INVESTMENT INCOME	478,000		478,000	310,821	65.03%	477,000	261,775	54.88%
ADVERTISING	219,000		219,000	162,339	74.13%	296,000	169,410	57.23%
CONTINUING LEGAL EDUCATION	3,130,000		3,130,000	2,416,964	77.22%	3,635,000	2,542,479	69.94%
USI AFFINITY PAYMENT	2,196,800		2,196,800	1,699,958	77.38%	2,262,000	1,647,577	72.84%
ANNUAL MEETING	850,000		850,000	940,308	110.62%	930,000	838,838	90.20%
HOUSE OF DELEGATES & COMMITTEES	78,250		78,250	54,830	70.07%	211,500	177,877	84.10%
PUBLICATIONS, ROYALTIES AND OTHER	268,200		268,200	182,819	68.17%	296,500	208,388	70.28%
REFERENCE MATERIALS	1,274,000		1,274,000	596,913	46.85%	1,310,000	659,498	50.34%
TOTAL REVENUE	23,006,890	0	23,006,890	19,293,217	83.86%	23,704,135	20,055,005	84.61%

EXPENSE

	2019 BUDGET	ADJUST- MENTS	2019 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 9/30/2019	% EXPENDED 9/30/2019	2018 BUDGET	UNAUDITED EXPENDED 9/30/2018	% EXPENDED 9/30/2018
SALARIES & FRINGE	9,382,242		9,382,242	6,245,325	66.57%	10,105,550	6,843,532	67.72%
BAR CENTER:								
Rent	284,000		284,000	233,996	82.39%	287,000	208,066	72.50%
Building Services	230,750		230,750	287,257	124.49%	238,250	155,309	65.19%
Insurance	162,000		162,000	118,257	73.00%	142,000	127,056	89.48%
Taxes	2,750		2,750	142,987	5199.53%	5,250	260	4.95%
Plant and Equipment	862,000		862,000	612,455	71.05%	904,600	608,774	67.30%
Administration	539,100		539,100	331,303	61.45%	607,600	278,515	45.84%
SECTIONS	4,466,940		4,466,940	3,012,393	67.44%	4,198,850	3,199,271	76.19%
PUBLICATIONS:								
Reference Materials	306,752		306,752	106,333	34.66%	389,050	123,230	31.67%
Journal	360,200		360,200	276,512	76.77%	378,200	288,464	76.27%
Law Digest	172,300		172,300	121,033	70.25%	187,800	124,747	66.43%
State Bar News	135,300		135,300	77,356	57.17%	242,300	102,636	42.36%
MEETINGS:								
Annual Meeting	338,500		338,500	380,222	112.33%	345,800	269,736	78.00%
House of Delegates, Officers and Executive Committee	519,300		519,300	356,547	68.66%	526,950	401,758	76.24%
COMMITTEES:								
Continuing Legal Education	1,659,000		1,659,000	1,223,299	73.74%	1,711,950	1,154,317	67.43%
LPM / Electronic Communication Committee	55,950		55,950	27,302	48.80%	72,800	40,607	55.78%
Marketing / Membership	924,350		924,350	467,346	50.56%	798,100	438,498	54.94%
Media Services	30,450		30,450	86,888	285.35%	98,900	29,302	29.63%
All Other Committees and Departments	2,574,705		2,574,705	2,043,450	79.37%	2,556,410	1,805,035	70.61%
TOTAL EXPENSE	23,006,589	0	23,006,589	16,150,261	70.20%	23,797,360	16,199,113	68.07%
BUDGETED SURPLUS	301	0	301	3,142,956		(93,225)	3,855,892	

NEW YORK STATE BAR ASSOCIATION
STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2019

<u>ASSETS</u>	<u>UNAUDITED</u> <u>9/30/2019</u>	<u>UNAUDITED</u> <u>9/30/2018</u>	<u>UNAUDITED</u> <u>12/31/2018</u>
<u>Current Assets:</u>			
General Cash and Cash Equivalents	12,390,413	9,563,675	15,595,866
Accounts Receivable	85,548	169,060	230,010
Prepaid expenses	1,146,976	715,487	1,627,608
Royalties and Admin. Fees receivable	550,056	485,375	644,691
Total Current Assets	14,172,993	10,933,597	18,098,175
<u>Board Designated Accounts:</u>			
<u>Cromwell Fund:</u>			
Cash and Investments at Market Value	2,514,047	2,428,412	2,191,231
Accrued interest receivable	0	0	0
	<u>2,514,047</u>	<u>2,428,412</u>	<u>2,191,231</u>
<u>Replacement Reserve Account:</u>			
Equipment replacement reserve	1,117,588	1,117,225	1,117,337
Repairs replacement reserve	794,380	794,123	794,202
Furniture replacement reserve	219,953	219,882	219,904
	<u>2,131,921</u>	<u>2,131,230</u>	<u>2,131,443</u>
<u>Long-Term Reserve Account:</u>			
Cash and Investments at Market Value	24,940,937	24,071,357	21,745,927
Accrued interest receivable	0	0	147,237
	<u>24,940,937</u>	<u>24,071,357</u>	<u>21,893,164</u>
<u>Sections Accounts:</u>			
Section Accounts Cash equivalents and Investments at market value	3,859,749	3,634,868	3,699,977
Cash	283,657	465,914	-31,562
	<u>4,143,406</u>	<u>4,100,782</u>	<u>3,668,415</u>
<u>Fixed Assets:</u>			
Furniture and fixtures	1,431,781	1,432,266	1,431,781
Leasehold Improvements	1,368,781	1,368,781	1,368,781
Equipment	8,770,787	9,616,354	8,311,267
Telephone	107,636	107,636	107,636
	<u>11,678,985</u>	<u>12,525,037</u>	<u>11,219,465</u>
Less accumulated depreciation	10,381,934	10,453,943	9,875,234
Net fixed assets	1,297,051	2,071,094	1,344,231
Total Assets	49,200,355	45,736,472	49,326,659
<u>LIABILITIES AND FUND BALANCES</u>			
<u>Current liabilities:</u>			
Accounts Payable & other accrued expenses	1,099,717	467,832	1,016,651
Deferred dues	1,564,513	687,371	8,382,450
Deferred income special	519,230	749,999	692,307
Deferred grant revenue	19,999	32,406	27,406
Other deferred revenue	424,617	81,076	1,228,772
Unearned Income - CLE	78,427	21,487	57,487
Payable To The New York Bar Foundation	31,379	17,609	28,915
Total current liabilities & Deferred Revenue	3,737,882	2,057,780	11,433,988
<u>Long Term Liabilities:</u>			
Accrued Pension Costs	0	0	0
Accrued Other Postretirement Benefit Costs	7,353,910	7,776,026	7,128,910
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	270,000	270,000	296,197
Total Liabilities & Deferred Revenue	11,361,792	10,103,806	18,859,095
<u>Board designated for:</u>			
Cromwell Account	2,514,047	2,428,412	2,191,231
Replacement Reserve Account	2,131,921	2,131,230	2,131,443
Long-Term Reserve Account	17,317,027	16,025,331	14,320,820
Section Accounts	4,143,406	4,100,782	3,668,415
Invested in Fixed Assets (Less capital lease)	1,297,051	2,071,094	1,344,231
Undesignated	10,435,111	8,875,817	6,811,424
Total Net Assets	37,838,563	35,632,666	30,467,564
Total Liabilities and Net Assets	49,200,355	45,736,472	49,326,659

New York State Bar Association
Statement of Activities
For the Nine Months Ending September 30, 2019

	<u>September 2019</u>	<u>September 2018</u>	<u>December 2018</u>
REVENUES AND OTHER SUPPORT			
Membership dues	9,632,215	9,883,978	9,902,972
Section revenues			
Dues	1,285,122	1,292,391	1,292,120
Programs	2,010,928	2,372,794	2,529,827
Continuing legal education program	2,416,964	2,542,479	3,240,221
Administrative fee and royalty revenue	1,911,195	1,832,939	2,483,276
Annual meeting	940,308	838,838	838,408
Investment income	625,081	512,647	1,580,794
Reference Books, Formbooks and Disk Products	596,913	659,498	1,076,377
Other revenue	184,556	401,517	518,422
	<u>19,603,282</u>	<u>20,337,081</u>	<u>23,462,417</u>
PROGRAM EXPENSES			
Continuing legal education program	1,820,657	1,767,243	2,307,567
Graphics	1,097,966	1,406,133	1,749,965
Government relations program	297,525	368,726	483,561
Law, youth and citizenship program	55,502	56,432	76,021
Lawyer assistance program	112,291	75,943	108,395
Lawyer referral and information services	88,328	92,598	122,216
Law practice management services	54,591	61,884	88,689
Media / public relations services	337,277	256,288	350,259
Marketing and Membership services	1,094,624	1,055,219	1,485,399
Pro bono program	124,251	159,239	208,883
Local bar program	77,712	79,533	103,730
House of delegates	322,982	354,052	431,481
Executive committee	33,565	47,706	57,322
Other committees	407,067	506,900	634,270
Sections	3,012,393	3,199,271	3,853,509
Section newsletters	80,008	125,629	160,727
Reference Books, Formbooks and Disk Products	538,432	548,566	794,391
Publications	474,901	515,848	648,945
Annual meeting expenses	380,222	269,736	274,263
	<u>10,410,294</u>	<u>10,946,946</u>	<u>13,939,593</u>
MANAGEMENT AND GENERAL EXPENSES			
Salaries and fringe benefits	2,414,778	2,662,235	3,907,677
Pension plans and other employee benefit plan costs	496,999	493,917	(131,456)
Rent and equipment costs	1,093,952	819,950	1,118,192
Consultant and other fees	961,086	647,140	903,249
Depreciation and amortization	506,700	506,700	1,294,000
Other expenses	266,451	122,228	176,382
	<u>5,739,966</u>	<u>5,252,170</u>	<u>7,268,044</u>
CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS			
	3,453,022	4,137,965	2,254,780
Realized and unrealized gain (loss) on investments	3,917,979	674,142	(2,603,313)
CHANGES IN NET ASSETS			
	7,371,001	4,812,107	(348,533)
Net assets, beginning of year	<u>30,467,564</u>	<u>30,816,097</u>	<u>30,816,097</u>
Net assets, end of year	<u>37,838,565</u>	<u>35,628,204</u>	<u>30,467,564</u>



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #3

REQUESTED ACTION: Approval of the 2020 Association income and expense budget.

Attached is the 2020 proposed Association operating budget. The budget has projected income of \$23,397,230 and expenses of \$23,207,399, leaving a projected surplus of \$189,831.

The budget will be presented by T. Andrew Brown, chair of the Finance Committee.

2020 PROPOSED BUDGET

**THE ASSOCIATION HAS PROJECTED REVENUE OF \$23,397,230 AND
EXPENSE OF \$23,207,399 LEAVING A PROJECTED SURPLUS OF \$189,831.**

2020 NYSBA PROPOSED BUDGET

2020 PROPOSED INCOME BUDGET

ITEM	2019 BUDGET	RECEIVED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
Membership Dues	10,050,000	9,539,728	9,644,000	9,732,250	9,902,972	10,044,393	10,537,010
Continuing Legal Education	3,130,000	1,760,983	3,220,000	3,220,000	3,240,221	3,154,300	3,631,127
Investment Income	478,000	164,316	478,000	500,800	500,080	480,953	472,795
Advertising (MCI) **	219,000	104,045	220,000	250,000	249,390	63,218	154,428
Reference Materials	1,274,000	404,422	1,274,000	1,250,000	1,076,377	1,204,335	1,256,741
Publications and Miscellaneous	268,200	128,448	321,200	216,200	327,559	251,556	266,170
Insurance Program	2,196,800	1,129,222	2,258,444	2,306,000	2,209,019	2,258,770	2,269,769
Annual Meeting	850,000	941,408	941,408	1,312,000	838,409	897,247	865,217
House of Delegates	36,250	32,762	38,250	24,750	43,365	27,205	34,100
Committees	42,000	23,986	30,000	150,000	150,928	42,176	190,483
Sections	4,462,640	2,520,597	3,892,430	4,435,230	3,821,947	3,770,838	3,584,454
TOTAL	23,006,890	16,749,918	22,317,732	23,397,230	22,360,267	22,194,991	23,262,294

** Please note that several advertising lines are included in other items. These include sponsorship for CLE programs and committees as

well as the Annual Meeting for 2019 forward.

2020 NYSBA PROPOSED BUDGET

EXPENSE BUDGET

ITEM	2019 BUDGET	EXPENDED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
Salaries and Fringed Benefits	9,377,242	4,165,625	8,499,540	8,790,034	8,667,283	9,884,498	9,432,132
Less: Allocations	(9,373,142)	(4,163,765)	(8,497,380)	(8,789,409)	(8,663,180)	(9,880,612)	(9,428,589)
Bar Center Operations	2,080,600	993,637	2,060,850	2,286,850	2,533,440	2,114,998	1,955,359
Publications and Meetings	1,525,600	1,055,553	1,527,375	1,858,325	1,412,011	1,666,099	1,601,073
Committees and Departments	14,924,349	6,856,378	13,940,359	14,626,369	13,403,631	14,757,951	14,714,390
Sections	4,466,940	2,365,670	4,036,567	4,435,230	3,853,509	3,730,254	3,600,564
TOTAL	23,001,588	11,273,097	21,567,311	23,207,399	21,206,694	22,273,188	21,874,929

2020 NYSBA PROPOSED BUDGET

2020 MEMBERSHIP DUES

CLASS	DUES	MEMBERS	AMOUNT
Regular Membership:			
Sustaining Members	400	675	270,000
Members admitted 2012 and Prior	275	24,150	6,641,250
Members admitted 2013-2014	185	1,400	259,000
Members admitted 2015-2016	125	1,600	200,000
Members admitted 2017 -2019	60	3,500	210,000
Special Dues Classes	Various	1,080	115,000
Newly admitted	-	8,060	-
Law students	-	8,591	-
		49,056	7,695,250
Out-of-State Members:			
Sustaining Members	400	150	60,000
Members admitted 2011 and Prior	180	9,500	1,710,000
Members admitted 2012-2013	150	700	105,000
Members admitted 2014-2015	120	900	108,000
Members admitted 2016 -2018	60	900	54,000
Newly admitted	-	-	-
		12,150	2,037,000
TOTAL		61,206	9,732,250
PROPOSED DUES REVENUE			9,732,250

2020 NYSBA PROPOSED BUDGET

CLE INCOME BUDGET

ITEM	2019 BUDGET	RECEIVED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
560-4700 Programs	1,900,000	1,021,781	1,900,000	1,600,000	1,847,841	1,453,864	1,661,165
572-4700 Webcast Program Income	-	-	-	400,000	-	485,487	600,248
573-4700 LPM Program Income	-	-	-	-	-	84,341	87,013
568-4780 On-Line	1,000,000	590,234	1,100,000	1,000,000	1,055,753	849,200	844,225
569-4790 Audio Compact Disk (CD)	50,000	33,508	-	-	186,098	170,067	272,864
561-4710 Course Book	30,000	9,920	20,000	25,000	30,208	28,115	41,152
574-4780 All Access Pass	-	59,380	120,000	120,000	-	-	-
571-4715 DVD/CD	150,000	46,160	80,000	75,000	120,321	83,226	124,460
TOTAL	3,130,000	1,760,983	3,220,000	3,220,000	3,240,221	3,154,300	3,631,127

2020 NYSBA PROPOSED BUDGET

CLE GENERAL DEPARTMENT

ITEM	2019 BUDGET	EXPENDED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
504-5020	5,000	2,425	5,000	5,000	1,410	3,580	2,899
504-5070	827,904	412,750	884,596	976,890	806,255	880,649	768,007
504-5130	3,500	1,311	3,000	3,500	3,290	3,500	3,044
504-5230	103,000	46,512	100,000	100,000	91,502	88,759	98,598
560-5480	1,450,000	772,849	1,350,000	1,300,000	1,126,133	1,076,558	1,158,517
572-5480	-	-	-	15,000	155,041	254,405	170,914
573-5480	-	-	-	-	50,883	86,276	48,529
568-5480	35,000	-	14,000	-	-	67,572	90,414
504-5100	1,000	87	1,000	1,000	(4,091)	1,132	(1,350)
504-5110	3,000	3,116	4,000	3,000	5,874	14,894	3,394
569-5480	6,000	661	1,500	3,000	4,780	11,115	20,080
561-5480	1,000	4,228	5,000	1,000	425	1,088	2,204
571-5180/570	12,000	4,041	10,000	12,000	11,158	13,622	16,159
504-5370	1,000	-	576	1,000	75	1,591	2,532
504-5470	9,500	-	-	-	6,439	5,228	9,146
504-5655	-	2,184	5,000	1,000	-	-	-
504-5700	4,000	8,286	10,000	5,000	5,519	11,893	8,761
504-5270	25,000	18,060	30,000	30,000	31,144	23,750	42,316
TOTAL	2,486,904	1,276,510	2,423,672	2,457,390	2,295,838	2,545,612	2,444,164

2020 NYSBA PROPOSED BUDGET

BAR CENTER OPERATIONS AND ADMINISTRATIVE EXPENSE

ITEM	2019 BUDGET	EXPENDED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
Rent	284,000	132,509	284,000	284,000	283,623	283,623	285,078
Building Services	230,750	150,846	350,000	397,000	213,285	210,549	227,752
Insurance	162,000	72,885	170,000	170,000	170,278	169,687	141,781
Taxes	2,750	4,730	7,750	7,750	6,872	13,884	23,148
Plant and Equipment	862,000	406,621	820,500	890,500	1,435,314	886,025	754,394
Office Administration	35,000	(55,621)	(54,000)	25,000	(63,758)	(8,253)	(18,089)
Other	504,100	281,667	482,600	512,600	487,826	559,482	541,295
TOTAL	2,080,600	993,637	2,060,850	2,286,850	2,533,440	2,114,998	1,955,359

2020 NYSBA PROPOSED BUDGET

PUBLICATIONS AND MEETINGS

PUBLICATIONS

ITEM	2019 BUDGET	EXPENDED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
New York State Bar Journal	360,200	204,583	386,300	396,500	351,483	410,666	418,138
New York State Law Digest	172,300	82,544	156,950	156,000	165,856	161,153	187,721
State Bar News	135,300	51,954	124,200	122,300	131,607	217,676	173,259
TOTAL PUBLICATIONS	667,800	339,081	667,450	674,800	648,945	789,494	779,118

MEETINGS

Annual Meeting	338,500	388,275	388,275	714,700	274,263	338,205	321,137
Executive Committee	70,500	44,277	61,000	66,700	57,322	57,647	46,196
House of Delegates and Officer's Expense	448,800	283,920	410,650	402,125	431,480	480,754	454,622
TOTAL MEETINGS	857,800	716,472	859,925	1,183,525	763,065	876,605	821,955
TOTAL	1,525,600	1,055,553	1,527,375	1,858,325	1,412,011	1,666,099	1,601,073

2020 NYSBA PROPOSED BUDGET

COMMITTEES AND DEPARTMENTS

ITEM	2019 BUDGET	EXPENDED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
Committees \$25,000 and/or more	313,955	162,599	278,250	408,525	391,217	300,064	432,556
Committees \$2,501 - \$24,999	225,800	98,726	216,615	256,925	160,879	151,118	177,176
Non-Line Items Committees and Other	125,350	67,393	104,100	129,500	94,584	110,002	123,534
Departments	14,259,244	6,527,659	13,341,394	13,831,419	12,756,952	14,196,767	13,981,124
TOTAL	14,924,349	6,856,378	13,940,359	14,626,369	13,403,631	14,757,951	14,714,390

2020 NYSBA PROPOSED BUDGET

SECTION DUES INCOME

ITEM	2019 BUDGET	RECEIVED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
Antitrust	12,000	12,005	12,500	12,600	11,575	12,273	13,335
Business Law	68,500	70,000	75,000	67,500	73,182	75,676	81,314
Commercial & Federal Litigation	68,000	67,852	70,000	68,000	68,261	70,360	74,330
Corporate Counsel	36,000	34,120	35,000	36,000	35,948	35,893	37,300
Criminal Justice	34,500	35,273	35,500	35,000	34,952	35,389	36,615
Dispute Resolution	37,800	41,664	45,000	40,000	39,085	38,259	41,510
Elder Law and Special Needs	80,000	70,618	72,000	75,000	74,197	74,845	77,960
Entertainment Law	34,500	32,486	35,000	35,000	34,629	34,703	36,914
Environmental Law	28,200	27,583	28,500	28,200	28,587	28,656	29,725
Family Law	74,000	70,896	75,000	70,000	74,936	74,960	75,873
Food, Drug	5,000	4,963	5,500	7,500	5,063	4,888	5,193
General Practice	30,000	32,366	35,000	35,000	29,697	31,508	34,410
Health Law	34,000	37,029	38,000	38,000	32,938	33,583	34,053
Intellectual Property Law	35,500	33,447	36,000	35,000	36,142	37,518	40,951
International Law	48,000	43,018	45,000	45,000	45,369	45,044	49,261
Judicial	10,000	9,411	10,000	10,000	9,649	9,681	8,345
Labor & Employment	62,000	60,400	64,000	64,000	63,225	65,666	67,969
Local State Government	30,000	27,910	29,000	30,000	28,807	29,550	29,962
Real Property	139,000	138,594	139,000	142,000	139,777	140,271	142,853
Senior Lawyers	47,000	41,677	47,000	48,000	48,304	44,120	47,080
Tax	53,000	48,304	53,000	50,000	50,457	50,189	53,699
Torts, Insurance and Compensation	73,000	69,858	73,000	75,000	73,200	75,705	77,310
Trial Lawyers	62,000	58,898	65,000	60,000	62,767	66,687	69,098
Trusts and Estates	160,000	159,245	165,000	160,000	163,210	165,713	170,977
Women in Law	12,000	13,861	15,000	26,000	-	-	-
Young Lawyers	28,000	26,637	28,000	29,000	28,163	25,649	24,800
TOTAL	1,302,000	1,268,113	1,331,000	1,321,800	1,292,120	1,306,781	1,360,836

2020 NYSBA PROPOSED BUDGET

SECTION OTHER INCOME

ITEM	2019 BUDGET	RECEIVED TO 6/30/19	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL
Antitrust	220,400	201,365	212,600	224,750	200,120	159,987	147,275
Business Law	113,100	11,677	71,600	88,500	29,706	19,333	28,466
Commercial & Federal Litigation	175,500	149,080	181,700	195,500	172,605	188,625	178,090
Corporate Counsel	28,300	698	14,000	18,700	4,548	17,002	10,421
Criminal Justice	22,150	8,895	22,200	22,200	24,124	28,178	17,525
Dispute Resolution	169,005	52,264	66,000	141,880	86,611	71,952	98,745
Elder Law and Special Needs	303,500	10,510	212,500	284,000	182,319	228,167	201,905
Entertainment Law	67,800	21,298	50,250	74,100	49,938	52,115	43,669
Environmental Law	70,000	13,985	64,000	87,300	67,392	68,280	45,265
Family Law	319,050	55,169	320,750	346,050	366,685	330,256	290,308
Food, Drug	2,000	760	1,500	2,600	1,395	1,310	585
General Practice	68,050	-	23,250	22,200	2,250	2,735	2,420
Health Law	39,200	14,658	36,350	37,350	35,907	39,052	32,591
Intellectual Property Law	45,250	26,430	31,650	41,150	17,259	37,660	33,138
International Law	298,000	45,014	279,500	310,500	346,006	279,336	249,017
Judicial	15,500	26,795	28,780	20,000	15,290	21,725	13,530
Labor & Employment	106,700	29,590	70,500	118,100	76,145	85,579	71,497
Local State Government	21,700	125	13,150	69,800	13,170	17,480	11,730
Real Property	107,000	12,230	64,500	104,000	54,057	58,033	48,929
Senior Lawyers	45,000	-	6,500	23,400	800	3,273	15,632
Tax	212,400	177,590	181,000	196,750	177,340	160,955	154,825
Torts, Insurance and Compensation	90,135	15,855	81,150	88,200	74,800	108,419	102,346
Trial Lawyers	59,000	14,870	35,000	40,500	31,019	49,825	23,357
Trusts and Estates	366,500	242,670	295,500	343,900	357,173	258,929	257,733
Women in Law	25,500	35,285	55,500	57,000	9,500	-	-
Young Lawyers	169,900	85,671	142,000	155,000	133,669	175,851	144,620
TOTAL	3,160,640	1,252,484	2,561,430	3,113,430	2,529,827	2,464,057	2,223,619

2020 NYSBA PROPOSED BUDGET

SECTIONS EXPENSE

ITEM	2019 BUDGET	RECEIVED TO 4/30/18	PROJECTED YEAR END	2020 PROPOSED BUDGET	2018 ACTUAL	2017 ACTUAL	2016 ACTUAL	
Antitrust	232,400	184,228	225,100	237,350	208,719	252,101	193,013	620
Business Law	181,600	70,680	146,600	156,000	142,115	122,457	123,254	621
Commercial & Federal Litigation	243,500	230,602	279,600	263,500	245,377	246,413	259,822	631
Corporate Counsel	64,300	21,898	49,800	54,700	33,688	55,022	57,926	622
Criminal Justice	56,650	31,717	57,200	57,200	56,333	58,421	70,867	623
Dispute Resolution	206,805	83,768	126,600	181,880	129,637	140,149	106,861	644
Elder Law and Special Needs	383,500	98,320	285,000	359,000	295,420	250,205	285,817	632
Entertainment Law	102,300	35,923	84,750	109,100	79,509	96,275	76,962	630
Environmental Law	88,500	67,914	92,500	115,500	80,752	78,674	65,935	624
Family Law	393,050	176,570	395,750	416,050	443,355	401,451	378,011	625
Food, Drug	7,000	6,353	7,000	10,100	6,777	8,635	6,037	626
General Practice	98,050	39,206	61,250	57,200	66,694	57,962	44,377	627
Health Law	73,200	50,856	74,600	75,350	66,243	92,465	69,241	633
Intellectual Property Law	80,750	44,819	67,782	76,150	57,461	64,527	64,563	634
International Law	335,300	85,008	324,500	355,500	373,784	218,335	242,216	629
Judicial	25,100	36,366	43,500	30,000	20,460	27,275	19,645	635
Labor & Employment	168,700	67,707	134,500	182,100	132,346	118,660	115,728	636
Local State Government	51,700	21,966	42,650	99,800	38,157	27,079	23,257	637
Real Property	246,000	107,194	203,804	246,000	186,981	234,481	240,235	638
Senior Lawyers	92,000	31,654	53,500	71,400	44,557	28,646	30,572	645
Tax	265,400	225,693	255,031	246,750	228,468	232,303	198,767	639
Torts, Insurance and Compensation	163,135	52,233	154,450	163,200	158,504	150,104	145,414	628
Trial Lawyers	116,000	37,436	100,000	100,500	91,666	129,707	97,413	640
Trusts and Estates	526,500	406,311	529,000	503,900	489,764	400,746	484,772	641
Women in Law	67,600	42,832	71,600	83,000	37,609	35,661	24,385	646
Young Lawyers	197,900	108,415	170,500	184,000	139,132	202,499	175,475	642
TOTAL	4,466,940	2,365,670	4,036,567	4,435,230	3,853,509	3,730,254	3,600,564	



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #4

REQUESTED ACTION: Subscription to the Bylaws amendments proposed by the Committee on Bylaws to allow for their consideration at the Annual Meeting of the Association.

At its June 2019 meeting, the House of Delegates approved the report and recommendations of the Task Force on the Role of the Paralegal. Among the recommendations approved was that the Association create a membership category for paralegals. The Committee on Bylaws was charged with developing appropriate Bylaws amendments to implement this recommendation, and the committee's report with proposed amendments is attached.

The committee recommends that Article III of the Bylaws be restructured to provide for a class of Non-Attorney Affiliates, which would include paralegals as well as the current law school graduates who are not admitted to practice in any jurisdiction and who are employed by a law school or bar association. The committee also recommends that for purposes of the Bylaws, "paralegal" be defined in accordance with the definition contained in the Association's Guidelines for the Utilization by Lawyers of the Services of Paralegals.

The committee's report also contains several recommendations related to the Non-Attorney Affiliate category:

- Sections that involve Non-Attorney Affiliates in section activities should consider what rights, if any, such affiliates should have within the section.
- Membership applications for Non-Attorney affiliates should contain a disclaimer that status as an affiliate does not entitle a person to engage in the practice of law.
- The application should include a question as to whether the applicant has been convicted of a felony or misdemeanor; if so, the application should request an attestation from an attorney regarding the applicant's character and fitness.
- Any identification card issued to a Non-Attorney Affiliate should be distinguishable from cards issued to members.

- The Membership Committee should be tasked with recommending dues and benefits for Non-Attorney Affiliates.

Under procedures established in the Bylaws, the proposed amendments must be subscribed to by a majority of all members of the House of Delegates in order to be considered at a meeting of the Association. Subscription can take place at this meeting to allow for consideration of these proposed amendments at the Annual Meeting of the Association on January 31, 2020.

The report will be presented at the November 2 meeting by Robert T. Schofield, IV, Chair of the Committee on Bylaws.



COMMITTEE ON BYLAWS

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Chair
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September 23, 2019

To: Members of the House of Delegates

Re: Report on Proposed Bylaws Amendment to include Paralegals as Non-voting Affiliates of the Association

INTRODUCTION

At its June 15, 2019 meeting, the House of Delegates approved a recommendation from the Task Force on the Role of Paralegals that the Association create a category of membership for paralegals. The Task Force's recommendation is attached as Exhibit "A." As envisioned by the Task Force, paralegals would be able to participate in Association activities, particularly programs aimed at improving the paralegal profession.

This committee subsequently was asked by leadership to develop Bylaws amendments to implement this House action. The co-chairs of the Membership Committee, together with a designated committee representative, worked with our committee to review materials and develop this report.

After considering the issues, the committee recommends that Article III be restructured to provide for a class of Non-attorney Affiliates, of which paralegals would be one,¹ in addition to the existing membership classes. The committee also recommends that the Association's current definition of paralegal be used to describe the qualifications needed to join the Association as a paralegal Non-attorney Affiliate.

STUDY OF ISSUES

As set forth in the report of the Task Force on the Role of the Paralegal, a membership category for paralegals "would provide a means for paralegals to learn from and contribute to the organized bar[and] provide guidance for paralegals who are considering law school attendance and the practice of law. In addition, [paralegal members] could focus on researching some of the open questions presented in this Report regarding the need for further regulation or certification of

¹ The other class on Non-attorney Affiliates would be law school graduates not admitted to any bar who work for a New York law school or a bar association; these people are currently called "Affiliate Members" under the bylaws.

paralegals.” Our committee observed several other benefits to the Association from creating a category for paralegals:

- Greater distribution of Association publications and programming.
- Increased dues revenue.
- Increased Association visibility.

This category would not permit paralegals to vote or hold office, as is currently the case with the affiliate members who hold a law degree but are not admitted to practice in any jurisdiction.

The committee reviewed other bar associations’ bylaws relating to paralegal/non-lawyer members; a list of these provisions may be found in Exhibit “B.” These provisions range from very limited non-lawyer members (Pennsylvania) to paralegals (North Carolina) to law-related employee members (Connecticut) to persons interested in the Association’s work (American Bar Association). After reviewing these provisions, it was the committee’s view that for the present time, it would be appropriate to base our proposed provision on the definition contained in the report of the Task Force on the Role of the Paralegal, approved by the House:

“a person qualified through education, training or work experience who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, which requires a sufficient knowledge of legal concepts that, absent such legal assistant/paralegal, the attorney would perform the task.”²

An issue raised by several committee members is whether a person with a criminal record should be permitted to become a paralegal affiliate of the Association. Our review of other bars’ provisions for non-lawyer members did not reveal any bars that have addressed the issue. However, the Denver Bar Association requires non-lawyer members to have an attorney sponsor their membership and renewals. The committee expressed concern that, paralegals, being unregulated paraprofessionals with no licensure or oversight by any regulatory body, might expose the Association to individuals with problematic professional histories joining through this new class. After study and discussion, the committee agreed to make several recommendations to address this situation.

An additional issue raised was whether non-attorneys might improperly use membership in an improper manner, including creating the appearance that they are attorneys. We believe this problem can be mitigated by including appropriate disclaimers in membership materials and prominently identifying these persons as non-attorneys. Accordingly, the committee agreed to make several recommendations on these points as well.

² This definition was adopted in the Association’s 1995 Guidelines for the Utilization by Lawyers of the Service of Legal Assistants, which were adopted by the NYSBA House of Delegates on June 28, 1997.

PROPOSED LANGUAGE

The committee proposes that Article III of the Association's bylaws be amended as follows:

III. MEMBERS AND AFFILIATES

Section 1. Membership. There shall be ~~five~~^{six} classes of membership in the Association: Active, Associate, ~~Affiliate~~, Honorary, Sustaining and Law Student, and the members shall be divided among such classes according to their eligibility.

A. Active Members. Any member of the legal profession in good standing admitted to practice in the State of New York may become an Active member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all responsibilities of membership.

B. Associate Members. Any member of the legal profession in good standing admitted to practice in any state, territory or possession of the United States or another country but not in New York may become an Associate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership, with the exception of being an officer of the Association, being a member of the House of Delegates or Executive Committee, or serving as a Section Chair; provided, however, that upon the request of a Section Executive Committee and with the consent of the Association Executive Committee, an Associate member may serve as a Section Chair.

~~**C. Non-attorney Affiliates.** Any person holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals, or who is employed by a bar association, may become an Affiliate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee.~~

~~**D. Honorary Members.** Honorary members may be elected by the Association.~~

D.E. Law Student Members.

1. Any law student in good standing, if not otherwise eligible for membership in this Association, may become a Law Student member by written application to the Executive Director, endorsed as to the applicant's good standing as above prescribed on behalf of the applicant's law school, and by payment of the annual dues of the current year, provided that the law school is an approved law school under the Rules of the Court of Appeals. A Law Student member shall cease to be such at the end of any calendar year in which, for any reason other than graduation or service in the Armed Forces of the United

States or in any statutory substitute for such service, the law student ceases to be enrolled in good standing in an approved law school, provided that continuance of such membership because of service in the Armed Forces of the United States or in any statutory substitute for such service shall cease one year after the termination of such service if the Law Student member has not by that time again become a law student and met all qualifications for becoming a Law Student member. A Law Student member shall be exempt from dues while in service of the Armed Forces of the United States or in any statutory substitute for such service.

2. A Law Student member shall have all the powers and privileges of an Active member of the Association except those of voting, being an officer of the Association, serving as a member of the Executive Committee or House of Delegates, or serving as Chair of a Section or Committee.

3. A Law Student member may become an Active or Associate member of the Association, as the case may be, without further application upon notice to the Association of admission to the bar of any state, territory or possession of the United States or another country within nine months after graduation from law school (exclusive of time spent in the Armed Forces of the United States or in any statutory substitute for such service) accompanied by payment of the annual dues for the current year.

E.F.—Sustaining Membership. The House of Delegates shall have the power to establish Sustaining memberships in the Association and to fix from time to time the amount of dues therefor. Sustaining membership shall be available to such members of any class as are willing, for the support of the general work of the Association, to pay such amount as annual dues in any year, in lieu of the dues prescribed pursuant to Section 2 of this Article. A member who elects to be a Sustaining member in any year shall not be obligated thereby to continue as such in any subsequent year. Sustaining members shall have the same rights and privileges as pertain to the class of which they are a member. Subject to the provisions of this Article, the House of Delegates shall have power to make appropriate regulations as to such Sustaining membership and the collection of sustaining dues therefrom.

Section 2. Non-attorney Affiliates.

A. Any Person:

1. holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals or who is employed by a bar association, or

2. who is not admitted to practice law in any state, territory or possession of the United States or another country and is a legal assistant or paralegal, qualified by education, training or work experience, who is employed or retained by an attorney, law office, corporation, governmental agency or other entity, and who performs specifically delegated substantive legal work for which an attorney is responsible,

may become a Non-attorney Affiliate of the Association by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities as if such person were a member, except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee. Non-attorney Affiliates are not entitled to hold themselves out as members and their status as a Non-attorney Affiliate does not authorize them to practice law unless they otherwise have standing to do so.

RECOMMENDATIONS

The committee makes the following recommendations to the House of Delegates:

- **Recommendation #1:** That the House subscribe to the proposed amendment of the bylaws in the form set forth above that that proposed amendment can be put forth for a vote of the membership at the January 2020 Annual Meeting.
- **Recommendation #2:** That Sections which seek to involve Non-attorney Affiliates in their activities consider what, if any rights those persons may have within the Section. While the proposed amendment makes it clear that Non-attorney Affiliates are not eligible to vote or be Chair of the Section, the Committee did not reach any conclusion on whether a Non-attorney Affiliate should be allowed to chair a committee within the Section and, if they are so allowed, what rights to vote on Section issues the Non-attorney Affiliate should be given, if any. The committee recommends that each Section consider these issues and whether, as an associated inquiry, the Section's bylaws should be amended to address such issues.
- **Recommendation #3:** That a separate Non-attorney Affiliate membership application be developed by the Membership Committee and/or Staff. Such an application should carry the disclaimer "*NON-ATTORNEY AFFILIATES ARE NOT ENTITLED TO HOLD THEMSELVES OUT AS MEMBERS AND THEIR STATUS AS A NON-ATTORNEY AFFILIATE DOES NOT AUTHORIZE THEM TO PRACTICE LAW.*"
- **Recommendation #4:** That the application for Non-attorney Affiliates include a question about whether the applicant has ever been convicted of a felony or misdemeanor. If the answer is in the affirmative, the application should seek basic information about the conviction and require an attestation from an admitted attorney with whom the applicant works, attesting that the applicant possesses the requisite character and fitness to be affiliated with the Association.
- **Recommendation #5:** That a policy be implemented to revoke the affiliate status of any Non-attorney Affiliate who is convicted of a felony and to review the affiliate status of any Non-attorney Affiliate who is convicted of a misdemeanor.
- **Recommendation #6:** That any identification card that is issued to Non-attorney Affiliates be distinguished from the identification card issued to individuals in the

membership categories, and that any such card specifically state that the holder is a “Non-attorney Affiliate.”

- **Recommendation #7:** That the Membership Committee be tasked with recommending the dues and benefits level for the Non-attorney Affiliate category consistent with the amended bylaw and these recommendations.

CONCLUSION

Our committee proposes the foregoing amendment to provide an opportunity for growth of the Association and its revenues, in a manner consistent with expansions already in place in, or being considered by, other comparable Bar associations. We commend it to you for your consideration and subscription at the November 2, 2019 meeting of the House of Delegates. If subscribed, the above amendment will be presented for discussion and adoption at the 2020 Annual Meeting.

Respectfully submitted,

COMMITTEE ON BYLAWS

Robert T. Schofield, IV, Chair

Anita L. Pelletier, Vice Chair

Eileen E. Buholtz

Michael E. Getnick

LaMarr J. Jackson

A. Thomas Levin

Jay G. Safer

Oliver C. Young

Mitchell J. Katz, *ex officio*, Co-Chair of Membership Comm.

Hyun Choi, *ex officio*, Co-Chair of Membership Comm.

Rona Shamoan, *ex officio*, Member of Membership Comm.

Executive Committee liaison: Scott M. Karson

Staff liaison: Kathleen R. Mulligan Baxter

Staff reporter: Thomas Richards

APPENDIX A

D. The Task Force Recommends Creation of a Paralegal Division

The Task Force recommends that NYSBA create a Paralegal Division through which paralegals can become non-voting members of NYSBA and participate in NYSBA's activities, but particularly in programs aimed at the enhancement of the paralegal profession. The Task Force notes that the American Bar Association has such a division. The state bars of a number of states have paralegal membership categories and/or sections or divisions. These include, at least, Connecticut, Montana, New Mexico, Nevada, Texas, Florida, Indiana, Michigan, North Carolina, Utah, Vermont, Massachusetts, New Jersey, and Ohio.⁴⁴ Such a division would provide a means for paralegals to learn from and contribute to the organized bar. Moreover, a Paralegal Division could provide guidance for paralegals who are considering law school attendance and the practice of law. In addition, the Paralegal Division could focus on researching some of the open questions presented in this Report regarding the need for further regulation or certification of paralegals.

⁴⁴ New Mexico--

https://www.nmbar.org/nmstatebar/AboutUs/Divisions/Paralegal_Division/Nmstatebar/About_Us/Paralegal_Division/Paralegal_Division.aspx?hkey=7fea2437-2fa2-4acd-bef2-6d8e1d012f43

Nevada --https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Jan2018_

Michigan -- <http://connect.michbar.org/paralegal/home> (Paralegal/Legal Assistant Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, this site, public service programs, and publication of a newsletter. Membership in the Section is open to qualified legal assistants and to all members of the State Bar of Michigan).

Ohio --The Ohio State Bar Association (OSBA) has established a credentialing program for paralegals. Paralegals interested in earning a certification good for four years must meet educational standards stipulated by the bar association, have sufficient experience and pass an examination. The first exam was offered in March 2007.

Montana -- <https://www.montanabar.org/store/ViewProduct.aspx?id=2102697>

Nevada -- <https://www.nvbar.org/member-services-3895/sections/paralegal-division/>

North Carolina --<https://www.ncbar.org/join-ncba/applications/>

Texas--

<https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MembershipInformation/ParalegalDivision/default.htm>

Indiana -- <https://www.inbar.org/page/paralegals>

Utah--<http://paralegals.utahbar.org/index.php/Bylaws>

Connecticut--<https://members.ctbar.org/page/Paralegals>

Vermont --

[https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717\(1\).pdf](https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717(1).pdf)

Massachusetts --<https://www.massbar.org/membership/dues-structure-and-rates>

New Jersey --<https://community.njsba.com/paralegalspecialcommittee/home?ssopc=1>

APPENDIX B



NEW YORK STATE BAR ASSOCIATION

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Thomas J. Richards, Esq., *Deputy General Counsel • Director of Public Interest*
voice: 518/487-5640 • fax: 518/463-8844 • e-mail: trichards@nysba.org

MEMORANDUM

To: Robert Schofield, Esq.
Date: July 30, 2019
Re: Affiliate Membership Bylaws Provisions – ABA, State Bars, Major Local Bars

Please find below references to the specific affiliate/paralegal member provisions in the bylaws of several other state bar associations, the American Bar Association, and three major metropolitan bar associations

American Bar Association – Bylaws Article 3.4 (Affiliated Professionals) –
https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/constitution-and-bylaws/aba_constitution_and_bylaws_2018-2019.pdf

California Lawyers Association – Bylaws Article II.3. permits the House to establish non-voting member categories. These categories are not yet established. –
<https://calawyers.org/bylaws/>

The Colorado Bar Association – Bylaws 3.1.b (Associate CBA Members) –
<http://www.cobar.org/portals/cobar/repository/cbabylaws.pdf>

Connecticut Bar Association – Constitution Article III.1.B.iii. (Law-related Employee Members) –
https://www.ctbar.org/docs/default-source/resources/cba-constitution-bylaws-and-procedures_7-31-18.pdf

Illinois State Bar Association – Bylaws Section 1.1.i.1&2 (Associate (nonlawyer) members) –
<https://www.isba.org/sites/default/files/policy/Bylaws%20%28as%20amended%20120917%29.pdf>

Ohio State Bar Association – Constitution Article III.2 – <https://www.ohioabar.org/about-us/OSBA-constitution/>

New Jersey State Bar Association – Bylaws Article IV.B. (Associate Membership) –
https://tcms.njsba.com/personifyebusiness/Portals/0/NJSBA-PDF/miscellaneous/Bylaws_2016_revised.pdf

North Carolina Bar Association – Bylaws Article 2.10 (Paralegal Members); Article 2A (Affiliate Members); Article 8 (paralegal division) – <https://www.ncbar.org/media/888020/north-carolina-bar-association-bylaws-6-24-17.pdf>

Pennsylvania Bar Association – Bylaws Section 201.8 (Affiliated Member) (n.b. this is a very limited definition, like our current affiliate membership class for JDs employed by bar association and law schools) – <http://www.pabar.org/site/About-PBA/Bylaws/Bylaws-200/Section-201>

Denver Bar Association – Article 2.1.7 (Associate) – <https://www.denbar.org/About/Governance/Bylaws>

Los Angeles County Bar Association – Article II.8 (Associate Members) – <https://www.lacba.org/docs/default-source/members-documents/lacba-bylaws-as-amended-5-22-19.pdf>

Philadelphia Bar Association – Article 2.1.3. (Nonvoting Members) – <http://www.philadelphiabar.org/page/ByLawsArticle2?appNum=1>

**PROPOSED AMENDMENT OF NYSBA BYLAWS ARTICLE III
to add paralegals as Non-voting Affiliates of the Association**

III. MEMBERS AND AFFILIATES

Section 1. Membership. There shall be ~~six~~five classes of membership in the Association: Active, Associate, ~~Affiliate~~, Honorary, Sustaining and Law Student, and the members shall be divided among such classes according to their eligibility.

A. Active Members. Any member of the legal profession in good standing admitted to practice in the State of New York may become an Active member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all responsibilities of membership.

B. Associate Members. Any member of the legal profession in good standing admitted to practice in any state, territory or possession of the United States or another country but not in New York may become an Associate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership, with the exception of being an officer of the Association, being a member of the House of Delegates or Executive Committee, or serving as a Section Chair; provided, however, that upon the request of a Section Executive Committee and with the consent of the Association Executive Committee, an Associate member may serve as a Section Chair.

C. Honorary Members. Honorary members may be elected by the Association. ~~**Affiliate Members.** Any person holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals, or who is employed by a bar association, may become an Affiliate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee.~~

~~**D. Honorary Members.** Honorary members may be elected by the Association.~~

E. Law Student Members.

1. Any law student in good standing, if not otherwise eligible for membership in this Association, may become a Law Student member by written application to the Executive Director, endorsed as to the applicant's good standing as above prescribed on behalf of the applicant's law school, and by payment of the annual dues of the current year, provided that the law school is an approved law school under the Rules of the Court of Appeals. A Law Student member shall cease to be such at the end of any calendar year in which, for any reason other than graduation or service in the Armed Forces of the United States or in any

**PROPOSED AMENDMENT OF NYSBA BYLAWS ARTICLE III
to add paralegals as Non-voting Affiliates of the Association**

statutory substitute for such service, the law student ceases to be enrolled in good standing in an approved law school, provided that continuance of such membership because of service in the Armed Forces of the United States or in any statutory substitute for such service shall cease one year after the termination of such service if the Law Student member has not by that time again become a law student and met all qualifications for becoming a Law Student member. A Law Student member shall be exempt from dues while in service of the Armed Forces of the United States or in any statutory substitute for such service.

2. A Law Student member shall have all the powers and privileges of an Active member of the Association except those of voting, being an officer of the Association, serving as a member of the Executive Committee or House of Delegates, or serving as Chair of a Section or Committee.

3. A Law Student member may become an Active or Associate member of the Association, as the case may be, without further application upon notice to the Association of admission to the bar of any state, territory or possession of the United States or another country within nine months after graduation from law school (exclusive of time spent in the Armed Forces of the United States or in any statutory substitute for such service) accompanied by payment of the annual dues for the current year.

FE. Sustaining Membership. The House of Delegates shall have the power to establish Sustaining memberships in the Association and to fix from time to time the amount of dues therefor. Sustaining membership shall be available to such members of any class as are willing, for the support of the general work of the Association, to pay such amount as annual dues in any year, in lieu of the dues prescribed pursuant to Section 2 of this Article. A member who elects to be a Sustaining member in any year shall not be obligated thereby to continue as such in any subsequent year. Sustaining members shall have the same rights and privileges as pertain to the class of which they are a member. Subject to the provisions of this Article, the House of Delegates shall have power to make appropriate regulations as to such Sustaining membership and the collection of sustaining dues therefrom.

Section 2. Non-attorney Affiliates.

A. Any person:

1. holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals or who is employed by a bar association, or

2. who is not admitted to practice law in any state, territory or possession of the United States or another country and is a legal assistant or paralegal, qualified by education, training or work experience, who is employed or retained by an attorney, law office, corporation, governmental agency or other entity, and who performs specifically delegated substantive legal work for which an attorney is responsible,

**PROPOSED AMENDMENT OF NYSBA BYLAWS ARTICLE III
to add paralegals as Non-voting Affiliates of the Association**

may become a Non-attorney Affiliate of the Association by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities as if such person were a member, except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee. Non-attorney Affiliates are not entitled to hold themselves out as members and their status as a Non-attorney Affiliate does not authorize them to practice law unless they otherwise have standing to do so.

Proposed: September 23, 2019



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Standards of Attorney Conduct.

The Committee on Standards of Attorney Conduct (COSAC) is in the process of a comprehensive review of the Rules of Professional Conduct. Earlier this year, the House approved a number of amendments to the Rules for transmittal to the Administrative Board of the Courts. In June, COSAC circulated another set of proposed amendments for comment by interested groups. In response to comments received, the committee has made several amendments to its report, and is presenting its report to you for debate and vote at this meeting.

The proposed amendments may be summarized as follows:

- **Rule 1.0.** Delete the definitions of “Advertisement,” “Computer-accessed communication,” and “Qualified legal assistance organization” in Rule 1.0(c), and (p) respectively, since these terms will no longer appear in the Rules of Professional Conduct if Rules 7.1 through 7.5 are amended as COSAC proposes.
- **Rule 1.10.** Amend Rule 1.10(c) to permit prompt and effective screening to avoid imputation of conflicts arising from lateral hires, except in certain situations, based on New Jersey Rule 1.10(c), and add a new Comment [5F] to Rule 1.10 to explain the limitations on screening.
- **Rule 2.4.** Amend Rule 2.4(b) to require increased disclosures by lawyer-neutrals, and amend Comment [3] to Rule 2.4 to elaborate on this change.
- **Rule 4.1.** Amend Rule 4.1 and Comment [1] to make clear that Rule 4.1 is limited to “material” falsehoods. Add a new sentence to Comment [1] making clear that the rule applies only to statements to third persons, not to clients, but that statements to clients are governed by other rules.

Rule 5.2: Amend Comment [2] to make clear that the rule applies not only to applicable “law” but also to any applicable Rules of Professional Conduct.

- **Rule 5.4.** Add a new Rule 5.4(a)(4) to address a division of fees between New York lawyers and out-of-state co-counsel or referring lawyers who work in law firms with nonlawyer owners or supervisors, and to add a new final sentence to Comment [2] to Rule 5.4 referring to subparagraph (a)(4).
- **Rule 5.5.** Amend Rule 5.5(a) by incorporating the essence of Rule 5.5(b) into Rule 5.5(a) for the sake of uniformity in rule numbering with the numerous jurisdictions that have adopted ABA Model Rule 5.5, and add a new Comment [3] to remind lawyers about New York Court of Appeals Rules that authorize limited practice by lawyers from other U.S. or foreign jurisdictions (e.g., 22 NYCRR Parts 521, 522, and 523).
- **Rules 7.1-7.5.** Streamline these complex advertising and solicitation rules by adopting in substantial part ABA Model Rules 7.1 through 7.3 (as amended in August 2018), while moving the substance of New York Rule 7.4 to amended Rule 7.2(c) and retaining New York Rule 7.5 in modified form.

Prof. Roy D. Simon, co-chair of the committee, will present the report at the November 2 meeting.

MEMORANDUM

September 11, 2019 REVISED version
of report originally circulated for public comment on June 6, 2019

TO: NYSBA Executive Committee and House of Delegates

FROM: Committee on Standards of Attorney Conduct (“COSAC”)

SUBJECT: ***REVISED*** COSAC Proposals to Amend Rules 1.0, 1.10, 2.4, 4.1, 5.2, 5.4, 5.5, and 7.1 through 7.5 of the New York Rules of Professional Conduct

The New York State Bar Association’s Committee on Standards of Attorney Conduct (“COSAC”) is engaged in a comprehensive review of the New York Rules of Professional Conduct. On June 6, 2019, COSAC circulated for public comment proposals to amend various New York Rules of Professional Conduct and their Comments. This is a revised report that reflects the public comments that COSAC received on the June 6th report.

COSAC received comments from the following groups:

- New York State Bar Association Labor & Employment Law Section
- New York State Bar Association Dispute Resolution Section
- New York State Bar Association Committee on Professional Ethics
- New York State Bar Association International Section
- New York County Lawyers Association Committee on Professional Ethics
- New York City Bar Committee on Professional Discipline
- New York City Bar Committee on Professional Responsibility

COSAC is grateful to these groups for the time and care they put into developing thoughtful comments. COSAC carefully considered all of these comments. COSAC accepted many of the suggested revisions, and all of the comments directed COSAC’s attention to areas of potential concern and helped COSAC to improve its earlier proposals.

In light of the comments received, COSAC has revised its proposals to amend or delete the following Rules (and to amend or eliminate some of the Comments to these Rules):

- Rule 1.0: Terminology

- Rule 1.10 Imputation of Conflicts of Interest
- Rule 2.4: Lawyer Serving as Third-Party Neutral
- Rule 4.1: Truthfulness in Statements to Others
- Rule 5.2: Responsibilities of a Subordinate Lawyer
- Rule 5.4: Professional Independence of a Lawyer
- Rule 5.5: Unauthorized Practice of Law
- Rule 7.1: Advertising
- Rule 7.2: Payment for Referrals
- Rule 7.3: Solicitation and Recommendation of Professional Employment
- Rule 7.4: Identification of Practice and Specialty
- Rule 7.5: Professional Notices, Letterheads and Signs

Please keep in mind that proposed changes to the black letter Rules can take effect only if they are adopted by the Appellate Divisions of the New York state courts. In contrast, proposed changes to Comments can be made by the House of Delegates of the New York State Bar Association without judicial approval (although some proposed changes to the Comments are contingent on Appellate Division approval of the related changes to the black letter Rules).

We first summarize the proposals, then explain the issues and reasoning that led COSAC to propose each particular amendment, as well as the reasons that COSAC agrees or disagrees with the various suggestions submitted during the public comment period. We set out each proposed amendment in redline style, comparing COSAC's proposal to the existing New York Rules of Professional Conduct by striking out deleted language (~~in red~~) and underscoring added language (in blue). (In the case of Rules 7.1 through 7.5, however, strikeouts and underscoring reflect changes against the equivalent ABA Model Rules of Professional Conduct, because the proposed changes are too extensive to make a comparison to the existing New York rules meaningful.)

Summary of Proposals

- **Rule 1.0.** Delete the definitions of “Advertisement,” “Computer-accessed communication,” and “Qualified legal assistance organization” in Rule 1.0(c), and (p) respectively, since these terms will no longer appear in the Rules of Professional Conduct if Rules 7.1 through 7.5 are amended as COSAC proposes.
- **Rule 1.10.** Amend Rule 1.10(c) to permit prompt and effective screening to avoid imputation of conflicts arising from lateral hires, except in certain situations, based on New Jersey Rule 1.10(c), and add a new Comment [5F] to Rule 1.10 to explain the limitations on screening.

- **Rule 2.4.** Amend Rule 2.4(b) to require increased disclosures by lawyer-neutrals, and amend Comment [3] to Rule 2.4 to elaborate on this change.
- **Rule 4.1.** Amend Rule 4.1 and Comment [1] to make clear that Rule 4.1 is limited to “material” falsehoods. Add a new sentence to Comment [1] making clear that the rule applies only to statements to third persons, not to clients, but that statements to clients are governed by other rules.
- **Rule 5.2:** Amend Comment [2] to make clear that the rule applies not only to applicable “law” but also to any applicable Rules of Professional Conduct.
- **Rule 5.4.** Add a new Rule 5.4(a)(4) to address a division of fees between New York lawyers and out-of-state co-counsel or referring lawyers who work in law firms with nonlawyer owners or supervisors, and to add a new final sentence to Comment [2] to Rule 5.4 referring to subparagraph (a)(4).
- **Rule 5.5.** Amend Rule 5.5(a) by incorporating the essence of Rule 5.5(b) into Rule 5.5(a) for the sake of uniformity in rule numbering with the numerous jurisdictions that have adopted ABA Model Rule 5.5, and add a new Comment [3] to remind lawyers about New York Court of Appeals Rules that authorize limited practice by lawyers from other U.S. or foreign jurisdictions (*e.g.*, 22 NYCRR Parts 521, 522, and 523).
- **Rules 7.1-7.5.** Streamline these complex advertising and solicitation rules by adopting in substantial part ABA Model Rules 7.1 through 7.3 (as amended in August 2018), while moving the substance of New York Rule 7.4 to amended Rule 7.2(c) and retaining New York Rule 7.5 in modified form.

The remainder of this report will explain each of COSAC’s revised recommendations.

Rule 1.0

Terminology

In Rule 1.0, which is New York’s Terminology section, COSAC recommends deleting the definitions of “Advertisement,” “Computer-accessed communication” and Comment [1A] (explaining the term), and deleting “Qualified legal assistance organization.” These terms are no longer necessary or meaningful because they will no longer appear in the New York Rules of Professional Conduct if the Courts and the Association accept COSAC’s recommendations to amend the advertising and solicitation rules, Rules 7.1 through 7.5. The deleted terms and Comment [1A] (the only Comment that explains one of the deleted terms) are contained in Appendix A to this report.

Public comments regarding Rule 1.0 and COSAC’s response

The NYSBA Labor and Employment Law Section commented (in a footnote) on COSAC’s proposed elimination of several definitions in Rule 1.0 by saying: “COSAC has also proposed changes to the ‘Terminology’ (i.e., definitions) portion of the current Rules. ... Obviously, if COSAC’s substantive changes are ultimately adopted, these ‘Terminology’ changes should be made as well.”

Rule 1.10

Imputation of Conflicts of Interest

COSAC proposes amendments to Rule 1.10(c). Earlier versions of COSAC’s proposed amendments to Rule 1.10(c)(1)-(2) were presented by COSAC to the House of Delegates for debate in April 2019 but were tabled to permit COSAC to work out revised language articulating situations in which the screening measures described in Rule 1.10(c)(2) would *not* be effective to prevent imputation of conflicts. COSAC has worked with Sharon Stern Gerstman and Ron Minkoff, who offered motions from the floor at the April House of Delegates meeting, to draft the revised language in Rule 1.10(c)(3) and new Comment [5F] below, which they support.

The portion of COSAC’s report presented at the April 2019 meeting dealing with Rule 1.10(c) is attached. *The only changes since the April proposal are to Rule 1.10(c)(3) and new proposed Comment [5F].* No other portions of the earlier Rule 1.10 report have been changed.

Public comments regarding Rule 1.10 and COSAC’s response

COSAC did not receive any written public comments on its proposals to amend Rule 1.10(c) regarding screening of lateral hires. However, COSAC has responded to comments expressed in the House of Delegates. In November 2018, when COSAC presented its conflicts proposals for informational purposes, COSAC’s proposal for Rule 1.10(c) provided that screening would be available to avoid imputation of conflicts of lateral-hire lawyers in *all* cases. That proposal triggered concerns from the floor that the proposed screening provision was not sufficiently protective when a client’s lawyer, in the midst of a hotly litigated matter, moved to the opposing firm.

In January 2019, COSAC re-submitted its original proposal but, in response to the concerns expressed in November 2018, also offered an alternative proposal. Under that alternative—which COSAC did not favor—screening would not be available to prevent imputation of conflicts for lateral-hire lawyers who had “primary responsibility” for a litigated matter at their prior firm. A proposed new Comment to Rule 1.10 explained, “The lawyer with primary responsibility for the matter will generally be the lawyer who had the primary decision-making role in the matter.” (Due to time constraints in January, the proposed Rule and Comment were not debated until April 2019.)

During the debate on the alternative proposal in April, House members Sharon Stern Gerstman and Ron Minkoff offered an amendment to COSAC’s alternative proposal, urging

the House to adopt New Jersey’s approach to Rule 1.10(c). Under the New Jersey version of Rule 1.10(c), screening is not available to avoid imputation of conflicts from lateral-hire lawyers who, while at a former law firm, either participated in the management and direction of a litigated matter or had continuous day-to-day decision-making responsibility for the litigated matter.

Specifically, New Jersey Rule 1.10(c)(1) provides that screening of lateral-hire lawyers is available to avoid imputation only where “the matter does not involve a proceeding in which the personally disqualified lawyer had *primary responsibility*.” (Emphasis added.) New Jersey Rule 1.0(h), in turn, defines “primary responsibility” as follows:

“Primary responsibility” denotes actual participation in the management and direction of the matter at the policy-making level or responsibility at the operational level as manifested by the continuous day-to-day responsibility for litigation or transaction decisions.

The House voted in favor of the amended alternative proposal to adopt New Jersey’s approach, and the House then tabled COSAC’s pending proposal to allow COSAC to develop language to implement the New Jersey approach.

In accordance with the House’s instructions, COSAC has revised its proposed Rule 1.10(c)(3) to incorporate the key elements of New Jersey Rule 1.10(c).

COSAC Discussion on Rule 1.10

In revising proposed Rule 1.10(c)(3) for this report, COSAC has omitted New Jersey’s distinction between “policy-making” and “operational” levels because those terms are not entirely appropriate for litigation matters and because the concepts are sufficiently addressed by the distinction between “management and direction of the matter,” on the one hand, and “day-to-day decision-making responsibility,” on the other hand. COSAC has also inserted the term “substantial” to denote the kind of involvement indicated by the term “primary” responsibility in the New Jersey formulation.

Under COSAC’s revised formulation, lateral-hire screening would be unavailable to avoid imputation of conflicts not only from the lead counsel in a litigated matter, but from all lawyers who either (i) substantially participated in the management and direction of the matter, or (ii) had substantial decision-making responsibility in the matter on a continuous day-to-day basis.

COSAC’s proposal to amend Rule 1.10(c) and Comment [5F]

COSAC proposes to revise Rule 1.10(c) and its accompanying Comments to provide as follows:

(c) When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to

a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless

(1) the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter; or

(2) the newly associated lawyer's current firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the former client to enable it to ascertain compliance with the provisions of this Rule, except that if the notice would disclose confidential information protected by Rule 1.6 the notice may be temporarily postponed but shall be sent promptly after such confidential information is known to the former client or is otherwise no longer protected by Rule 1.6;

(3) Notwithstanding paragraph (c)(2), the screening measures set forth in subparagraphs (c)(2)(i)-(iv) of this Rule will not prevent imputation of conflicts within a firm pursuant to paragraph (a) of this Rule where the matter is a litigation, arbitration, or other adjudicative proceeding and the newly associated lawyer, while associated with the prior firm, either (i) substantially participated in the management and direction of the matter, or (ii) had substantial decision-making responsibility in the matter on a continuous day-to-day basis.

Proposed New Comment [5F] to explain Rule 1.10(c)(3):

[5F] Paragraph (c)(3) makes clear that the screening procedures set forth in paragraph (c)(2) are ineffective to prevent the imputation of disqualifying conflicts for lawyers with substantial litigation responsibilities in a matter at a former firm who move during a litigation, arbitration or other adjudicative proceeding to a law firm representing a party whose interests are materially adverse to the interests of the lawyer's former client in the same or a substantially related matter. The lawyers for whom screening will not prevent imputation of conflicts are those who, while working at a former firm, had either (i) substantial responsibility for the management and direction of a litigation, arbitration or other adjudicative proceeding or (ii) substantial responsibility about day-to-day matters on a continuous basis in such a proceeding. Screening under the terms described in paragraph (c)(2) and Comments [5C]-[5E] to Rule 1.10 remains effective to cure conflicts, however, in (i) transactional or other non-litigated matters and (ii) litigated matters where a law firm is hiring one or more lawyers (such as an associate or collaterally involved partner) who did some work on the matter at the opposing firm but did not have substantial responsibility of the kind described by subparagraph (c)(3).

Rule 2.4

Lawyer Serving as Third-Party Neutral

COSAC recommends amending Rule 2.4(b) to require increased disclosures by lawyer-neutrals, and recommends amending Comment [3] to Rule 2.4 to elaborate on this change.

Rule 2.4 first became part of the New York Rules of Professional Conduct in 2009 – the Code of Professional Responsibility had no equivalent. COSAC has examined Rule 2.4 and recommends amendments to the existing text of Rule 2.4(b) and to Comment [3], which elaborates on paragraph (b). The amended Rule and Comments would provide as follows:

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them and ~~When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer~~ shall explain to them the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

COSAC also recommends corresponding changes to Comment [3] to Rule 2.4 which, as amended, would read as follows:

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving ~~in this role as third-party neutrals~~ may experience unique problems as a result of differences between the role of a third-party neutral and ~~the role of a lawyer's service~~ as a client

representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them [and to](#) ~~For some parties, particularly parties who frequently use dispute resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should~~ inform unrepresented parties of the important differences between the lawyer's role as a third-party neutral and [the lawyer's role](#) as a client representative, including ~~the inapplicability of the fact that~~ the attorney-client evidentiary privilege [does not apply when the lawyer is serving as a neutral](#). The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

COSAC Discussion of Rule 2.4

Currently Rule 2.4 requires a lawyer-neutral to inform all unrepresented parties that the lawyer-neutral does not represent them, but does *not* require the lawyer-neutral to provide a slightly fuller disclosure (explaining “the difference between the lawyer’s role as a third-party neutral and a lawyer’s role as one who represents a client”) unless “the lawyer knows or reasonably should know that a party does not understand the lawyer’s role in the matter.” In contrast, Virginia Rule 2.4 requires a lawyer-neutral to give the fuller disclosure to all parties (represented or unrepresented), and Illinois Rule 2.4 requires a lawyer-neutral to give the fuller disclosure to all unrepresented parties.

COSAC believes that the fuller disclosure should be made to all unrepresented parties, for three reasons.

First, it is likely that in many cases unrepresented parties will lack a full understanding of the lawyer’s role. *See* N.Y. State 900 (2011) (“In nearly all instances where parents are unrepresented by counsel and inexperienced in mediation and other legal matters, Inquirer ‘reasonably should know’ that the parents do not understand Inquirer’s role...”).

Second, a bright-line rule would be a reasonable safeguard, avoiding the need for the lawyer-neutral to assess whether any party “does not understand the lawyer’s role in the matter.”

Third, the additional disclosure would not have to be lengthy, individualized or burdensome, and would not differ substantially from the simple disclosure that is already routinely required. Even requiring the fuller disclosure to all parties, as in Virginia, would not be very burdensome, but because represented parties presumably would not need Virginia’s detailed disclosure, COSAC is proposing a narrower requirement like the one adopted in Illinois.

Public comments regarding Rule 2.4 and COSAC's response

The NYSBA Committee on Professional Ethics supported COSAC's proposals, saying: "The addition of an affirmative disclosure obligation is reasonable, non-burdensome, and seeks to prevent confusion on the part of unrepresented parties."

The NYSBA Dispute Resolution Section had some reservations. It said:

The Section believes that the proposed changes to Rule 2.4 are generally desirable, but views a portion of the revisions to Comment 3 as potentially confusing. ...

In the Section's view, the last clause of that sentence - "including the fact that the attorney-client evidentiary privilege does not apply when the lawyer is serving as a neutral" - is potentially confusing, in that the mediation privilege does apply to render mediation discussions confidential, and unrepresented parties may not comprehend the distinction between the two types of protection. Instead, the Section recommends that the last clause be deleted. ...

COSAC appreciates that the Dispute Resolution Section has great expertise in mediation and other forms of dispute resolution, but COSAC does not agree with the recommendation to delete the last sentence. The mediation settlement privilege is quite a different thing from the attorney-client privilege. For example, in most courts, the settlement "privilege" does not prevent discovery of settlement materials, and Rule 408 of the Federal Rules of Evidence contains exceptions that are more commonly applicable than the attorney-client privilege. Moreover, COSAC believes that a mediator's mandatory disclosures regarding "the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client" directly imply absence of the attorney-client privilege. The thrust of Rule 2.4 is to avoid confusion when a neutral is also a lawyer, and pointing out that the attorney-client privilege does not apply helps to dispel the confusion between the role of a lawyer and the role of a neutral.

An unidentified member of the New York City Bar Professional Discipline Committee said:

Regarding Proposed Rule 2.4(b), 'Lawyer Serving as Third-Party Neutral', don't single out 'unrepresented' parties, but state that all parties should receive the explanation. Give the neutrals the benefit of the doubt in the scope of what they say, *e.g.*, there will be more disclosure if an unrepresented party is present.

COSAC disagrees with this suggestion. A party who is represented by a lawyer has likely been counseled in advance by that lawyer about what to expect in a proceeding before a neutral. A party represented by a lawyer is also far less likely to look to the neutral for legal advice. Nothing in proposed Rule 2.4 prevents a lawyer-neutral from explaining the neutral's role to represented parties, but the parties most in need of clarification about the role of a lawyer-neutral are unrepresented parties.

The same unidentified member of the New York City Bar Professional Discipline Committee said:

About Comment [3], to Rule 2.4, because it is premised on a 'potential for confusion,' I would eliminate the entire first sentence about non-lawyers and lawyers as unnecessary, and talk about a real 'potential for confusion' in ADR, if there is an unrepresented party. The draft of [3] mentions attorney-client privilege but does not even discuss confidentiality. One of the main reasons parties typically seek mediation or arbitration, not litigation in open court, is the promise of reasonable confidentiality. Yet in [3], the third-party neutral must make his disclosures to the unrepresented party and the privilege is the only point brought up. I can assure you, the unrepresented party will then be thoroughly confused. Instead, [3] should identify all the positive aspects of ADR, including how to define it to all parties, represented and unrepresented, the role of the third party neutral and what he does and does not do, etc. Comment [3] should be positive not negative in tone.

For reasons expressed above in responding to a similar idea, COSAC disagrees with this suggestion. The purpose of Rule 2.4 is not to promote the virtues of arbitration or mediation, but rather to avoid confusion when the neutral is also a lawyer. Proposed Rule 2.4 does not prevent a neutral from explaining the positive aspects of ADR, but the focus of Rule 2.4 is and ought to be on ensuring that parties to an ADR proceeding understand that a neutral who happens to be a lawyer is not serving as the lawyer for any party.

Rule 4.1

Truthfulness in Statements to Others

COSAC proposes to amend Rule 4.1 and Comment [1] to make clear that Rule 4.1 is limited to “material” falsehoods. New York Rule 4.1 has one paragraph, which reads, “In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.” This is similar to ABA Model Rule 4.1(a), except that the ABA Rule includes a materiality requirement, referring to a “false statement of *material* fact or law.”

COSAC proposes amendments to Rule 4.1 and Comment [1], as follows:

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

COSAC also recommends a corresponding change to Comment [2] to Rule 4.1 and a change to Comment [1], which would read as follows:

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. [This rule prohibits false statements only to third persons, but false statements to clients are prohibited by other provisions, such as Rules 1.5\(d\)\(3\) and 8.4\(c\).](#) –As to dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

[2] This Rule refers to [material misrepresentation](#) ~~statements of fact~~. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of [material](#) fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category; so is the existence of an undisclosed principal, except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

COSAC Discussion of Rule 4.1

In 2005, COSAC proposed that New York adopt the language of ABA Model Rule 4.1(a), which has the materiality requirement set forth in the amendment proposed above. *See* New York State Bar Ass'n, Committee on Standards of Attorney Conduct, *Proposed Rules of Professional Conduct*, at 319 (Sept. 2005). The New York Courts, however, adopted Rule 4.1 without the materiality requirement. (It appears that only three other states—Minnesota, North Dakota and Virginia –have adopted a version of Rule 4.1 that omits the word “material.”)

COSAC believes that amending Rule 4.1 to add a materiality requirement would merely conform the text of the rule to the reality that an immaterial false statement would not be considered sanctionable conduct. For example, as explained in Comment [2] to New York Rule 4.1, it is widely accepted that “[e]stimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim” are not typically treated as statements of fact that a counterparty would rely on. If a lawyer says, “My client will not accept a penny less than \$1,000,” when in fact the client has authorized a settlement or sale at \$750, that would not ordinarily lead to discipline (nor should it). The reason for that conclusion is that the statement, even if literally a statement of fact, is not viewed as a statement of *material* fact, and very few people would rely on such a statement. Moreover,

there is an interest in uniformity with the rules of other jurisdictions, and the amendment would make New York’s version of this rule consistent with the ABA Model Rule and the rules of most other U.S. jurisdictions.

COSAC also considered whether the text of the rule should be amended to prohibit false statements to a client as well as to a third person, but COSAC rejected this amendment to the text on the ground that the current rule is more consistent with the rules of other jurisdictions and with the overall structure and organization of the Rules. (In the ABA Model Rules and the rules of some other jurisdictions, “Article 4” is entitled “Transactions with Persons *Other Than* Clients.”) However, COSAC believes it is appropriate to add a new sentence to Comment [1] to Rule 4.1 to clarify that while this rule reaches only false statements to third parties, false statements to clients are prohibited by other provisions. Thus, COSAC recommends adding a new sentence to Comment [1] that says: “This rule prohibits false statements only to third persons, but false statements to clients are prohibited by other provisions, such as Rules 1.5(d)(3) and 8.4(c).”

Public comments regarding Rule 4.1 and COSAC’s response

The NYSBA Committee on Professional Ethics stated:

We agree. COSAC recommends adding a materiality Standard to the prohibition on false statements. This is consistent with law and common sense. Issues of materiality and reasonable reliance are entwined; inadvertent or even knowing mistakes of immaterial facts or law are not worthy of disciplinary attention.

The NYSBA Labor and Employment Law Section commented on COSAC’s proposed changes to Rule 4.1 as follows:

... The change to Comment [2], adding the word “material” is simply intended to have the language of the Comment match the proposed change in the Rule itself. The reason for the change in Comment [1] is to remind lawyers that while Rule 4.1 itself is limited to misstatements to third parties, and not clients, other existing Rules prohibit misrepresentations to clients.

On one hand, we understand how this change to the text of the Rule makes some sense and that for conduct to be subject to discipline, it may be appropriate that there be some materiality threshold. We also recognize that as multijurisdictional practice for lawyers continues to be common and even expand, absent unusual local interests, there is value in having uniform rules of professional conduct across those jurisdictions.

On the other hand, it gives us some pause that the change could be seen as, at least implicitly, “approving” (or at least minimizing the inappropriateness) of misstatements when they are “immaterial.” We believe lawyers should not engage in

misstatements, material or otherwise. On balance, we would prefer to see this Rule unchanged in this manner.

(As an aside, Rule 8.4 contains a general prohibition against, among other things, “misrepresentations” by lawyers in any context. That provision does not contain an explicit materiality threshold and one is not proposed by COSAC at this time. We do not understand this incongruity.)

If the text of the Rule is in fact changed as proposed by COSAC, then the proposed change to the Comment makes sense. However, in that case, a new reference to “material” should be added to the first sentence of Comment [2], in addition to its proposed placement in the third sentence of that comment.

In any event, we think the “reminder” to lawyers in Comment [1] that other Rules can apply to misstatements to clients is appropriate.

COSAC appreciates that adding the word “material” to Rule 4.1 and its Comments has both advantages and disadvantages, but COSAC stands by its proposal. COSAC does not believe that the change will be seen as approving immaterial false statements or minimizing their inappropriateness.

COSAC agrees that lawyers should not engage in misstatements, material or otherwise, but the real question here is whether lawyers should be subject to professional discipline for making immaterial false statements, especially if a lawyer makes an inconsequential false statement by mistake. COSAC therefore agrees with the NYSBA Ethics Committee that “inadvertent or even knowing mistakes of immaterial facts or law are not worthy of disciplinary attention.”

As to the supposed incongruity between the proposed materiality threshold in Rule 4.1 and the lack of a materiality element in Rule 8.4(c), COSAC notes that “misrepresentation” connotes a more serious violation of norms than an immaterial false statement. As the last sentence of existing Comment [2] says: “Lawyers should be mindful of their obligations under applicable law to avoid *criminal* and *tortious* misrepresentation.” (Emphasis added.)

However, COSAC agrees that a new reference to “material” should be added to the first sentence of Comment [2], and COSAC has revised its proposal accordingly.

Rule 5.2

Responsibilities of a Subordinate Lawyer

COSAC recommends that in the sixth sentence in Comment [2], the phrase “in light of applicable law” should be amended to read “in light of applicable Rules of Professional Conduct and other law.” The sentence in its entirety would thus read:

[2] ... To evaluate the supervisor’s conclusion that the question is arguable and the supervisor’s resolution of it is reasonable in light of applicable [Rules of Professional Conduct and other](#) law, it is advisable that the subordinate lawyer undertake research, consult with a designated partner or special committee, if any (*see* Rule 5.1, Comment [3]), or use other appropriate means.

COSAC Discussion of Rule 5.2

It should be obvious that a subordinate attorney should consider both applicable Rules of Professional Conduct and other applicable law in evaluating the supervisor’s conclusion and resolution of a question of professional duty. COSAC’s proposed amendment makes this obvious proposition explicit.

A possible objection to COSAC’s proposed insertion is that the term “applicable law” by itself already implies both substantive law and ethics rules. A search of the New York Rules of Professional Conduct, however, shows numerous instances – both in the black letter law and in the Comments – where the Rules of Professional Conduct and/or other law are distinguished. *See, e.g.*, Rule 1.1(c)(1); Comments [8], [10], [13], [14], and [15] to Rule 1.2; Rule 1.4(a)(5); and Rule 1.6(b)(4). Since lawyers cannot assume that “applicable law” in Comment [2] already includes both applicable law *and* the ethics rules, Comment [2] should be amended to make explicit that Rule 5.2 also encompasses any applicable Rules of Professional Conduct.

Public comments regarding Rule 5.2 and COSAC’s response

The NYSBA Labor and Employment Law Section commented on COSAC’s proposed changes to Rule 5.2 by saying: “We do not have any issue with this clarification of the Comment.”

The NYSBA Ethics Committee also supports this proposal. It said: “We agree. ... Although we have long considered the Rules to be within the ambit of Rule 5.2, the profession will benefit from clarity on this point.”

Since none of the public comments raised any objections to this proposal, COSAC has not revised its original proposal.

Rule 5.4

Professional Independence of a Lawyer

COSAC recommends adding a new Rule 5.4(a)(4) to address a division of fees between New York lawyers and out-of-state co-counsel or referring lawyers who work in law firms with nonlawyer owners or supervisors. Proposed new Rule 5.4(a)(4) would read as follows:

(4) A lawyer or law firm may divide a fee with another lawyer or law firm that has nonlawyer owners or nonlawyer supervisors provided that:

-
- (i) nonlawyer ownership of law firms is permitted in the jurisdiction whose professional conduct rules governs the other lawyer's conduct;
-
- (ii) the lawyer who divides the fee does not permit any nonlawyer to interfere with the lawyer's independent professional judgment or with the client lawyer relationship; and
-
- (iii) the division of fees with the other lawyer complies with Rule 1.5(g).

COSAC also recommends adding a new final sentence to Comment [2] to Rule 5.4 to explain the new subparagraph. Comment [2] to Rule 5.4 would thus provide as follows:

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f), providing that a lawyer may accept compensation from a third party as long as there is no interference with the lawyer's professional judgment and the client gives informed consent. Rule 5.4(d) does not prohibit a lawyer from participating in a fee-sharing arrangement permitted under Rule 5.4(a).

COSAC Discussion of Rule 5.4

In 2012, the NYSBA House of Delegates (“HOD”) adopted an extensive report prepared by the Task Force on Nonlawyer Ownership. At that time, the HOD further resolved to refer the issue of how to implement the policy behind the Inter Firm Fee Sharing Proposal to COSAC and requested that COSAC report back to the HOD. (The Task Force Report is extensive and will not be summarized here.)

COSAC discussed whether to implement fee sharing with nonlawyer-owned firms by way of a Comment, on the one hand, or by way of a change in black letter rule, on the other hand. This topic has received substantial attention over the years – see ABA Formal Ethics Opinion 13-464 (2013) (entitled “Division of Legal Fees With Other Lawyers Who May Lawfully Share Fees With Nonlawyers”); N.Y. State Ethics Op. 889 (2011), N.Y. State Ethics Op. 911 (2012), N.Y. State Ethics Op. 1038 (2014) (all addressing issues relating to jurisdictions that allow nonlawyer partners). There appears to be a need for more formal guidance, so we recommend an amendment to the black letter rule.

The language of proposed subparagraph (a)(4)(ii) is based on language found in Rule 1.8(f)(2), which provides that a lawyer shall not accept anything of value related to the lawyer's representation of the client from one other than the client unless, among other things, “(2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship”

COSAC has also amended Comment [2] to Rule 5.4 to clarify that fee division arrangements permitted by proposed Rule 5.4(a)(4) are not prohibited by Rule 5.4(d), which bars New York lawyers from practicing in an entity authorized to practice law for profit if a non-lawyer owns any interest therein.

Public comments regarding Rule 5.4 and COSAC's response

The NYSBA Labor and Employment Law Section commented on COSAC's proposed changes to Rule 5.4 by saying:

This change adds guidance for a situation not currently expressly provided for in the Rules by basically permitting fee sharing with firms comprised of non-lawyer owners and supervisors (even though those structures are not permitted in New York), provided those firms are properly authorized to operate in that manner in their home jurisdiction, and the New York lawyer is not aware of the exercise of any impermissible control by the non-lawyer control over that other lawyer's professional judgment.

We do not have any issues with this proposal.

A member of the New York City Bar Professional Discipline Committee said:

The way this condition is expressed would appear to condone, if not promote, willful ignorance on the part of the New York lawyer about whether the advice and judgment of the out-of-state lawyer is controlled by a nonlawyer. While a rule that required the New York lawyer to conduct a thorough investigation into possible influences on the out-of-state lawyer's judgment would be impractical, other approaches might avoid the risk of promoting willful ignorance. Options could include: (i) a good faith belief that the out-of-state lawyer's judgment is not compromised by nonlawyer ownership; or (ii) a reasonable inquiry relating to the same. There could also be other approaches along the continuum of "has no knowledge" to "performed a full investigation" that would balance the competing concerns.

Perhaps the following language for proposed Rule 5.4(4)(ii) would be acceptable:

(ii) no nonlawyer, to the **reasonable belief** of the lawyer who divides this fee, controls or directs the other lawyer's professional judgment

COSAC has not accepted this suggestion directly, but has revised proposed Rule 5.4(a)(4)(ii) by substituting phrasing taken from existing New York Rule 1.8(f)(2). The revised phrasing strikes a better balance between imposing a burden on New York lawyers to investigate the operation of a law firm with nonlawyer partners or managers, on the one hand, and allowing New York lawyers to be willfully ignorant of the operation of such a law firm, on the other hand. As re-formulated, proposed Rule 5.4(a)(4)(ii) puts the emphasis where it ought to be—on avoiding nonlawyer interference with the New York lawyer's independent professional judgment. The injunction not to permit "interference with the lawyer's independent professional judgment or with the client lawyer relationship" seems to have worked well in

warding off interference by a person who is directly paying a lawyer's fees to represent another, and COSAC thinks it will work well to ward off interference by a nonlawyer who is merely receiving an indirect share of the fees by virtue of his or her out-of-state (or foreign) law firm's role as co-counsel to a New York lawyer.

The NYSBA Ethics Committee expressed some concern about COSAC's June 6th proposal, commenting as follows:

We do not oppose, with a caveat. ... COSAC does not tell us why it perceives a need for "more formal guidance." In our view, ample authority exists to support the same result. This is an issue with ever-increasing importance - witness the movement in California for non-lawyer ownership of law firms - and we wonder whether this is the moment to be changing the Rules. We believe, too, that the knowledge component in the proposed amendment should refer to Rule 1.0(k), which defines "know" to mean not only actual knowledge, but also knowledge that may be inferable from the circumstances. Although we do not oppose the change outright, we think this proposed amendment would benefit from further study.

COSAC accepted the Ethics Committee's invitation for "further study," which has led to the reformulation outlined above, but COSAC disagrees with the Ethics Committee's implication that "more formal guidance" is unnecessary. COSAC recognizes that ample authority exists to support the same result, but much of that authority is in ethics opinions - see the "COSAC Discussion of Rule 5.4" above (citing several New York ethics opinions). When there is a consensus about an ethical issue that is not addressed in the Rules of Professional Conduct, it is often helpful to reflect that consensus in the rules.

Moreover, in the wake of the 2012 report of the NYSBA Task Force on Non-Lawyer Ownership, the House of Delegates instructed COSAC to consider this issue and to recommend a change in the text of Rule 5.4 or its Comment. COSAC has decided that expressing the consensus in the black letter text of Rule 5.4 (rather than merely in a Comment) provides the clearest and most authoritative guidance to New York lawyers.

Rule 5.5

Unauthorized Practice of Law

COSAC recommends amending Rule 5.5 by incorporating the essence of Rule 5.5(b) into Rule 5.5(a) so that amended Rule 5.5 will match ABA Model Rule 5.5(a). As amended, New York Rule 5.5 would read as follows:

~~(a)~~ A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

~~(b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.~~

To conform with the above amendments to the black letter text of Rule 5.5, COSAC proposes the following change in existing Comment [1] and proposes adding a new Comment [3]. As amended, the Comments to Rule 5.5 would read as follows:

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. ~~Paragraph (a)~~ [Rule 5.5](#) applies to unauthorized practice of law in another jurisdiction by a lawyer through the lawyer's direct action, and ~~also paragraph (b)~~ prohibits a lawyer from assisting a nonlawyer in the unauthorized practice of law.

[3] [New York lawyers shall not assist out-of-state and foreign lawyers in the unauthorized practice of law. The practice of law in New York by lawyers who are not admitted in New York but who are admitted in other U.S. jurisdictions and foreign jurisdictions, including those serving as in-house counsel and as legal consultants, is governed by applicable court rules, including without limitation the New York Court of Appeals Rules for the Licensing of Legal Consultants \(22 NYCRR Part 521\), the New York Court of Appeals Rules for the Registration of In-House Counsel \(22 NYCRR Part 522\), and the New York Court of Appeals Rules for the Temporary Practice of Law in New York \(22 NYCRR Part 523\), as amended from time to time.](#)

COSAC Discussion of Rule 5.5

The purpose of combining former subparagraphs (a) and (b) of Rule 5.5 into a single paragraph is simply to conform to the approach in ABA Model Rule 5.5, thus making New York's rule numbering consistent with the numbering of ABA Model Rule 5.5 and the many jurisdictions that have adopted it. This is not a substantive change.

Regarding the new Comment [3], New York lawyers should be aware of the significant change in New York's regulation of temporary practice brought about by Parts 522 and 523. COSAC considered reciting verbatim the Court of Appeals Rules as part of the black letter ethics Rules in Rule 5.5, but COSAC concluded that it is sufficient to include references to Parts 522 and 523 in new Comment [3]. Given the brevity of the Comments to Rule 5.5 and the general availability of those Comments to practitioners, this should accomplish the purpose of ensuring that New York lawyers are made aware of these important court rules and their interplay with the Rules of Professional Conduct.

Public comments regarding Rule 5.5 and COSAC's response

The NYSBA Committee on Professional Ethics supports the change to both the text and Comment. It said:

We agree. COSAC recommends deleting Rule 5.5(b) and incorporating its intent into Rule 5.5(a). This is an editing exercise, not a substantive change. We also see a benefit in citing rules on foreign consultants, in-house counsel, and temporary practice in the Comments.

The NYSBA Labor and Employment Law Section also supports this change. It said: “We do not have any issue with a new Comment [3] simply referencing Parts 521, 522 and 523 and thereby putting lawyers on notice where to look for New York’s rules in this area.”

The NYSBA International Section supported COSAC’s addition of new Comment [3] to Rule 5.5 but suggested adding two other sentences expressing the idea that “we want to encourage collaborative co-counsel arrangements between New York lawyers and foreign lawyers by which each can give advice about their own respective laws and coordinate their advice accordingly so that the client gets the best result possible.” Specifically, the International Section suggested adding the following language at the end of proposed new Comment [3]:

New York lawyers are encouraged to seek the assistance of lawyers admitted to the practice of law in other states or foreign jurisdictions where the laws of other states or other foreign jurisdictions may apply to or be relevant to the representation of their clients. At the same time, New York lawyers should be mindful not to facilitate out-of-state and foreign and out-of-state attorneys in the unauthorized practice of New York law.

COSAC appreciates the International Section’s suggestions but does not accept them. We will explain COSAC’s reasons with respect to each sentence.

As to the International Section’s proposed new sentence encouraging New York lawyers to seek the assistance of non-New York lawyers, COSAC is concerned that urging lawyers to consult with non-New York co-counsel where the laws of other jurisdictions may apply or may be relevant subtly shifts the balance that a lawyer must strike between engaging out-of-state co-counsel (at additional cost to the client), on one hand, and having the New York lawyer advise on a point of non-New York law (which may be straight-forward or immaterial, or may be solidly within the expertise of the New York lawyer or New York co-counsel, as Delaware corporation lawyer is for many New York lawyers). If a lawyer makes the wrong decision about whether to seek assistance from an out-of-state or foreign lawyer, the suggested new sentence to the Comment will likely be cited in hindsight as evidence that the lawyer should have engaged non-New York co-counsel on the issue. The purpose of COSAC’s proposal is simply to alert lawyers to the existence of other relatively recent authorities, outside the Rules of Professional Conduct, regulating practice by non-New York lawyers in New York. Nothing about COSAC’s proposed new Comment, which is merely a straightforward string of citations to recently adopted court rules, calls for encouragement to consult with non-New York co-counsel. Nor does COSAC’s proposed new Comment discourage such consultation – it simply points out the court rules.

As to the International Section’s proposed new sentence warning New York lawyers not to facilitate the unauthorized practice of law, COSAC believes that the proposed warning is not necessary. The opening sentence of proposed new Comment [3] plainly says, “New York lawyers shall not assist out-of-state and foreign lawyers in the unauthorized practice of law.” There is no reason to add another reminder at the end of this short Comment.

Rules 7.1 through 7.5

(advertising, solicitation, and related topics)

COSAC recommends amending New York Rules 7.1 through 7.4 and the Comments to those rules to conform substantially to ABA Model Rules 7.1-7.3 (formerly ABA Model Rules 7.1 through 7.5) as amended by the ABA in August 2018. The ABA deleted Rules 7.4 and 7.5 entirely, incorporating some of the text and Comments into ABA Model Rules 7.1 and 7.2 and the Comments to those Rules. As discussed below, the New York attorney advertising and solicitation rules are unnecessarily complicated and unduly burdensome, and COSAC believes it is time to simplify and update New York's rules in this area.

In modernizing its advertising rules, the ABA issued a report that identified three trends that demand “simplicity and uniformity in the regulation of lawyer advertising.” ABA, *Report: Lawyer Advertising Rules of the 21st Century*, at 1 (Aug. 2018).

First, the growth of multijurisdictional practice favors the elimination of the “current web of complex, contradictory and detailed advertising rules” that exists across jurisdictions in the U.S. *Id.* Indeed, according to the chair of the ABA Center for Professional Responsibility, there is “breathtaking variation” in advertising rules among the states. *ABA Model Rules on Lawyer Advertising To Be Modernized* (Aug. 6, 2018), available at www.abajournal.com/news/article/model_rules_on_lawyer_advertising_to_be_modernized. This variation “impedes lawyers’ efforts to expand their practices” into new jurisdictions “and thwarts clients’ interests in securing the services they need.” *ABA Report* at 1.

Second, widespread use of social media and the Internet allows lawyers to “use innovative methods to inform the public about the availability of legal services.” *Id.* But “[c]onflicting state advertising regulations . . . unreasonably impede” these marketing innovations, which often involve “borderless forms of marketing.” *APRL Report* at 5. (“APRL” is the acronym for the Association of Professional Responsibility Lawyers.)

Third, the lawfulness of “burdensome and unnecessary restrictions on the dissemination of accurate information about legal services” is called into question by recent developments in First Amendment and antitrust jurisprudence. *ABA Report* at 1. As the ABA Standing Committee on Ethics and Professional Responsibility explained in proposing the amended advertising rules:

The Supreme Court announced [in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)] that lawyer advertising is commercial speech protected by the First Amendment. Advertising that is false, misleading and deceptive may be restricted, but many other limitations have been struck down.

ABA Report, at 1-2 (footnote omitted). In its report, APRL reviewed cases since *Bates* in which courts have addressed restrictions on lawyer advertising, see *APRL Report* at 7-18. APRL observed that “there is no shortage of cases” in which lawyer advertising regulations failed the First Amendment test for restrictions on commercial speech set forth by the

Supreme Court in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). *APRL Report* at 18. APRL concluded that “attorney advertising regulations are, in many cases, unconstitutional and unsustainable.” *Id.*

These trends counsel strongly in favor of replacing New York’s attorney advertising rules with the recently amended ABA Model Rules. Indeed, the current state of electronic advertising by lawyers, particularly those with multijurisdictional practices, does not respect state boundaries. Therefore, an absence of uniformity necessitates, as a practical matter, that lawyers and law firms comply with multiple rules.¹ In these circumstances, uniformity among the advertising rules of different jurisdictions has obvious benefits.

We discuss Rules 7.1 through 7.5 one at a time, and set out the public comments received and COSAC’s response to those public comments. We recommend that New York adopt substantial parts of those rules in place of the current New York rules on advertising and solicitation. We will also discuss a revised proposal that COSAC has developed, in response to public comments, to incorporate parts of existing New York Rule 7.5 into Rule 7.4. Because the new Rules and Comments that COSAC is proposing below would replace the New York advertising rules almost in their entirety with the ABA versions of those rules, striking out the deleted language (~~in red~~) and underscoring added language (in blue) reflects departures from the ABA Model Rules rather than from the existing New York Rules.

Rule 7.1

Advertising

The current title of New York Rule 7.1 is “Advertising.” COSAC proposes to change the title to the title of amended ABA Model Rule 7.1: “Communications Concerning a Lawyer’s Services,” which COSAC believes is a more helpful description.

New York Rule 7.1 regulates lawyer “advertising” in considerable detail, subjecting it to numerous substantive, procedural and record-keeping requirements. Foremost among these requirements is a prohibition on advertising that is “false, deceptive, or misleading.” Rule 7.1(a)(1).² “

¹ See, e.g., N.Y. State 1042 (2014) (reasoning that the rules applicable to the website, letterhead and business card of a New York lawyer practicing in D.C. while a D.C. bar application is pending “depend on the jurisdiction where the lawyer ‘principally practices,’ and whether the conduct of the lawyer will have its ‘predominant effect’ in another jurisdiction where the lawyer is licensed or deemed to be licensed”).

² Rule 7.1(a)(1) overlaps the broad prohibition against “conduct involving dishonesty, fraud, deceit or misrepresentation” of Rule 8.4(c). Nonetheless, the drafters of the New York Rules and the ABA Model Rules appear to see value in separately prohibiting “false, deceptive, or misleading” communications concerning lawyers’ services, and so do we.

Advertising” is defined in Rule 1.0(a) as any communication “by or on behalf of a lawyer” about the lawyer’s services, “the primary purpose” of which is “the retention of the lawyer.” However, the definition expressly exempts communications to existing clients or other lawyers. Since existing New York Rule 7.1 applies only to “advertisements,” it does not apply to communications to existing clients or to other lawyers.

In COSAC’s view, existing Rule 7.1 is too narrow in scope, overly complicated, and largely unique to New York.

Too narrow. Rule 7.1 is too narrow because it carves out communications with “existing clients” or “other lawyers.” COSAC has eliminated these two exemptions from Rule 7.1(a) (existing clients and other lawyers) because they send the wrong signal to lawyers and set a trap for unwary lawyers who read Rule 7.1 in isolation without considering other rules. Such lawyers may feel free to make a false or deceptive statement about the lawyer’s services to existing clients or other lawyers. But a false or deceptive statement to an existing client or other lawyer, for the purpose of seeking retention or otherwise, might well violate Rule 8.4(c), which prohibits a lawyer from engaging in “conduct involving dishonesty, fraud, deceit, or misrepresentation” in any situation.

Overly complicated. New York Rule 7.1 has eighteen subparts, which makes the rule too complicated. A number of the requirements imposed by the rule are redundant, including the prohibition on advertising that violates another rule, as well as specific prohibitions that, in our view, fall within the general prohibition on “false, deceptive, or misleading” advertising.³ Similarly, numerous provisions of New York Rule 7.1 specify content that may appear in advertising provided that it is not “false, deceptive or misleading.”⁴ Moreover, many of the specific requirements in Rule 7.1 are of dubious benefit. For example, Rule 7.1(e)(3) requires certain statements regarding the lawyer’s services to be accompanied by a specific disclaimer: “Prior results do not guarantee a similar outcome.” Exactly those words must be used, even in contexts where they do not fit, such as where an advertisement does not describe any prior results but characterizes the quality of the lawyer’s services or compares the lawyer’s services with the services of other lawyers. *See* Rule 7.1(d)(4); N.Y. State 1001 ¶ 6 (2014); (disclaimer required in law firm newsletter); N.Y. State 834 (2009) (disclaimer required in advertisements containing testimonials or endorsements). In any event, we have

³ *See* Rule 7.1(c)(1) (prohibiting the use of paid endorsements without disclosure of the payment); Rule 7.1(c)(2) (prohibiting portrayals of fictitious firms or associations of lawyers); Rule 7.1(c)(3) (prohibiting the use of actors to portray lawyers or clients); Rule 7.1(c)(4) (prohibiting advertisements that “resemble” legal documents).

⁴ *See* Rule 7.1(b) (“Subject to the provision of paragraph (a),” which prohibits “false, deceptive, or misleading” advertising, “an advertising may include information as to”); Rule 7.1(e)(1) (“It is permissible to provide the information set forth in paragraph (d) provided . . . its dissemination does not violate paragraph (a) . . .”).

been told that similar disclaimers required for financial industry advertising are generally regarded as ineffective.

As another example, Rule 7.1(f) requires the legend “ATTORNEY ADVERTISING” to be affixed to most electronic “advertisement[s],” but the line between providing information and seeking retention is unclear. Lawyers seeking to inform the public about legal matters through electronic client alerts, blogs or social media posts (*e.g.*, Linked-In or Facebook) may be discouraged from providing valuable information. As a result, Rule 7.1(f) raises difficult questions about whether the “primary purpose” of a blog post or other electronic communication is “the retention of the lawyer.” *See ABA Commission on Advertising, A Re-Examination of the ABA Model Rules of Professional Conduct Pertaining to Client Development in Light of Emerging Technologies* 14-16 (July 1998).

Unique New York provisions. Many provisions in New York’s complex existing rule are unique to the New York Rules of Professional Conduct (*i.e.*, they have not been adopted by any other states). Since relatively few New York cases and ethics opinions have interpreted these unique provisions, lawyers from New York and elsewhere find it difficult to research the meaning of New York’s advertising rules. Eliminating the unique provisions and taking other steps to simplify New York’s advertising rules will make interpretation easier.

COSAC’s recommendation. COSAC recommends that New York Rule 7.1 be replaced by ABA Model Rule 7.1. This recommendation is consistent with the recommendation in APRL’s 2015 report, which concluded that “a practical solution” to the problems with attorney advertising rules “is best achieved by having a single rule that prohibits false and misleading communications about a lawyer or the lawyer’s services.” *Id.* at 3.

In contrast to New York Rule 7.1, ABA Model Rule 7.1 applies broadly to all communications “about the lawyer or the lawyer’s services” – including to existing clients and other lawyers – and imposes a simple prohibition on “false or misleading” communications. This model rule has been broadly adopted by jurisdictions across the U.S., so New York’s adoption would increase national uniformity. Again, uniformity is highly desirable given the interstate nature of modern legal practice and the geographically borderless nature of advertising on television, radio, the Internet, and other electronic media, as well as in national and regional print publications.

Public comments regarding Rule 7.1 and COSAC’s response

In the proposals circulated on June 6, 2019, COSAC recommended adopting the ABA approach of deleting Rule 7.5 entirely, and recommended addressing law firm names, letterhead, and professional designations solely in Comments [5] – [8] to Rule 7.1, rather than keeping existing New York Rule 7.5 (“Professional Notices, Letterhead, and Signs”). However, comments received during the public comment period have persuaded COSAC to keep New York Rule 7.5 and to continue to address law firm names and related issues in

Rule 7.5 and its Comments. We explain COSAC's decision to keep Rule 7.5 in our discussion following that rule.

The NYSBA Labor and Employment Law Section commented on COSAC's proposed changes to Rule 7.1 by saying, in part:

While we recognize that advertising abuses can be detrimental to the public, and therefore have some reservations about changes that might be seen by some lawyers as allowing them to push the envelope even further in that regard, on balance we believe that both the push towards more uniform standards across the country, as well as simplified standards that can promote compliance, are good things and, from our perspective, these changes can be supported.

A member of the New York City Committee on Professional Discipline said:

I urge the Committee to stay the course on our RPC regarding Advertising, Solicitation and the like, Rules 7.1 - 7.5. New York has charted a course that has served us well since we adopted these Rules, why should we join the ABA approach for the sake of doing so?

COSAC disagrees. COSAC does not believe that the existing complex and highly detailed rules governing advertising and solicitation have served New York well, and COSAC has expressed multiple reasons aside from increased uniformity with the ABA (and hence with other jurisdictions) for modernizing and streamlining Rules 7.1 through 7.5.

The text of existing New York Rule 7.1 and its Comment are contained in an Appendix to this report. As amended, New York Rule 7.1 and its Comment would provide as follows:

Proposed Rule 7.1
Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

COMMENT

[1] This Rule governs all communications [that a lawyer makes](#) about [the lawyer or the lawyer's services](#), including advertising [and including communications to existing clients and to other lawyers](#). Whatever means are used to make known [a lawyer or a lawyer's services](#), statements about them must be truthful. [A lawyer who makes false statements or misrepresentations about the lawyer or the lawyer's services may also be violating Rule 8.4\(c\), which prohibits conduct involving "dishonesty, fraud, deceit or misrepresentation."](#)

[2] ~~Misleading truthful statements are prohibited by this Rule.~~ This Rule also prohibits truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A law firm may not use a name that is misleading - see Rule 7.5(b). A firm may be designated by the names of all or some of its current members, or by the names of deceased members where there has been a succession in the firm's identity ~~or by a trade name if it is not false or misleading.~~ A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer, or with a public or charitable legal services organization. If a firm uses a ~~trade~~ name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication - cf. Rule 7.5(b)(2).

[6] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but all enumerations of the lawyers listed on the firm's letterhead and in other permissible listings should make

clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions – see Rule 7.5(b).

[7] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(h)(e), because to do so would be false and misleading. In particular, it is misleading for lawyers to hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners – see Rule 7.5(c).

[8] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm – see Rule 7.5(b).

[8A] A lawyer may utilize a domain name for an internet web site that does not include the name of the lawyer or the lawyer’s firm if (1) all pages of the web site include the actual name of the lawyer or firm; (2) the lawyer or law firm does not attempt to engage in the practice of law using the domain name; (3) the domain name does not imply an ability to obtain results in a matter; and (4) the domain name does not otherwise violate these Rules – see Rule 7.5(e).

[8B] Likewise, a lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules – see Rule 7.5(f).

Rule 7.2

Payment for Referrals

The current title of New York Rule 7.2 is “Payment for Referrals.” COSAC proposes to change the title to the title of amended ABA Model Rule 7.2: “Communications Concerning a Lawyer’s Services: Specific Rules.” The new title is more descriptive of proposed Rule 7.2, which will cover more than simply payment for referrals.

New York Rule 7.2(a) generally bars a lawyer from providing “anything of value” to anyone to obtain a recommendation or a client. The rule contains several exceptions:

- referrals of clients to nonlegal professionals permitted by Rule 5.8, *see* Rule 7.2(a)(1);
- referral fees permitted by Rule 1.5(g), *see* Rule 7.2(a)(2); and
- payment of “usual and reasonable fees” to a qualified legal assistance organization, *see id.*

Separately, Rule 7.2 permits lawyers to accept referrals from an organization like a prepaid legal services plan (*e.g.*, a military legal assistance office), and permits lawyers to represent the organization’s members. *See* Rule 7.2(b).

ABA Model Rule 7.2(b), as amended in 2018, has several advantages over New York Rule 7.2, above and beyond uniformity with many other jurisdictions.

First, amended Model Rule 7.2(b) clarifies that the model rule’s prohibition on giving anything of value for referrals reaches any “promise” of anything of value.

Second, Model Rule 7.2(b) makes clear that a lawyer may “pay the reasonable costs” of permissible advertisements and communications, and “pay for a law practice in accordance with Rule 1.17.” *See* Model Rule 7.2(b)(1), (3). This codifies certain “implied exceptions” that, according to Professor Simon, “should ... be read into Rule 7.2(a),” including paying for advertising and paying for a law practice. Roy D. Simon & Nicole Hyland, *SIMON’S NEW YORK RULES OF PROFESSIONAL CONDUCT ANNOTATED* 1525 (Thomson Reuters, 2019 ed.).

Third, Model Rule 7.2(b) creates a new exception that permits nominal tokens of appreciation “that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.”

ABA Model Rule 7.2(c) addresses claims that a lawyer is “certified as a specialist.” New York has previously treated such claims in the text of Rule 7.4 (“Identification of Practice and Specialty”). COSAC now recommends replacing existing New York Rule 7.4 and its Comments with the simpler language of ABA Model Rule 7.2(c), as well as Comments [9]-[11], which explain claims of specialization. Our discussion of Rule 7.4 below contains some additional detail.

Public comments regarding Rule 7.2 and COSAC’s response

During the public comment period, the NYSBA Committee on Professional Ethics objected to COSAC’s proposed new exception in Rule 7.2(b) allowing a lawyer to “give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.” The NYSBA Ethics Committee said:

We agree with the proposed revisions of Rule 7.2 except that, in our view, the suggested allowance of a “nominal gifts as an expression of appreciation” is an ambiguous and potentially troublesome loophole for which codification in the Rules seems superfluous. One person’s “nominal gift” of a modest floral arrangement is another person’s diamond Rolex.

COSAC is persuaded by the Ethics Committee’s points, and consequently has eliminated the proposed exception for nominal gifts.

The NYSBA Ethics Committee has also persuaded COSAC to amplify Comment [5] to be consistent with N.Y. State Ethics Op. 1131 (2017), which ensures that when a nonlawyer referral service recommends a particular lawyer, the recommendation (i) is based on a non-discretionary ministerial system and (ii) is not a function of whether the lawyer pays more than others for inclusion in the service. The NYSBA Ethics Committee said:

The NYSBA Ethics Committee also objected to COSAC’s proposed Comment [8], as follows:

Equally puzzling is the statement in Comment [8] that reciprocal referral arrangements should be of “indefinite duration,” a requirement that does not exist in Rule 5.8. If the sole purpose of this proposed language is to alert a lawyer of the need to revisit such arrangements “to determine whether they comply with the Rules,” as COSAC says, then we would delete the phrase “indefinite duration” and substitute language that a lawyer “must be continuously alert to compliance with the Rules” in maintaining such arrangements.

COSAC is persuaded and has revised Comment [8] to eliminate the reference to “indefinite duration.”

The NYSBA Ethics Committee also objected to proposed Comment [12] because, in explaining the “contact information” that Rule 7.1 requires lawyers to include in advertisements, proposed Comment [12] listed a physical office address as an option rather than a requirement. The Ethics Committee said:

We also object to the language in proposed Comment [12] that defines a lawyer’s essential contact information as “an email address *or* a physical office location” (emphasis added). The location of a lawyer’s physical location is an important data point in a client’s choice of counsel, among other reasons owing to a client’s reasonable consideration of the geographic proximity of the lawyer to the client. No logical basis exists why this information should not be supplied, and its omission may well be regarded as misleading to the public.

COSAC is not persuaded by this point. Many New York lawyers practice out of their homes and do not want to advertise a home address, and other New York lawyers practice out of temporary offices that may change relatively often, making it burdensome to update every advertisement with a current physical address. In any event, potential clients can ordinarily ascertain a lawyer’s address by searching online or by calling the lawyer – and even lawyers whose offices are distant may be willing to travel to the client’s geographic location to meet in person. Accordingly, while lawyers are free to advertise the address of their physical offices, and may see advantages in doing so, COSAC does not believe that lawyers should be required to advertise a physical office address.

The NYSBA Ethics Committee also submitted several other comments that did not persuade COSAC. Specifically, the Ethics Committee objected to the references in proposed

Comments [6] and [11] to Rule 7.2 to the extent that they refer to the ABA Model Supreme Court Rules Governing Lawyer Referral Services and the ABA Model Lawyer Referral and Information Service Quality Assurance Act, which have not been adopted in New York State. COSAC believes that the references are descriptive only and that they are helpful in explaining the application of Rule 7.2.

Similarly, the Ethics Committee objected to Comments [9] and [11] to Rule 7.2 as follows:

The proposed revision of Comment [9], with an unqualified statement that a lawyer is “generally permitted” to state that the lawyer is a “specialist” in an area of law, is inconsistent with the proposed text of Rule 7.2 – which places qualifications on its usage – and also the proposed Comment [11], which outlines criteria for using that label. This language should be deleted.

... [P]roposed Comment [11] ... intimates that New York may adopt a certification process in harmony with the Model Rules, a prediction for which no evidence exists and is unlikely to prove true. Numerous indicia of excellence exist today of unquestioned credibility and exacting standards – the American Colleges of Trial Lawyers, Bankruptcy Lawyers, Trust and Estate Lawyers, to name a few – and we question whether bar-sanctioned qualifiers need to be added to the list.

COSAC regards the objection to the term “specialist” as unpersuasive as long as the representation is true, and COSAC believe that proposed Comment [9] is inconsistent with the proposed text of Rule 7.2(c), which governs claims that a lawyer is “certified” as a specialist in a particular field of law. A lawyer’s claim to be a “*certified* specialist” triggers the requirements of Rule 7.2(c), but a claim to be a “specialist” without certification is permitted as long as the claim is not false or misleading under Rule 7.1. As to whether New York might at some point adopt a certification process in harmony with the ABA Model Rules of Professional Conduct, COSAC sees no harm in allowing for the possibility, which has the added virtue of conforming to ABA Comment [11].

The NYSBA Labor and Employment Law Section commented on COSAC’s proposed changes to Rule 7.2 by saying, in part: “As with respect to the proposed changes to Rule 7.1, on balance we think these changes, promoting uniformity and simplicity, are worth supporting.”

The NYSBA Dispute Resolution Section commented on proposed Rule 7.2(c), saying:

... [T]he proposed changes to Rule 7.2 are also generally desirable. However, with regards to Comment 10 to Rule 7.2... In addition to identifying the designation of lawyers practicing before the Patent and Trademark Office and the designation of admiralty practice, the Section believes that additional clarification regarding the designation of arbitrators and mediators by certain organizations in the alternative dispute resolution field would also be helpful to the bar and necessary to avoid unwarranted and unintended transgressions of the prohibition.

Specifically, before the final sentence – “A lawyer’s communications about these practice areas are not prohibited by this Rule.” – the Section recommends that the following additional language be inserted: “Similarly, organizations such as the Chartered Institute of Arbitrators, the Center for Effective Dispute Resolution, and the International Mediation Institute designate arbitrators and mediators as experienced in the alternative dispute resolution field.” ...

COSAC does not accept the Dispute Resolution Section’s suggestion, for several reasons.

First, admiralty and patent practice are different from practice in other areas of law because, as Comment [10] says, “The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts.” New York’s ethics rules have therefore singled out admiralty and patent practice for nearly fifty years, since New York adopted the old Code of Professional Responsibility in 1970.

Second, COSAC does not agree that adding specific references to the suggested organizations is necessary to avoid unwarranted and unintended transgressions of Rule 7.2(c). The prohibition in Rule 7.2(c) is only against claiming to be “certified” as a specialist by a qualifying organization, so lawyers who are not certified by one of the organizations named by the Dispute Resolution Section are free to note that they practice in the mediation or arbitration area without transgressing Rule 7.2(c).

Third, many different organizations certify specialists, in many areas of law – see https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standing-committee-on-specialization/resources/resources_for_lawyers/sources_of_certification/ (listing organizations approved by the ABA to certify lawyers as specialists).

The text of existing New York Rule 7.2 and its Comment are contained in an Appendix to this report. As amended, New York Rule 7.2 and its Comment would provide as follows:

Proposed Rule 7.2
**Communications Concerning a
Lawyer’s Services: Specific Rules**

- (a) A lawyer may communicate information regarding the lawyer’s services through any media.
- (b) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer’s services except that a lawyer may:
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17;

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive; and

(ii) the client is informed of the existence and nature of the agreement; ~~and~~

~~(5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.~~

(c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

COMMENT

[1] This Rule permits public dissemination of information concerning a lawyer's or law firm's name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b)(1)-(b)(5), lawyers are not permitted to pay others for recommending the lawyer's services. A communication contains a

“recommendation” if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible “recommendations.”

[3] Paragraph (b)(1) allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons and website designers.

[4] [Reserved.] ~~Paragraph (b)(5) permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer’s services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.~~

[5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator’s communications are consistent with Rule 7.1 (communications concerning a lawyer’s services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral. A lawyer may participate in a for-profit lead generation service if (i) the lawyer is selected by transparent and mechanical methods that do not purport to be based on an analysis of the potential client’s legal problem or the qualifications of the selected lawyer to handle that problem, and (ii) the selection of a particular lawyer is not based on whether the selected lawyer pays more than others for inclusion in the service. See Comment [2] (definition of “recommendation”). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other

client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. *See, e.g.*, the American Bar Association’s Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer – [see Rule 5.8\(c\)](#). Such reciprocal referral arrangements must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(g)(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive – [see Rule 5.8\(c\)](#) – and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements ~~should be of indefinite duration and~~ should be reviewed periodically to determine whether they comply with these Rules. ~~This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.~~

Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts.

A lawyer’s communications about these practice areas are not prohibited by this Rule.

[11] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia, or a U.S. Territory, or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia, or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Required Contact Information

[12] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information should always include a telephone number or a physical office address, and may also include a website address, ~~a telephone number,~~ an email address, ~~or a physical office location,~~ and other contact information that may be helpful to clients and potential clients.

Rule 7.3

Solicitation and

Recommendation of Professional Employment

The current title of New York Rule 7.3 is “Solicitation and Recommendation of Professional Employment.” COSAC proposes to change this to the title of amended ABA Model Rule 7.3: “Solicitation of Clients,” which COSAC believes is an accurate description.

Rule 7.3 governs “solicitation” by a lawyer, which is defined in existing New York Rule 7.3(b) as advertising that is “directed to, or targeted at, a specific recipient or group of recipients,” and “a significant motive for which is pecuniary gain.” Rule 7.3 seeks to prevent over-reaching by lawyers in situations in which potential clients may be taken advantage of—such as when clients feel pressured to respond immediately (*e.g.*, in-person or real-time phone communications) or may be emotionally vulnerable (*e.g.*, shortly after a mass tort or other incident).

But Rule 7.3 goes too far, because several of its provisions are unnecessary to protect potential clients and are otherwise undesirable. For example, Rule 7.3(c)(1) generally requires that solicitations be filed with an attorney disciplinary committee, and requires lawyers to maintain lists of the recipients of certain solicitations for at least three years. This rule has been criticized as “impos[ing] complex and burdensome filing and recordkeeping requirements on lawyers, and impos[ing] heavy administrative burdens on disciplinary authorities.” *Simon’s New York Rules*, at 1592-93.

Further, Rule 7.3(e) gives defendants and insurance companies an unfair advantage by restricting the time that lawyers may solicit clients injured in mass torts and other incidents. In particular, Rule 7.3(e) generally prohibits solicitations by lawyers “relating to a specific incident involving potential claims for personal injury or wrongful death” prior to 30 days after the incident. This prohibition gives parties that have an interest in defending against these claims, such as insurance adjusters, an unfair advantage because it permits them to settle claims before potential plaintiffs may have obtained legal representation. (Plaintiffs are of course free to contact lawyers on their own, without awaiting a solicitation, but many people do not know any lawyers, or don’t know how to quickly find a lawyer who handles injury claims.)

Accordingly, COSAC recommends that Rule 7.3 be replaced by amended ABA Model Rule 7.3. The Model Rule is significantly simpler and lacks the unnecessary, unduly burdensome, and unfair provisions in Rule 7.3 that we have highlighted above. In addition, adopting Model Rule 7.3 will promote uniformity if, as expected, other jurisdictions also adopt it.

Public comments regarding Rule 7.3 and COSAC’s response

The New York State Bar Ethics Committee generally agreed with COSAC’s proposed revisions to Rule 7.3, but had two objections:

First, we believe the proposed exemption of in-person solicitation by a lawyer of a “person who routinely use for business purposes the type of legal services offered by the lawyer” [a phrase used in proposed Comment [5] as amended] is vague and ambiguous. ... If the client has experienced the problem only once or twice before, and used a lawyer, does that make the relationship “routine”? If the client has previously used the lawyer only in a specific geographic area, may the lawyer personally solicit the client for a like matter in a different venue? The Rules apply to every lawyer in the governance of the attorney- client relationship, and COSAC’s unsubstantiated assertion that the danger of overreaching is small may be true with sophisticated clients having large in-house legal departments, but this proposal seems to us to rampant with possibilities of abuse. *See* N.Y. State 1110 ¶ 22 (2016) (cautioning against in-person solicitation of attendees at a tax seminar for in-house counsel).

Second, we do not believe that Internet chat rooms are more akin to writings than in-person solicitation. For this reason, we would amend Comment [2] so to reflect.

COSAC disagrees with the objection to the word “routinely” in proposed Comment [5]. The Comment gives several examples, and ethics opinions can elaborate further if necessary.

COSAC understands the concern about treating chat rooms as written communications in Comment [2], and has therefore revised Comment [2] so that it no longer refers to chat rooms at all. Proposed Comment [2] thus does not resolve whether chat rooms are more like writings or more like live in-person solicitation, but leaves the issue open for further interpretation by courts, commentators, and ethics committees.

The NYSBA Labor and Employment Law Section commented on COSAC’s proposed changes to Rule 7.3 by saying:

We generally agree with these changes because they do serve to greatly simplify the Rules and to remove provisions that are both burdensome to lawyers (such as the filing of solicitations with local grievance committees ... and the retention of solicitations for a period of three years) and of questionable effect.

As amended, New York Rule 7.3 would provide as follows:

Proposed Rule 7.3
Solicitation of Clients

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the contact is with **a**:

(1) **a** lawyer;

(2) **a** person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or

(3) **a** person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENT

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website, or a television commercial, or if it is in response to a request for information, or is automatically generated in response to electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone, and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm a person's judgment.

[4] The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1), is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations must not be directed to a person known to need legal services in a particular matter, but must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(c).

The text of existing New York Rule 7.3 and its Comment are contained in an Appendix to this report.

Rule 7.4

Identification of Practice and Specialty

COSAC recommends that New York should delete Rule 7.4 as a freestanding rule but also (i) should move the substance of Rule 7.4 to Rule 7.2(c) and (ii) should replace New York's existing language with the language of ABA Model Rule 7.2(c). COSAC also recommends that New York adopt Comments [9]-[11] to ABA Model Rule 7.2, which explained Rule 7.2(c). These steps will promote simplicity, uniformity, and constitutional rights.

Lawyers have a First Amendment right to describe their qualifications in a manner that is not false, deceptive or misleading, and this right should not be unduly burdened. *See, e.g., Ibanez v. Florida Dep't of Bus. & Prof'l Regulation, Bd. of Accountancy*, 512 U.S. 136, 146 (1994) (reversing discipline against a Florida attorney for using accurate and truthful "CPA" and "CFP" designations in her commercial communications); *Hayes v. New York Attorney Grievance Comm. of the Eighth Judicial Dist.*, 672 F.3d 158, (2d Cir. 2012) (upholding existing disclaimers in New York Rule 7.4(c), striking down disclaimers that subsequently were deleted from Rule 7.4(c), and holding that Rule 7.4(c)(3) was unconstitutional as applied). *See also Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 257 (2010) ("a disclosure requirement passes constitutional muster only to the extent that it is aimed at advertisements that, by their nature," are "*inherently likely* to deceive" or have "*in fact* been deceptive") (quoting *In re R.M.J.*, 455 U.S. 191, 202 (1982)).

In 2018, the ABA amended the ABA Model Rules by moving the provisions regarding specialization from Model Rule 7.4 to the text of Model Rule 7.2(c), and by moving Rule 7.4's Comments to Comments [9] to [11] to Model Rule 7.2. As a result, Model Rule 7.4(c)

is significantly more streamlined than New York Rule 7.4—yet we believe the Model Rule is just as effective in preventing false, deceptive, or misleading advertisements about claims of specialization.

We recommend that New York delete existing Rule 7.4 in its entirety and replace it with ABA Model Rule 7.2(c) and Comments [9]-[11] to Rule 7.2, which are set forth above. The text of existing Rule 7.4 and its Comment are contained in Appendix A to this report. However, Rule 7.4 will remain in the New York Rules of Professional Conduct next to the bracketed words indicating that the substance of former Rule 7.4 has been moved to Rule 7.2(c) and accompanying Comments.

Public comments regarding Rule 7.4 and COSAC’s response

The New York State Bar Ethics Committee generally agreed with COSAC’s proposed approach to Rule 7.4 – deleting Rule 7.4 in its entirety but moving the substance to proposed Rule 7.2(c) and Comments [9]-[11] to Rule 7.2.

The NYSBA Labor and Employment Law Section commented on COSAC’s proposed changes to Rule 7.4 as follows:

Substantively, the most significant change in the proposed language is that rather than prohibiting identifying oneself as a “specialist” unless so certified by a recognized organization (as is the case now), the Rule would only prohibit identifying oneself as “certified” as a specialist unless in fact certified by a recognized organization. We think that change is warranted. For example, many of our Section’s members are indeed “specialists” in labor and employment law (e.g., having practiced exclusively in that area for decades) although not so certified by any organization. Under the current Rule, we strive to find ways around the literal language of the rule by noting we “specialize in” this area (or use similar language touting our “expertise” or that our practice is “limited exclusively to”), while artificially avoiding use of the work “specialist.” This change would eliminate the need to jump through these artificial hoops. On the other hand, given that all advertising must be truthful, a lawyer could not claim to “specialize” in something unless that was indeed the case.

Since none of the public comments objected to COSAC’s proposal, COSAC has not revised its original proposal.

Proposed Rule 7.4 **Identification of Practice and Specialty**

[\[Former Rule 7.4 has been deleted but the substance of former Rule 7.4 and its Comments have been moved to Rule 7.2\(c\) and accompanying Comments to Rule 7.2.\]](#)

Rule 7.5

Professional Notices, Letterheads, and Signs

New York Rule 7.5 has no counterpart in the ABA Model Rules as amended in 2018, and COSAC's June 6, 2019 proposals recommended that New York adopt the ABA approach by deleting the black letter text of Rule 7.5 entirely and moving the substance of the rule to Comments [5]-[8] to Rule 7.1. However, during the public comment period, two different groups opposed COSAC's recommendation to delete Rule 7.5. COSAC agrees with those public comments, so COSAC now recommends retaining New York Rule 7.5 in modified form, for the reasons stated below.

Rule 7.5(a) expressly permits lawyers to use various forms of promotional materials, including web sites, professional cards, letterhead and signage, provided that they comply with Rule 7.1, statutes and court rules. Thus, other than its superfluous reference to statutes and court rules, Rule 7.5(a) is redundant of Rule 7.1. Accordingly, in August 2018 the ABA deleted the black letter text of Rule 7.5 and moved the substance of Rule 7.5 to Comments [5] - [8] to Rule 7.1.

The remainder of New York Rule 7.5 sets forth detailed regulations of partnership names, Internet domain names and phone numbers that, while not expressly redundant of any other rule, arguably are nothing more than specific applications of the general prohibition against false and misleading communications. *See* Rule 7.5(b)-(f).

Public comments and COSAC's response

The NYSBA Labor and Employment Law Section commented on COSAC's proposed elimination of Rule 7.5 as follows:

We believe that there is some value to practitioners in having the current examples of specific applications of the general prohibition against false and misleading communications included in the Rules (for instructional purposes). As a result, while we can agree with the elimination of current Rule 7.5, we would recommend that COSAC consider including its specific examples in the Comments to Rule 7.1.

The NYSBA Ethics Committee also criticized the proposed deletion of Rule 7.5, saying that "the wholesale deletion in service of a perceived need to conform to the ABA Model Rules or to strive for simplicity, may have unintended consequences which COSAC does not confront." The NYSBA Ethics Committee also elaborated on its opposition to allowing law firms to use trade names in New York, saying:

We do not agree with proposed ... endorsement of "trade names" as the name of a law firm, even with the condition that the trade name not be "false or

misleading.” In our view, this is a summons to trickery, for trade names are pregnant with possibilities for mischief. Should a law firm be able to call itself “The Go-To Pros” or “Ben & Jerry’s Firm” or “Service with a Smile Firm”? We think not. We are mindful of the permissible use of mottos, domain names, phone numbers, and other branding devices. COSAC does not explain why this change-altering over a century of standard custom and usage in naming firms – is needed or desirable. We believe neither is true.

In all events, we recommend that for-profit firms be expressly forbidden from adopting as a trade name those names traditionally used by non-profit providers of legal services, a circumstance that “false or misleading” is inadequate to cure. ...

These comments have persuaded COSAC, which now proposes to retain Rule 7.5 and its Comments, but to move parts of the text of Rule 7.5 to the Comments to Rule 7.5.

COSAC also stands by its earlier recommendation to adopt ABA Comments [5]-[8] to Rule 7.1, which elaborate on law firm names and related matters, but COSAC has modified those Comments to reflect the particular language of New York Rule 7.5. Finally, since existing Rule 7.5(b) is a long paragraph covering multiple subjects, COSAC proposes to break it down into multiple subparagraphs, each covering a different topic.

As amended, New York Rule 7.5 would provide as follows (redlined against existing New York Rule 7.5, striking through language deleted by COSAC in ~~red~~ and underscoring language added by COSAC in blue):

Proposed Rule 7.5

Professional Notices, Letterheads and Signs

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1, ~~including the following:~~

~~(1) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates;~~

~~(2) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4;~~

- ~~(3) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or~~
- ~~(4) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or Rule 7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.~~
- (b) (1) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that
- (i) the name of a professional corporation shall contain "PC" or such symbols permitted by law,
 - (ii) the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and,
 - (iii) if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.
- (2) Such terms as "legal clinic," "legal aid," "legal service office," "legal assistance office," "defender office" and the like may be used only by **qualified bona fide** legal assistance organizations, except that the term "legal clinic" may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein.
- (3) A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.
- (4) A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer's name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:

- (1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;
- (2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;
- (3) the domain name does not imply an ability to obtain results in a matter; and
- (4) the domain name does not otherwise violate these Rules.

(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.

COMMENT

Professional Status

[1] In order to avoid the possibility of misleading persons with whom a lawyer deals, a lawyer should be scrupulous in the representation of professional status. Lawyers should not hold themselves out as being partners or associates of a law firm if that is not the fact, and thus lawyers should not hold themselves out as being a partners or associates if they only share offices.

[1A] A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1, including the following: (i) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates; (ii) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4; (iii) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or (iv) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or

Rule 7.4. A letter- head of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated “Of Counsel” on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as “General Counsel” or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

Trade Names and Domain Names

[2] A lawyer may not practice under a trade name. Many law firms have created Internet web sites to provide information about their firms. A web site is reached through an Internet address, commonly called a “domain name.” As long as a law firm’s name complies with other Rules, it is always proper for a law firm to use its own name or its initials or some abbreviation or variation of its own name as its domain name. For example, the law firm of Able and Baker may use the domain name www.ableandbaker.com, or www.ab.com, or www.able.com, or www.ablelaw.com. However, to make domain names easier for clients and potential clients to remember and to locate, some law firms may prefer to use terms other than the law firm’s name. If Able and Baker practices real estate law, for instance, it may prefer a descriptive domain name such as www.realestatelaw.com or www.ablerealestatelaw.com or a colloquial domain name such as www.dirtlawyers.com. Accordingly, a law firm may utilize a domain name for an Internet web site that does not include the name of the law firm, provided the domain name meets four conditions: First, all pages of the web site created by the law firm must clearly and conspicuously include the actual name of the law firm. Second, the law firm must in no way attempt to engage in the practice of law using the domain name. This restriction is parallel to the general prohibition against the use of trade names. For example, if Able and Baker uses the domain name www.realestatelaw.com, the firm may not advertise that people buying or selling homes should “contact www.realestatelaw.com” unless the firm also clearly and conspicuously includes the name of the law firm in the advertisement. Third, the domain name must not imply an ability to obtain results in a matter. For example, a personal injury firm could not use the domain name www.win-your-case.com or www.settle-for-more.com because such names imply that the law firm can obtain favorable results in every matter regardless of the particular facts and circumstances. Fourth, the domain name must not otherwise violate a Rule. If a domain name meets the three criteria listed here but violates another Rule, then the domain name is improper under this Rule as well. For example, if Able and Baker are each solo practitioners who are not partners, they may not jointly establish a web site with the domain name www.ableandbaker.com because the lawyers would be holding themselves out as having a partnership when they are in fact not partners.

Telephone Numbers

[3] Many lawyers and law firms use telephone numbers that spell words, because such telephone numbers are generally easier to remember than strings of numbers. As with domain names, lawyers and law firms may always properly use their own names, initials, or combinations of names, initials, numbers, and legal words as telephone numbers. For example, the law firm of Red & Blue may properly use phone numbers such as RED-BLUE, 4-RED-LAW, or RB-LEGAL.

[4] Some lawyers and firms may instead (or in addition) wish to use telephone numbers that contain a domain name, nickname, moniker, or motto. A lawyer or law firm may use such telephone numbers as long as they do not violate any Rules, including those governing domain names. For example, a personal injury law firm may use the numbers 1-800-ACCIDENT, 1-800-HURT-BAD, or 1-800-INJURY-LAW, but may not use the numbers 1-800-WINNERS, 1-800-2WIN-BIG, or 1-800-GET-CASH. (Phone numbers with more letters than the number of digits in a phone number are acceptable as long as the words do not violate a Rule.) See Rule 7.1, Comment [12].

APPENDIX A
EXISTING NEW YORK RULES GOVERNING
ATTORNEY ADVERTISING AND SOLICITATION

Rule 1.0. Terminology

(a) “Advertisement” means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm’s services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

(c) “Computer-accessed communication” means any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.

(p) “Qualified legal assistance organization” means an office or organization of one of the four types listed in Rule 7.2(b)(1)-(4) that meets all of the requirements thereof.

Computer-Accessed Communication

[1A] Rule 1.0(c), which defines the phrase “computer-accessed communication,” embraces electronic and wireless communications of every kind and includes, without limitation, communication by devices such as cell phones, smartphones, and all other handheld or portable devices that can send or receive communications by any electronic or wireless means, including cellular service, the Internet, wireless networks, or any other technology.

Rule 7.1 Advertising

(a) A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that:

- (1) contains statements or claims that are false, deceptive or misleading; or
- (2) violates a Rule.

(b) Subject to the provisions of paragraph (a), an advertisement may include information as to:

- (1) legal and nonlegal education, degrees and other scholastic distinctions; dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by these Rules; public offices and teaching positions held; publications of law-related matters authored by the lawyer; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency; and bona fide professional ratings;
- (2) names of clients regularly represented, provided that the client has given prior written consent;

- (3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the lawyer or law firm participates; non- legal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by Rule 5.8, and the nature and extent of services available through those contractual relationships; and
- (4) legal fees for initial consultation; contingent fee rates in civil matters, when accompanied by a statement disclosing the information required by paragraph (p); range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service, hourly rates, and fixed fees for specified legal and nonlegal services.
- (c) An advertisement shall not:
- (1) include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;
- (2) include the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;
- (3) use actors to portray a judge, the lawyer, members of the law firm, or clients, or utilize depictions of fictionalized events or scenes, without disclosure of same; or
- (4) be made to resemble legal documents.
- (d) An advertisement that complies with paragraph (e) may contain the following:
- (1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;
- (2) statements that compare the lawyer's services with the services of other lawyers;
- (3) testimonials or endorsements of clients, and of former clients; or
- (4) statements describing or characterizing the quality of the lawyer or law firm's services.
- (e) It is permissible to provide the information set forth in paragraph (d) provided:
- (1) its dissemination does not violate paragraph (a);
- (2) it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated; and
- (3) it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome."; and

- (4) in the case of a testimonial or endorsement from a client with respect to a matter still pending, the client gives informed consent confirmed in writing.
- (f) Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to Rule 7.3(a)(1), shall be labeled “Attorney Advertising” on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words “Attorney Advertising” shall appear therein. In the case of electronic mail, the subject line shall contain the notation “ATTORNEY ADVERTISING.”
- (g) A lawyer or law firm shall not utilize meta-tags or other hidden computer codes that, if displayed, would violate these Rules.
- (h) All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.
- (i) Any words or statements required by this Rule to appear in an advertisement must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud. In the case of a web site, the required words or statements shall appear on the home page.
- (j) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service. Such legal services shall include all those services that are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.
- (k) All advertisements shall be pre-approved by the lawyer or law firm, and a copy shall be retained for a period of not less than three years following its initial dissemination. Any advertisement contained in a computer- accessed communication shall be retained for a period of not less than one year. A copy of the contents of any web site covered by this Rule shall be preserved upon the initial publication of the web site, any major web site redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days.
- (l) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.
- (m) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this Rule in a publication that is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this Rule in a publication that is published once per month or less frequently, the

lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this Rule in a publication that has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.

(n) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this Rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(o) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.

(p) All advertisements that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall comply with the provisions of Judiciary Law §488(3).

(q) A lawyer may accept employment that results from participation in activities designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services.

(r) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not undertake to give individual advice.

COMMENT

Advertising

[1] The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of competent legal counsel. Hence, important functions of the legal profession are to educate people to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

[2] The public's need to know about legal services can be fulfilled in part through advertising. People of limited means who have not made extensive use of legal services in many instances rely on advertising to find appropriate counsel. While a lawyer's reputation may attract some clients, lawyers may also make the public aware of their services by advertising to obtain work.

[3] Advertising by lawyers serves two principal purposes. First, it educates potential clients regarding their need for legal advice and assists them in obtaining a lawyer appropriate for those needs. Second, it enables lawyers to attract clients. To carry out these two purposes and because of the critical importance of legal services, it is of the utmost importance that lawyer advertising not be false, deceptive or misleading. Truthful statements that are misleading are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication, considered as a whole, not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services, or about the results a lawyer can achieve, for which there is no reasonable

factual foundation. For example, a lawyer might truthfully state, “I have never lost a case,” but that statement would be misleading if the lawyer settled virtually all cases that the lawyer handled. A communication to anyone that states or implies that the lawyer has the ability to influence improperly a court, court officer, governmental agency or government official is improper under Rule 8.4(e).

[4] To be effective, advertising must attract the attention of viewers, readers or recipients and convey its content in ways that will be understandable and helpful to them. Lawyers may therefore use advertising techniques intended to attract attention, such as music, sound effects, graphics and the like, so long as those techniques do not render the advertisement false, deceptive or misleading. Lawyer advertising may use actors or fictionalized events or scenes for this purpose, provided appropriate disclosure of their use is made. Some images or techniques, however, are highly likely to be misleading. So, for instance, legal advertising should not be made to resemble legal documents.

[5] The “Attorney Advertising” label serves to dispel any confusion or concern that might be created when nonlawyers receive letters or emails from lawyers. The label is not necessary for advertising in newspapers or on television, or similar communications that are self-evidently advertisements, such as billboards or press releases transmitted to news outlets, and as to which there is no risk of such confusion or concern. The ultimate purpose of the label is to inform readers where they might otherwise be confused.

[6] Not all communications made by lawyers about the lawyer or the law firm’s services are advertising. Advertising by lawyers consists of communications made in any form about the lawyer or the law firm’s services, the primary purpose of which is retention of the lawyer or law firm for pecuniary gain as a result of the communication. However, non-commercial communications motivated by a not-for-profit organization’s interest in political expression and association are generally not considered advertising. Of course, all communications by lawyers, whether subject to the special rules governing lawyer advertising or not, are governed by the general rule that lawyers may not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a material false statement of fact or law. By definition, communications to existing clients are excluded from the Rules governing advertising. A client who is a current client in any matter is an existing client for all purposes of these Rules. (Whether a client is a current client for purposes of conflicts of interest and other issues may depend on other considerations. Generally, the term “current client” for purposes of the advertising exemption should be interpreted more broadly than it is for determining whether a client is a “current client” for purposes of a conflict of interest analysis.)

[7] Communications to former clients that are germane to the earlier representation are not considered to be advertising. Likewise, communications to other lawyers, including those made in bar association publications and other publications targeted primarily at lawyers, are excluded from the special rules governing lawyer advertising even if their purpose is the retention of the lawyer or law firm. Topical newsletters, client alerts, or blogs intended to educate recipients about new developments in the law are generally not considered advertising. However, a newsletter, client alert, or blog that provides information or news primarily about the lawyer or law firm (for example, the lawyer or law firm’s cases, personnel, clients or achievements) generally would be considered advertising. Communications, such as proposed retainer agreements or ordinary correspondence with a prospective client who

has expressed interest in, and requested information about, a lawyer's services, are not advertising. Accordingly, the special restrictions on advertising and solicitation would not apply to a lawyer's response to a prospective client who has asked the lawyer to outline the lawyer's qualifications to undertake a proposed retention or the terms of a potential retention.

[8] The circulation or distribution to prospective clients by a lawyer of an article or report published about the lawyer by a third party is advertising if the lawyer's primary purpose is to obtain retentions. In circulating or distributing such materials the lawyer should include information or disclaimers as necessary to dispel any misconceptions to which the article may give rise. For example, if a lawyer circulates an article discussing the lawyer's successes that is reasonably likely to create an expectation about the results the lawyer will achieve in future cases, a disclaimer is required by paragraph (e)(3). If the article contains misinformation about the lawyer's qualifications, any circulation of the article by the lawyer should make any necessary corrections or qualifications. This may be necessary even when the article included misinformation through no fault of the lawyer or because the article is out of date, so that material information that was true at the time is no longer true. Some communications by a law firm that may constitute marketing or branding are not necessarily advertisements. For example, pencils, legal pads, greeting cards, coffee mugs, T-shirts or the like with the law firm name, logo, and contact information printed on them do not constitute "advertisements" within the definition of this Rule if their primary purpose is general awareness and branding, rather than the retention of the law firm for a particular matter.

Recognition of Legal Problems

[9] The legal professional should help the public to recognize legal problems because such problems may not be self-revealing and might not be timely noticed. Therefore, lawyers should encourage and participate in educational and public-relations programs concerning the legal system, with particular reference to legal problems that frequently arise. A lawyer's participation in an educational program is ordinarily not considered to be advertising because its primary purpose is to educate and inform rather than to attract clients. Such a program might be considered to be advertising if, in addition to its educational component, participants or recipients are expressly encouraged to hire the lawyer or law firm. A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, because slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for nonlawyers should caution them not to attempt to solve individual problems on the basis of the information contained therein.

[10] As members of their communities, lawyers may choose to sponsor or contribute to cultural, sporting, charitable or other events organized by not-for-profit organizations. If information about the lawyer or law firm disseminated in connection with such an event is limited to the identification of the lawyer or law firm, the lawyer's or law firm's contact information, a brief description of areas of practice, and the fact of sponsorship or contribution, the communication is not considered advertising.

Statements Creating Expectations, Characterizations of Quality, and Comparisons

[11] Lawyer advertising may include statements that are reasonably likely to create an expectation about results the lawyer can achieve, statements that compare the lawyer's services with the services of other lawyers, or statements describing or characterizing the quality of the lawyer's or law firm's services, only if they can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated and are accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome." Accordingly, if true and accompanied by the disclaimer, a lawyer or law firm could advertise "Our firm won 10 jury verdicts over \$1,000,000 in the last five years," "We have more Patent Lawyers than any other firm in X County," or "I have been practicing in the area of divorce law for more than 10 years." Even true factual statements may be misleading if presented out of the context of additional information needed to properly understand and evaluate the statements. For example, a truthful statement by a lawyer that the lawyer's average jury verdict for a given year was \$100,000 may be misleading if that average was based on a large number of very small verdicts and one \$10,000,000 verdict. Likewise, advertising that truthfully recites judgment amounts would be misleading if the lawyer failed to disclose that the judgments described were overturned on appeal or were obtained by default.

[12] Descriptions of characteristics of the lawyer or law firm that are not comparative and do not involve results obtained are permissible even though they cannot be factually supported. Such statements are understood to be general descriptions and not claims about quality, and would not be likely to mislead potential clients. Accordingly, a law firm could advertise that it is "Hard-Working," "Dedicated," or "Compassionate" without the necessity to provide factual support for such subjective claims. On the other hand, descriptions of characteristics of the law firm that compare its services with those of other law firms and that are not susceptible of being factually supported could be misleading to potential clients. Accordingly, a lawyer may not advertise that the lawyer is the "Best," "Most Experienced," or "Hardest Working." Similarly, some claims that involve results obtained are not susceptible of being factually supported and could be misleading to potential clients. Accordingly, a law firm may not advertise that it will obtain "Big \$\$\$," "Most Money," or "We Win Big."

Bona Fide Professional Ratings

[13] An advertisement may include information regarding bona fide professional ratings by referring to the rating service and how it has rated the lawyer, provided that the advertisement contains the "past results" disclaimer as required under paragraphs (d) and (e). However, a rating is not "bona fide" unless it is unbiased and nondiscriminatory. Thus, it must evaluate lawyers based on objective criteria or legitimate peer review in a manner unbiased by the rating service's economic interests (such as payment to the rating service by the rated lawyer) and not subject to improper influence by lawyers who are being evaluated. Further, the rating service must fairly consider all lawyers within the pool of those who are purported to be covered. For example, a rating service that purports to evaluate all lawyers practicing in a particular geographic area or in a particular area of practice or of a particular age must apply its criteria to all lawyers within that geographic area, practice area, or age group.

Meta-Tags

[14] Meta-tags are hidden computer software codes that direct certain Internet search engines to the web site of a lawyer or law firm. For example, if a lawyer places the meta-tag "NY personal injury specialist" on the lawyer's web site, then a person who enters the search term

“personal injury specialist” into a search engine will be directed to that lawyer’s web page. That particular meta-tag is prohibited because Rule 7.4(a) generally prohibits the use of the word “specialist.” However, a lawyer may use an advertisement employing meta-tags or other hidden computer codes that, if displayed, would not violate a Rule.

Advertisements Referring to Fees and Advances

[15] All advertisements that contain information about the fees or expenses charged by the lawyer or law firm, including advertisements indicating that in the absence of a recovery no fee will be charged, must comply with the provisions of section 488(3) of the Judiciary Law. However, a lawyer or law firm that offers any of the fee and expense arrangements permitted by section 488(3) must not, either directly or in any advertisement, state or imply that the lawyer’s or law firm’s ability to advance or pay costs and expenses of litigation is unique or extraordinary when that is not the case. For example, if an advertisement promises that the lawyer or law firm will advance the costs and expenses of litigation contingent on the outcome of the matter, or promises that the lawyer or law firm will pay the costs and expenses of litigation for indigent clients, then the advertisement must not say that such arrangements are “unique in the area,” “unlike other firms,” available “only at our firm,” “extraordinary,” or words to that effect, unless that is actually the case. However, if the lawyer or law firm can objectively demonstrate that this arrangement is unique or extraordinary, then the lawyer or law firm may make such a claim in the advertisement.

Retention of Copies; Filing of Copies; Designation of Principal Office

[16] Where these Rules require that a lawyer retain a copy of an advertisement or file a copy of a solicitation or other information, that obligation may be satisfied by any of the following: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

[17] A law firm that has no office it considers its principal office may comply with paragraph (h) by listing one or more offices where a substantial amount of the law firm’s work is performed.

Rule 7.2 Payment for Referrals

(a) A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:

- (1) a lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and other professional services on a systematic and continuing basis as permitted by Rule 5.8, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; and**
- (2) a lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by Rule 1.5(g).**

(b) A lawyer or the lawyer's partner or associate or any other affiliated lawyer may be recommended, employed or paid by, or may cooperate with one of the following offices or organizations that promote the use of the lawyer's services or those of a partner or associate or any other affiliated lawyer, or request one of the following offices or organizations to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, if there is no interference with the exercise of independent professional judgment on behalf of the client:

(1) a legal aid office or public defender office:

(i) operated or sponsored by a duly accredited law school;

(ii) operated or sponsored by a bona fide, non-profit community organization;

(iii) operated or sponsored by a governmental agency; or (iv) operated, sponsored, or approved by a bar association;

(2) a military legal assistance office;

(3) a lawyer referral service operated, sponsored or approved by a bar association or authorized by law or court rule; or

(4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(i) Neither the lawyer, nor the lawyer's partner, nor associate, nor any other affiliated lawyer nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer;

(ii) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization;

(iii) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter;

(iv) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved by the organization for the particular matter involved would be unethical, improper or inadequate under the circumstances of the matter involved; and the plan provides an appropriate procedure for seeking such relief;

(v) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that govern its legal service operations; and

(vi) Such organization has filed with the appropriate disciplinary authority, to the extent required by such authority, at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal

service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

COMMENT

Paying Others to Recommend a Lawyer

[1] Except as permitted under paragraphs (a)(1)-(a)(2) of this Rule or under Rule 1.17, lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that would violate Rule 7.3 if engaged in by a lawyer. See Rule 8.4(a) (lawyer may not violate or attempt to violate a Rule, knowingly assist another to do so, or do so through the acts of another). A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (a), however, does not prohibit a lawyer from paying for advertising and communications permitted by these Rules, including the costs of printing directory listings and newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, search engine optimization, and group advertising. A lawyer may also compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, marketing personnel, business development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as (i) the lead generator does not recommend the lawyer, (ii) any payment to the lead generator is consistent with Rules 1.5(g) (division of fees) and 5.4 (professional independence of the lawyer), (iii) the lawyer complies with Rule 1.8(f) (prohibiting interference with a lawyer's independent professional judgment by a person who recommends the lawyer's services), and (iv) the lead generator's communications are consistent with Rules 7.1 (advertising) and 7.3 (solicitation and recommendation of professional employment). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (lawyer's responsibility for conduct of nonlawyers).

[2] A lawyer may pay the usual charges of a qualified legal assistance organization. A lawyer so participating should make certain that the relationship with a qualified legal assistance organization in no way interferes with independent professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary, rather than competence and quality of service.

[3] A lawyer who accepts assignments or referrals from a qualified legal assistance organization must act reasonably to ensure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. The lawyer must ensure that the organization's communications with potential clients are in conformity with these Rules. For example, the organization's advertising must not be false or misleading, as would be the case if the organization's communications falsely suggested that it was a lawyer referral

service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic or real-time interactive electronic contacts that would violate Rule 7.3.

[4] A lawyer also may agree to refer clients to another lawyer or a nonlawyer in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1, 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer must not pay anything solely for the referral, but the lawyer does not violate paragraph (a) by agreeing to refer clients to the other lawyer or nonlawyer so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. A lawyer may enter into such an arrangement only if it is nonexclusive on both sides, so that both the lawyer and the nonlawyer are free to refer clients to others if that is in the best interest of those clients. Conflicts of interest created by such arrangements are governed by Rule 1.7. A lawyer's interest in receiving a steady stream of referrals from a particular source must not undermine the lawyer's professional judgment on behalf of clients. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprising multiple entities.

[5] Campaign contributions by lawyers to government officials or candidates for public office who are, or may be, in a position to influence the award of a legal engagement may threaten governmental integrity by subjecting the recipient to a conflict of interest. Correspondingly, when a lawyer makes a significant contribution to a public official or an election campaign for a candidate for public office and is later engaged by the official to perform legal services for the official's agency, it may appear that the official has been improperly influenced in selecting the lawyer, whether or not this is so. This appearance of influence reflects poorly on the integrity of the legal profession and government as a whole. For these reasons, just as the Code prohibits a lawyer from compensating or giving anything of value to a person or organization to recommend or obtain employment by a client, the Code prohibits a lawyer from making or soliciting a political contribution to any candidate for government office, government official, political campaign committee or political party, if a disinterested person would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain a government legal engagement. This would be true even in the absence of an understanding between the lawyer and any government official or candidate that special consideration will be given in return for the political contribution or solicitation.

[6] In determining whether a disinterested person would conclude that a contribution to a candidate for government office, government official, political campaign committee or political party is or has been made for the purpose of obtaining or being considered eligible to obtain a government legal engagement, the factors to be considered include (a) whether legal work awarded to the contributor or solicitor, if any, was awarded pursuant to a process that was insulated from political influence, such as a "Request for Proposal" process, (b) the amount of the contribution or the contributions resulting from a solicitation, (c) whether the contributor or any law firm with which the lawyer is associated has sought or plans to seek government legal work from the official or candidate, (d) whether the contribution or solicitation was made because of an existing personal, family or non-client professional

relationship with the government official or candidate, (e) whether prior to the contribution or solicitation in question, the contributor or solicitor had made comparable contributions or had engaged in comparable solicitations on behalf of governmental officials or candidates for public office for which the lawyer or any law firm with which the lawyer is associated did not perform or seek to perform legal work, (f) whether the contributor has made a contribution to the government official's or candidate's opponent(s) during the same campaign period and, if so, the amounts thereof, and (g) whether the contributor is eligible to vote in the jurisdiction of the governmental official or candidate, and if not, whether other factors indicate that the contribution or solicitation was nonetheless made to further a genuinely held political, social or economic belief or interest rather than to obtain a legal engagement.

Rule 7.3 Solicitation and Recommendation of Professional Employment

(a) A lawyer shall not engage in solicitation:

(1) by in-person or telephone contact, or by real-time or interactive computer-accessed communication unless the recipient is a close friend, relative, former client or existing client; or

(2) by any form of communication if:

(i) the communication or contact violates Rule 4.5, Rule 7.1(a), or paragraph (e) of this Rule;

(ii) the recipient has made known to the lawyer a desire not to be solicited by the lawyer;

(iii) the solicitation involves coercion, duress or harassment;

(iv) the lawyer knows or reasonably should know that the age or the physical, emotional or mental state of the recipient makes it unlikely that the recipient will be able to exercise reasonable judgment in retaining a lawyer; or

(v) the lawyer intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by another lawyer who is not affiliated with the soliciting lawyer as a partner, associate or of counsel.

(b) For purposes of this Rule, "solicitation" means any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request.

(c) A solicitation directed to a recipient in this State shall be subject to the following provisions:

(1) A copy of the solicitation shall at the time of its dissemination be filed with the attorney disciplinary committee of the judicial district or judicial department wherein the lawyer or law firm maintains its principal office. Where no such office is

- maintained, the filing shall be made in the judicial department where the solicitation is targeted. A filing shall consist of:
- (i) a copy of the solicitation;
 - (ii) a transcript of the audio portion of any radio or television solicitation; and
 - (iii) if the solicitation is in a language other than English, an accurate English-language translation.
- (2) Such solicitation shall contain no reference to the fact of filing.
- (3) If a solicitation is directed to a predetermined recipient, a list containing the names and addresses of all recipients shall be retained by the lawyer or law firm for a period of not less than three years following the last date of its dissemination.
- (4) Solicitations filed pursuant to this subdivision shall be open to public inspection.
- (5) The provisions of this paragraph shall not apply to:
- (i) a solicitation directed or disseminated to a close friend, relative, or former or existing client;
 - (ii) a web site maintained by the lawyer or law firm, unless the web site is designed for and directed to or targeted at persons affected by an identifiable actual event or occurrence or by an identifiable prospective defendant; or
 - (iii) professional cards or other announcements the distribution of which is authorized by Rule 7.5(a).
- (d) A written solicitation shall not be sent by a method that requires the recipient to travel to a location other than that at which the recipient ordinarily receives business or personal mail or that requires a signature on the part of the recipient.
- (e) No solicitation relating to a specific incident involving potential claims for personal injury or wrongful death shall be disseminated before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.
- (f) Any solicitation made in writing or by computer-accessed communication and directed to a pre-determined recipient, if prompted by a specific occurrence involving or affecting a recipient, shall disclose how the lawyer obtained the identity of the recipient and learned of the recipient's potential legal need.
- (g) If a retainer agreement is provided with any solicitation, the top of each page shall be marked "SAMPLE" in red ink in a type size equal to the largest type size used in the agreement and the words "DO NOT SIGN" shall appear on the client signature line.
- (h) Any solicitation covered by this section shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.
- (i) The provisions of this Rule shall apply to a lawyer or members of a law firm not admitted to practice in this State who shall solicit retention by residents of this State.

COMMENT

Solicitation

[1] In addition to seeking clients through general advertising (either by public communications in the media or by private communications to potential clients who are neither current clients nor other lawyers), many lawyers attempt to attract clients through a specialized category of advertising called “solicitation.” Not all advertisements are solicitations within the meaning of this Rule. All solicitations, however, are advertisements with certain additional characteristics. By definition, a communication that is not an advertisement is not a solicitation. Solicitations are subject to all of the Rules governing advertising and are also subject to additional Rules, including filing a copy of the solicitation with the appropriate attorney disciplinary authority (including a transcript of the audio portion of any radio or television solicitation and, if the solicitation is in a language other than English, an accurate English language translation). These and other additional requirements will facilitate oversight by disciplinary authorities.

[2] A “solicitation” means any advertisement: (i) that is initiated by a lawyer or law firm (as opposed to a communication made in response to an inquiry initiated by a potential client), (ii) with a primary purpose of persuading recipients to retain the lawyer or law firm (as opposed to providing educational information about the law, see Rule 7.1, Comment [7]), (iii) that has as a significant motive for the lawyer to make money (as opposed to a public-interest lawyer offering pro bono services), and (iv) that is directed to or targeted at a specific recipient or group of recipients, or their family members or legal representatives. Any advertisement that meets all four of these criteria is a solicitation, and is governed not only by the Rules that govern all advertisements but also by special Rules governing solicitation.

Directed or Targeted

[3] An advertisement may be considered to be directed to or targeted at a specific recipient or recipients in two different ways. First, an advertisement is considered “directed to or targeted at” a specific recipient or recipients if it is made by in-person or telephone contact or by real-time or interactive computer-accessed communication or if it is addressed so that it will be delivered to the specific recipient or recipients or their families or agents (as with letters, emails, express packages). Advertisements made by in-person or telephone contact or by real-time or interactive computer-accessed communication are prohibited unless the recipient is a close friend, relative, former client or current client. Advertisements addressed so that they will be delivered to the specific recipient or recipients or their families or agents (as with letters, emails, express packages) are subject to various additional rules governing solicitation (including filing and public inspection) because otherwise they would not be readily subject to disciplinary oversight and review. Second, an advertisement in public media such as newspapers, television, billboards, web sites or the like is a solicitation if it makes reference to a specific person or group of people whose legal needs arise out of a specific incident to which the advertisement explicitly refers. The term “specific incident” is explained in Comment [5].

[4] Unless it falls within Comment [3], an advertisement in public media such as newspapers, television, billboards, web sites or the like is presumed not to be directed to or targeted at a specific recipient or recipients. For example, an advertisement in a public medium is not directed to or targeted at “a specific recipient or group of recipients” simply because it is intended to attract potential clients with needs in a specified area of law. Thus, a lawyer could

advertise in the local newspaper that the lawyer is available to assist homeowners in reducing property tax assessments. Likewise, an advertisement by a patent lawyer is not directed or targeted within the meaning of the definition solely because the magazine is geared toward inventors. Similarly, a lawyer could advertise on television or in a newspaper or web site to the general public that the lawyer practices in the area of personal injury or Workers' Compensation law. The fact that some recipients of such advertisements might actually be in need of specific legal services at the time of the communication does not transform such advertisements into solicitations.

Solicitations Relating to a Specific Incident Involving Potential Claims for Personal Injury or Wrongful Death

[5] Solicitations relating to a specific incident involving potential claims for personal injury or wrongful death are subject to a further restriction, in that they may not be disseminated until 30 days (or in some cases 15 days) after the date of the incident. This restriction applies even where the recipient is a close friend, relative, or former client, but not where the recipient is a current client. A "specific incident" is a particular identifiable event (or a sequence of related events occurring at approximately the same time and place) that causes harm to one or more people. Specific incidents include such events as traffic accidents, plane or train crashes, explosions, building collapses, and the like.

[6] A solicitation that is intended to attract potential claims for personal injury or wrongful death arising from a common cause but at disparate times and places, does not relate to a specific incident and is not subject to the special 30-day (or 15-day) rule, even though it is addressed so that it will be delivered to specific recipients or their families or agents (as with letters, emails, express packages), or is made in a public medium such as newspapers, television, billboards, web sites or the like and makes reference to a specific person or group of people, see Comments [3]-[4]. For example, solicitations intended to be of interest only to potential claimants injured over a period of years by a defective medical device or medication do not relate to a specific incident and are not subject to the special 30-day (or 15-day) rule.

[7] An advertisement in the public media that makes no express reference to a specific incident does not become a solicitation subject to the 30-day (or 15-day) rule solely because a specific incident has occurred within the last 30 (or 15) days. Thus, a law firm that advertises on television or in newspapers that it can "help injured people explore their legal rights" is not violating the 30-day (or 15-day) rule by running or continuing to run its advertisements even though a mass disaster injured many people within hours or days before the advertisement appeared. Unless an advertisement in the public media explicitly refers to a specific incident, it is not a solicitation subject to the 30-day (or 15-day) blackout period. However, if a lawyer causes an advertisement to be delivered (whether by mail, email, express service, courier, or any other form of direct delivery) to a specific recipient (i) with knowledge that the addressee is either a person killed or injured in a specific incident or that person's family member or agent, and (ii) with the intent to communicate with that person because of that knowledge, then the advertisement is a solicitation subject to the 30-day (or 15-day) rule even if it makes no reference to a specific incident and even if it is part of a mass mailing.

Extraterritorial Application of Solicitation Rules

[8] All of the special solicitation rules, including the special 30-day (or 15-day) rule, apply to solicitations directed to recipients in New York State, whether made by a lawyer admitted in New York State or a lawyer admitted in any another jurisdiction. Solicitations by a lawyer admitted in New York State directed to or targeted at a recipient or recipients outside of New York State are not subject to the filing and related requirements set out in Rule 7.3(c). Whether such solicitations are subject to the special 30-day (or 15-day) rule depends on the application of Rule 8.5.

In-Person, Telephone and Real-Time or Interactive Computer-Accessed Communication

[9] Paragraph (a) generally prohibits in-person solicitation, which has historically been disfavored by the bar because it poses serious dangers to potential clients. For example, in-person solicitation poses the risk that a lawyer, who is trained in the arts of advocacy and persuasion, may pressure an individual to hire the lawyer without adequate consideration. These same risks are present in telephone contact or in real-time or interactive computer-accessed communication. These same risks are also present in all other real-time or interactive electronic communications, whether by computer, phone, or related electronic means – see Rule 1.0(c) (defining “computer-accessed communication”) – and are regulated in the same manner. The prohibitions on in-person or telephone contact and the prohibitions on contact by real-time or interactive computer-accessed communications do not apply if the recipient is a close friend, relative, former or current client. Communications with these individuals do not pose the same dangers as solicitations to others. However, when the special 30-day (or 15-day) rule applies, it does so even where the recipient is a close friend, relative, or former client. Ordinarily, email communications and web sites are not considered to be real-time or interactive communications. Similarly, automated pop-up advertisements on a web site that are not a live response are not considered to be real-time or interactive communications. However, instant messaging (“IM”), and other similar types of “conversational” computer-accessed communications—whether sent or received via a desktop computer, a portable computer, a cell phone, or any similar electronic or wireless device, and whether sent directly or via social media – are considered to be real-time or interactive communications.

Rule 7.4 Identification of Practice and Specialty

(a) A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law, except as provided in Rule 7.4(c).

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.

(c) A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:

(1) A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying

organization is identified and the following statement is prominently made: “This certification is not granted by any governmental authority.”

(2) A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: “This certification is not granted by any governmental authority within the State of New York.”

(3) A statement is prominently made if:

(i) when written, it is clearly legible and capable of being read by the average person, and is in a font size at least two font sizes larger than the largest text used to state the fact of certification; and

(ii) when spoken aloud, it is intelligible to the average person, and is at a cadence no faster, and a level of audibility no lower, than the cadence and level of audibility used to state the fact of certification.

COMMENT

[1] Paragraph (a) permits a lawyer to indicate areas of practice in which the lawyer practices, or that his or her practice is limited to those areas.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office.

[3] Paragraph (c) permits a lawyer to state that the lawyer specializes or is certified as a specialist in a field of law if such certification is granted by an organization approved or accredited by the American Bar Association or by the authority having jurisdiction over specialization under the laws of another jurisdiction provided that the name of the certifying organization or authority must be included in any communication regarding the certification together with the disclaimer required by paragraph (c).

Rule 7.5 Professional Notices, Letterheads and Signs

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1, including the following:

(1) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates;

(2) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a

continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4;

(3) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or

(4) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or Rule 7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(b) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as "legal clinic," "legal aid," "legal service office," "legal assistance office," "defender office" and the like may be used only by qualified legal assistance organizations, except that the term "legal clinic" may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer's name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on

those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:

- (1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;
- (2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;
- (3) the domain name does not imply an ability to obtain results in a matter; and
- (4) the domain name does not otherwise violate these Rules.

(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.

COMMENT

Professional Status

[1] In order to avoid the possibility of misleading persons with whom a lawyer deals, a lawyer should be scrupulous in the representation of professional status. Lawyers should not hold themselves out as being partners or associates of a law firm if that is not the fact, and thus lawyers should not hold themselves out as being partners or associates if they only share offices.

Trade Names and Domain Names

[2] A lawyer may not practice under a trade name. Many law firms have created Internet web sites to provide information about their firms. A web site is reached through an Internet address, commonly called a “domain name.” As long as a law firm’s name complies with other Rules, it is always proper for a law firm to use its own name or its initials or some abbreviation or variation of its own name as its domain name. For example, the law firm of Able and Baker may use the domain name www.ableandbaker.com, or www.ab.com, or www.able.com, or www.ablelaw.com. However, to make domain names easier for clients and potential clients to remember and to locate, some law firms may prefer to use terms other than the law firm’s name. If Able and Baker practices real estate law, for instance, it may prefer a descriptive domain name such as www.realestatelaw.com or www.ablerealestatelaw.com or a colloquial domain name such as www.dirtlawyers.com. Accordingly, a law firm may utilize a domain name for an Internet web site that does not include the name of the law firm, provided the domain name meets four conditions: First, all pages of the web site created by the law firm must clearly and conspicuously include the actual name of the law firm. Second, the law firm must in no way attempt to engage in the practice of law using the domain name. This restriction is parallel to the general prohibition against the use of trade names. For example, if Able and Baker uses the domain name www.realestatelaw.com, the firm may not advertise that people buying or selling homes should “contact www.realestatelaw.com” unless the firm also clearly and conspicuously includes the name of the law firm in the advertisement. Third, the domain name must not imply an ability to obtain results in a matter. For example, a personal injury firm could not use the domain name

www.win-your-case.com or www.settle-for-more.com because such names imply that the law firm can obtain favorable results in every matter regardless of the particular facts and circumstances. Fourth, the domain name must not otherwise violate a Rule. If a domain name meets the three criteria listed here but violates another Rule, then the domain name is improper under this Rule as well. For example, if Able and Baker are each solo practitioners who are not partners, they may not jointly establish a web site with the domain name www.ableandbaker.com because the lawyers would be holding themselves out as having a partnership when they are in fact not partners.

Telephone Numbers

[3] Many lawyers and law firms use telephone numbers that spell words, because such telephone numbers are generally easier to remember than strings of numbers. As with domain names, lawyers and law firms may always properly use their own names, initials, or combinations of names, initials, numbers, and legal words as telephone numbers. For example, the law firm of Red & Blue may properly use phone numbers such as RED-BLUE, 4-RED-LAW, or RB-LEGAL.

[4] Some lawyers and firms may instead (or in addition) wish to use telephone numbers that contain a domain name, nickname, moniker, or motto. A lawyer or law firm may use such telephone numbers as long as they do not violate any Rules, including those governing domain names. For example, a personal injury law firm may use the numbers 1-800-ACCIDENT, 1-800-HURT-BAD, or 1-800-INJURY-LAW, but may not use the numbers 1-800-WINNERS, 1-800-2WIN-BIG, or 1-800-GET-CASH. (Phone numbers with more letters than the number of digits in a phone number are acceptable as long as the words do not violate a Rule.) See Rule 7.1, Comment [12].

APPENDIX B
COSAC SURVEY OF STATE RULES ON
ADVERTISING AND SOLICITATION

COSAC's Marketing Subcommittee prepared this Appendix to help provide national context for COSAC's recommendations. The Appendix illustrates many ways in which New York is an outlier in the regulation of attorney advertising and solicitation.

Rule 7.1

I. ABA Model Rule 7.1

A. The following States have adopted the black letter text of ABA Model Rule, either verbatim or with no changes of substance. (Note that the black letter text of ABA Model Rule 7.1 was not amended in 2018, and these States have not yet adopted the amended Comments to ABA Model Rule 7.1.)

1. Arizona
2. Connecticut
3. Delaware
4. Illinois
5. Indiana
6. Iowa
7. Maine
8. Maryland
9. Massachusetts
10. Minnesota
11. Nebraska
12. Oklahoma
13. Pennsylvania
14. Rhode Island
15. Tennessee
16. Vermont
17. Washington
18. Wyoming

B. The following State has continued to use the pre-2002 version of the black letter text of ABA Model Rule 7.1:

Mississippi

- C. Two States follow the pre-2002 version of the black letter text of ABA Model Rule 7.1, with certain additions (mentioned below):
1. West Virginia
 2. Wisconsin
- D. The following States have adopted rules whose black letter text differs substantially from ABA Model Rule 7.1:
1. California
 2. Florida
 3. Kentucky
 4. New York
- E. Most other States (and the District of Columbia) have in most part adopted the black letter text of ABA Model Rule 7.1 as an introduction but otherwise vary their respective versions of Model Rule 7.1 as discussed below.
- II. Comparison of the provisions of New York Rule 7.1 with those of most other jurisdictions:
- A. New York’s Rule 7.1 (a)(1) and (a)(2) are not different in substance from ABA Model Rule 7.1.
- B. The rest of New York Rule 7.1 (i.e., Rule 7.1(b)-(r)), however, reflects significant additions:
- 7.1(b)(1) - permitting descriptions of various background items is unique;
 - 7.1(b)(2) - permitting use of client name if written consent was given is unique;
 - 7.1(b)(3) - permitting disclosure of bank references and various forms of credit and prepayment plan arrangements, relationships with entities providing “non-legal” services is unique;
 - 7.1(b)(4) - permitting fee information including range of fees and scope of services - the following jurisdictions have mandatory disclosure requirements as to fees, costs and scope of services offered: Georgia, Missouri, Louisiana, Montana and New Jersey;
 - 7.1(c) - Prohibitions - The following are prohibited: 7.1(c)(1) paid “endorsements” or “testimonials” without disclosure of compensation thereof. The following jurisdictions have similar

prohibitions: Louisiana, Missouri, Montana, Rhode Island, South Dakota, Utah and West Virginia. Arkansas and South Carolina prohibit all such endorsements even without regard to payment;

- 7.1(c)(2) - of fictitious portrayals of clients or law firms or associations between lawyers. The following jurisdictions have like or similar prohibitions: Louisiana, Missouri, North Carolina, Rhode Island and South Dakota;
- 7.1(c)(3) - of actions to portray judges, lawyers or clients. The following jurisdictions have like or similar prohibitions: Louisiana, Missouri, North Carolina and Rhode Island.
- 7.1(c)(4) - of communications made to resemble legal documents. Colorado has a like prohibition;
- 7.1(d) and (e) - The following statements are permitted if true and not misleading, are accompanied by the disclaimer that “prior results do not guarantee similar results” and “can be factually supported”.
- 7.1(d)(1) - reasonably likely to create an expectation of achievable results. The following jurisdictions have similar or like prohibitions but do not provide for disclaimers: Georgia, New Hampshire, New Jersey, North Dakota, South Carolina, Texas, Alabama, Alaska, Arkansas, Colorado, Kansas, Missouri, Utah, Nevada and Montana. Note that these prohibitions although requested disclaimers were present in the prior to 2002 version of ABA Model Rule 7.1.
- 7.1(d)(2) - of statements that confuse the lawyer’s services with services of other lawyers. Similar prohibitions but without a disclaimer are present in the Rules 7.1 of: Georgia, Hawaii, Idaho, Kansas, Louisiana, Michigan, Missouri, Montana, Nevada, New Jersey, North Dakota, South Carolina, South Dakota, Texas, Alabama (except as to certified lawyers without disclaimers requested), Arkansas and Colorado. Note that a similar prohibition without disclaimers requested existed in the prior to 2002 version of ABA Model Rule 7.1.
- 7.1(d)(3) - of “testimonials” or “endorsements” of clients and former clients [presumably with written consent] Arkansas prohibits all such testimonials or endorsements.
- 7.1(d)(4) - of descriptions or characterizations of services of the lawyer or law firm. Similar prohibitions but without provision for disclaimers are the Rules in Alabama, Arkansas, Arizona, Colorado,

Idaho, New Hampshire, New Jersey, South Carolina, Texas, South Dakota and Missouri. Note that a similar provision without disclaimers was present in the prior to 2002 version of ABA Model Rule 7.1.

- 7.1(e)(4) - “Testimonials” or “endorsements” by clients in pending matters must be the subject of written informed consent (See Rule 7.1(b)(3)). This is unique.
- 7.1(f) - Print advertisement must be accompanied by the legend, “Attorney Advertising”. This is unique but a like legend is required under Model Rule 7.3 (i.e. “Direct Communications With Clients”).
- 7.1(g) - Prohibiting use of meta-tags and other such codes in violation of New York’s Rules. This is unique.
- 7.1(h) - Requiring the names of the law firm, lawyers, office address and telephone numbers. South Dakota has a similar Rule.
- 7.1(i) - The advertisement has to be legible and capable of being read by an “average person.” This is unique.
- 7.1(j) - Lawyer must have available for fixed fee clients a written statement of the scope of covered services. (*See Rule 7.1(b)(4)*)
- 7.1(k) - Retention of copies of advertisements. This is unique except for Florida.
- 7.1(l) - Limiting lawyers to advertised fees. (*See Rule 7.1(b)(4)*).
- 7.1(m) - Lawyers bound for 30 days as to fees advertised. (*See Rule 7.1(b)(4)*).
- 7.1(n) - Similarly to Rule 7.1(m) binding lawyer for 30 days to representations made on broadcasted advertising.
- 7.1(o) - Prohibiting payment to appear on radio, television, plays or the like. This is unique.
- 7.1(p) - Advertisements for contingent fee matters must comply with Judiciary Law Section 488(3). (*See Rule 7.1(b)(4)*)
- 7.1(q) - Lawyers may be employed to participate in education of the public as to legal problems and protection of lawyers. This is unique.
- 7.1(r) - Lawyers may speak publicly or write for publications. This is unique.

C. Provisions that have been adopted in other U.S. jurisdictions (but not New York) as part of Rule 7.1

- Required disclosures of references to other lawyers: Montana, Colorado, Missouri.
- Required disclosures of jurisdictions in which the lawyer is licensed to practice: Montana.
- If the lawyer advertises that the lawyer has received honors, then the lawyer must also disclose details as to who awarded the honors: North Dakota.
- Prohibition of the use of nicknames and honors: South Carolina.
- Restrictions on solicitations, mutual referrals, violations of certain statutes, etc.: District of Columbia.



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #9

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Diversity and Inclusion.

Attached is a report and resolution from the Committee on Diversity and Inclusion calling for the Association, other bar associations and lawyers generally to promote civil discourse and promote diversity. The report notes that current public discourse contains strong elements of hostility and divisiveness, threatening democracy. It calls for the Association to reaffirm the principle of civility as a foundation for democracy; for the legal profession generally to advance principles of civility and diversity; for public officials and organizations to strive toward more civil public discourse; and for the profession to promote and revive civil public discourse.

This report was submitted in September 2019 and posted in the Reports Community. No comments have been submitted.

The report will be presented at the November 2 meeting by committee co-chair Mirna Santiago.

RESOLUTION

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association affirms the principle of civility as a foundation for democracy and the rule of law and urges lawyers to set a high standard for civil discourse as an example for others in resolving differences constructively and without disparagement of others;

FURTHER RESOLVED, that the New York State Bar Association urges all lawyers, NYSBA member entities and other bar associations to take meaningful steps to enhance the constructive role of lawyers in promoting a more civil and deliberative public discourse;

FURTHER RESOLVED, that the New York State Bar Association urges all government officials and employees, political parties, the media, advocacy organizations, and candidates for political office and their supporters, to strive toward a more civil public discourse in the conduct of political activities and in the administration of the affairs of government;

FURTHER RESOLVED, that the New York State Bar Association supports governmental policies, practices, and procedures that promote civility and civil public discourse consistent with federal and state constitutional requirements;

RESOLVED, that the New York State Bar Association reaffirms its unwavering commitment to diversity, equity and inclusion at all levels of the Association, and its firm belief that diversity and inclusion must be fostered within the legal community and in society at large;

RESOLVED, that the New York State Bar Association strongly condemns the use of divisive and uncivil rhetoric by elected or other public officials that seeks to vilify specific groups or classes of individuals and/or seeks to sow division among the populace on the basis of gender, race, color, ethnic origin, national origin, religion, sexual orientation, age, disability and/or any other classification, by elected and other public officials.

Report

As gatekeepers to the justice system, lawyers are bound by the rules of engagement. At the heart of these rules lies the delicate art of civil conduct. Lawyers play overarching roles: we are stewards of the public, members of the judiciary, and on the frontline between our clients and the court system. Lawyers have been bestowed the great opportunity to shape the character of public discourse. Now is the time for us to inspire both preservation and change.

Current public discourse has devolved to a myopic stalemate, replete with hostility and divisiveness. This spate of incivility endangers a democratic society, and thereby, endangers the public. Now is the time to choose our words with greater care than ever before.

The New York State Bar Association urges its members to strive towards a more civil public discourse.¹ It is more critical than ever before for individuals and organizations in leadership to impart the significance of civil rhetoric. Now is the time for members of the New York State Bar Association to decree a recommitment to civility.

Civility and Public Discourse

Civility is the linchpin of democracy and public discourse. At the core of civility are four central tenets: appreciating the insight of an opponent, avoiding fallacies in argument, considering differing viewpoints, and affirming all persons in society.² Civility in public discourse cements an interactive process, and leads to the progression of effective deliberation,³ liberty, fairness, equality, safety, family, faith, and opportunity.⁴ With it, the public thrives: we build communities, we engineer solutions, and we lay the foundations of societal trust.⁵ Without it, public discourse shrinks, communities crumble, solutions escape us, trust collapses; the entire structure of the American democratic system faces ruin.

To recognize the greatest call for civility in American discourse, we must revisit the Philadelphia Convention of 1787. There, in the summer heat, in a modest shuttered room,

¹ American Bar Association Resolution 108, 2011.

² J. Taylor Danielson, Robin Stryker. *National Institute for Civil Discourse Research Brief No.10: Deliberative Democracy and Civil Discourse*, National Institute for Civil Discourse, available at https://nicd.arizona.edu/sites/default/files/research_briefs/NICD%20Research%20Brief%2010%20FINAL%20for%20web%20posting.pdf

³ *Id.* at 8.

⁴ *Revive Civility*, National Institute for Civil Discourse, <http://www.revivecivility.org/sites/default/files/documents/Short%20guide%20How%20to%20Listen%20-90%20minutes%20no%20tech.pdf> (last visited Sept. 14, 2019). *See also*, Jayne R. Reardon, *Civility as the Core of Professionalism*, American Bar Association, https://www.americanbar.org/groups/business_law/publications/blt/2014/09/02_reardon/ (last visited Sept. 11, 2019).

⁵ *See*, CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (CAMBRIDGE UNIVERSITY PRESS 1970).

brimming with fifty-five of the Colonies’ most lauded experts in jurisprudence, political science, history, and economics, these delegates were primed to advocate for legions of competing persuasions. These very debates breathed life into the canon of civility in public discourse and gave rise to civic friendship. Despite their differing social dispositions and philosophies, the delegates crafted a framework that championed unison. By virtue of mutual respect and open dialogue, the Convention transcended all sources of division, and paved the road for American democracy to take the reins.

The Current State of Public Discourse

Considering the tone of public discourse in recent years, the rhetoric has become a breeding ground for dialogue, teeming with corrosion and division. Speech concerning political expression, once designed to promote reason and deliberation, is now littered with demonizing incivility. Symptoms of incivility in political expression include: ad hominem attacks on political opponents, information that is recklessly false or intentionally misleading, the use of vulgarity or derogatory epithets⁶ to advance an argument, and hyperbolic or false characterizations of political opponents.⁷ In fact, researchers have defined incivility as “attacks that go beyond facts and differences, and move instead towards name-calling, contempt, and derision of the opposition.”⁸

The degeneration of civil rhetoric bears a striking relationship to increased public polarization.⁹ Adverse consequences of polarization lend themselves to legislative gridlock, citizen alienation, decreased citizen interest in politics, and decreased trust in government¹⁰ Mean-spirited discourse hinders the ability to legislate critical issues or respond to citizens’ needs. In this climate, democracy will falter.

The Resolution: NYSBA Strives for Civility in Public Discourse

In response to the current state of public discourse, the resolution embodies the call for civility, and embraces the New York State Bar Association’s commitment to diversity and inclusion. The New York State Bar Association’s Committee on Diversity and Inclusion seeks to promote the full and equal participation of attorneys of color, and other diverse

⁶ National Institute for Civil Discourse, *supra* note 1: “Speech that deploys racial, sexual, religious, or other epithets against a political opponent that a reasonable person would consider extremely demeaning.”

⁷ *Id.* at 8.

⁸ Carli Brosseau, Zachary Schrank, Robin Stryker. *National Institute for Civil Discourse Research Brief No.7: Negative Campaigning*, National Institute for Civil Discourse, available at https://nicd.arizona.edu/sites/default/files/research_briefs/NICD_research_brief7_0.pdf

⁹ Robin Stryker. *National Institute of Civil Discourse Research Brief 6: Political Polarization*, National Institute of Civil Discourse, available at https://nicd.arizona.edu/sites/default/files/research_briefs/NICD_research_brief6.pdf

¹⁰ *Id.* at 6.

attorneys, throughout the legal profession.¹¹ The resolution avows that the New York State Bar Association is made stronger and more capable of implementing societal change as a result of its diverse members.

1. NYSBA’s Statement of Principle

The New York State Bar Association recognizes that the recent use of uncivil rhetoric by elected officials and other public representatives, vilifies classes of individuals on the basis of gender, race, color, ethnicity, national origin, religion, sexual orientation, age, disability, and other classifications. The New York State Bar Association has long been committed to civility and decorum in the legal profession. The Standards of Civility, adopted in 1997 and revised in April 2019, serve as guidelines for all New York State attorneys with the purpose of preserving the integrity of the practice of law.¹² As such, the New York State Bar Association affirms the principle of civility as a foundation for democracy and the rule of law. The statement of principle reflects the New York State Bar Association’s commitment to encouraging civil discourse that is constructive and impactful, rather than discourse that results in the disparagement of others. This component of the resolution points to the unique role that lawyers must play in effectuating higher standards of civility, which warrants further discussion in the second pillar.

2. The Call to Civility in the Legal Profession

The second pillar of the resolution issues a call to action to all lawyers and members of the legal profession to take meaningful steps to advance a more civil and deliberative public discourse. Members of the legal profession carry a unique ability to be the harbingers of civil discourse through research, debate, and client counseling. This appeal to “all lawyers, NYSBA member entities and other bar associations” urges members of the bar to uphold the shared professional responsibility of weaving the threads of civility and inclusivity into the fabric of our conduct. Lawyers, as public servants, can fine-tune the strings of the instrument that resonate with the sounds of civil discourse. We can inspire tones that are harmonious rather than divisive, language that is inclusive rather than ‘othering,’ and overtures that advance ideas instead of attacks.

3. The Call to Civility in Administration and Governance

Public discourse gains most visibility in the public arena. The New York State Bar Association calls for government employees, public officials, organizations, and other key players in the political sphere, to “strive toward a more civil public discourse in the conduct of political activities and in the administration of the affairs of the government.” As a product of our democratic process, members of the political realm are often the very face

¹¹ New York State Bar Association, *Committee on Diversity and Inclusion Page*, New York State Bar Association, <https://www.nysba.org/diversityandinclusion/> (last visited Sept. 14, 2019).

¹² New York State Bar Association, *Report of the Committee on Attorney Professionalism*, as adopted by the House of Delegates on April 14, 2019, <https://www.nysba.org/capstandards/> (last visited Sept. 24, 2019).

of rhetoric. Political leaders' words can easily sway public demeanor and may freely alter the trajectory of public discourse. This is a call to action for leaders to use their gravitational pull in ways that align discourse with civility.

4. Reviving Civility in the Community

The final pillars of the resolution reaffirm the New York State Bar Association's efforts to promote civil public discourse that is consistent with the federal and state constitution, and promote diversity at all levels of the Association. This is an invitation to both, the legal community, and society at large, to stay engaged. Cultivating civility and diversity is an ongoing process, and the product of a ripple effect. Developing federal, state, and local legislation, cannot take shape without a populace that is attuned. A populace cannot tune into the waves of decision-making without trusting our democratic system, and without trusting each other. We must anchor our conduct in civility. It is our collective responsibility to revive civility, to revive trust in one another, and to revive a public discourse that banded together fifty-five diverse leaders and directed the creation of our Union.

Respectfully submitted,

Divya Acharya, Esq.
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October 29, 2019

**President's Report
to the House of Delegates
November 2, 2019**

Constant change is the new normal. This is true for society as a whole, and also for lawyers. Change is the law of life, and now it is the life of law practice. Our profession has experienced more change over the past 20 years than it did over the last 200.

I went to law school in the Dark Ages – the 1980s, before Al Gore invented the internet. We knew nothing of cell phones or email or social networking. We did legal research using books, not computers.

We wrote legal briefs and memos on typewriters.

When I graduated from law school, the newest and most mind-blowing new technology was the fax machine.

Today, the world creates as much information every 48 hours as it did from the dawn of civilization to the dawn of the Millennium. And, owing to the sustainability revolution, the two fastest-growing occupations in the United States are solar installer and wind turbine service technician.

In 2005 – a lifetime ago it seems – author and *New York Times* columnist Thomas Friedman published *The World Is Flat*, referring to the revolutionary changes in commerce brought about by new technologies.

That technological revolution did not just affect commerce.

The same seismic changes in communication that made this “flattening” possible have permeated every aspect of our lives.

Time has accelerated. Social media is ubiquitous and demands instant response. Work hours are 24/7, 365 days of the year, and businesses are always on call. There are no breaks, there are no pauses. The world never rests.

As Friedman predicted, the world is now flat. So, too, the practice of law.

Because the law is a mirror of society, changes in society impact the law. The technological changes that revolutionized the way the world communicates have had an enormous impact on the practice of law.

Clients expect immediate responses to their questions. They demand cost-effective and efficient service. Before they speak with us, they have armed themselves with information about their matter and the relevant law – information they could not access in the pre-Google days.

To meet their legal needs, we must meet our clients where they are – not where we once were or where we wish them to be. The only way we can do that is by embracing the technological revolution and letting it work for us. We either adapt to change or we become irrelevant. And make no mistake, change *is* the new normal.

For millennial lawyers, harnessing and leveraging change – especially technological change – is second nature. But today, all lawyers need these skills. This is not optional. It is our professional obligation as lawyers. And it is a business obligation to our practices.

Not only must lawyers and law firms change, so too must the organizations that represent them. Bar associations must reimagine how they deliver services to meet members – and potential members – where they live. When our members look for the tools, resources and CLEs they need, they turn to the cloud. We need to be there as well.

That is why the New York State Bar Association is making deep investments in technology. We are building a virtual bar center to welcome members wherever they reside, however they work, in whatever field they practice. This is imperative. The strength and relevancy of NYSBA depends on our accessibility and the ease with which members can get what they require.

New York is the economic and legal capital of the world. New York law, and New York lawyers and judges, are globally recognized as the gold standard in the profession. Likewise, the New York State Bar Association is a global force. We are widely regarded as the world leader among bar associations; our reputation is unmatched.

Some 330,000 attorneys are licensed to practice in New York. More than 140,000 – over 40 percent – live or practice outside of the state, and more than 26,000 live outside the U.S.

While these attorneys are not physically inside the state, they have a professional tie to New York; they need New York law and New York connections. And NYSBA is expanding globally to meet their needs - virtually.

We have launched a quarterly e-newsletter – *NYSBA Global* – with articles of interest to international attorneys. We are offering more CLE programs in areas of international law and practice. We are building relationships with international bar associations, law firms, and law schools. In November, I will travel to Tokyo to represent NYSBA at the International Section Global Conference.

And these are just but a few of the steps being taken as part of our global membership initiative.

But our efforts aren't just on the global scale. New York lawyers — from Montauk to Niagara Falls — need NYSBA as well, especially those who practice in rural communities.

Forty-four of New York's 62 counties are rural. While attorneys clustered in cities have ready access to technology and professional resources, rural lawyers often face a different experience. Our virtual bar center will make it easier for rural attorneys to get the CLE, tools, resources, connections and communities they need.

Our new Task Force on Rural Justice — chaired by Justice Stan L. Pritzker and Taier Perlman — is looking at the issues particular to rural lawyers, including the expansion of broadband access. In the year 2019, broadband access should be a civil right. It is indispensable to closing the justice gap in rural areas.

The legal profession is more diverse than ever before and reflects the great diversity of our Empire State. We continue to work to ensure that our Association reflects the diversity of our profession and our society within its membership, leadership, and programming.

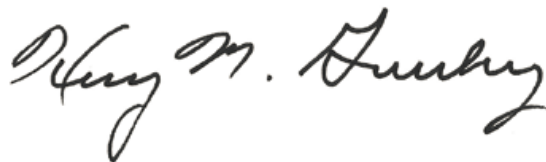
The Committee on Diversity and Inclusion has drafted a Diversity Plan for the Association. The Plan contains a set of goals and recommendations to promote and advance the participation of diverse attorneys in both the Association and the legal profession. I encourage you all to review the Plan before its presentation at the January 2020 meeting of the House of Delegates.

Many exciting changes are underway for our Association. Technology is helping NYSBA adapt for the future – and technology will ensure that we continue to be the trusted resource for the legal profession of New York State.

Technology makes it possible for us to serve lawyers everywhere. Technology is not a panacea, and it will not meet every challenge facing the legal profession. It is, however, a facilitator of the changes we must make and a tool we must learn to leverage if we wish to remain relevant in the digital age.

We must embrace change, and we must embrace technology.

It can help our practices, foster communication and expand access to justice. It can empower us to do the public good. And, it can help us be better lawyers.

A handwritten signature in black ink, reading "Gregory M. Durkin". The signature is written in a cursive style with a large, prominent "G" and "D".

SPEECHES, REMARKS & OTHER PRESENTATIONS:

Address on the life and legacy of Judith S. Kaye at the 9th Annual Diamond & Hearts Event for New York's Children, sponsored by CASA: Court Appointed Special Advocates for Children, in Albany, New York (October 29, 2019).

Remarks on the legal profession's obligation to lead, delivered for broadcast on WAMC's Midday Magazine, Albany, New York (October 2, 2019).

Remarks welcoming attendees of 2019 Statewide Stakeholders Meeting: Working Together to Expand Effective Assistance for All Low-Income New Yorkers, convened by the New York State Permanent Commission on Access to Justice, Albany, New York (October 28, 2019).

Remarks at Local and State Government Law Section 2019 Fall Meeting, at The Embassy Suites, Saratoga Springs, New York (October 25, 2019).

Remarks at the 144th Annual Dinner of the Onondaga County Bar Association, Marriott Syracuse Downtown, Syracuse, New York (October 23, 2019).

Remarks welcoming attendees of the New York Fair Trial Free Press Conference 2019, sponsored by the New York Fair Trial Free Press Conference, First Amendment Watch at NYU's Carter School Journalism Institute, New York State-Federal Judicial Council, S.I. Newhouse School of Public Communications and the New York State Bar Association's Committee on Media Law and Committee on Continuing Legal Education, at the Daniel Patrick Moynihan United States Courthouse, in New York City (October 21, 2019).

Remarks honoring John Dunne at the 2019 Haywood Burns Award Ceremony and Symposium, sponsored by the New York State Bar Association's Committee on Civil Rights, at CUNY Law School, in Long Island City, New York (October 16, 2019).

Remarks introducing Cass R. Sunstein, Robert Walmsley University Professor at Harvard, at a continuing legal education program entitled "Impeachment: A Guide to the Legal Process and Its History," at Fordham Law School in New York City (October 15, 2019).

Interviewed, along with Harvard Law School Professor Cass R. Sunstein, by Brian Lehrer for WNYC Radio's The Brian Lehrer Show, a daily call-in program, covering politics and life, locally and globally. The interview was originally broadcast on October 14, 2019. The link to the broadcast is: <https://www.wnyc.org/story/impeachment-legal-guide/>.

Remarks on "Lawyers and Depression," delivered on WAMC's Midday Magazine. The remarks were originally broadcast on October 2, 2019. The link to the broadcast is: <https://www.wnyc.org/story/impeachment-legal-guide/>.

Interviewed by Susan Arbetter for the Capitol Pressroom, a news and analysis program aired daily from the New York State Capitol, on the upcoming New York State Constitutional Convention. The interview was originally broadcast on September 27, 2019. The link to the

broadcast is: <https://www.wcny.org/september-27-2019-reporters-and-nysba-president-hank-greenberg/>.

Remarks at Bridging the GAP CLE Program for newly admitted attorneys, sponsored by the New York State Bar Association, Albany, New York (September 27, 2019).

Remarks at NYSBA 2019 Technology Summit, in New York City (September 19, 2019).

Interviewed by Errol Louis for NY1's *Inside City Hall*, a news program that interviews political newsmakers, pundits and consultants from New York City and beyond, every weeknight at 7 p.m. and 11 p.m. The interview was original broadcast on September 19, 2019. The link to the broadcast is: <https://www.ny1.com/nyc/all-boroughs/inside-city-hall/2019/09/20/navigating-the-immigration-system>.

Interviewed by Alan Chartock for WAMC's *The Capitol Connection*, a news and analysis program aired on radio stations across New York State. The interview was originally broadcast on September 19, 2019. The link to the broadcast is: <https://www.wamc.org/post/capitol-connection-1938-hank-greenberg-president-new-york-state-bar-association>.

Interviewed by Casey Seiler for WMHT's *New York NOW*, an Emmy Award-winning public affairs program shown on PBS stations in New York State. The interview was originally broadcast on August 30, 2019. The link to the broadcast is: https://video.wmht.org/video/new-york-state-bar-association-on-2020-agenda-41v4kk/?fbclid=IwAR1QHHkA797MHFToUX8i3M7imVovY8Em_tZI_FbSVa4QA-OoUXP88mcv0J4.

Remarks at Opening Convocation of the Syracuse University College of Law, in Syracuse, New York (August 15, 2019).

Remarks in support of resolution (10A) creating the *ABA Best Practice Guidelines for Online Legal Document Providers*, proposed by the New York State Bar Association, the New York County Lawyers' Association, and the American Bar Association's (ABA's) Standing Committee on the Delivery of Legal Services, Center for Innovation and International Law Section, before the House of Delegates, at the ABA's Annual Meeting, in San Francisco, California (August 12, 2019).

Remarks at a continuing legal education program entitled, "Diversity, Inclusion and Elimination of Bias," and sponsored by the New York State Bar Association, in Albany, New York (July 26, 2019).

Remarks at Elder Law and Special Needs Section Summer Meeting, at Boston Marriott Long Wharf Hotel, in Boston, Massachusetts (July 18, 2019).

Remarks at Family Law Section Summer Meeting, at The Saratoga Hilton, in Saratoga, New York (July 12, 2019).

Formal remarks at the Admissions Ceremony for the New York State Supreme Court, Appellate Division, Third Judicial Department, at the Governor Nelson A. Rockefeller Empire State Plaza Convention Center, in Albany, New York (June 26, 2019).

Testimony at the New York State Office of Indigent Legal Services' hearing on financial eligibility for assignment of counsel in family matters, in Albany, New York (June 19, 2019).

Address upon being sworn-in as the 122nd President of the New York State Bar Association, in Albany, New York (June 7, 2019).

Remarks at the Presentation of the 2019 Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare and Education Program, sponsored by the Committee on Children and the Law Committee of the New York State Bar Association, in Albany, New York (June 5, 2019).

Remarks at an event entitled, “The *Braschi* Breakthrough: 30 Years Later, Looking Back on the Relationship Recognition Landmark,” sponsored by The Richard C. Faila LGBTQ Commission of the New York Courts, among other groups, held at the Supreme Court, New York County Ceremonial Courtroom, in New York City (June 3, 2019). The link to a video of these remarks is:
<https://www.youtube.com/watch?v=tF1APx3qoEI&feature=youtu.be&fbclid=IwAR0f190q-siSXhEYKNuIHnVQnXSRDrzHL0D5vvuVvM4hOpHX110VOR1gv4Q> (see 25:37 to 1:01:13).



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #12

REQUESTED ACTION: Approval of the report and recommendations of the Working Group on Attorney Mental Health.

The Working Group on Attorney Mental Health was appointed by President Henry M. Greenberg to review the New York bar admission questionnaire with respect to questions relating to an applicant's mental health history. The report notes that in February 2019, the Conference of Chief Justices adopted a resolution calling for the elimination of questions that ask about mental health history, diagnosis or treatment, and that a number of states have eliminated or modified mental health inquiries.

The Working Group is comprised of representatives from the Young Lawyers Section, the Committee on Disability Rights, the Lawyer Assistance Committee, and the Committee on Legal Education and Admission to the Bar. The Working Group has made the following findings:

1. Law students today feel more stress and experience more mental health issues than ever before as a result of student debt and an uncertain job market, in addition to the demands of law school.
2. The Americans With Disabilities Act and related regulations prohibit the screening of candidate on the basis of mental disability.
3. There is evidence that the mental health inquiry on the current questionnaire is unnecessary and ineffective.

Accordingly, the Working Group concludes that questions relating to mental health and disability should be eliminated from the questionnaire.

This report was submitted in August 2019 and posted in the Reports Community. The New York City Bar Association, the Bar Association of Erie County and the Committee on Legal Education and Admission to the Bar have indicated support for the recommendation.

The report will be presented at the November 2 meeting by Simeon Goldman (Committee on Disability Rights), David R. Marshall (Committee on Legal Education and Admission

to the Bar), Thomas E. Schimmerling (Lawyer Assistance Committee), and Lauren E. Sharkey (Young Lawyers Section).

A hand in a dark suit jacket is shown from the left, holding a glowing, translucent brain. The brain is illuminated from within, casting a warm orange glow. The background is a dark blue with faint digital lines and icons, including a brain icon with the text 'BRAIN STORM NETWORK', '8143', and 'BRAIN DOWNLOAD'. Other numbers like '49868', '608', '5320', and '58768' are scattered around. The overall aesthetic is futuristic and technological.

The Impact, Legality, Use and Utility of Mental Disability Questions on the New York State Bar Application

A Report Issued by the Working
Group on Attorney Mental Health of
the New York State Bar Association

August 13, 2019



NEW YORK STATE
BAR ASSOCIATION

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The recommendations contained in the Working Group report do not imply full committee or section support of Working Group members' committees or sections. Nor does it reflect the New York State Bar Association's official position. The report and recommendation will be brought before the House of Delegates for vote in November 2019.

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INTRODUCTION

The evolution of legal, clinical and societal perspectives towards people with mental disabilities has led many to question the legality, efficacy and morality of screening Bar applicants for mental disability. In February 2019, the Conference of Chief Justices passed a resolution “urging its members and state and territorial bar admission authorities to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnosis or treatment” and instead use questions that only focus on an applicant’s conduct. Thereafter, New York State Bar Association President Henry M. Greenberg appointed a Multi-Disciplinary Working Group to Review the New York Bar Admission Questionnaire to advise on whether certain questions on the New York bar application character and fitness questionnaire comport with the recommendations found in the Conference of Chief Justices’ resolution.

Although statistics indicate a high incidence of mental health issues among law students that increase exponentially after matriculation, students still fear that seeking treatment would ultimately prohibit bar admission. Being between the proverbial rock and hard place, some law students forego needed treatment entirely. Some of them “self-medicate” with alcohol and other substances, leading to greater difficulties. Others simply crash and burn under the pressure of law school without feeling able to access necessary support and treatment. This is tragic and unnecessary.

Nationally, many states already do not include mental health inquiries on their applications. Alaska, Arizona, California, Connecticut, Illinois, Iowa, Massachusetts, Mississippi, Pennsylvania and Washington currently do not have

questions on their applications that ask about a mental health diagnosis or impairment. In response to law student demands for change, just this year, Virginia has modified their question to focus on behavior, and has included a clarifying statement regarding the question. Florida has recently included clarification with their mental health question which includes the statement, “the Board supports applicants seeking mental health treatment.”¹ Michigan is currently considering changes to their questions regarding applicant’s mental health.

The Working Group recognizes the importance of focusing on a bar candidate’s behavior and conduct to evaluate fitness to practice law and expects that to continue to be the focus of determining an applicant’s fitness to practice law.

The Working Group is comprised of representatives from the Young Lawyers Section, the Committee on Disability Rights, the Lawyer Assistance Committee, and the Committee on Legal Education and Admission to the Bar. Each of these entities have a unique interest and expertise in the subject of this report, and each have contributed a section to it. The Working Group has collectively concluded that:

1. Law students today feel more stress and experience more mental health issues than ever before as a result of crushing student debt and an uncertain job market, in addition to the demands of law school.

¹ See Bazelon Center for Mental Health Law *Bar Admissions Questions Pertaining to Mental Health, School/Criminal History, and Financial Issues* (February 2019) attached as Appendix III.

2. The Americans with Disabilities Act, and regulations promulgated thereunder, prohibit the screening of candidates on the basis of mental disability.

3. There is “compelling evidence that Question 34 is unnecessary, even if it were not also ineffective, in accomplishing the goal of identifying applicants whose mental conditions make them candidates for special scrutiny by the Character & Fitness Committees.”

Accordingly, questions related to mental disability should be eliminated from the bar application.

I. THE IMPACT OF QUESTION 34

A. Introduction

As all attorneys recall, law school is a time marked by extreme stress, anxiety, overwhelming expectations, and financial uncertainty. Recent studies have shown that today's law school students are experiencing these issues at alarming rates.² Moreover, they are not seeking the help needed to manage difficult personal challenges. Many students admit they are not seeking help because they are concerned that doing so will negatively impact their bar admission.

A 2014 *Survey of Law Student Well-Being* sponsored by the American Bar Association reported that 42% percent of surveyed law students believed they needed help for emotional or mental health issue in the past year, but only half sought assistance.³ 63% of the respondents feared that seeking help for a substance abuse

² A recent e-survey conducted by Kaplan Bar Review between February and March 2019 of 303 law school graduates who took a Kaplan bar preparation course found that 29% of participants felt that their law school did enough in the area of mental health to assist students experiencing increased levels of academic-related stress, while 40% reported that their law school does not do enough. Kaplan, *Kaplan Bar Review Survey: Only 29 Percent of Law Student Graduates Think Their Alma Mater Does Enough to Help their Students in the Area of Mental Health* (May 1, 2019), available at <https://www.kaptest.com/blog/press/2019/05/01/kaplan-bar-review-survey-only-29-percent-of-law-school-graduates-think-their-alma-mater-does-enough-to-help-their-students-in-the-area-of-mental-health/>. Additionally, survey takers demonstrated an acute lack of awareness of the resources available at their law schools, as 31% of participants reported being unsure of whether their school does enough to support students. *Id.* See also David B. Jaffe, *The Key to Law School Student Well-Being? We Have to Love Our Law Students* (Feb. 2018), available at <https://www.wcl.american.edu/impact/lawwire/the-key-to-law-student-well-being-we-have-to-love-our-law-students/article/> (suggesting changes that can be implemented for a variety of law school stakeholders to improve the experiences of law students); Jordana Alter Confino, *Where Are We on the Path to Law Student Well-Being?: Report on the ABA CoLAP Law Student Associate Committee Law School Wellness Survey* (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3374976 (discussing the findings of the 2018 Law School Wellness Survey, which reports on the well-being initiatives reported by 103 law schools).

issue could pose a threat to their bar admission, and 45% said the same thing regarding seeking mental health treatment. The perceived negative impact on bar admission was a primary factor in not seeking help.⁴

B. Stress Related to Exams, Grades, Debt and Other Issues

Law students are under extreme pressure prior to their admission to the bar. Some actually experience physical illness from bar exam stress.⁵ Bar exam study may also lead to relationship breakdown,⁶ and isolation leading to clinical depression.⁷ These challenges may be further compounded in instances where law students' experiences do not align with their expectations for law school and the legal profession, which can lead to overwhelming feelings of loss.⁸ Not surprisingly, students are frequently on Twitter, Facebook, LinkedIn and other social media platforms expressing worry about exam grades, the bar exam, work/life balance, and the job market.

³ A.B.A., *Survey of Law Student Well-Being* (Jan. 18, 2019), available at https://www.americanbar.org/groups/lawyer_assistance/research/law_student_survey/.

⁴ *Id.*

⁵ Tara Weiss, *Your Worst Career Anxiety, Bar None*, FORBES (July 25, 2007, 09:14 AM), available at https://www.forbes.com/2007/07/25/law-bar-exam-lead-careers-cx_tw_0725barexam.html#647f5728cddb.

⁶ *Relationship Stress and the Bar Exam*, BAR EXAM MIND, excerpt available at <https://www.barexammind.com/relationship-stress-bar-exam/> (last visited July 3, 2019).

⁷ JD ADVISING, n.d., available at <https://www.jdadvising.com/feeling-lonely-suicidal-depressed-bar-prep/> (last visited July 3, 2019).

⁸ See Erika Craven, *A Necessary Look at Mental Health in Law School* (Oct. 10, 2018), available at <https://bclawimpact.org/2018/10/10/a-necessary-look-at-mental-health-in-law-school/>.

In addition, many law students and young attorneys find themselves to be in debt by amounts that far exceed those of attorneys who entered the job market a few decades ago. For example, in 2009, the New York Times reported that a Bar applicant was denied admission⁹ based on his debts of nearly half a million dollars.¹⁰ While this applicant had a larger debt than the average student, it is not uncommon for recent graduates from law school and newly admitted attorneys to experience debts of a quarter of a million dollars.

As student debt is rising and the consequences of it are becoming greater, the job market has less to offer, particularly for entry level positions according to a report released by the ABA based on 2017 data.¹¹ With the federal government proposing a cap on student loans and cutting repayment options, law students also face the possibility of losing key programs that reduce debt and, in turn, stress.¹²

⁹ In the Matter of Anonymous, an Applicant for Admission to the Bar, N.Y. App. Div. 3d. (March 6, 2009), available at <http://decisions.courts.state.ny.us/ad3/Decisions/2009/D-11-09Anonymous.pdf> (the applicant was later admitted to practice in 2012 and is currently registered with no history of public discipline).

¹⁰ Jonathan D. Glater, *Finding Debt a Bigger Hurdle Than Bar Exam*, N.Y. TIMES (July 1, 2009), available at https://www.nytimes.com/2009/07/02/business/02lawyer.html?_r=1.

¹¹ Stephanie Francis Ward, *Fewer entry-level positions in most job categories for 2017 law grads, new ABA data shows*, A.B.A. JOURNAL (Apr. 20, 2018, 05:14 PM CDT), available at http://www.abajournal.com/news/article/fewer_entry-level_positions_in_most_job_categories_for_2017_law_grads_new_a; see also A.B.A., *Employment Outcomes as of April 2018 (Class of 2017 Graduates)*, n.d., available at https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_t_o_the_bar/statistics/2017_law_graduate_employment_data.authcheckdam.pdf.

¹² Abigail Hess, *Trump administration proposes capping student loans, cutting repayment options—here's what that means for borrowers*, CNBC (Mar. 19, 2019, 04:06 PM EDT), available at <https://www.cnbc.com/2019/03/19/trump-proposes-capping-federal-student-loans-cutting-repayment-options.html>.

Challenges faced by students in navigating the law school environment also impact the levels of stress experienced during the academic process. These challenges can include psychosocial factors, as well as stressors inherent to law school and academic environments.¹³ For example, students often discontinue their employment, put off other jobs, and move away from (or move) their families to pursue this education.¹⁴ Additionally, law students are well known for living lives that are considered “unbalanced,” where law school takes over the vast majority of the student’s life, and leads to failed relationships and disconnects from the people, things, and activities the student enjoys.¹⁵ Finally, the pressure to succeed can lead to additional stress, and can be worsened when students allow their law school-related success to impact and define their own beliefs about their personal worth and value.¹⁶ This focus on success and fear of failure has also been found to impact whether law students seek help: “It can be unbelievably daunting to ask for help. An environment where competition is paramount and the drive for success is all-

¹³ For example, a 1986 survey of students at the University of Florida, College of Law, found the following 15 stressors to be the most commonly reported by survey participants: (1) lack of feedback/examination system; (2) personal relationships; (3) other; (4) classes; (5) time pressure; (6) worry about future professional success; (7) competitive environment-GPA; (8) finances; (9) heavy academic demands; (10) writing assignments; (11) social isolation; (12) professors; (13) adjusting to law school; (14) feelings of inadequacy; and (15) public speaking. James Archer, Jr., & Martha M. Peters, *Law Student Stress*, 23 NASPA J. 48, 50 (Spring 1986), available at http://www.elon.edu/docs/e-web/academics/law/development/student_stress.pdf.

¹⁴ ABA Law Student Division, ABA Commission on Lawyer Assistance Programs, & Dave Nee Foundation, *Substance Abuse & Mental Health Toolkit for Law School Students and Those Who Care About Them* (2015), at 5, available at https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_mental_health_toolkit_new.authcheckdam.pdf.

¹⁵ *Id.* at 6. Notably, many of the actions that constitute an “unbalanced” life are seen as positive and admirable during law school. *Id.* (“A student’s actions, especially in the first year, are seen not as the beginning stages of burnout but rather as the signs of a hard worker.”).

¹⁶ *Id.* at 6-7.

encompassing makes help-seeking seem risky and shameful. Fear often paralyzes and dissuades so that many individuals do not pursue help they need.”¹⁷

Moreover, as law schools around the country, and the legal profession generally, attempt to recruit more diverse candidates, the intersectionality between the stresses already experienced by law students and those experienced by minority-identified individuals cannot be ignored. A 2014 study of students at Yale Law School found that students who identify as women, as lesbian, gay, or bisexual, students of color, and students considered “low income” were more likely to experience mental health issues during law school than their counterparts.¹⁸ Students of color were also less likely to seek mental health treatment than white students, and students from lower incomes were significantly less likely to seek services than high income students.¹⁹

The phenomenon of imposter syndrome—“a psychological term referring to a pattern of behavior where people doubt their accomplishments and have a persistent, often internalized fear of being exposed as a fraud”²⁰—is an additional stressor experienced by minority-identified students, which can impact mental health. As minority students often already perceive prejudices and bias against them,

¹⁷ Craven, *supra* note 7.

¹⁸ Yale Law School Mental Health Alliance, *Falling Through the Cracks: A Report on Mental Health at Yale Law School* (Dec. 2014), at 6, available at https://law.yale.edu/system/files/falling_through_the_cracks_120614.pdf.

¹⁹ *Id.*

²⁰ Megan Dalla-Camina, *The Reality of Imposter Syndrome*, Psychology Today (Sep. 3, 2018), available at <https://www.psychologytoday.com/us/blog/real-women/201809/the-reality-imposter-syndrome>.

the feelings associated with imposter syndrome can lead to increased levels of anxiety and depression.²¹

C. The Impact of Question 34 on Law Students

When developing question 34, there was little or no consideration of its impact on law students. New data suggests that an inquiry into mental disability, in and of itself, may have harmful effects on law students seeking to be admitted to the Bar.²²

Nearly half of the participants in 2018 ABA survey of law students believed it would be better if mental health obstacles remained private, noting a fear of delayed admission to the bar.²³ Furthermore, a majority of respondents preferred to

²¹ Jeremy Bauer-Wolf, *Feeling Like Imposters*, Inside Higher ED (Apr. 6, 2017), available at <https://www.insidehighered.com/news/2017/04/06/study-shows-impostor-syndromes-effect-minority-students-mental-health>.

²² Margaret Hannon, *Why the character and fitness requirement shouldn't prevent law students from seeking mental health treatment*, A.B.A. (Jul. 29, 2018), available at <https://abaforlawstudents.com/2018/07/09/character-fitness-requirement-and-seeking-mental-health-treatment/> ([I]nquiries into mental health are just one piece of the character and fitness application. Character and fitness inquiries vary by state, but typically include questions about educational, employment, and financial background, along with questions about criminal and civil misconduct and mental health. Because the character and fitness inquiry is a holistic one, your responses to questions about your mental health won't be considered in a vacuum but rather in the context of the other information you disclose.).

²³ Jerome M. Organ et al., *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*, 66 J. Legal Educ. 116, 142 (2016); see Brian Cuban, *When Bar Examiners Become Mental Health Experts*, Above the Law (Jan. 10, 2018, 10:03 AM), available at <https://abovethelaw.com/2018/01/when-bar-examiners-become-mental-health-experts/> (“The question that may be phrased in a way requiring an applicant to disclose mental health issue(s) that may only be known to the applicant and his/her therapist or other treatment provider. A question which, if answered in the positive, can have substantial ramifications on when and if the applicant will be allowed to sit for the bar exam or obtain a license if the exam has already been taken and passed.”).

seek health professional, instead of the dean of students or Lawyers Assistance Program for any such mental health concerns, including drug or alcohol abuse.²⁴

A 2019 survey conducted by Kaplan Bar Review found that 74% of the 303 law student graduates who participated in the survey believed that state bar examiners should be barred from asking students about their history of mental health issues on bar examination applications.²⁵ The same survey also found that 61% of law students believed that state bar examiners also should not be permitted to ask students about addiction-related treatments on bar examination applications.²⁶

²⁴ *Id.* at 140

²⁵ Kaplan, *supra* note 1. Interestingly, the survey found that those students who were opposed to these types of questions expressed “strong opinions” about their use. For example:

- “I believe large law firms and corporations would prefer new hires that do not suffer from these issues. This would exacerbate the existing stigma against mental health problems within the profession... We do need to discuss mental health within the profession, however I do not believe that the place for discussions of mental health should be in the certification process.”
- “It is of no consequence what a person’s mental health state is, especially if they are seeking treatment and are functional. It is a personal matter and if it does actually impede the attorney’s ability to practice, it will show in the work.”
- “Unless there is an incentive to disclose mental health, such as a time accommodation, then no, not anyone’s business. Sad to see so many students and practicing attorneys suffering with addiction and mental illness; something needs to change.”

²⁶ *Id.* Noting both practical and privacy-related issues, survey participants provided:

- “The profession absolutely needs to address the problem. However, screening people with issues from entering the profession is not the way to combat these problems.”
- “While I do not condone the use of drugs, the state should mind its own business until the drug addiction becomes an actual problem in the legal profession.”
- “How on earth could you prove it either way? Someone lies, and they show signs of addiction later, how can you prove they didn’t disclose? What good would it do, except for catching a few people with addiction issues who are honest.”

The overwhelming opinion expressed by the surveyed law student graduates was that “asking applicants about their mental health or past substance abuse challenges is irrelevant to the job of being a lawyer.”²⁷

The inquiry into mental health and substance abuse disorders within question 34 systemically ignores two important facts about the law school experience: (1) “[l]aw students who begin law school with no major pre-existing mental health conditions frequently acquire mental health impairments as a result of their experience”²⁸; and (2) “[f]or law students who begin law school with pre-existing mental health issues . . . , and those in recovery, the stressors of law school may intensify the conditions.”²⁹ Thus, by asking recent law graduates about these challenges, and basing bar admission decisions on their responses, the bar examiners are punishing individuals for challenges created, or significantly exacerbated, by the process required for even reaching admission.

Nobody wants the careers of future lawyers to be sabotaged, or their health imperiled, by law students denying themselves necessary treatment when they need it most. That is precisely the impact of an inquiry into an applicant’s mental disability history. Furthermore, as described in the sections below, there is no evidence that this inquiry effectively screens out unfit attorneys. Question 34 is a lose-lose proposition, and we respectfully urge its elimination.

²⁷ *Id.*

²⁸ ABA Law Student Division, ABA Commission on Lawyer Assistance Programs, & Dave Nee Foundation, *Substance Abuse & Mental Health Toolkit for Law School Students and Those Who Care About Them* (2015), at 5, available at https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_mental_health_toolkit_new.authcheckdam.pdf.

²⁹ *Id.*

II. THE LEGALITY OF QUESTION 34

A. Introduction

The passage into federal law of the Americans with Disabilities Act of 1990 (ADA) provided, for the first time, a nation-wide mandate prohibiting discrimination on the basis of disability in almost all employment, activities of public entities and private places of public accommodation.³⁰ It mirrored the protections previously provided in Section 504 of the Rehabilitation Act of 1973,³¹ which only covered recipients of federal funds, and those provided in the 1988 amendments to the federal Fair Housing Act.³²

All three laws use a similar functional definition of disability, covering those who have a mental or physical impairment that substantially limits a major life activity, have a history of such impairment, or who are regarded as having such impairment.³³ Notably, when the ADA was being debated, two of the groups that were most frequently cited by the supporters of the ADA and Congress as the most stigmatized and thus requiring protection for “being regarded as” disabled were those with the diagnoses of mental impairments and HIV.³⁴

³⁰ 42 USC 12101 et seq.

³¹ 29 USC 794

³² 42 USC 3601 et seq.

³³ 42 USC 12102, 42 USC 3602, 45 CFR 84.3(j) The older and disfavored term “handicapped” is used instead of “disability” in the Fair Housing Act and Sec. 504 regulations, but the terms are synonymous.

³⁴ *See*, generally, Mayerson, Arlene, “A History of the Disability Rights Movement” at <https://dredf.org/about-us/publications/the-history-of-the-ada/> “From the beginning the “class” concept prevailed – groups representing specific disabilities and specialized issues vowed to work on all of the issues affecting all persons with disabilities. This commitment was constantly

As a member of the Working Group astutely observed, it has been clearly established for the past quarter-century that an employer cannot legally question a job applicant about either a current or past mental or physical disability. This includes the obvious direct inquiry (“Do you have a mental illness?”), or the less obvious indirect inquiry (“Have you ever received Social Security benefits?”). However, an employer may always inquire as to the ability to perform job functions and meet workplace standards, including past workplace performance and behavior.

Today, there is still a section of the New York State Bar Admissions Application entitled “Mental Conditions and Impairments, Substance Abuse and Addictions”, which includes the following question:

“Do you currently have any condition or impairment, including, but not limited to a mental, emotional, psychiatric, nervous or behavior disorder or condition, or an alcohol, drug, or other substance abuse condition or impairment or gambling addiction, which in any way impairs or limits your ability to practice law?”

If your answer is yes, describe the nature of the condition or impairment?” (Question 34)³⁵

B. Application of the ADA to Question 34

Title II of the ADA applies to all public entities, which includes any state or local government, as well as any department, agency or instrumentality of a state or local government.³⁶ The NYS Supreme Court Appellate Division, which screens

put to the test. The disability community as a whole resisted any proposals made by various members of Congress to exclude people with AIDS or mental illness or to otherwise narrow the class of people covered.”

³⁵ See NYS Bar Admissions Application, attached as Appendix I

³⁶ 42 USC 12182

applicants to the Bar, is part of the New York State Unified Court System, and therefore subject to Title II of the ADA.³⁷

For an applicant to the Bar to be covered, he or she must be a “qualified individual with a disability,” meaning that he or she meets the essential eligibility requirements, with or without reasonable modification to rules, policies or practices.³⁸ The essential eligibility requirements for Bar applicants are (almost always) the completion of a Juris Doctor degree at an accredited law school, passage of the NYS Bar Examination and having fitness of character to practice law in New York State. Historically, most jurisdictions, including New York State, have inquired into both past conduct, including criminal arrests, military record, debts, and denials of other licenses; as well as mental disability status and history. While prior conduct has been and remains a legitimate subject of inquiry, do questions designed to elicit mental disability status and history run afoul of Title II of the ADA?

Title II, and the regulations implemented by the US Department of Justice (DOJ) thereunder, prohibits the denial of the participation of a qualified person with a disability in any program, service or activity of a public entity.³⁹ It should be noted that prior to the ADA Amendments of 2007, it would have required careful scrutiny to determine whether an applicant with a diagnosis of mental disability was, in fact, considered a person with a disability under the ADA. Much litigation, primarily under the Title I employment provisions of the ADA, involved the determination of

³⁷ Clark v. Virginia Bd. of Law Examiners, 880 F. Supp 430, 446 (E.D. Va., 1994)

³⁸ *Id.*

³⁹ 42 USC 12182, 28 CFR 130 et. seq.

whether the mental or physical impairment substantially limited a major life function. The 2007 ADA Amendments eliminated this requirement for individuals alleging that they are “regarded as” persons with disabilities, only requiring them to prove that they are regarded as having a mental or physical impairment.⁴⁰ Therefore, any applicant who would have to answer Question 34 in the affirmative would likely receive the protections of the ADA.

One could argue that an inquiry into mental disability, in and of itself, neither denies nor excludes an applicant from the practice of law, and thus comports with the ADA. However, answering question 34 in the affirmative requires both the disclosure of one’s diagnosis, which otherwise is protected, private health information, as well as the potential release of some or all of one’s health records to the Committee on Character and Fitness. This requirement to forego one’s right to keep medical information confidential does not extend to other Bar applicants, even those with physical disabilities.

The ADA Title II DOJ regulations state that “A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.”⁴¹ Furthermore, “a public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability.”⁴² Only requiring applicants with mental disabilities to sacrifice their

⁴⁰ 42 USC 12102(3).

⁴¹ 28 CFR 35.130(b)(3)i.

⁴² 28 CFR 35.130(b)(6).

right to keep their medical conditions confidential discriminates against those applicants based upon their actual or perceived disability, and thus appears to violate these regulations.

More importantly, we know anecdotally and from surveys, that law students, in anticipation of having to answer questions about mental disability and possibly being denied Bar admission, have foregone psychiatric and psychological care that they needed during the most stressful time of their lives. Those that completed law school without treatment may have suffered needlessly. Others have left law school and forfeited their career goal to practice law.

The Regulations also state that “a public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”⁴³ It is likely that Question 34 has had the effect of screening out otherwise qualified applicants with disabilities, but that is not dispositive under the regulation. It may be permissible to screen out applicants if “necessary for the provision of the service, program or activity being offered.”

As a matter of law under the rules of regulatory construction, this amounts to an affirmative defense that would have to be proven by the Committee on Character

⁴³ 28 CFR 35.130(b)(8).

and Fitness when challenged.⁴⁴ It is unlikely this burden of proof could be met for several reasons.

Even if one assumes the legality of the question, it is both over-inclusive and under-inclusive in identifying applicants who may be unfit to practice law. It is over-inclusive in that it asks the applicant to reveal “any condition ... which in any way impairs or limits your ability to practice law.” For example, If an applicant needs to see a psychologist for one hour every two weeks during business hours that could arguably impair the applicant’s ability to practice law during an intense four week trial, but it probably would not impair the practice of most attorneys who do not do trial work. We would need to know the type of legal practice, and perhaps the specific legal job to assess whether most mental disabilities could impair or limit an applicant’s ability to practice law. It appears impossible for either the applicant or the Committee on Character and Fitness to accurately predict such a thing. Even psychiatrists are notoriously inaccurate in their predictions of their patients’ future conduct. Studies have determined that the most accurate predictor of future conduct is past conduct – exactly the focus of the character and fitness determination for all other NYS Bar applicants.⁴⁵

⁴⁴ *Guckenberger v Boston Univ.*, 974 F. Supp. 106, 134-35 [D Mass 1997] (“Documentation requirements that screen out or tend to screen out disabled students—in this case, the qualification criteria and the currency requirement as it was initially imposed—still do not violate the ADA and Rehabilitation Act if BU can demonstrate that the requirement is a ‘necessary’ part of the accommodations process. *See* 42 U.S.C. § 12182(b)(2)(i)” [Colo. Cross Disability Coal. v. Hermanson Family Ltd.](#), 264 F.3d 999, 1003 (10th Cir. 2001) (“Several district courts have placed the burden of showing that the eligibility criteria are necessary on the proponent of such criteria.” (citations omitted)); *In re* Petition & Questionnaire for Admission to the R.I. Bar (683 A.2d 1333, 1336 (R.I. 1996) (“[T]he burden is on those who propose to ask the questions to show an actual relationship”).

⁴⁵ *See* Am. Bar Ass’n Comm’n on Mental and Physical Disability Law, Recommendation to the House of Delegates, 22 MENTAL & PHYSICAL DISABILITY L. REP. 266, 267 (Feb. 1998) (“Research in the health field and clinical experience demonstrate that neither diagnosis

The question is under-inclusive because if you accept the premise that the Committee on Character and Fitness should screen out applicants who are impaired in any way from the practice of law, it fails to identify countless physical conditions that could theoretically impair the ability to practice of law. Deafness, blindness, many neurological disorders, speech impairments, and even insomnia could meet these criteria. However, no applicants are required to divulge such information, nor could they legally be required to do so.

There are many successful practicing attorneys in New York State who might have been screened out by this question, to the detriment of their clients and our profession. Because of stigma, most attorneys with a diagnosed mental illness do not share their plight, although this is slowly starting to change.⁴⁶

The author of this section has been practicing law for 32 years, during which he has been in contact with many attorneys who grapple with mental disabilities, but practice successfully. Some of them have been impaired to some degree at times, and that is why employers offer sick leave, for both mental and physical ailments. Some have required reasonable accommodations, and many have not. Some of them

nor the fact of having undergone treatment support any inferences about a person's ability to carry out professional responsibilities or to act with integrity, competence, or honor."); Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 *UCLA L. REV.* 93, 141 (2001) ("there is simply no empirical evidence that applicants' mental health histories are significantly predictive of future misconduct or malpractice as an attorney"); *id.* at 141-42 n. 153 (observing that the only small retrospective study of attorneys "provides no support at all for the notion that individuals with mental health treatment histories are more likely than others to engage in misconduct as attorneys").

⁴⁶ See, <https://www.law.com/newyorklawjournal/2019/05/12/not-alone-how-five-lawyers-triumphed-over-illness-and-addiction/>.

have brought a level of insight and compassion to client concerns that they would not have without personal experience with mental illness. Whether it be matrimonial law, criminal law, trusts and estates, employment or other areas of practice, mental disabilities are pervasive and understanding them is often advantageous to providing effective representation. Our profession is best- served by having diversity of gender, race, religion and nationality. Mental disability is no different.

Screening out otherwise qualified applicants with mental disabilities is not only impossible and unnecessary, it is ultimately detrimental to the profession of law and those we serve. As such, it violates the proscriptions against discrimination of Title II of the ADA.

C. The U.S. Department of Justice, the American Bar Association and Conference of Chief Justices have Opined that State Bar Inquiries Should be Limited to Conduct

The US DOJ is charged with the administrative enforcement of Title II of the ADA. The American Bar Association (ABA) was founded in 1878 and has over 400,000 attorney members. It is the premier law school accreditation organization, and its Model Rules of Professional Conduct have been adopted by 49 states. Membership in the Conference of Chief Justices (CCJ) consists of the highest judicial officer of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam and the Virgin Islands.

A 2014 investigation by DOJ, a 2015 Report of the ABA, and a 2019 Resolution of the CCJ reached similar conclusions: questions about mental health diagnoses should be eliminated on Bar admission applications because they tend to

screen out people with disabilities, deter individuals from seeking treatment and have no predictive value in determining who will be able to practice law competently, ethically and professionally. Each of these documents is attached to this Report.

The collective analysis and conclusions of these pillars of American jurisprudence supports the growing belief that Question 34, if challenged, would be found to violate Title II of the ADA for the reasons described in Section II, above. New York State should be a leader, not a lemming clinging to an antiquated and discredited notion that individuals with mental disabilities are suspect and unworthy to practice law. Everyone benefits.

III. THE USE AND UTILITY OF QUESTION 34

A. Purpose and Process for Surveying the Judicial Departments

An important component of the Working Group's evaluation of the mental health portion of the bar application, and of Question 34 in particular, was an assessment of the effectiveness of the mental health questions in achieving the goal of excluding from admission applicants whose mental health renders them unfit to practice law in New York State. Three basic questions informed the Working Group's consideration of that important issue. First, what are the mental health conditions that an applicant is expected to disclose in response to Question 34? Second, how many applicants actually disclose a mental health condition in response to Question 34? Third, what do the Committees on Character and Fitness in the four judicial departments do when an applicant discloses a mental health condition in response to Question 34?

Interviews were conducted with officials familiar with the character and fitness process in each of the judicial departments to gather information relevant to those questions. Although all four judicial departments use the identical bar application questionnaire, each department conducts its own character and fitness assessment and therefore has the discretion to develop its own standards and processes for evaluating the mental health of bar applicants. The information gathered from those interviews, and certain conclusions drawn from that information, are summarized below.

B. The Disclosure Expected in Response to Question 34

Question 34 is comprised of three subparts. First, the applicant is asked, “Do you have any condition or impairment ... which in any way impairs or limits your ability to practice law?” Second, the applicant is instructed, “If your answer is Yes, describe the nature of the condition or impairment.” Third, the applicant who answered the first subpart affirmatively is asked if the limitations caused by the condition or impairment are “reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program.”

The preface to the question is detailed in terms of what is not being elicited as well as what is. The preface reads:

The purpose of these inquiries is to assist the Appellate Division of the Supreme Court and its Committees on Character and Fitness in evaluating the applicant’s current fitness to practice law. This information shall be treated confidentially (see Judiciary Law § 90[10]). The mere fact of treatment for mental health, alcohol, drug or other substance abuse conditions and impairments or gambling addiction is not, in itself, a basis on which an applicant is denied admission.

This section is not intended to require disclosure of physical conditions or impairments, general guidance counseling for smoking disorders, weight loss advice, academic support, matrimonial and family issues, crime victim issues or career counseling. An applicant may be denied admission where the applicant’s ability to function is impaired in a manner relevant to the fitness to practice law, or where the applicant demonstrates a lack of candor by the

applicant's responses. This is consistent with the public purpose underlying the licensing responsibilities assigned to the Appellate Division. The burden of proving an applicant's fitness to practice law is borne by the applicant.⁴⁷

An applicant might reasonably question whether smoking, excess weight, marital difficulties, family stress, status as a crime victim, or the desire to improve academic performance or career success constitutes an emotional disorder or is the product of a mental condition. Using these examples of what need not be disclosed understandably creates confusion as to what bar admission officials view as the type of mental, emotional or behavioral condition that qualifies as a potentially disclosable condition. Compounding the confusion as to what condition an applicant should disclose, the preamble states immediately after these examples that "an applicant may be denied admission ... where the applicant demonstrates lack of candor by the applicant's responses." This statement and its positioning in the preamble clearly imply that the applicant's failure to disclose a condition can be grounds for denying admission, even if the condition the applicant failed to disclose would not itself be a reason for denying admission. Read together, the specified examples and the cautionary statement about the need for candor can reasonably be interpreted to create a presumption that disclosure is required with respect to any emotional situation that prompted the applicant to speak to a guidance counselor, social worker, psychologist, psychiatrist, or spiritual advisor, unless it is expressly exempted from disclosure by one of the stated examples.

⁴⁷ See NYS Bar Admissions Application, attached as Appendix I.

Interviews with officials in the four judicial departments who are familiar with the character and fitness process indicate that there is not a single, uniform interpretation across the departments as to the types of conditions that are presumed to be potentially disclosable. Some advised that the applicant should answer “yes” to the first part of Question 34, which asks whether an applicant has a mental, emotional or behavioral condition that limits the ability to practice law, if the applicant is taking medication, participating in counseling, or in receipt of a formal diagnosis from a medical or mental health professional. These officials advised that, having erred on the side of disclosure so that his or her candor is not in doubt, and having described the nature of the condition in the second part of Question 34, the applicant could answer “yes” to the third part of Question 34 that asks if the condition is “reduced or ameliorated” by treatment or participation in a support group. On the other hand, some bar officials advised that an applicant need not make any disclosure at all of a well-managed condition because Question 34 seeks disclosure only of a condition “which in any way impairs or limits [the applicant’s] ability to practice law.” They explained that if a condition is well-managed, it would not impair the current ability to practice law, even if the condition would do so in its untreated, unmedicated or unmanaged state.

Notably, none of those interviewed indicated what benchmark a law student who has never practiced law should use for determining whether a condition limits his or her ability to practice law. None disputed that a law student could reasonably construe his or her successful completion of the requirements for graduation from law school, or satisfaction of the New York State bar’s 50-hour pro bono work requirement or pathway to practice standard, as proof that his or her current condition does not limit the ability to practice law. In other words, any applicant

who meets the other requirements for admission to the bar in New York could fairly and honestly answer “no” to first part of Question 34 and skip the remaining parts, according to the interpretation employed by these officials.

The variation in interpretations among bar officials is illustrated by the handling of Attention Deficit Hyperactivity Disorder (“ADHD”), a condition estimated to affect between 2 and 8% of college students according to a November 2009 report in the *Journal of Attention Disorders*.⁴⁸ Some bar officials thought it should be disclosed, because it would limit, among other things, the ability to organize, concentrate, and complete tasks in a timely fashion, which are essential to effective lawyering. Others thought that ADHD need not be disclosed if it is controlled by medication, or has been “outgrown,” because it does not currently limit the ability to practice.

The absence of a uniform view among, or even within, the four judicial departments regarding the scope of the applicant’s disclosure obligation under Question 34 is consistent with the fact that the decision as to what and when to disclose is ultimately left to the discretion of the individual applicant. The Character and Fitness Committees do not have a mechanism for determining whether or not an applicant has accurately interpreted Question 34 or properly complied with its requirements. In the words of one official, the interpretation of Question 34 is entirely subjective and compliance with it depends almost entirely on the interpretation and candor of the applicant. An applicant who has a severe form of a condition like ADHD, but chooses not to disclose it, would not be subject to scrutiny

⁴⁸ George J. DuPaul, *et al.*, *College Students With ADHD*, 13 *Journal of Attention Disorders*, p. 236 (2009).

by the Character and Fitness Committees for a potentially disqualifying mental or emotional disorder unless the ADHD had in the past caused conduct that came to the attention of the Committee through other sources or in answer to the conduct-related questions on the bar application about, for example, academic probation, suspension or expulsion.

Not surprisingly, law school personnel who provide advice and counseling to students about their academic and personal problems, or assist them with bar admission applications, report wide variation in their understanding as to what students must disclose in response to Question 34.

C. The Number of Applicants Disclosing Mental Health Conditions in Response to Question 34

None of the four judicial departments keeps statistics regarding the number of applicants who answer “yes” to the first part of Question 34. Informally, it is estimated that between one and two percent of applicants each year disclose a mental health condition on their applications. In the Third Department, which processes the highest number of applicants at about 3,600 annually because it handles out-of-state and foreign applicants as well as Third Department residents, the 1-2% figure translates to approximately 35-70 applicants each year. Other judicial departments handle one-third or fewer of the applications processed annually by the Third Department, putting the number of applicants answering “yes” to Question 34 in the other three departments combined in the range of a few dozen each year.

It is also estimated that the vast majority of applicants who disclose a mental health condition in response to the first part of Question 34 state that the condition is ameliorated by treatment or counseling in response to the third part of Question 34. One bar official noted that those applicants who answered “yes” to the third part of Question 34 could reasonably have answered “no” to the first part of Question 34 without running afoul of the cautionary statement in the preamble regarding candor. This suggests that the current 1-2% affirmative response rate among applicants is over-inclusive.

Occasionally, but very rarely, an applicant will answer “no” to Question 34, but the Character and Fitness Committee will learn from another source that the applicant suffers from a potentially disqualifying mental health condition. In those cases, the applicant has typically offered his or her mental health condition in defense against a misconduct charge that has been the subject of a legal, administrative, employment-related, or academic investigation or proceeding of some kind. The Committee learns of the investigation or proceeding, and the applicant’s assertion of a mental health defense, from the applicant’s letters of reference, school reports, or answers to other conduct-based questions on the bar application. In such instances, the Committee does not automatically deny admission to the applicant for lack of candor in answering Question 34.

The small percentage of applicants who respond affirmatively to Question 34 contrasts sharply with the percentage of law students who reported receiving a formal diagnosis of an emotional disorder in the 2014 Survey of Law Student Well-Being (“SLSWB”), as reported in the Autumn 2016 issue of the Journal of Legal Education. For example, 18% of law students who responded to the SLSWB

questionnaire reported receiving a formal diagnosis of depression while 21% reported having been diagnosed with an anxiety disorder.⁴⁹

The report also points out the dampening effect that potentially having to report any condition to the bar admission committee has on seeking mental health treatment.

Perhaps most significantly, with respect to mental health, the percentage of third-year respondents concerned that seeking help would be a potential threat to job or academic status or a potential threat to bar admission was higher than the percentage of first-year respondents for whom these factors were of concern...

This may suggest that while in law school, students are getting messages indicating that seeking help for mental health concerns or alcohol/drug concerns may be problematic for their academic or professional careers.⁵⁰

D. The Committee Process for Evaluating Mental Health Disclosure

The members of the Committees on Character and Fitness are lawyers, not mental health professionals, and do not make mental health professionals *ex officio* members of the Committees to assist the lawyers in assessing applicants' answers to Question 34. None of the bar officials interviewed indicated that the Committees have a mental health professional on-call to assist them in reviewing mental health

⁴⁹ Jerome M. Organ, *et al.*, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Abuse and Mental Health Concerns*, 66 *Journal of Legal Education*, pp. 136, 138 (2016).

⁵⁰ *Id.* at p. 141.

information. Apparently, none of the Committees has funds budgeted to pay for regular consultations with a mental health professional for that purpose. The Committees are supported by members of the executive staff of the particular judicial department in which the Committee members are appointed to serve.

When an applicant states that he or she has a mental health condition that impairs the ability to practice law, but reports that the condition is ameliorated by treatment, the Committees typically take the applicant at his or her word. They do not usually exercise their right, which is set forth at the end of Question 34, to ask for a HIPAA release to obtain medical records from the applicant's health care provider. On rare occasions, depending on the nature of the condition described by the applicant in the second part of Question 34, judicial departmental staff that screen and assemble application materials for presentation to the Committee will ask an applicant to provide a letter from the treating physician to verify the applicant's statement about the ameliorative effects of treatment and confirm the applicant's compliance with the prescribed treatment regimen. The letter from the doctor is added to the application package presented to the Character and Fitness Committee, usually without review by a mental health professional retained on behalf of the Committee. Screening staff may also flag for the Committee the affirmative answers to Question 34 and the letter from the treating physician so that the Committee can, if it chooses, ask the applicant about his or her mental health during the Committee's in-person interview of the applicant. One official noted, however, that there is a presumption that an applicant who has traveled a long distance to sit for the in-person interview will be admitted immediately after the interview. Naturally, this presumption makes the in-person interview an impractical vehicle for fact-gathering about the impact of the applicant's mental health condition or for any further

investigation of the information obtained during the interview. Another official noted that if an applicant discloses that he or she suffers from severe depression, but reports that the depression is controlled by medication, and the application materials include a glowing recommendation from a judge with whom the applicant interned, no further follow-up will be deemed necessary.

More substantive investigation, if it takes place at all, occurs when the Committee learns from the applicant's answer to a conduct-related question on the application, or from another source, such as the applicant's law school or previous employer, that the applicant engaged in misconduct caused by or related to the applicant's mental health condition.⁵¹ Follow-up also occurs when the applicant answers "no" to the part of Question 34 that asks whether the condition is ameliorated by treatment.

In such circumstances, the applicant is asked to provide proof that the applicant is not disqualified by his or her mental health condition. This puts the burden on the applicant to bear the cost of retaining a physician or other professional to submit evidence sufficient to show that the condition is not disqualifying. Sometimes, an applicant will be referred to the Lawyer Assistance Program for evaluation, most often when a drug or alcohol problem is disclosed, and input from the LAP's outside mental health provider is provided to the Character and Fitness

⁵¹ The NYS Bar Admission Questionnaire contains more than a dozen questions related to conduct by the applicant that might trigger additional scrutiny as to whether the applicant's conduct was associated with a mental health condition warranting additional investigation. *See* Bazelon Center for Mental Health summary of bar admission questions attached as Appendix III, pp. 78-80. For example, Question 14 asks, "Have you ever been requested or advised by any college, law school, or other professional or graduate school for any reason to discontinue your studies therein."

Committee for consideration. It was estimated that requests for more substantive follow-up information from the applicant, a treating professional, or the LAP occurs between six and ten times a year.

A decision to deny an applicant admission to the bar based on a mental health condition, including a substance abuse problem, is very rare. When such a decision is made, the applicant has the right to request an administrative hearing at which the applicant can be represented by a lawyer, submit evidence via documents and witness testimony, and make arguments in support of reversing the denial decision. One official indicated that of 15,000 applications submitted during a ten-year period, only about 50 such hearings were held, only a few of those involved a denial based on mental health as opposed to substance abuse, and only half of the 50 hearings resulted in a denial of the applicant's admission to the bar.

E. Analysis

Question 34 is not an effective mechanism for detecting and excluding from the New York State bar applicants whose ability to practice law is impaired by a mental health condition. The question does not reliably, uniformly, fairly and consistently identify applicants who suffer from a disqualifying mental health condition and prevent their admission. First, there is no uniformly agreed-upon definition of a disclosable mental health condition, which constrains the fairness and consistency of the inquiry. Second, disclosure depends entirely on the subjective judgment of the applicant, which undermines the objectivity of the process and the outcomes it produces. Third, because Question 34 depends largely on the insight and integrity of the applicant, it allows the dishonest, delusional, or simply un-self-aware applicants to avoid scrutiny while the subjecting scrupulously honest applicants to unnecessary, intrusive scrutiny. Fourth, the mental health information

disclosed in response to Question 34 is not regularly and systematically reviewed by mental health professionals, which imports into the bar admission process an opportunity for decision-making based on impressionistic, anecdotal, or stereotypical thinking, not on medical expertise. Fifth, the number of applicants subjected to scrutiny as a result of disclosure under Question 34 is minimal compared to the number of law students who report suffering from a previously-diagnosed mental health condition, suggesting that applicants who suffer from potentially-disqualifying mental health conditions are being admitted to practice without the special scrutiny contemplated by Question 34.

Finally, it is clear that questions on the bar application related to the applicant's past conduct, not his or her mental health condition, are providing the disclosure that the Character and Fitness Committees actually rely on and find most useful in identifying applicants who deserve closer scrutiny when evaluating their fitness to practice law. More than one bar official interviewed in connection with this Report noted that the elimination of Question 34 would not have affected the outcome of any of the cases in the past ten years in which admission to the bar was denied. That fact is compelling evidence that Question 34 is unnecessary, even if it were not also ineffective, in accomplishing the goal of identifying applicants whose mental conditions make them candidates for special scrutiny by the Character and Fitness Committees.

CONCLUSION

The demands of law school, coupled with increasing debt and an uncertain job market, result in law students experiencing stress and mental health issues. The presence of mental health inquiries on the application may lead to a number of students who fail to seek assistance for these problems. Moreover, the Americans With Disabilities Act casts serious doubt upon the legality of asking questions relating to mental disability. Finally, there is compelling evidence that such questions are ineffective and unnecessary. It is the conclusion of the Working Group on Attorney Mental Health that mental health inquiries should be eliminated from the application for admission to the Bar of New York State.

APPENDICES

Appendix A

A-1: Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York, Part H. Mental Conditions and Impairments, Substance Abuse and Addictions

Appendix B

B-1: American Bar Association Resolution 102 with Report, August 2015

B-2: Conference of Chief Justices Resolution 5, In Regard to the Determination of Fitness to Practice Law, February 2019

B-3: *Virginia Panel Scraps Mental Health Question After Law School Student Push*, Richmond Times-Dispatch, February 8, 2019

B-4: California Senate Bill No. 544, Chapter 152

B-5: *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*, Jerome M. Organ, David B. Jaffe, and Katherine M. Bender, Ph. D.

Appendix C

C-1: *Bar Admissions Questions Pertaining to Mental Health, School/Criminal History and Financial Issues*, Bazelon Center, February 2019

APPENDIX A

Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York**Application for Admission Questionnaire (Continued)** - Please see the General Instructions for guidance on filing complete applications

31. State whether there are any unpaid traffic or parking tickets in your name or attributable to a motor vehicle registered in your name; if 'Yes', please complete the following.

No Yes

▼ Description of unpaid ticket(s)	▼ Fines - Amount(s) due and Date(s) due
_____	_____
_____	_____
_____	_____
_____	_____

32. State whether you have ever been charged with fraudulent conduct or any other act involving moral turpitude.

No Yes

33. State whether you have ever been a complainant, party or witness to or otherwise involved in any civil or criminal action, proceeding or investigation not covered by answers to the above questions **28-32**.

No Yes

If you answered 'Yes' to any of the above questions **28-33**, indicate the question and state the facts as fully as possible. If applicable, provide the name and locality of the court or agency, the approximate date of the action or proceeding, and the judgment or other disposition.

H. Mental Conditions and Impairments, Substance Abuse and Addictions

The purpose of these inquiries is to assist the Appellate Division of the Supreme Court and its Committees on Character and Fitness in evaluating the applicant's current fitness to practice law. This information shall be treated confidentially (see Judiciary Law § 90[10]).

The mere fact of treatment for mental health, alcohol, drug or other substance abuse conditions and impairments or gambling addiction is not, in itself, a basis on which an applicant is denied admission.

This section is not intended to require disclosure of physical conditions or impairments, general guidance counseling for smoking disorders, weight loss advice, academic support, matrimonial and family issues, crime victim issues or career counseling.

An applicant may be denied admission where the applicant's ability to function is impaired in a manner relevant to the fitness to practice law, or where the applicant demonstrates a lack of candor by the applicant's responses. This is consistent with the public purpose underlying the licensing responsibilities assigned to the Appellate Division. The burden of proving an applicant's fitness to practice law is borne by the applicant.

34. Do you currently have any condition or impairment including, but not limited to a mental, emotional, psychiatric, nervous or behavioral disorder or condition, or an alcohol, drug or other substance abuse condition or impairment or gambling addiction, which in any way impairs or limits your ability to practice law?

No Yes

Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York

Application for Admission Questionnaire (Continued) - Please see the General Instructions for guidance on filing complete applications

If your answer is 'Yes', describe the nature of the condition or impairment.

If your answer is 'Yes', are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

No Yes

If your answer is 'Yes', the Committee on Character and Fitness may require that you provide an Authorization for the Release of Health Information Pursuant to HIPAA (OCA Official Form No.:960) for some or all of the providers of your treatment. The form is available at www.nycourts.gov/forms/hipaa_fillable.pdf.

35. Are you currently using any illegal drugs?

No Yes

36. Within the past five years, have you engaged in any conduct that, as applied to you:

- (a) resulted in an arrest, discipline, sanction or warning;
- (b) resulted in termination or suspension from school or employment;
- (c) resulted in loss or suspension of any license;
- (d) resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an employer, educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or
- (e) endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules?

No Yes

If so, provide a complete explanation and include all defenses or claims that you offered in mitigation or as an explanation for your conduct. If you answered 'Yes', furnish the following information.

▲ Name of Entity Before Which the Issue was Raised (i.e., Court, Agency, Etc.)		
▲ Street Address		
▲ City/Town/Village	▲ State	▲ ZIP
▲ Country	▲ Province	
▲ Nature of the Proceeding		
▲ Relevant Date(s)		
▲ Disposition, if any		
▼ Explanation:		

APPENDIX B

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 3-4, 2015

RESOLUTION

RESOLVED, That the American Bar Association urges state and territorial bar licensing entities to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner.

FURTHER RESOLVED, That state and territorial bar licensing entities are not precluded from making reasonable and narrowly-tailored follow-up inquiries concerning an applicant's mental health history if the applicant has engaged in conduct or behavior that may otherwise warrant a denial of admission, and a mental health condition either has been raised by the applicant as, or is shown by other information to be, an explanation for such conduct or behavior.

FURTHER RESOLVED, That this resolution replaces the 1994 policy, ABA Resolution No. 110, Aug. 1994 (94A110).

REPORT

Introduction

State and territorial bar examiners have a duty to the public to ensure that all licensed attorneys are fit to practice law. To fulfill this duty, state bars ask all applicants a series of moral character and fitness questions. Many of these questions focus on conduct or behavior, including deceit, fraud, financial irresponsibility, criminal arrests and convictions, academic, employment and professional discipline, and driving under the influence of alcohol or drugs.¹

In addition to conduct and behavior-related questions, many state bars inquire about applicants' mental health diagnoses and treatment. Applicants who answer these questions affirmatively are subject to burdensome supplemental investigations that are not imposed on other applicants. Typically, they are required to authorize their treatment providers to release information relating to mental health diagnoses and treatment, including medical and hospitalization records. These records contain highly sensitive, personal information such as details about childhood, parents, siblings, and sexual history that is not relevant to one's ability to practice law. These applicants may also have to undergo examinations by independent psychiatrists or psychologists at their expense. Questions about mental health history, diagnoses, or treatment are not only unduly intrusive, but screen out or tend to screen out individuals with disabilities, are ineffective for the presumed purpose of identifying unfit applicants, and are likely to deter individuals from seeking mental health counseling and treatment.

Purpose

This Resolution urges state and territorial bar licensing entities, when determining character and fitness for the purpose of bar admission, to eliminate all questions that ask about mental health history, diagnoses, or treatment and instead focus on conduct or behavior that in a material way impairs an applicant's ability to practice law competently, ethically, and professionally.

This Resolution replaces ABA Resolution No. 110 (Aug. 1994),² which stated:

BE IT RESOLVED, That the American Bar Association recommends that when making character and fitness determinations for the purpose of bar admission, state and territorial bar examiners, in carrying out their responsibilities to the

¹ See, e.g., NATIONAL CONFERENCE OF BAR EXAMINERS, REQUEST FOR PREPARATION OF A CHARACTER REPORT, at 13, available at <http://ncbex.org/character-and-fitness> (e.g., "Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?").

² Available at

http://www.americanbar.org/content/dam/aba/directories/policy/1994_am_110.authcheckdam.pdf.

public to admit only qualified applicants worthy of the public trust, should consider the privacy concerns of bar admission applicants, tailor questions concerning mental health and treatment narrowly in order to elicit information about current fitness to practice law, and take steps to ensure that their processes do not discourage those who would benefit from seeking professional assistance with personal problems and issues of mental health from doing so.³

Although the 1994 policy was a step forward in limiting unnecessary and intrusive questions regarding mental health and treatment, it stopped short of calling for their elimination. The drafters recognized it might well become necessary to revisit the issue in the future, and expressed their intent “to pursue further dialogue and interaction.” The 20 years that have elapsed since adoption of that policy have brought significant developments in the law and our understanding of mental disabilities that call into question the continued use of even narrowly-tailored questions regarding mental health and treatment. It has become clear that questions about mental health history, diagnoses, or treatment are inherently discriminatory, invade privacy, stigmatize and needlessly exclude applicants with disabilities, are ineffective in identifying applicants who are unfit, and discourage some applicants from seeking necessary treatment. By calling for the elimination of such questions, the proposed Resolution will help ensure that bar applicants with disabilities are assessed—like other applicants—solely on the basis of their fitness to practice law.

Developments Since Adoption of 1994 Policy

In early 2014, the U.S. Department of Justice (DOJ) informed the states of Vermont⁴ and

³ This concern was acknowledged in a subsequent policy adopted by the House of Delegates in February 1998 regarding character and fitness determinations of state and territorial judicial candidates, nominees, or appointees. *Available at* http://www.americanbar.org/content/dam/aba/directories/policy/1998_my_114.authcheckdam.pdf. Brought before the House by the Commission on Mental and Physical Disability Law (now the Commission on Disability Rights), the Resolution stated:

RESOLVED, That the American Bar Association recommends that when making character and fitness determinations of state and territorial judicial candidates, nominees, or appointees, any nominating or evaluating entity: 1) consider the privacy concerns of the candidates; 2) narrowly tailor questions concerning physical and mental disabilities or physical and mental health treatment in order to elicit information about current fitness to serve as a judge, with such reasonable modifications as may be required; and 3) take steps to ensure that the process does not have the effect of discouraging those who would seek judicial office from pursuing professional assistance when needed. (Emphasis added.)

FURTHER RESOLVED, That fitness determinations may include specific, targeted questions about a state and territorial judicial candidate's behavior, conduct, or current impairment as it affects the ability to serve as a judge.

⁴ Letter from Jocelyn Samuels, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Karen L. Richards, Executive Director, Vermont Human Rights Commission (Jan. 21, 2014) [Vermont Letter]. Richards had requested the Department of Justice's (DOJ) position regarding the extent to which states may consider mental health in their screening process for bar applicants. DOJ stated its

Louisiana⁵ that their questions about bar applicants' mental health diagnoses and treatment violate Title II of the Americans with Disabilities Act (ADA). The decision with respect to Louisiana followed an extensive investigation in response to a complaint filed by Louisiana bar applicants, resulting in a formal finding in February 2014 that Louisiana's character and fitness questions regarding applicants' mental health diagnoses and treatment discriminate based on disability and thus violate Title II of the ADA. The questions at issue were:

25. Within the past five years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?

26A. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice law in a competent and professional manner?

26B. If your answer to Question 26A is yes, are the limitations caused by your mental health condition or substance abuse problem reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?

27. Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous, or behavioral disorder or condition as a defense, mitigation, or explanation for your actions in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination by an educational institution, employer, government agency, professional organization, or licensing authority?⁶

Applicants who responded affirmatively to these questions were required to provide a detailed description of their condition(s) and treatment, list all of their treatment

position—the questions are eligibility criteria that screen out or tend to screen out persons with disabilities and subject them to additional burdens; the questions are unnecessary because questions related to applicants' conduct are sufficient and most effective to evaluate fitness; and the questions are unnecessary because they do not effectively identify unfit applicants—but did not make a formal finding because no complaint was lodged.

⁵ Letter from Jocelyn Samuels, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to the Honorable Bernette J. Johnson, Chief Justice, Louisiana Supreme Court, Elizabeth S. Schell, Executive Director, Louisiana Supreme Court Committee on Bar Admissions, and Charles B. Plattsmier, Chief Disciplinary Counsel, Louisiana Attorney Disciplinary Board Office of Disciplinary Counsel, *The United States' Investigation of the Louisiana Attorney Licensure System Pursuant to the Americans with Disabilities Act*, DJ No. 204-32M-60-32-88,204-32-89 (Feb. 5, 2014) [Findings Letter], available at <http://www.ada.gov/louisiana-bar-lof.pdf>.

⁶ *Id.* at 5.

providers, and authorize their providers to release all of their medical records to bar officials.

The DOJ found that, to comply with the ADA, “attorney licensing entities must base their admissions decisions on an applicant’s record of conduct, not the applicant’s mental health history.”⁷ Moreover, “[i]nquiring about bar applicants’ medical conditions substitutes inappropriate questions about an applicant’s status as a person with a disability for legitimate questions about an applicant’s conduct.”⁸ The DOJ concluded that the questions at issue: impermissibly screen out or tend to screen out persons with disabilities “based on stereotypes and assumptions about their disabilities”;⁹ are unnecessary to determine fitness and ineffective in identifying unfit applicants;¹⁰ and are likely to deter individuals from seeking mental health counseling and treatment and, therefore, are counterproductive to the goal of ensuring fitness to practice.¹¹

As to Question 26A, the DOJ found that asking whether a condition or impairment “if untreated could affect” an applicant’s ability to practice law “reduces the question to one about an applicant’s diagnosis, not the effect of that diagnosis on his or her fitness to practice law.”¹² Because the question “considers an applicant’s disability in a hypothetical future untreated form,” it fails to “inform an assessment of how the disability affects an applicant’s current fitness to practice law.”¹³ It assumes “a worst case scenario that may never come to pass” and “appears rooted in unfounded stereotypes about individuals with these diagnoses.”¹⁴

In August 2014, the DOJ entered into a settlement agreement with the Louisiana Supreme Court to ensure the right of qualified bar applicants with mental health conditions to have equal access to the legal profession.¹⁵ The settlement requires the court to revise its character and fitness questions so that they focus on an applicant’s conduct or behavior. Under the terms of the settlement, inquiries into mental health diagnoses or treatment are prohibited unless an applicant voluntarily discloses this information (1) to explain conduct or behavior that may otherwise warrant denial of admission or (2) in response to

⁷ *Id.* at 8.

⁸ *Id.* at 19.

⁹ *Id.* at 18. See also Carol J. Banta, Note, *The Impact of the Americans with Disabilities Act on State Bar Examiners’ Inquiries into the Psychological History of Bar Applicants*, 94 MICH. L. REV. 167, 176-78 (1995).

¹⁰ Findings Letter, *supra* note 5, at 19, 22. See also Banta, *supra* note 9, at 182-83.

¹¹ Findings Letter, *supra* note 5, at 22. *Id.* at 23. See also Jennifer McPherson Hughes, *Suffering in Silence: Questions Regarding an Applicant’s Mental Health on Bar Applications and Their Effect on Law Students Needing Treatment*, 28 J. LEGAL PROF. 187 (2003-04); Banta, *supra* note 9, at 183-84.

¹² Findings Letter, *supra* note 5, at 22. See also *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 472 (1999) (finding that a “disability” under the Americans with Disability Act “exists only where the impairment ‘substantially limits’ a major life activity, not where it ‘might,’ ‘could,’ or ‘would’ be substantially limiting if mitigating measures were not taken.”)

¹³ Findings Letter, *supra* note 5, at 22.

¹⁴ *Id.*

¹⁵ Settlement Agreement Between the United States of America and the Louisiana Supreme Court Under the Americans with Disabilities Act (Aug. 2014), available at http://www.ada.gov/louisiana-supreme-court_sa.htm.

Question 26A on the National Conference of Bar Examiners' Character and Fitness application, "Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?"

Although the settlement did not require Louisiana to eliminate Question 26A, at least one other state has done so. The Tennessee Board of Law Examiners decided to remove Questions 26A and B¹⁶ from the National Conference of Bar Examiners' application accessed by applicants for licensure in Tennessee.¹⁷

The Law and Its Application

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."¹⁸ DOJ is the federal agency charged with enforcing Title II. Its regulations bar public entities from "administer[ing] a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of a disability."¹⁹ In addition, public entities cannot impose or apply "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary" for the provision of the service, program, or activity.²⁰ Also prohibited are policies that "unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others."²¹ State bars are public entities and thus fall within the scope of coverage under Title II.²²

As the DOJ concluded in its Findings Letter, inquiries about bar applicants' mental health diagnoses and treatment constitute eligibility criteria that screen out or tend to screen out individuals based on speculation, stereotypes, and assumptions about their disabilities.²³

¹⁶ 26. A. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? Yes No

B. If your answer to Question 26(A) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

¹⁷ See Martha M. Lafferty, *Tennessee Removes Discriminatory Questions from Attorney Licensure Application: Questions about Mental Health Diagnoses Violate ADA* (Mar. 15, 2014), <http://www.dlactn.org/news-events/61-latest-news/158-disability-attorney-licensure-mental-health-tn.html>.

¹⁸ 42 U.S.C. § 12132.

¹⁹ 28 C.F.R. § 35.130(b)(6).

²⁰ *Id.* § 35.130(b)(8).

²¹ 28 C.F.R. pt. 35, app. B at 673.

²² See, e.g., *Clark v. Va. Bd. of Bar Exam'rs*, 880 F. Supp. 430, 441 (E.D. Va. 1995); *Ellen S. v. Fla. Bd. of Bar Exam'rs*, 859 F. Supp. 1489, 1493 (S.D. Fla. 1994); *In re Petition & Questionnaire for Admission to R.I. Bar*, 683 A.2d 1333, 1336 (R.I. 1996).

²³ Findings Letter, *supra* note 5, at 19.

Bar examiners appropriately ask a wide range of questions that focus on conduct relevant to applicants' fitness. Such conduct-based questions are not only sufficient to evaluate fitness, but also the most effective means for doing so.²⁴ A history of mental health diagnosis or treatment is not a useful predictor of future attorney misconduct or malpractice.²⁵

Furthermore, as the DOJ observed, questions concerning mental health diagnoses and treatment are counterproductive to the goal of ensuring the fitness of licensed attorneys by deterring applicants from seeking counseling and treatment for mental health concerns.²⁶ Applicants fear that such disclosures may preclude them from becoming lawyers. In addition, such questions may prevent applicants who seek treatment from being totally candid about their conditions, thereby limiting the health care provider's ability to accurately diagnose and treat them.²⁷

²⁴ *Id.* at 22-23. See also Allison Wielobob, *Bar Application Mental Health Inquiries: Unwise and Unlawful*, 24:1 HUMAN RIGHTS 12, 14 (Winter 1997) ("But questions about behavior, not mental health treatment, would more accurately discover potentially problematic practitioners."); Banta, *supra* note 9, at 186-87 ("Permissible inquiries into conduct and behavior to determine fitness are sufficient to serve bar examiners' purpose of protecting the public."); Phyllis Coleman & Ronald A. Shellow, *Ask About Conduct, Not Mental Illness: A Proposal for Bar Examiners and Medical Boards to Comply with the ADA and Constitution*, 20 J. LEGIS. 147, 149 (1994) ("Consequently, professional licensing boards should inquire about conduct, not treatment for or history of mental illness or substance abuse.").

²⁵ See, e.g., Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. REV. 93, 141 (2001) ("there is simply no empirical evidence that applicants' mental health histories are significantly predictive of future misconduct or malpractice as an attorney"); Banta, *supra* note 9, at 182-83 (Psychological records are not a reliable predictor of behavior, since the range and severity of individuals' problems vary."); *In re Petition & Questionnaire for Admission to R.I. Bar*, 683 A.2d 1333, 1336 (R.I. 1996) ("Research has failed to establish that a history of previous psychiatric treatment can be correlated with an individual's capacity to function effectively in the workplace."); *Clark v. Va. Bd. of Bar Exam'rs*, 880 F. Supp. 430, 446 (E.D. Va. 1995) (licensing questions related to mental health status or treatment were unnecessary where "the Board presented no evidence of correlation between obtaining mental counseling and employment dysfunction"; "past behavior is the best predictor of present and future mental fitness."); *Application of Underwood*, 1993 WL 649283, at *2 (Me. Dec. 7, 1993) ("Although it is certainly permissible for the Board of Bar Examiners to fashion other questions more directly related to *behavior* that can affect the practice of law without violating the ADA, the questions and medical authorization objected to here are contrary to the ADA.") (emphasis in original).

²⁶ Findings Letter, *supra* note 5, at 23-24 (citing American Psychiatric Ass'n, *Recommended Guidelines Concerning Disclosure and Confidentiality* (1999) (disclosure policies "inhibit individuals who are in need of treatment from seeking help"); *Clark v. Va. Bd. of Bar Exam'rs*, 880 F. Supp. 430, 445-46 (E.D. Va. 1995) (bar examiners' mental health question "deters the counseling and treatment from which [persons with disabilities] could benefit" and "has strong negative stigmatic and deterrent effects upon applicants"); *In re Petition & Questionnaire for Admission to R.I. Bar*, 683 A.2d 1333, 1336 (R.I. 1996) (bar examiners' questions regarding mental health may prevent a person in need of treatment from seeking assistance); *In re Petition of Frickey*, 515 N.W.2d 741 (Minn. 1994) ("the prospect of having to answer the mental health questions in order to obtain a license to practice causes many law students not to seek necessary counseling").

²⁷ Findings Letter, *supra* note 5, at 24 (citing *Clark v. Va. Bd. of Bar Exam'rs*, 880 F. Supp. 430, 438 (E.D. Va. 1995); U.S. Dep't of Health & Human Services, *Mental Health: A Report of the Surgeon General* 441 (1999) ("evidence also indicates that people may become less willing to make disclosures during treatment if they know that information will be disseminated beyond the treatment relationship").

Finally, unnecessary burdens are placed on applicants who respond affirmatively to mental health questions.²⁸ Typically, they are subjected to further investigations such as interviews and independent psychiatric or psychological examinations at their own expense, and are required to submit detailed medical information related to their condition and treatment, including copies of medical and hospitalization records. These records contain highly sensitive, personal information such as details about childhood, parents, siblings, and sexual history that is not relevant to one's ability to practice law. These practices impose significant expense, delays, and invasions of privacy on applicants with disabilities.

Conclusion

Nearly 25 years after the passage of the ADA, in the wake of intervening court and federal agency decisions, the time has come for the ABA to update its position on this issue of great significance to our profession and our members. The ABA has long sought to “promote the full and equal participation in the association, our profession, and the justice system by all persons.”²⁹ In 2000, the House adopted policy urging courts to ensure equal access to justice by making courthouses and court proceedings accessible. The accompanying report cited the congressional finding that people with disabilities frequently face restrictions and limitations “resulting from stereotypical assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.”³⁰

The signatories to the 1994 Resolution wrote in the conclusion to their report, “What has been accomplished to date represents both progress and the promise of greater progress.” We believe this new Resolution represents that “greater progress” and we commend it to the House of Delegates for its favorable consideration.

Respectfully submitted,
Mark D. Agrast
Chair
Commission on Disability Rights

²⁸ Vermont Letter, *supra* note 4, at 8-9 (citing *Clark v. Va. Bd. of Bar Exam'rs*, 880 F. Supp. at 442-43 (E.D. Va. 1995) (finding applicants with disabilities cannot be subjected to additional unnecessary burdens); *Ellen S. v. Fla. Bd. of Bar Exam'rs*, 859 F. Supp. 1489, 1494 (S.D. Fla. 1994); *Med. Soc'y of N.J. v. Jacobs*, 1993 WL 413016, at *8 (D.N.J. Oct. 5, 1993) (holding that licensing board may not place burden of additional investigations on applicants who respond affirmatively to questions about disability status); *Brewer v. Wis. Bd. of Bar Exam'rs*, 2006 WL 346958, at *10 (E.D. Wis. Nov. 28, 2006) (concluding licensing entities may not require additional investigation solely because of applicants' disabilities)). See also Coleman & Shellow, *supra* note 24, at 148 (stating that applicants who disclose a history of illness or treatment are injured because their admission is delayed, they are compelled to reveal private details of mental health, and face the stigma associated with mental conditions).

²⁹ ABA Goal III: Eliminate Bias and Enhance Diversity, available at http://www.americanbar.org/about_the_aba/aba-mission-goals.html.

³⁰ ABA Recommendation No. 112, at 4 (2000).

Mark I. Schickman
Chair
Section of Individual Rights and Responsibilities

August 2015

GENERAL INFORMATION FORM

Submitting Entity: Commission on Disability Rights & Section of Individual Rights and Responsibilities

Submitted By: Mark D. Agrast, Chair, Commission on Disability Rights; Mark I. Schickman, Chair, Section of Individual Rights and Responsibilities

1. Summary of Resolution(s). This resolution urges state and territorial bar licensing entities, in their character and fitness determinations for the purpose of bar admission, to eliminate any questions that ask about mental health history, diagnoses, or treatment and instead focus questions on conduct or behavior that in a material way impairs an applicant's ability to practice law in a competent, ethical, and professional manner. This resolution replaces the 1994 policy (ABA Resolution No. 110 (Aug. 1994)).
2. Approval by Submitting Entity. The Commission on Disability Rights approved the resolution at its fall meeting in Washington, DC, on November 17, 2014. The Section of Individual Rights and Responsibilities approved the resolution at its council meeting on April 24, 2015.
3. Has this or a similar resolution been submitted to the House or Board previously? No. However, this proposed resolution would replace existing policy as noted under Question 4.
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In August 1994, the House passed policy—submitted by the Commission on Mental and Physical Disability Law (now the Commission on Disability Rights), the Section of Legal Education and Admissions to the Bar, and the Association of American Law Schools—recommending that state and territorial bar examiners, when making character and fitness determinations for the purpose of bar admission, should tailor

questions concerning mental health and treatment narrowly in order to elicit information about current fitness to practice law and take steps to ensure that their processes do not discourage those who would benefit from seeking professional assistance with personal problems and issues of mental health from doing so. The proposed resolution would replace this 1994 policy by urging state and territorial bar licensing entities and the National Conference of Bar Examiners to no longer ask any questions concerning mental health and treatment.

In February 1998, the House passed policy—submitted by the Commission on Mental and Physical Disability Law (now the Commission on Disability Rights) and the Section of Individual Rights and Responsibilities—urging any nominating or evaluating entity making character and fitness determinations of state judicial candidates, nominees, and appointees to: consider the privacy interests of the candidates; narrowly tailor questions concerning physical and mental disabilities and health treatment in order to elicit information about current fitness to serve as a judge, with such reasonable modifications as may be required; and take steps to ensure that the evaluation process does not have the effect of discouraging those who would seek judicial office from pursuing professional assistance when needed. This policy would not be affected by the proposed resolution, which does not address judicial character and fitness determinations.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
6. Status of Legislation. (If applicable) N/A
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Adoption of this policy will enable the Association to urge state and territorial bar licensing entities to eliminate any questions that ask about mental health history, diagnoses, or treatment and instead ask questions that focus on conduct or behavior that in a material way impairs a bar applicant's ability to practice law in a competent, ethical, and professional manner.
8. Cost to the Association. (Both direct and indirect costs) None
9. Disclosure of Interest. (If applicable) N/A
10. Referrals.

Criminal Justice Section

Section of Family Law
Section of Legal Education and Admissions to the Bar
Section of Real Property, Trust and Estate Law
Judicial Division
Law Student Division
Senior Lawyers Division
Young Lawyers Division
Association of American Law Schools
National Conference of Bar Examiners
Standing Committee on Client Protection
Standing Committee on Ethics and Professional Responsibility
Standing Committee on Legal Assistance for Military Personnel
Commission on Law and Aging
Commission on Lawyers Assistance Programs

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Commission on Disability Rights
Amy L. Allbright
1050 Connecticut Avenue, NW Suite 400
Washington, DC 20036
(202) 662-1575
amy.allbright@americanbar.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Commission on Disability Rights:
Mark D. Agrast
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Section of Individual Rights and Responsibilities:
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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges state and territorial bar licensing entities, in their character and fitness determinations for the purpose of bar admission, to eliminate any questions that ask about mental health history, diagnoses, or treatment and instead focus questions on conduct or behavior that in a material way impairs an applicant's ability to practice law in a competent, ethical, and professional manner. This resolution replaces the 1994 policy (ABA Resolution No. 110 (Aug. 1994)).

2. Summary of the Issue that the Resolution Addresses

The resolution addresses the extent to which questions about mental health history, diagnoses, or treatment are necessary or appropriate in determining an applicant's character and fitness. It provides that such questions are unnecessary and ineffective in identifying applicants who are unfit and are likely to deter individuals from seeking mental health counseling and treatment. These kinds of questions are counterproductive to the goal of ensuring fitness to practice; unnecessarily invade applicants' privacy; and impermissibly tend to screen out persons with disabilities based on stereotypes and assumptions about their disabilities, rather than focusing on their conduct or behavior that impairs their ability to practice law in a competent, ethical, and professional manner.

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

The proposed resolution urges state and territorial bar licensing entities to eliminate any questions that ask bar applicants about mental health history, diagnoses, or treatment.

4. Summary of Minority Views

At this time, we are unaware of any opposition. However, to the extent that some licensing entities currently ask questions about mental health history, diagnoses, or treatment, it is possible that there will be some opposition to the resolution.

CONFERENCE OF CHIEF JUSTICES

Resolution 5

In Regard to the Determination of Fitness to Practice Law

WHEREAS, the courts of last resort in the respective states and territories exercise responsibility over the process for the admission of the attorneys to the practice of law; and

WHEREAS, as part of the admissions process, state bar admission authorities evaluate the character and fitness of applicants for admission to practice law; and

WHEREAS, in addition to conduct and behavior-related questions, some states inquire about applicants' mental health diagnoses and treatment unrelated to conduct and behavior; and

WHEREAS, the U.S. Department of Justice has made findings in an Americans with Disabilities Act (ADA) investigation of bar licensure that questions about medical conditions as part of a fitness inquiry inappropriately focus on an applicant's status as a person with a disability, rather than on the applicant's conduct; and

WHEREAS, questions about mental health history, diagnoses, or treatment are unduly intrusive, may tend to screen out individuals with disabilities, may violate the Americans with Disabilities Act, and are likely to deter individuals from seeking mental health counseling and treatment; and

WHEREAS, applicants with disabilities should be assessed, like all other applicants, solely based on their current fitness to practice law; and

WHEREAS, the Department of Justice also has made findings in an ADA investigation of bar licensure that to comply with the ADA, "attorney licensing entities must base their admissions decisions on an applicant's record of conduct, not the applicant's mental health history," and

WHEREAS, public entities cannot impose or apply eligibility criteria that tend to screen out an individual with a disability from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges its members and state and territorial bar admission authorities to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus solely on conduct or behavior that

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impairs an applicant's current ability to practice law in a competent, ethical, and professional manner;

BE IT FURTHER RESOLVED that reasonable inquiries concerning an applicant's mental health history are only appropriate if the applicant has engaged in conduct or behavior and a mental health condition has been offered or shown to be an explanation for such conduct or behavior.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the Conference of Chief Justices 2019 Midyear Meeting on February 13, 2019.

Virginia panel scraps mental health question after law school student push

By JUSTIN MATTINGLY Richmond Times-Dispatch

Feb 8, 2019

The state agency that oversees qualifications for the Virginia State Bar will no longer ask students to disclose mental health treatment on their application.

In the spring, law students from across the state organized and sent letters to the Virginia Board of Bar Examiners asking it to eliminate a portion of the application that prompts the disclosure of mental health conditions, saying that students who need mental health counseling aren't getting it for fear they will be denied admission to the state bar.

"It was a barrier to treatment," said Gray O'Dwyer, a University of Richmond law school alumna who helped lead the effort. "It was reinforcing the stigma that if you seek treatment for any sort of mental health concern, it will come back to haunt you."

The bar used to ask if applicants had any "condition or impairment (including, but not limited to, a substance or alcohol use disorder, or a mental, emotional, or nervous disorder or condition)" that might impact their ability to be a lawyer. That question has been entirely removed, said Catherine Hill, the board's secretary-treasurer.

Hill said the bar slightly edited another question, which now asks: "Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner?"

"It is a step forward in the right direction in ensuring that we are building people up and promoting wellness," said Kurt Lockwood, UR's Student Bar

Association president. “I believe it will reduce the stigma law students have about seeking treatment .”

The changes took effect Jan. 1 and were announced this week at the first Law Student Wellness Summit at the University of Virginia School of Law.

The board had been looking at the questions for several years, Hill said, but decided to make the changes because of a recommendation from a Supreme Court of Virginia committee and “valuable input” from lawyers, judges, law school deans and students.

The students who pressured the bar last year praised the changes.

“Knowing that the students who hope to one day join the Virginia Bar will not have to experience fear of ramifications for disclosing any treatment they sought during law school on their bar applications is a wonderful thing,” said Catherine Woodcock, last year’s Student Bar Association president at Washington and Lee University who now works as a lawyer in Washington. “The more we normalize and encourage sound mental health and wellness, the better we will be as a profession.”

While no applicants were denied a law license based on their responses to the old mental health question, students said the fear of it being part of the decision led students to not seek treatment.

A 2016 American Bar Association survey of 3,300 law school students found that more than one in six screened for depression and nearly one in four screened for anxiety. Forty-two percent of the survey respondents said they needed mental health help.

Of those respondents, only half ended up receiving counseling because of concern over how it would affect their bar admission, academic standing and job prospects, the ABA said.

“This is a national problem and the focus should be on wellness and encouraging people to seek help,” said Alex Sklut, the associate dean of students at the University of Richmond School of Law.

About four in five states still have questions about mental health on bar applications.

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Senate Bill No. 544

CHAPTER 152

An act to amend Section 6060 of the Business and Professions Code, relating to attorneys.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 544, Umberg. State Bar: admission: license: moral character review: mental health medical records.

The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees. Existing law provides for the creation of an examining committee within the State Bar with specified powers, which include the power to examine applicants for admission to practice law. The act imposes specified requirements for a person to be certified to the Supreme Court for admission and a license to practice law, including a requirement that an applicant be of good moral character.

This bill would prohibit the staff of the State Bar or members of the examining committee, in reviewing whether an applicant is of good moral character, from reviewing or considering the person's medical records relating to mental health, except as specified. The bill would prohibit the staff of the State Bar or members of the examining committee from requesting or seeking to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose the records, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 6060 of the Business and Professions Code is amended to read:

6060. To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

- (a) Be at least 18 years of age.
- (b) (1) Be of good moral character.

(2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person's medical records relating to mental health, except

if the applicant seeks to use the record for either of the following purposes:

- (i) To demonstrate that the applicant is of good moral character.
- (ii) As a mitigating factor to explain a specific act of misconduct.

(B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose such records, except as requested by an applicant and for a purpose specified in subparagraph (A).

(c) Before beginning the study of law, have done either of the following:

(1) Completed at least two years of college work, which college work shall be at least one-half of the collegiate work acceptable for a bachelor's degree granted on the basis of a four-year period of study by a college or university approved by the examining committee.

(2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking examinations in subject matters and achieving the scores as are prescribed by the examining committee.

(d) Have registered with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon a showing of good cause, may permit a later registration.

(e) Have done either of the following:

(1) Had conferred upon them a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.

(2) Studied law diligently and in good faith for at least four years in any of the following manners:

(A) (i) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.

(ii) A person who has received their legal education in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that the person's education, experience, and qualifications qualify them to take the examination.

(B) In a law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the examining committee as the committee may require.

(C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the examining committee as the committee may require.

(D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.

(E) By any combination of the methods referred to in this paragraph.

(f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.

(g) Have passed the general bar examination given by the examining committee.

(h) (1) Have passed a law students' examination administered by the examining committee after completion of their first year of law study. Those who pass the examination within its first three administrations upon becoming eligible to take the examination shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within its first three administrations upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for one year of legal study only.

(2) (A) This requirement does not apply to a student who has satisfactorily completed their first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

(B) The law students' examination shall be administered twice a year at reasonable intervals.

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

Jerome M. Organ, David B. Jaffe,
and Katherine M. Bender, Ph.D.

This article reports the results of the Survey of Law Student Well-Being (SLSWB) implemented in spring 2014 at fifteen law schools around the country. The SLSWB is the first multischool study in over twenty years to address law student use of alcohol and street drugs, and the first-ever multischool study to explore prescription drug use and the mental health concerns and help-seeking attitudes of law students. The results of the study indicate that roughly one-quarter to one-third of respondents reported frequent binge drinking or misuse of drugs, and/or reported mental health challenges. Moreover, the results indicated that significant majorities of those law students most in need of help are reluctant to seek it. The article concludes by discussing how law school administrators and other relevant leaders within the legal academy and legal profession can promote and improve wellness so that law students are better-positioned to find success as law students and to serve their future clients well as lawyers.

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Section I: Introduction

Law school, like medical school or any other doctoral program of study, can be a time riddled with anxiety, stress, and financial upheaval. Unfortunately, there has been little empirical work examining how law students respond to these stresses, either in terms of patterns of substance use or patterns of mental health problems. What little empirical data exist regarding law student substance use and law student well-being indicate that law students may have higher rates of anxiety and depression than other graduate students,¹ and may engage in patterns of alcohol and drug use that many would consider problematic.² In the past few years, the news media have reported on addiction and mental health issues among law students and lawyers, with several prominent stories addressing suicide among lawyers and law students.³ Ten law-school-related deaths occurred between July 2014 and February 2015, including eight suicides (seven students and one law school professor), and two homicides (one law student and one parent of a law student) at the hand of a law student.⁴ These deaths indicate a need to learn more about the substance

1. The most commonly reported statistics on law student mental health come from a study published in the American Bar Foundation Research Journal, which found that 40% of third-year law students reported symptoms of depression. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225 [hereinafter Benjamin et al., *Psychological Distress*] (discussed *infra* at notes 21, 24-26 and accompanying text). Many articles cite this study. See, e.g., Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55, 55-56 (1999); Patrick J. Schiltz, *On Being a Happy, Healthy, Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871, 875 n. 18 (1999). More recently, Ken Sheldon and Larry Krieger conducted empirical studies of law student well-being at two law schools that showed declines in well-being during the first year. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 261-63 (2004) [hereinafter Sheldon & Krieger, *Undermining Effects*] (discussed *infra* at notes 13-18 and accompanying text).
2. EXEC. COMM., ASSOC. AM. LAW SCH., REPORT OF THE AALS SPECIAL COMMITTEE ON PROBLEMS OF SUBSTANCE ABUSE IN THE LAW SCHOOLS (1993) [hereinafter AALS REPORT] (discussed *infra* at notes 29-32 and accompanying text).
3. In January 2014 CNN broadcast a report on the high rate of attorney suicides, citing that the legal profession ranks among the top five careers for suicide. Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>.
4. Six of the deaths referenced here were made public. See Rick Jurgens, *Vermont Law School Professor Cheryl Hanna's Death Ruled Suicide*, VALLEY NEWS (Aug. 4, 2014), <http://www.vnews.com/news/13016059-95/professors-death-ruled-suicide>; Debra Cassens Weiss, *Vermont Law Student and His Mother Die in Murder-Suicide*, AM. BAR ASS'N J. (Sept. 18, 2014), <http://www.abajournal.com/news/article/vermont-law-student-and-his-mother-die-in-murder-suicide>; Colleen Murphy, *Second-Year Law Student's Death Ruled a Suicide*, G.W. HATCHET (Mar. 16, 2015), <http://www.gwhatchet.com/2015/03/16/second-year-law-students-death-ruled-a-suicide/>; Jim Mustian & Benjamin Oreskes, *Tulane Law School Students, Faculty Struggle to Understand Murder-Suicide*, NEW ORLEANS ADVOC. (Feb. 6, 2015), <http://www.theneworleansadvocate.com/news/11497215-123/tulane-law-school-students-faculty>. However, one of the authors knows of four additional law-student suicides in the 2014-15 academic year (personal communications with Katherine Bender).

use and mental health and wellness of today's law students so that we can better understand the nature of these challenges and explore strategies to encourage students to seek help so that fewer of these tragic situations occur.

The authors responded to this need by undertaking the Survey of Law Student Well Being (SLSWB), the first multischool study in over twenty years to address patterns of alcohol use and use of street drugs, and the first-ever multischool study to focus on prescription drug use, mental health and help-seeking attitudes.⁵

The SLSWB, which was implemented in spring 2014, was designed as an exploratory survey to answer the following four research questions: 1) to what extent are law students drinking alcohol, using prescription and nonprescription drugs, and engaging in nonmedical use of prescription drugs (taking prescription drugs without a prescription); 2) to what extent do law students experience mental health issues; 3) to what extent are law students with substance use or mental health issues inclined to seek assistance or treatment for such issues; and 4) what factors discourage law students from seeking help for substance use and/or mental health concerns.

This article begins in Section II with a review of the limited literature on law student wellness. Section III then describes the methods used in conducting the SLSWB and discusses the survey's limitations. Section IV describes in detail the SLSWB results, presenting the most recent and robust data on law students' use and misuse of alcohol, street drugs and prescription drugs, law students' mental health, and law students' attitudes toward seeking help. Section V recommends actions law school administrators and others can take to help law students lead healthier lives and have more productive legal careers.

Section II: Literature Review

Although an existing body of literature suggests that law students disproportionately experience mental health and substance use issues

5. We are very grateful for grant funding we received from the ABA Enterprise Fund (with sponsorship from the ABA Commission on Lawyer Assistance Programs and the support of the ABA Law Student Division; Solo, Small Firm and General Practice Division; Young Lawyers Division; and Commission on Disability Rights), without which this survey would not have been possible; We also are very grateful for the support we received from the Dave Nee Foundation, which allowed us to expand the number of law schools participating in the survey. The Dave Nee Foundation, a nonprofit association based in New York, was established after Dave Nee, a very successful graduate of the Fordham University School of Law, died by suicide in June 2005. *History*, DAVE NEE FOUND., <http://www.daveneefoundation.org/history> (last visited July 30, 2016). Uncommon Counsel, the primary program of the Dave Nee Foundation, raises awareness about depression, anxiety, addiction, and suicide prevention in the legal field via law school and state bar association presentations. *Uncommon Counsel*, DAVE NEE FOUND., <http://www.daveneefoundation.org/uncommon-counsel/> (last visited July 30, 2016).

compared with other graduate students or the general population,⁶ there are more anecdotal stories about law students and their levels of distress, substance use, and suicidal thoughts than there are empirical studies. Indeed, prior to the SLSWB, only one multischool empirical study of substance use among law students had been conducted (and it did not include prescription drug use),⁷ and only one multischool empirical study of law student well-being had been conducted.⁸ No multischool empirical studies of law student mental health more generally were undertaken, nor studies of law student prescription drug use or of students' help-seeking attitudes.

Researchers have examined the mental health of law students using single-school samples since at least 1968.⁹ Empirical studies varying in both sample sizes and methodology through the late 1960s and 1970s generally reported similar findings: Law students experienced anxiety,¹⁰ and their levels of anxiety were disruptive to their ability to study.¹¹ Law students reported "changes in student personality characteristics," and first-year students experienced "a drop in sociability [and] . . . an increase in psychological distress, internal conflict, and anxiety"¹² in the first several months of law school.

While these studies are over thirty years old, more recent studies have reached similar results. Larry Krieger and Ken Sheldon researched law student

6. See, e.g., AALS REPORT *supra* note 2; JESSIE AGATSTEIN ET AL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL (2014), https://www.law.yale.edu/system/files/falling_through_the_cracks_120614.pdf [hereinafter AGATSTEIN ET AL., FALLING THROUGH THE CRACKS]; Benjamin et al., *Psychological Distress*, *supra* note 1; James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 4 L. & SOC. INQUIRY 791 (1979); Marilyn Heins, et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511 (1983); Robert Kellner, et al., *Hypochondriacal Fears and Beliefs in Medical and Law Students*, 43 ARCHIVES GEN. PSYCHIATRY 487 (1986); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985) (hereinafter *Distress in Law Students*); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007) [hereinafter Sheldon & Krieger, *Self-Determination Theory*] (discussed *infra* at notes 14-18 and accompanying text); Sheldon & Krieger, *Undermining Effects*, *supra* note 1; Lawrence Silver, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201 [hereinafter Silver, *Anxiety*].
7. See AALS REPORT *supra* note 2.
8. See Sheldon & Krieger, *Undermining Effects*, *supra* note 1; Sheldon & Krieger, *Self-Determination Theory*, *supra* note 6 (both discussed *infra* at notes 13-18 and accompanying text).
9. Silver, *Anxiety*, *supra* note 6, published in 1968, is the first law review article discussing law student anxiety among first-year students.
10. See, e.g., *id.* at 1201.
11. See, e.g., *id.* at 1202.
12. See, e.g., Hedegard, *supra* note 6, at 835. The study was conducted on BYU law students who were predominately male, mostly married, Mormon, and had attended the same undergraduate school. *Id.* at 812-13. Accordingly, there is uncertainty about generalizing the results to other law students.

well-being at two separate law schools, publishing their initial results in 2004,¹³ with further results published in 2007.¹⁴ Sheldon and Krieger measured law students' subjective well-being (referred to as SWB), by assessing their mood, life satisfaction, and physical health.¹⁵ The results indicated that at the start of law school, students tend to have a positive SWB as compared with undergraduates.¹⁶ One year into law school, the results indicated a decline in SWB and an increase in physical health problems.¹⁷ When the study was expanded to include students from more than just one law school, the results supported the previous findings of an overall decline in law student well-being after a year in law school.¹⁸

Most recently, in 2014 the Yale Law School Mental Health Alliance published a report on the mental health of Yale Law students.¹⁹ Half of the respondents agreed that mental health challenges impaired law school academic performance, and just over half agreed that mental health challenges affected them socially.²⁰

While the above studies focused on distress levels and well-being, studies by Dr. Andy Benjamin are among the most cited that specifically address law student mental health and substance use.²¹ In the mid- to late 1980s, Dr. Andy Benjamin, a prominent researcher of mental health in the legal profession, set out to compare law student distress with medical student distress.²² Using psychological measures as the survey tools, Benjamin found that "law students have higher rates of psychiatric distress than a contrasting normative population or a medical student population."²³ Benjamin then set out to study law student mental health at different points on the journey through law school.

13. Sheldon & Krieger, *Undermining Effects*, *supra* note 1.

14. Sheldon & Krieger, *Self-Determination Theory*, *supra* note 6.

15. *Id.* at 261, 278.

16. *Id.* at 271.

17. *Id.* at 280.

18. *Id.* at 280-82.

19. AGATSTEIN ET AL., *FALLING THROUGH THE CRACKS*, *supra* note 6. This report provides the first in-depth analysis of student experiences with mental health challenges (MHCs) and mental health services during their time at Yale Law School.

20. *Id.* at 52.

21. Benjamin et al., *Psychological Distress*, *supra* note 1, has been cited 149 times in the Law Reviews and Journals Database on Westlaw. WESTLAW, [HTTP://WWW.LAWSCHOOL.WESTLAW.COM](http://www.lawschool.westlaw.com) (last visited July 30, 2016). Shanfield & Benjamin, *Distress in Law Students*, *supra* note 6, has been cited eighty-two times in the Law Reviews and Journals database on Westlaw. WESTLAW, [HTTP://WWW.LAWSCHOOL.WESTLAW.COM](http://www.lawschool.westlaw.com) (last visited July 30, 2016).

22. Shanfield & Benjamin, *Distress in Law Students*, *supra* note 6.

23. *Id.* at 69.

Using a cohort model, Benjamin and colleagues administered five psychological measures to each cohort of students at three different stages in their law school careers.²⁴ Results included responses from first-year law students, second-year law students, third-year law students and law school alumni up to two years after graduation.²⁵ Benjamin compared results across each year of law school and before and after the law school experience. Benjamin found that:

Elevations of symptom levels significantly increase for law students during the first to third years of law school. Depending on the symptoms, 20-40% of any given class reports significant symptom elevations . . . the symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni.²⁶

Another frequently cited article on law student distress is one by Dammeyer and Nunez, in which the authors analyzed published studies that measured law students' levels of anxiety and depression from 1970 to the late 1990s.²⁷ Their article emphasized the findings described above—that law students have disproportionate levels of stress, anxiety, and mental health concerns compared with other populations.²⁸

Less frequently cited but perhaps with data just as compelling is a report published in 1994 from the Association of American Law Schools (AALS) Special Committee on Problems of Substance Abuse in the Law Schools.²⁹ The report was the final product of two and a half years of work, including a survey of nineteen law schools, yielding 3388 student responses.³⁰ The AALS study revealed “increased usage and frequency of usage of some substances as students progress through law school, and also among older law students. The pattern is most dramatic with alcohol.”³¹

Despite these studies, large gaps remain in the literature on law student substance use and mental health. No research has been done on alcohol or drug use among law students in over two decades, nor on prescription drug

24. Benjamin et al., *Psychological Distress*, *supra* note 1. The survey involved 320 law students at the University of Arizona divided into three cohorts. *Id.* at 226-27.

25. *Id.* at 231-33.

26. *Id.* at 246.

27. Dammeyer & Nunez, *supra* note 1.

28. *Id.* at 67.

29. AALS REPORT, *supra* note 2.

30. *Id.* at 35-36. The response rate was 24.9% across all nineteen participating law schools.

31. *Id.* at 42.

use among law students. Nor has any multischool study focused on mental health or on help-seeking attitudes of law students.³²

This article focuses on a survey project designed to fill some of these gaps—the first multischool, national study of alcohol and substance use among law students since the early 1990s, the first study to assess nonmedical use or misuse of prescription drugs among law students, and the first multischool study of mental health issues and help-seeking attitudes among law students. The authors hope that the results of this study can open the door for dialogue and specific action within the law school community to improve the health and wellness of law students.

Section III: Methodology

Before implementing the Survey of Law Student Well-Being (SLSWB) in spring 2014, the principal investigators (PIs) of the study conducted a pilot study in spring 2013.³³ The pilot study, just like SLSWB, was formatted as an online survey using skip logic.³⁴ The pilot study included roughly the same universe of questions as the SLSWB, with several distinct “sections”—a demographic section, a section on alcohol use, a section on drug use (both street drugs and prescription drugs), a section on mental health, and a section

32. Notably, all studies discussed in the preceding text or referenced in footnote 6, *supra*, other than the AALS Survey, results of which were described in the AALS Report, were limited to one school or two schools, and many had small sample sizes ranging from nine to 320, limiting the extent to which the results were generalizable. *See, e.g.*, Benjamin et al., *Psychological Distress*, *supra* note 1, at 226-27 (survey involved 320 law students at the University of Arizona divided into three cohorts); Hedegard, *supra* note 6 (small number of Mormon students at Brigham Young University); Heins, *supra* note 6 (discussing groups of law students and medical students at the University of Arizona in response to growing student concern over the stress of education); Kellner et al., *Distress in Medical and Law Students*, 27 *COMPREHENSIVE PSYCHIATRY* 220 (1986) (discussing sixty law students and sixty medical students at the University of New Mexico); Alan Reifmann et al., *Depression and Affect Among Law Students During Law School: A Longitudinal Study*, 2 *J. EMOTIONAL ABUSE* 93-106 (2000) (focusing on 45 law students at the University of Michigan).
33. The pilot study was conducted at the PIs' home institutions with Institutional Review Board (IRB) approval from the University of St. Thomas—IRB # B10-183-01. The PIs collaborated with SoundRocket (formerly Survey Sciences Group, LLC) a full-service social science research provider. *See Why SoundRocket?*, SOUNDROCKET, <http://www.soundrocket.com/soundrocket-why> (last visited July 30, 2016). SoundRocket programmed, tested, and hosted both the pilot survey and the SLSWB. SoundRocket's survey infrastructure included the DatStat Illume survey system engine, with a Microsoft SQL database back-end, along with custom proprietary applications to support the survey effort.
34. The skip logic design meant that if a respondent answered “No” to an introductory question in a set of questions, the survey would “skip” past the remaining questions in the subset.

on help-seeking attitudes.³⁵ The response to the pilot study demonstrated both that law students were willing to answer intrusive questions about alcohol use, drug use and mental health with reasonable response rates and that the survey was not inordinately time-consuming.³⁶

Recruiting law schools to participate in the SLSWB was a challenge. Some law schools were not willing to encourage their students' participation in a survey addressing controversial and at times illegal behaviors (taking prescription drugs without a prescription, using cocaine, etc.). Other schools expressed concern about protecting their students' anonymity and the law school's anonymity, having the financial resources to participate,³⁷ and obtaining IRB approval. These concerns precluded the possibility of having a truly random set of representative law schools participate in the survey. Rather, the PIs drew on a network of law faculty and administrators known to have particular interest in these topics, while also paying attention to the importance of diversity of schools in size, region, and institution type. Invitations to participate in the survey were extended to a few dozen ABA-accredited law schools.³⁸ Each law school was promised that the data collected from the school would be kept confidential, that the name of the participating school would not be disclosed, and that the school would receive a report containing school-specific results along with the aggregate results.

These invitations resulted in seventeen schools expressing interest in participating in the SLSWB. Ultimately, two schools were unable to obtain IRB or institutional approvals in a timely manner and were not able to participate, leaving a total of fifteen law schools participating in the survey,

35. Almost all of the questions in the SLSWB survey have been used in other surveys, such as the Healthy Minds Survey or the Student Life Survey. Others, as noted *infra*, notes 60 (binge drinking), 63 (the CAGE screen for alcoholism), 73 (PHQ-2 depression screen), 78 (Kessler 6 anxiety screen), and 84 (SCOFF eating disorder screen), are widely used and validated screening tools addressing substance use or mental health concerns.
36. Respondents took about eighteen minutes on average to complete the survey, which was helpful in communicating with prospective survey participants when the actual survey was implemented in spring 2014. The data collected in the pilot study have not been integrated into the data set for the SLSWB.
37. Schools that were invited were informed that they would need to contribute a small fee to cover administrative costs. As noted *supra*, note 5 and accompanying text, the SLSWB was substantially funded by a grant from the ABA Enterprise Fund and by additional funds contributed by the Dave Nee Foundation. These grants covered roughly 85% to 90% of the costs of implementing the survey. The balance was covered by each school contributing \$400.
38. The PIs included some public schools and some private schools, as well as schools that had only full-time programs and schools that had full-time and part-time programs.

with over 11,000 students.³⁹ The fifteen participating law schools reflect a cross-section in terms of enrollment,⁴⁰ affiliation,⁴¹ and geographic location.⁴²

Participants in the SLSWB were students enrolled in Juris Doctorate (JD) programs at each of the fifteen participating ABA-accredited law schools. At each participating law school, all JD students were invited by email to complete the online survey, with email reminders sent to those who had not completed the survey.⁴³ The overall response rate was just under 30%, a response rate slightly higher than the roughly 25% response rate of the 1991 AALS Survey, results of which were published in the AALS Report, or the recent iterations of the Healthy Minds Study.⁴⁴

The SLSWB was designed as a cross-sectional survey, taking a snapshot of respondents at one point in time, rather than a longitudinal survey, because of both cost factors and concerns about attrition and confidentiality with a longitudinal survey design. As a result, the SLSWB did not attempt to establish a baseline for respondents' pre-law school behavior against which to compare their responses as law students. Nonetheless, in a number of questions discussed in the following section, respondents were asked to identify changes in behavior regarding alcohol use or drug use since the twelve months prior to

39. The University of St. Thomas IRB granted "master" approval of the survey project with RB No. 437533-1. Several schools accepted the IRB master approval while several schools required separate IRB approval at their own university. The two schools that ended up not participating could not get approval through their university review process in time to participate in the survey.
40. The percentage of respondents from small schools (those with fewer than 550 students) is close to the percentage of students nationally from small schools. The percentage of respondents from larger law schools is larger than the percentage of students nationally in larger law schools (those with more than 900 students), while the percentage of respondents from medium-sized law schools is smaller than the percentage of students nationally in medium-sized law schools (those with student bodies ranging from 550 to 900).
41. The percentage of respondents from private law schools is close to the percentage of students nationally from private schools. The percentage of respondents from religiously affiliated law schools is larger than the percentage of students nationally from religiously affiliated law schools, while the percentage of respondents from public law schools is smaller than the percentage of students nationally in public law schools.
42. The percentage of respondents from law schools in the Southeast is close to the percentage of students nationally from law schools in the Southeast. The percentage of respondents from law schools in the Midwest and Northeast is larger than the percentage of students nationally in law schools in those regions, while the percentage of respondents from law schools in the Southwest and West is smaller than the percentage of students nationally in law schools in those regions.
43. Based on the pilot survey, students were informed that the survey took an average of fifteen to twenty minutes and were asked to give informed consent before commencing the survey.
44. See AALS REPORT, *supra* note 2 (noting a response rate just less than 25%). See also HEALTHY MINDS, THE HEALTHY MINDS STUDY 2014-15 DATA REPORT 2, http://healthybodiesstudy.org/wp-content/uploads/2015/07/HMS_national_14_15.pdf (noting response rate of just more than 23%) [hereinafter HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY]. The vast majority of law schools had a response rate between 25% and 35%. *Id.*

starting law school.⁴⁵ In addition, questions regarding mental health diagnoses asked respondents whether their diagnosis had been obtained since starting law school.⁴⁶

The demographic distribution of students at the fifteen law schools roughly approximates the demographic distribution of students across all ABA-accredited law schools. The sample included roughly 49% women and 51% men, compared with the national population of law students in 2013-2014, which was 48% women and 52% men.⁴⁷ Among actual respondents, 56% of those completing the survey were women and 44% men, which is a result common in large surveys of college students or graduate students.⁴⁸

As shown in Table 1, the percentage of respondents who indicated they were black/African-American and Asian was close to the percentages across law schools generally, while the percentage of respondents who indicated they were white was slightly larger than across law schools generally. In addition, the percentage of respondents who indicated a multiracial ethnicity was larger than across law schools generally, while the percentage of respondents who indicated Hispanic was smaller than across law schools generally.⁴⁹

Note that we have not made an effort to “reweight” the results to account for these discrepancies in the proportion of law schools in each category or in the proportion of respondents based on gender or ethnicity. As a result, readers should be cautious about generalizing results with too much specificity—the results perhaps should be best understood as rough estimates of what one might expect within a student population at a given law school. At a large, urban, private law school, results on some questions might differ from those at a small, rural public law school. Law schools with more women or more men might see different results, particularly on those questions for which the differences in results between male respondents and female respondents are notable.

45. See *infra*, notes 59-62 and accompanying text (paragraph following Alcohol Table 4).

46. See *infra*, note 77 and accompanying text (depression); note 83 and accompanying text (anxiety).

47. See AM. BAR ASS’N, 2009-2013 TOTAL FULL-TIME JD ENROLLMENT BY GENDER AND ETHNICITY, http://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited July 30, 2016) [hereinafter AM. BAR ASS’N, FULL-TIME ENROLLMENT]; AM. BAR ASS’N, 2009-2013 TOTAL PART-TIME JD ENROLLMENT BY GENDER AND ETHNICITY, http://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited July 30, 2016) [hereinafter AM. BAR ASS’N, PART-TIME ENROLLMENT]. The authors calculated overall percentages by gender for 2013-14 in a spreadsheet on file with the authors using both of these resources.

48. See, e.g., HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY, *supra* note 44 at 5 (noting 54% of respondents were women and 45% of respondents were men); AALS REPORT, *supra* note 2, at app. B, tbl. 1 (noting that women made up 43% of the sample, but 46% of the respondents).

49. See AM. BAR ASS’N, PART-TIME ENROLLMENT, *supra* note 47; AM. BAR ASS’N, FULL-TIME ENROLLMENT, *supra* note 47. The authors used these resources to calculate overall percentages by ethnicity for 2013-14 in a spreadsheet on file with the authors.

Table 1 - Comparison of Racial/Ethnic Composition of Law Student Population and Survey Population

	Asian	Black African American	Hispanic/Latino	Multi-racial	Other	White	Unknown (Prefer not to disclose)
All ABA-Accredited Law Schools	7	8	10	2	3	64	5
Respondents	7	8	5	7	3	69	2

In that same vein, the SLSWB involved self-reporting by respondents. Respondents may not have been totally forthcoming in their self-report. It also is possible that there is response bias or nonresponse bias on the very issues on which the survey is focused—alcohol use, drug use and mental health issues—although it is impossible to know which way the bias might operate. It is possible that there is a response bias in that those students with alcohol or drug use issues or mental health issues at participating law schools might have been disproportionately inclined to respond to the SLSWB given that it inquired about topics that might have been of particular interest to such respondents. On the other hand, it is possible that there is a non-response bias as well, in that students with alcohol or drug use issues or mental health issues at participating law schools might have been disproportionately inclined not to respond to the SLSWB given that it asked a number of intrusive questions, some of which involved illegal conduct.⁵⁰

It would be fruitful if similar studies could be conducted to provide a broader framework for understanding the extent to which law students use alcohol or drugs or deal with mental health issues. It also would be helpful to assess the extent to which a variety of efforts might make a difference with respect to the help-seeking attitudes of law students. It would be particularly useful if these studies could be designed to be longitudinal so that they could inform us more about the extent to which law students see changes in alcohol use, drug use, mental health issues, or help-seeking attitudes during law school.

Section IV: Analysis of Survey Results

The following section provides the results of the Survey of Law Student Well-Being (SLSWB) in the categories of alcohol, drug use, mental health, and help-seeking attitudes. To contextualize the results of the SLSWB, we have provided some comparisons, where possible, with other survey results that used similar questions with somewhat comparable populations. All results are rounded up or down to whole percentages using traditional rounding principles.

50. Studies suggest that those with alcohol and mental health problems are underrepresented in empirical studies on health. See Fartein Ask Torvik et al., *Alcohol Use and Mental Distress as Predictors of Non-Response in a General Population Health Survey: The HUNT Study*, 47 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 805 (2012).

A. Alcohol

The SLSWB documents that consumption of alcohol among law students appears to have become more prevalent than two decades ago when the AALS Survey project was conducted at nineteen law schools.⁵¹ First, as shown in Alcohol Table 1, while the percentage of respondents who have had a drink in their lifetime has remained relatively consistent since the AALS Survey, the percentage of law students responding to the respective surveys who have had a drink in the prior thirty days is higher now than in the early 1990s. Drinking among law students also appears to be more prevalent than drinking among graduate students more generally, based on both the Core Alcohol and Drug Survey from the 1990s⁵² and the Healthy Minds Survey, which has been implemented annually since 2007 at hundreds of college campuses across the country.⁵³

Alcohol Table 1 - Percentage of Respondents Who Have Had a Drink in Their Lifetime and in Prior 30 Days

	SLSWB (2014)	AALS (1991) ¹	Core Alcohol and Drug Study (1992-1994) Graduate Students) ²	Healthy Minds (Graduate) ³	Healthy Minds (Undergraduate) ⁴
Drink in Lifetime	98%	98%	Not Available	90%	90%
Drink in past 30 days	90%	82%	75%	75%	75%

Notably, the increase in the prevalence of drinking within the prior thirty days between the AALS Survey and the SLSWB was fairly consistent among

51. See AALS REPORT, *supra* note 2, at app. B, tbl. 4. Although one should be cautious in making direct, specific comparisons as the sets of law schools participating in the survey are not identical, these two surveys provide the only multi-school survey data covering law student alcohol and drug use. Thus, we believe it is appropriate to provide comparisons on questions that overlap across the two surveys.
52. CHERYL A. PRESLEY ET AL., IV ALCOHOL AND DRUGS ON AMERICAN COLLEGE CAMPUSES 51, tbl. 4-11 (1994) (hereinafter CORE ALCOHOL AND DRUG STUDY). This survey included over 40,000 students at seventy-four four-year campuses, including over 2000 graduate and professional students.
53. We are very grateful to Daniel Eisenberg and the Healthy Minds Survey team, particularly J.P. DeWitt, who has worked closely with us in developing comparative data from the Healthy Minds data set. The Healthy Minds Survey is an annual web-based survey examining mental health, service utilization, and related issues among undergraduate and graduate students. Since its national launch in 2007, HMS has been fielded at over 100 colleges and universities, with over 100,000 survey respondents. <http://healthymindsnetwork.org/hms>. Healthy Minds openly shares its data on a user-friendly web-based interface. For more specifics on the Healthy Minds Study, methodology, etc., please visit the Healthy Minds webpage, <http://healthymindsnetwork.org/>.

respondents across all three years of law school, with first-year respondents and second-year respondents in the SLSWB at 89% (up from 81% and 80%, respectively, in the AALS Survey)⁵⁴ and with third-year respondents in the SLSWB at 91% (up from 84% in the AALS Survey).⁵⁵ The percentage of female respondents having had a drink in the prior thirty days increased slightly more than the percentage of male respondents (from 81% in the AALS Survey⁵⁶ to 90% in the SLSWB for female respondents; from 83% in the AALS Survey⁵⁷ to 89% in the SLSWB for male respondents),⁵⁸ a result shown to have statistical significance at $p < .01$.

With respect to drinking behaviors that might be of concern, as shown in Alcohol Table 2, more than half of the respondents in the SLSWB reported drinking enough to get drunk in the prior thirty days, compared with 61% of undergraduate respondents and 39% of graduate student respondents in the Healthy Minds Study.⁵⁹ Moreover, 43% of the respondents in the SLSWB indicated that they had engaged in binge-drinking at least once in the prior two weeks, compared with 45% of undergraduates and 36% of graduate students in the Healthy Minds Study.⁶⁰ In addition, 22% of law students binge-drank two

54. AALS REPORT, *supra* note 2, at app. B, tbl. 6.

55. *Id.*

56. *Id.* at app. B, tbl. 4.

57. *Id.*

58. *Id.*

59. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 4300 undergraduate respondents and over 1600 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 06:31 CDT)(on file with authors).

60. The Healthy Minds data on binge-drinking are based on more than 100,000 undergraduate respondents and over 25,000 graduate student respondents. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org/>, registering as a guest and then searching the Healthy Minds “All Years Combined” survey dataset and using the drop down boxes to search “binge drinking (any in past two weeks)” and “degree level”. In both the SLSWB and the Healthy Minds Study, respondents were asked the frequency with which they consumed four or more drinks (for women) or five or more drinks (for men) in one sitting in the past two weeks. This measure of binge-drinking also has been used in the Harvard College Alcohol Study. See Henry Wechsler & Toben F. Nelson, *What Have We Learned from the Harvard School of Public Health College Alcohol Study: Focusing Attention on College Student Alcohol Consumption and the Environmental Conditions that Promote It*, 69 J. STUD. ON ALCOHOL & DRUGS 481 (2008).

or more times in the prior two weeks, compared with 27% of undergraduate respondents and 12% of graduate student respondents in the Healthy Minds Study.⁶¹

Alcohol Table 2 - Percentage of Respondents Who Drank Enough to Get Drunk in Past 30 Days and Binge-Drank in Prior 2 Weeks

	SLSWB (2014)	Healthy Minds (Graduate) ⁵	Healthy Minds (Undergraduate) ⁶
Drank enough to get drunk in prior 30 days	53%	39%	61%
Binge-drank at least once in prior 2 weeks	43%	36%	45%
Binge-drank 2 or more times in the prior 2 weeks	22%	21%	30%

As shown in Alcohol Table 3, more male than female respondents in the SLSWB reported both drinking enough to get drunk in the prior thirty days and binge-drinking in the prior two weeks, results shown to have statistical significance at $p < .001$. Indeed, male respondents in the SLSWB were roughly one and a half times more likely than female respondents to have reported engaging in binge-drinking two or more times in the prior two weeks, a result shown to have statistical significance at $p < .001$. Notably, the percentage of third-year respondents who reported binge-drinking in the prior two weeks was larger than the percentage of first-year respondents, a result shown to have statistical significance at $p < .01$. In addition, those SLSWB respondents ages 21-30 were roughly twice as likely to report engaging in binge-drinking behavior as those over age 30, results shown to have statistical significance at $p < .001$.

61. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 4300 undergraduate respondents and over 1600 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 06:31 CDT)(on file with authors).

Alcohol Table 3 - Percentage of Respondents in the Survey of Law Student Well-Being Who Reported Drinking Enough to Get Drunk in Prior 30 Days and Binge-Drinking in Prior Two Weeks Broken Out by Gender and by Year in Law School

	Men	Women	1Ls	2Ls	3Ls
Drank enough to get drunk in prior 30 days	54%	52%	51%	53%	54%
Binge drank at least once in prior two weeks	47%	40%	40%	44%	45%
Binge drank two or more times in prior two weeks	27%	18%	18%	23%	24%

As shown in Alcohol Table 4, when binge-drinking, male respondents in the SLSWB as well as the Healthy Minds Study drank much more than female respondents, with a median of seven drinks for men compared with a median of five drinks for women, a result shown to have statistical significance at $p < .001$.⁶²

Alcohol Table 4 - Percentage of Men and Women Respondents Consuming a Given Number of Drinks When Binge-Drinking

		4	5	6	7	8	9 (M) 9+ (W)	10+ (M)
SLSWB	Men	X	15%	21%	18%	17%	11%	16%
SLSWB	Women	28%	27%	21%	9%	10%	6%	X
Healthy Minds (Graduate)	Men	X	23%	26%	22%	13%	6%	10%
Healthy Minds (Graduate)	Women	31%	38%	17%	6%	4%	4%	X
Healthy Minds (Undergraduate)	Men	X	11%	22%	16%	18%	12%	21%
Healthy Minds (Undergraduate)	Women	22%	30%	24%	10%	8%	6%	X

62. These results in Alcohol Table 4 from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 2000 undergraduate respondents and over 400 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 06:31 CDT)(on file with authors). For undergraduate male respondents in the Healthy Minds Study, the median number of drinks was eight drinks rather than seven. *Id.* For the majority of respondents in the SLSWB, binge-drinking generally occurred over a period of three hours or more, without much difference between men and women or between 1Ls, 2Ls, and 3Ls - three hours, 22%, four hours, 31%, five hours, 21%, six or more hours, 19%.

Interestingly, a higher percentage of respondents in the SLSWB indicated that their drinking had decreased in comparison with the twelve-month period prior to starting law school (36%), as opposed to increased (29%), with little difference across male and female respondents or across first-year, second-year and third-year respondents. With respect to ethnicity, however, white respondents were less likely to experience an increase in drinking since starting law school than all other respondents (27% vs. 34%, respectively), a result shown to have statistical significance at $p < .01$. Black/African-American and Asian respondents were more likely to experience an increase in drinking since starting law school than all other respondents (38% v. 28%, and 38% v. 27%, respectively), a result shown to have statistical significance at $p < .01$.

The SLSWB also looked at a number of “problem” behaviors associated with drinking, as described in Alcohol Table 5, asking respondents to indicate the frequency with which they experienced in the prior year any of sixteen possible problems associated with drinking. A subset of these problem behaviors is known as the CAGE questionnaire, a widely used tool for screening for alcoholism.⁶³ A positive response to two of the four CAGE questions indicates someone who should be evaluated more carefully for alcoholism.⁶⁴ Among the respondents to the SLSWB, 25% had positive responses to two or more of the four CAGE questions (27% of male respondents and 23% of female respondents responding positively to two or more of the four CAGE questions, a result shown to have statistical significant at $p < .01$). Respondents who identified as white were more likely to be positive on two or more of the four CAGE questions than all other respondents (27% v. 20%), while Asians were significantly less likely to be positive on two or more of the four CAGE questions (17% v. 26%), results shown to have statistical significance at $p < .05$.

As indicated in Alcohol Table 5, many of these problem behaviors overlap with a set of problem behaviors identified in the Core Alcohol and Drug Study. Alcohol Table 5 contains a listing of the twelve overlapping items with the percentage of respondents experiencing the problem in the prior twelve months. Notably, five of the six most frequent problem behaviors in the SLSWB occurred with greater frequency among law student respondents to the SLSWB than among graduate student respondents in the Core Alcohol

63. *CAGE Questionnaire*, NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, <http://pubs.niaaa.nih.gov/publications/inscage.htm> (last visited July 30, 2016). The four CAGE questions are:

1. Have you ever felt you should Cut down on your drinking?
2. Have people Annoyed you by criticizing your drinking?
3. Have you ever felt bad or Guilty about your drinking?
4. Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover (Eye-opener)?

64. *Id.*

and Drug Study; the exception is “drove while under the influence of alcohol,” which was significantly less likely among respondents in the SLSWB.⁶⁵

Alcohol Table 5 - Percentage of Respondents Who Experienced Various Problems Associated with Drinking (Reported in Descending Order of Frequency in the SLSWB)

	SLSWB (2014)	Core Alcohol and Drug Survey (1992- 1994) (Graduate Students) ⁷
Vomited	37.3%	28.6%
*Felt that you should Cut down your drinking	31.4%	N/A
*Felt Guilt, remorse or regret	30.2%	21.8%
Had amnesia or memory loss	24.8%	14.6%
Missed class	19.3%	12.3%
Had unplanned sex	15.9%	N/A
Drove while under the influence of alcohol	15.3%	27.7%
Thought I had a problem—afraid I might be an alcoholic	13.9%	8.8%
*Been Annoyed with criticism about drinking or been criticized about drinking	11.2%	13.8%
Was hurt or injured	7.3%	4.4%
*Had an “Eye-opener” first thing in the morning to get rid of a hangover	6.7%	N/A
Performed poorly on a test/project	4.7%	7.7%
Drove a car after five or more drinks in two hours	4.0%	N/A
Thought about suicide	3.9%	2.6%
Been taken advantage of sexually	3.1%	4.6%
Taken advantage of someone else sexually	0.1%	2.5%

*Indicates CAGE assessment question

Notably, 16% of respondents in the SLSWB indicated at least five of these sixteen problem behaviors, with male respondents being more likely than

65. This might suggest that educational efforts in recent years to discourage drinking and driving have been successful, but it also may simply indicate that law students are sufficiently concerned about having to report a DUI to bar admissions authorities that they try to avoid drinking and driving.

female respondents to reflect five or more problem behaviors (19% compared with 15%, a result shown to have statistical significance at $p < .01$).

B. Drug Use Among Law Students

1. Street Drugs

As shown in Drug Table 1, law students responding to the SLSWB reported use of marijuana and cocaine in the prior twelve months and prior thirty days at higher percentages than law students responding to the 1991 AALS Survey. By contrast, reported use of LSD and other psychedelic drugs was lower among the respondents to the SLSWB than among respondents to the AALS Survey.⁶⁶ Male respondents in the SLSWB were more likely than female respondents in the SLSWB to use marijuana and cocaine in the prior twelve months and prior thirty days, results shown to have statistical significance at $p < .001$.⁶⁷ Few respondents to the SLSWB (less than 0.2%) reported use of heroin, crystal meth, inhalants or anabolic steroids. As indicated in Drug Table 1, frequency of use of marijuana, cocaine and Ecstasy among law student respondents to the SLSWB was more comparable to undergraduate respondents in the Healthy Minds Survey than to the graduate respondents in the Healthy Minds Survey.

Drug Table 1 - 12-Month and 30-Day Use of Selected Street Drugs

	SLSWB (2014)		AALS (1991) ⁸		Healthy Minds (Graduate) ⁹		Healthy Minds (Undergraduate) ¹⁰	
	12 Month	30 Day	12 Month	30 Day	12 Month	30 Day	12 Month	30 Day
Marijuana	25%	14%	21%	8%	14%	7%	33%	18%
Cocaine	6%	2%	5%	1%	2%	1%	4%	1%
Ecstasy	4%	1%	N/A	N/A	1%	0.2%	5%	1%
LSD	1%	0.2%	2%	1%	0.7%	0.1%	3%	0.7%
Other Psychedelics	1%	0.2%	3%	1%	1%	0.1%	4%	1%

66. Notably, there was a fairly wide range across schools with respect to the use of marijuana in the past twelve months, ranging from 14.3% to 36.9%.

67. Male respondents in the SLSWB also were more likely to use other psychedelics than female respondents in the SLSWB in both the prior twelve months and prior thirty days, results shown to have statistical significance at $p < .001$ (for twelve months) and $p < .05$ (for thirty days). Male respondents in the SLSWB also were more likely to use LSD than female respondents in the SLSWB in both the prior twelve months and prior thirty days, although only the twelve-month results were shown to have statistical significance, at $p < .01$.

2. Prescription Drug Use

As noted earlier in this article, the SLSWB is the first survey to assess the use of prescription drugs among law students.⁶⁸ As shown in Drug Table 2, between 9% and 15% of respondents reported use of one or more of five categories of prescription drugs *with* a prescription during the prior year. Female respondents reported a higher rate of prescription drug use *with* a prescription than male respondents in every category of prescription drugs other than stimulant medication, results shown to have statistical significance at $p < .001$ (for sedatives/anxiety medication, pain medication and anti-depressants), and at $p < .05$ (for sleeping medication).

Drug Table 2 - Use of Prescription Drugs *with* a Prescription During the Prior Year

	Sleeping Medication	Sedatives - Anxiety Medication	Stimulants	Pain Medication	Anti-depressants
All SLSWB Respondents	9%	12%	13%	15%	12%
Male Respondents	8%	7%	13%	10%	8%
Female Respondents	10%	15%	13%	18%	14%

Of those respondents who reported using prescription drugs *with* a prescription, 13%, roughly one in eight, reported giving away their prescriptions drugs, with stimulants (17%) and sedatives/anxiety medication (12%) being given away most frequently.

3. Prescription Drug Use *Without a Prescription*

Overall, 14% of respondents reported having used prescription drugs *without a prescription* in the prior twelve months.⁶⁹ Stimulants were the prescription drug most frequently used without a prescription (9%), followed by pain medication and sedatives/anxiety medication (4%).⁷⁰ Notably, 61% of law student respondents to the SLSWB who reported using a stimulant medication without a prescription reported an increase in use compared with the twelve months prior to law school, while nearly 50% of those who reported using sedative/anxiety medication without a prescription noted an increase in use compared with the twelve months prior to law school, and 44% of those who

68. See *supra* text located between notes 32 and 33.

69. The percentage of respondents using prescription drugs *without a prescription* ranged across schools from 9% to 18%.

70. The most common sources of prescription drugs were a family member and a friend outside law school for all categories of prescription drugs other than stimulants. For prescriptions stimulants, the most common sources were a law school friend followed by a friend outside law school.

reported using sleeping medication without a prescription noted an increase in use compared with the twelve months prior to law school.

Law students were asked to identify the specific prescription stimulant they had used without a prescription. The most commonly reported stimulants used without a prescription were: Adderall (79%), followed by Adderall XR (39%), with Ritalin a distant third (12%) and Concerta fourth (6%). The most common reported reasons for using prescription stimulants without a prescription were:

- 1) to concentrate better while studying (67%);
- 2) to increase alertness to study longer (64%);
- 3) to enhance my academic performance (49%);
- 4) to increase my alertness to work longer (46%);
- 5) to concentrate better while working (45%)

Nearly 20% of law student respondents who reported using a prescription stimulant without a prescription indicated one reason was to “prevent other students who [also use a prescription stimulant] from having an academic edge over me.” This suggests that some law students may be inclined to use prescription stimulants without a prescription in an effort to gain a perceived advantage in law school.

Respondents also were asked about ten possible problem behaviors associated with drug use,⁷¹ similar to but slightly different from the problem behaviors associated with alcohol.⁷² More than 10% of the respondents indicated that they had experienced three or more of the ten problem behaviors associated with drug use, with male respondents more likely than female respondents (14% compared with 8%) to experience three or more

71. The ten problem behaviors about which respondents were asked relating to drug use were the following:

Have you used drugs other than those required for medical reasons?
 Have you used more than one drug at a time?
 Are you always able to stop using drugs when you want to?
 Have you had blackouts or flashbacks as a result of drug use?
 Have you ever felt bad or guilty about your drug use?
 Have family members ever complained about your involvement with drugs?
 Have you stayed away from your family because of your use of drugs?
 Have you engaged in illegal activities in order to obtain drugs?
 Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs?
 Have you had medical problems as a result of your drug use (e.g., memory loss, hepatitis, convulsions, bleeding)?

The most common problematic behaviors were having used drugs other than those required for medical reasons (64%), having used more than one drug at a time (22%), and having felt bad or guilty about drug use (20%).

72. These 10 problem behaviors associated with drug use can be compared with the 16 problem behaviors associated with alcohol use discussed in Alcohol Table 5 and the accompanying text.

problem behaviors associated with drug use, a result shown to have statistical significance at $p < .001$.

C. Mental Health Results

The survey asked a number of questions regarding each respondent's mental health condition, including embedded valid and reliable screening tools related to depression, anxiety and eating disorders, along with questions regarding history of diagnosis, and questions regarding whether respondents had hurt themselves or had thought about suicide. As the results are described, footnotes include the specifics about these psychological measures.

1. Depression

The survey used the Patient Health Questionnaire-2 (PHQ-2) to screen for depression,⁷³ with 17% of respondents screening positive for depression. This compares with 20% of undergraduate respondents and 14% of graduate student respondents screening positive for depression in the Healthy Minds Study.⁷⁴

Respondents also were asked if they had been diagnosed with depression during their lifetime, with 18% of respondents indicating a depression diagnosis (15% for male respondents and 20% for female respondents, a result shown to have statistical significance at $p < .001$).⁷⁵ This compares with 15% of undergraduate respondents and 17% of graduate student respondents in

73. The PHQ-2 is scored on a 0,1,2,3 basis, with a positive screen reflected by a score of 3 or more (out of a possible six points). The Healthy Minds Study used the PHQ-9 (from which the PHQ-2 is derived). HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY, *supra* note 44 at 6 For a good description of the PHQ-2 and the PHQ-9, please see *Screening for Depression*, AM. FAM. PHYSICIAN, <http://www.aafp.org/afp/2012/0115/p139.html> (last visited July 31, 2016). The SLSWB also included a three-question screen asking about the frequency with which the respondents felt happy or hopeful or enjoyed life in the prior week. These three "positive" questions were drawn from the CES-D, a twenty-question depression screen. Ctr. for Substance Abuse Treatment, *Managing Depressive Symptoms in Substance Abuse Clients During Early Recovery*, TREATMENT IMPROVEMENT PROTOCOL SERIES, No. 48 (2008), <http://www.ncbi.nlm.nih.gov/books/NBK64056/>. In the SLSWB, Respondents were asked about the frequency in the past week in which they felt each of the three "positive" feelings. It was scored on a 0,1,2,3 basis, but scored inversely (to highlight those who did not enjoy life, were not happy, or were not hopeful about the future), with a score of 4 or more (out of 9) yielding a positive screen. This "short" version of the CES-D has not been validated, but we wanted to have something that could provide a cross-check with the PHQ-2 responses, without the full set of the CES-D, given concerns that the survey instrument was already long. Using this "positive" screen, 18% of respondents to the SLSWB surveyscreened positive for depression.
74. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org>, registering as a guest and then searching the Healthy Minds "All Years Combined" survey dataset and using the drop down boxes to search "Any depression (PHQ-9)" and "degree level". The Healthy Minds Study results were based on responses from over 81,000 undergraduates and over 28,000 graduate students (comprising both graduate and professional students).
75. Across law schools, respondents with a depression diagnosis ranged from 10% to 25%.

the Healthy Minds Study.⁷⁶ Notably, one-sixth of those respondents with a diagnosis of depression in the SLSWB had been diagnosed since starting law school.⁷⁷

Both the screening data and the diagnosis data suggest depression may be slightly more prevalent among law students than among graduate students more generally. When compared with undergraduates, however, law student respondents to the SLSWB screened positive for depression with less frequency than undergraduate respondents to the Healthy Minds study, but reported a diagnosis of depression with greater frequency than undergraduate respondents to the Healthy Minds study.

2. Anxiety

The survey used the Kessler 6,⁷⁸ a six-question screening tool for generalized anxiety. Thirty-seven percent of respondents screened positive for anxiety—23% for mild to moderate anxiety and 14% for severe anxiety (15% for female respondents, 12% for male respondents,⁷⁹ a result shown to have statistical significance at $p < .01$). This compares with 21% of undergraduate respondents and 15% of graduate student respondents who screened positive for anxiety in the Healthy Minds Study, of whom 8% of undergraduate respondents and 5% of graduate student respondents screened positive for severe anxiety.⁸⁰

76. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 117,000 undergraduate respondents and over 25,000 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 09:17 CDT)(on file with authors).
77. Across law schools, respondents with a depression diagnosis since starting law school ranged from 0% to 43%.
78. The Kessler 6 is a six-question screening tool with a five-point Likert scale, 0-4, scored on a 0-24 scale with moderate anxiety reflected by a score of 8-12 and severe anxiety reflected by a score of 13 or more. For more information about the Kessler 6, please see <http://dhds.cdc.gov/guides/psychdistress>. For comparison purposes, a national study of more than 197,000 people found 9% with mild to moderate anxiety and 4% with severe anxiety using the Kessler 6. See Satvinder S. Dhingra, et al., *Psychological Distress Severity of Adults Reporting Receipt of Treatment for Mental Health Problems in the BRFSS*, 62 PSYCHIATRIC SERVS. 396 (2011).
79. A study examining the threshold of the Kessler 6 found that those who scored in the moderate mental distress range for the Kessler 6 reported some levels of impairment in their lives while those in the severe mental distress range reported “a lot of impairment.” Further, those in the moderate group reported twelve days of impairment, and those in the severe range reported sixty-six days of impairment. See Judith J. Prochaska et al., *Validity Study of the K6 Scale as a Measure of Moderate Mental Distress Based on Mental Health Treatment Need and Utilization*, 21 INT’L J. METHODS PSYCHIATRIC RES. 88 (2012).
80. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org>, registering as a guest and then searching the Healthy Minds “All Years Combined” survey dataset and using the drop down boxes to search “Anxiety (GAD-7)” and “degree level” and “Severe anxiety (GAD-7). The Healthy Minds Study results were based on responses from over 32,000 undergraduates and over 12,000 graduate

In addition, 21% of respondents in the SLSWB indicated that they had been diagnosed with anxiety at some point in their lives (16% for male respondents and 25% for female respondents,⁸¹ a result shown to have statistical significance at $p < .001$). This compares with 14% of undergraduate respondents and 15% of graduate student respondents in the Healthy Minds Study.⁸² Of those in the SLSWB with an anxiety diagnosis, roughly 30% had been diagnosed with anxiety since starting law school.⁸³

Both the screening data and the diagnosis data suggest that anxiety may be much more prevalent among law students than among undergraduates or graduate students more generally.

3. Eating Disorders

Part of the SLSWB included the SCOFF questionnaire, a five-question screening tool regarding eating disorders, on which two affirmative responses are considered indicative of a behavior symptomatic of an eating disorder.⁸⁴ Somewhat surprisingly, 27% of respondents screened positive for an eating disorder (18% of male respondents and 34% of female respondents, a result

students (comprising both graduate and professional students). The Healthy Minds Study screened for anxiety using the Generalized Anxiety Disorder-7 (GAD-7), a 21-point scale in which any score of 10 or more is viewed as positive for moderate anxiety with a score of 15 or more for severe anxiety. HEALTHY MINDS, 2014-15 HEALTHY MINDS STUDY, *supra* note 44. These results were based on over 32,000 undergraduates and over 12,000 graduate students (comprising both graduate and professional students). *Id.* For a list of the questions on the GAD-7, please see Robert L. Spitzer et al., *A Brief Measure for Assessing Generalized Anxiety Disorder*, 166 INTERNAL MED. 1092 (2006). For a description of the GAD-7, please see Nerys Williams, *The GAD-7 Questionnaire*, 64 Occupational Med. 224 (2014), <http://ocmed.oxfordjournals.org/content/64/3/224.full>.

81. Across law schools, respondents with an anxiety diagnosis ranged from 10% percent to 28%.
82. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 117,000 undergraduate respondents and over 25,000 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 09:17 CDT)(on file with authors).
83. Across law schools, respondents with an anxiety diagnosis who received the diagnosis since starting law school ranged from 16% to 57%.
84. The five questions on the SCOFF questionnaire are:
 S - Do you make yourself Sick because you feel uncomfortably full?
 C - Do you worry you have lost Control over how much you eat?
 O - Have you recently lost more than One stone (6.35 kg or 14 lbs.) in a three-month period?
 F - Do you believe yourself to be Fat when others say you are too thin?
 F - Would you say Food dominates your life?

A yes answer to two or more questions suggests the need for a more comprehensive screening. See John F. Morgan, et al., *The SCOFF Questionnaire: A New Screening Tool for Eating Disorders*, 172(3) WEST. J. MED. 164-165 (2000); available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1070794>.

shown to have statistical significance at $p < .001$).⁸⁵ This compares with 18% of undergraduate respondents and 14% of graduate student respondents in the Healthy Minds Study.⁸⁶

The results of the SCOFF screening appear to contrast with the results from the survey question that specifically asked for a diagnosis of an eating disorder, for which just over 3% of respondents reported a diagnosis (less than 1% of male respondents and just over 5% of female respondents, a result shown to have statistical significance at $p < .001$). This compares with 2% of undergraduate respondents and 3% of graduate student respondents in the Healthy Minds Study.⁸⁷ Less than 3% of those with an eating disorder diagnosis in the SLSWB reported receiving their diagnosis since starting law school.

4. Self-Harm

The SLSWB survey asked respondents about whether, in the prior year, they had engaged in self-harm, such as cutting or burning oneself, with 9% of respondents indicating that they had done so. This compares with 18% for undergraduate respondents and 11% for graduate student respondents in the Healthy Minds Study.⁸⁸

5. Suicide

Respondents were asked about the extent to which they had seriously thought about attempting suicide, both in their lifetimes and in the prior twelve months. The survey revealed that 21% of participants reported they had seriously thought about suicide in their lifetime. Six percent had seriously thought about suicide in the prior twelve months, with no meaningful differences between male and female participants. This compares with 9% of undergraduate respondents and 5% of graduate student respondents in the Healthy Minds Survey who reported they had thought seriously about suicide in the prior twelve months.⁸⁹ The Centers for Disease Control and Prevention

85. The range across law schools was 19% to 31%.

86. These results from the Healthy Minds Study were provided by J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan. These percentages are drawn from a set of over 41,000 undergraduate respondents and over 8,000 graduate student respondents (comprising both graduate and professional students). Email from J.P. DeWitt, Program Manager for the Institute for Social Research at the University of Michigan to Jerome M. Organ, Professor of Law at the University of St. Thomas School of Law (August 28, 2015, 09:17 CDT)(on file with authors).

87. *Id.*

88. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org>, registering as a guest and then searching the Healthy Minds “All Years Combined” survey dataset and using the drop down boxes to search “Non-suicidal self-injury (past year)” and “degree level.” The Healthy Minds Study results were based on responses from over 79,000 undergraduates and over 27,000 graduate students (comprising both graduate and professional students).

89. This data can be found by going to the Healthy Minds website, <http://data.healthymindsnetwork.org/>, registering as a guest and then searching the Healthy Minds

reports that roughly 4% of Americans over age 18 reported suicidal thoughts in the prior year.⁹⁰

D. Help-Seeking Attitudes

As indicated above, one of the most important aspects of this research involved gathering empirical information for the first time regarding law students' attitudes toward seeking help for substance use or mental health issues. The "help-seeking" results are detailed in the following paragraphs.

1. Seeking Help Individually

The initial set of help-seeking questions concerned the extent to which respondents would be likely to use a health professional, to consult with a dean of students, or to talk to a state Lawyers Assistance Program (LAP) for help with substance use or mental health concerns. Respondents reported that they were more likely to seek help from a health professional, with 81% saying they would be very likely or somewhat likely to seek help from a health professional for an alcohol or drug problem and 79% for a mental health concern. By contrast, only 14% said they would be very likely or somewhat likely to seek help from a dean of students for an alcohol or drug problem and 15% for a mental health concern.⁹¹

Only 4% of respondents indicated that they actually had ever used a health professional for issues associated with alcohol or drugs, which seems to be a very low percentage relative to the percentages of respondents described above who indicated behavior that might suggest substance use issues.

As for mental health, 42% of respondents indicated that in the prior year they thought they needed help for emotional or mental health problems, with female respondents being much more likely than male respondents to report such a need (50% compared with 31%, a result shown to have statistical significance at $p < .001$). Of these, approximately half reported that they actually received counseling from a health professional, with female respondents reporting getting help with more frequency than male respondents (28% compared with 19%, a result shown to have statistical significance at $p < .001$).

"All Years Combined" survey dataset and using the drop down boxes to search "suicidal ideation (past year)" and "degree level." The Healthy Minds Study results were based on responses from over 79,000 undergraduates and over 27,000 graduate students (comprising both graduate and professional students).

90. A link to the CDC webpage can be found at <http://www.cdc.gov/violenceprevention/pdf/suicide-datasheet-a.pdf>.

91. We asked about willingness to seek help from state LAPs as well, but inadvertently asked this only with respect to alcohol/drugs, not with respect to mental health. Respondents were more likely to seek help from state LAPs than from deans of students, with 30% indicating a willingness to seek help for alcohol/drugs from a LAP.

2. Factors Discouraging Respondents from Seeking Help

The survey also asked respondents about factors that would discourage them from seeing a health professional for substance use issues and separately for mental health concerns. The most common factors are set forth in Help-Seeking Table 1.

Help-Seeking Table 1 - Factors Discouraging Respondents from Seeking Help

Factor	Percentage re. Substance Use	Percentage re. Mental Health
Potential threat to bar admission	63%	45%
Potential threat to job or academic status	62%	48%
Social stigma	43%	47%
Concerns about privacy	43%	30%
Financial reasons	41%	47%
The belief that they could handle the problem themselves	39%	36%
Not having the time	36%	34%

Notably, male respondents were much more likely than female respondents to believe that they could handle things themselves with respect to both alcohol/drugs and mental health concerns (51% for male respondents and 30% for female respondents for substance use and 45% for male respondents and 29% for female respondents for mental health concerns, results shown to have statistical significance at $p < .001$). In addition, with respect to mental health, male respondents also had a higher concern about social stigma than female respondents (54% to 41%, a result shown to have statistical significance at $p < .001$).

Perhaps most significantly, with respect to mental health, the percentage of third-year respondents concerned that seeking help would be a potential threat to job or academic status or a potential threat to bar admission was higher than the percentage of first-year respondents for whom these factors were of concern, a result shown to have statistical significance at $p < .01$. With respect to alcohol/drug concerns, the percentage of third-year respondents for whom potential threat to bar admission was a concern also was higher than the percentage among first-year respondents, a result shown to have statistical significance at $p < .05$. This may suggest that while in law school, students are getting messages indicating that seeking help for mental health concerns or alcohol/drug concerns may be problematic for their academic or professional careers.

Participants were also asked about perceived implications of talking with a dean of students or a state LAP regarding substance use or mental health concerns.

Respondents first were asked if they thought such conversations would be confidential. With respect to substance use, 80% of respondents reported believing a conversation with a state LAP would be confidential, while 58% thought a conversation with a dean of students would be confidential. Similarly, 80% of respondents reported believing a conversation with a state LAP about a mental health concern would be confidential, while 65% thought a conversation of this nature with a dean of students would be confidential.

Respondents separately were asked if they thought such a conversation would delay/prevent admission to the bar. Notably, 54% of participants reported that a conversation with the dean of students about substance use would delay/prevent admission to the bar, while 46% thought that such a conversation with a state LAP would delay/prevent admission to the bar. With respect to conversations about mental health, 42% thought that a conversation with the dean of students about mental health would delay/prevent admission to the bar, while 39% thought that such a conversation with a state LAP would delay/prevent admission to the bar.

Moreover, 49% of all respondents indicated: "If I had a drug or alcohol problem, my chances of getting admitted to the bar are better if the problem is hidden"; 43% of all respondents indicated: "If I had a mental health problem, my chances of getting admitted to the bar are better if the problem is hidden." Male respondents were much more inclined than female respondents to keep a problem hidden (53% compared with 44% for alcohol/drugs, 47% compared with 42% for mental health), results shown to have statistical significance at $p < .001$ (for alcohol/drugs) and at $p < .01$ (for mental health).

If one looks at the subgroup of slightly over 300 respondents who reported binge-drinking two or more times in the prior two weeks and indicated five or more problem behaviors associated with alcohol use, the percentages of those believing they are better off keeping the problem hidden increase to 58% (alcohol/drugs) and 56% (mental health), compared with all other respondents (46% (alcohol/drugs) and 41% (mental health)), results shown to have statistical significance at $p < .01$ (alcohol/drugs) and at $p < .001$ (mental health). In addition, if one looks at the subgroup of roughly 200 respondents who reported three or more of five issues of concern (two or more incidents of binge-drinking, use of street drugs, use of prescription drugs without a prescription, positive screening for depression and/or positive screening for severe anxiety), the percentages of those believing they are better off keeping the problem hidden increase to 72% (alcohol/drugs) and 62% (mental health), compared with all other respondents (47% (alcohol/drugs) and 42% (mental health)), results shown to have statistical significance at $p < .001$ (alcohol/drugs) and at $p < .001$ (mental health). Thus, those who might benefit most from getting help appear to be among those least inclined to seek help.

3. Encouraging Others to Seek Help or Taking Steps to Inform Appropriate Parties About Concerns About Other Students

The SLSWB also asked about the extent to which respondents would be likely to encourage a student to seek help if the respondents believed the student had an alcohol or drug problem or a mental health problem “that was sufficient to significantly impair his or her ability to fulfill his or her responsibilities as a student.”

Over three-quarters of respondents reported they were somewhat likely or very likely to encourage the student to seek help from a campus counseling center for alcohol/drug use (76%) or for mental health concerns (77%). Roughly half of respondents reported they were somewhat likely or very likely to encourage the student to seek help from a state LAP for alcohol/drug use (50%) or for mental health concerns (49%). Roughly one-third of respondents reported they were somewhat likely or very likely to encourage the student to seek help from a dean of students for alcohol/drug use (33%) or for mental health concerns (36%). Approximately one-third of participants reported they were somewhat likely or very likely to do nothing for a student they felt had a substance use or mental health problem.⁹²

Female respondents were more likely than male respondents to report that they would encourage the student to seek help from campus counseling (82% (alcohol/drugs) and 83% (mental health) for female respondents and 70% (alcohol/drugs) and 68% (mental health) for male respondents), results shown to have statistical significance at $p < .001$. Correspondingly, male respondents were more likely than female respondents to report that they would do nothing (40% (alcohol/drugs) and 42% (mental health) for male respondents and 28% (alcohol/drugs) and 31% (mental health) for female respondents), results shown to have statistical significance at $p < .001$ with respect to both alcohol/drugs and mental health.

Perhaps most significantly, respondents who were first-year students were more likely than respondents who were third-year students to report that they would encourage the student to seek help from campus counseling (79% (1Ls) to 75% (3Ls) (alcohol/drugs) and 80% (1Ls) to 74% (3Ls) (mental health)), results shown to have statistical significance at $p < .05$ (alcohol/drugs) and at $p < .01$ (mental health). Correspondingly, respondents who were third-year students were more likely than respondents who were first-year students to report that they would do nothing (36% (3Ls) to 30% (1Ls) (alcohol/drugs) and 38% (3Ls) to 33% (1Ls) (mental health)), results shown to have statistical significance at $p < .05$ with respect to both alcohol/drugs and mental health.

If the student whom the SLSWB respondent thought had an alcohol or drug problem or a mental health problem that was sufficient to significantly impair his or her ability to fulfill his or her responsibilities as a student did

92. The percentages somewhat likely or very likely to do nothing were 33% for substance use and 36% for mental health. The respondents were encouraged to answer all subquestions on a 4-point scale from very unlikely to very likely, which is why the sum of responses exceeds 100%.

not seek help following the respondent's encouragement to do so, the vast majority of respondents reported being somewhat likely or very likely to do nothing (63% for alcohol/drugs, 55% for mental health), while much smaller percentages reported being somewhat likely or very likely to inform a campus counseling center (23% for alcohol/drugs, 31% for mental health), a dean of students (17% for alcohol/drugs, 20% for mental health), or a state LAP (12% for alcohol/drugs, 15% for mental health).⁹³

Female respondents indicated a greater willingness than male respondents to inform campus counseling of their concerns about another student (26% (alcohol/drugs) and 34% (mental health) for female respondents and 19% (alcohol/drugs) and 25% (mental health) for male respondents), results shown to have statistical significance at $p < .001$ for both alcohol/drugs and mental health. Correspondingly male respondents reported being more likely than female respondents to do nothing (67% (alcohol/drugs) and 60% (mental health) for male respondents and 59% (alcohol/drugs) and 51% (mental health) for female respondents), results shown to have statistical significance at $p < .001$ with respect to both alcohol/drugs and mental health.

Perhaps most significantly, once again, respondents who were first-year students reported being more likely than respondents who were third-year students to inform campus counseling (29% (1Ls) to 19% (3Ls) (alcohol/drugs) and 35% (1Ls) to 26% (3Ls) (mental health)), results shown to have statistical significance at $p < .001$ for both alcohol/drugs and mental health. Correspondingly respondents who were third-year students reported being more likely than respondents who were first-year students to do nothing (66% (3Ls) to 59% (1Ls) (alcohol/drugs) and 59% (3Ls) to 52% (1Ls) (mental health)), results shown to have statistical significance at $p < .01$ with respect to both alcohol/drugs and mental health.

4. Factors Discouraging Respondents from Informing Appropriate Parties About Concerns About Other Students

Respondents were asked to indicate reasons why they would be discouraged from informing a campus counseling center, a dean of students or a state LAP about concerns for a fellow student. The top four reasons were the following: potential threat to job or academic status (60% for alcohol/drugs, 53% for mental health), potential threat to bar admission (57% alcohol/drugs, 48% mental health) (both higher among third-years than first-years), social stigma (54% alcohol/drugs, 53% mental health), and don't want to get involved (53% alcohol/drugs, 54% mental health).

E. Summary of Survey Data

In summary, the results of the SLSWB should be a wakeup call to law schools and those involved with legal education and admission to the legal profession. The current culture of law school at many law schools appears to

93. Once again, the respondents were encouraged to answer all subquestions on a 4-point scale from very unlikely to very likely, which is why the sum of responses exceeds 100%.

foster a variety of challenges for students navigating their way into the legal profession:

1) Alcohol use should be seen as a concern. Law students appear to be drinking more now than they were twenty years ago. Nearly one-quarter of respondents reported binge-drinking two or more times in the prior two weeks and one-quarter of respondents screened positive on the CAGE assessment, which suggests further screening for alcoholism is appropriate.

2) Illegal use of street drugs and prescription drugs is fairly common, with nearly one-third of respondents (32%) having used marijuana or cocaine or used prescription drugs without a prescription in the prior year.

3) Over one-third of respondents screened positive for moderate or severe anxiety (much higher than comparable populations), and roughly one-sixth screened positive for depression (somewhat similar to comparable populations).

4) Of the one-fifth to one-sixth of respondents with a diagnosis of anxiety or depression, many received their diagnosis after beginning law school.

5) Even though many respondents indicate that they would benefit from help for substance use issues or for mental health concerns, significant majorities of those most in need of help are unlikely to seek help, for a variety of reasons.

The remainder of this article focuses on what law school administrators and other relevant leaders within the legal academy and legal profession can do to discourage misuse of alcohol and drugs among law students and to promote improved mental health among law students, especially in terms of encouraging those students who would benefit from help to seek help so that they are better-positioned to find success as law students and to serve their clients well as lawyers.

Section V: Discussion

It is clear that more than twenty years after the AALS Survey on substance use among law students, the substance use and mental health issues facing law students have not decreased. Although the AALS Report included numerous recommendations⁹⁴ to improve the situation for law students, the data reported

94. In its Executive Summary, the Committee set forth the following specific recommendations for law school substance abuse programs for students.
1. Even if its affiliated university has a substance abuse policy, a law school should promulgate its own supplementary written policy.
 2. The law school should designate at least one person as substance abuse coordinator and highly publicize that designation.
 3. The law school should institute an education program about the consequences and treatment of substance abuse. If resources permit, the school should seriously consider implementing a general wellness program.
 4. The law school should be prepared to intervene early to assist students with substance abuse problems.
 5. Following intervention, a medical evaluation should be completed and the student should be advised regarding appropriate counseling and treatment.
 6. The law school should consider adopting an alcohol policy.

here from the Survey of Law Student Well-Being (SLSWB) suggest that law schools and officials tasked with assisting law students may have failed to implement these recommendations effectively or that these recommendations have not been sufficient to address the challenges facing law students.

This section begins by discussing what various stakeholders can do to help law students dealing with substance use or mental health issues. The section concludes with a call for collective action to change the culture of legal education and the legal profession so that those in need of help find an environment in which they are encouraged to seek help.

A. Suggestions for Various Stakeholders

Law school faculty, staff and administrators bear responsibility for the development of the law students at their law school. Although the degree of that responsibility may be subject to debate, and may vary from student to student, law schools cannot expect students to grow intellectually and professionally when they are experiencing significant mental and emotional challenges. The transition for many of our students from college to law school, which includes learning the new language of the law, dealing with anxieties about their future beyond graduation, and managing the debt many take on to finance their legal education, creates stressors for which many are unprepared. If these stressors do not have an outlet, or if students do not have access to resources to help address these stressors, students are left on their own to understand (or not) why they are no longer thinking clearly and feeling healthy, why they are giving way to medications, legal or illicit, and why they have departed from

7. Whatever disciplinary sanctions the law school adopts for substance abuse should be consistent with a disease model emphasizing counseling and treatment.

8. The law school should highly publicize its substance abuse programs to students, faculty, and staff.

9. The law school should review the Americans with Disabilities Act (ADA) to ensure that the school's policies and practices comply with the requirements of the Act.

10. The law school should consider coordinating its internal substance abuse program with relevant lawyer assistance programs.

11. The law school should endeavor to persuade the relevant state bar admission authority to agree that:

(1). The authorities will maintain the general confidentiality of substance abuse information divulged to them;

(2) Any inquiries that bar admission authorities make concerning applicant's history of substance abuse or treatment for substance abuse will be limited to reasonably recent events; and

(3) Otherwise qualified applicants who are recovering from substance abuse will be admitted to practice.

12. At the national level, the Association of American Law Schools should cooperate with the American Bar Association Section of Legal Education and Admissions to the Bar and with the National Conference of Bar Examiners to urge bar admission authorities to provide assurances that otherwise qualified applicants who are recovering from substance abuse will not be denied admission to practice.

13. A law school should inform its students of the substance abuse policies of the jurisdictions where its graduates most frequently apply.

AALS REPORT, *supra* note 2, at vi-vii.

their intended course when first matriculating to law school. The stakeholders referenced hereinafter must take advantage of the many opportunities to help the students with whom they come in contact.⁹⁵

I. Admissions

Law school admission committees have the first look at the backgrounds and profiles of an entering class. To comply with relevant questions on a law school's application, a number of applicants will disclose prior issues involving substance use or mental health or may disclose conduct that suggests concern about a future student's wellness.⁹⁶ In most instances, the conduct will not prevent the student from being admitted.⁹⁷ However, the issues reported should not be ignored; if left entirely unaddressed, the behaviors have an increased chance of resurfacing during law school when any number of new stressors can serve as triggers or catalyze a relapse to former behavior. Admissions officials are in an ideal position to provide resources to the student, to refer the student to the dean of students, or to provide the dean of students a list of names for outreach post-matriculation.

A well-informed dean of students can in turn have a meaningful and constructive conversation with a potentially at-risk student. First, the dean of students should commend the student for having provided the information and assure the student that s/he has the ability to demonstrate to the bar that s/he is fit to practice law. Second, by informing the student in a caring way of the availability of resources and how to access them, and by sharing that the dean of students is one among several resources available should the student

95. Portions of the following section are adapted from AM. BAR ASS'N, SUBSTANCE ABUSE AND MENTAL HEALTH TOOLKIT FOR LAW STUDENTS AND THOSE WHO CARE ABOUT THEM, http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_mental_health_toolkit_new.authcheckdam.pdf (last visited on July 31, 2015).
96. Law school applications generally have character and fitness questions that are similar to, but generally not as detailed as, state bar character and fitness questions. The Law School Admission Council Standards discusses the responsibility of law school applicants to provide accurate information to law schools in the admissions process. *Applying to Law School: Misconduct and Irregularities*, LAW SCH. ADMISSIONS COUNCIL, <http://www.lsac.org/jd/applying-to-law-school/overview/misconduct-and-irregularities> (last visited July 23, 2016). In addition, Standard 504 of the ABA Standards and Rules of Procedure for Approval of Law Schools sets forth the obligation law schools have to inform students of the character and fitness questions that will be asked by state boards of law examiners. See *Standard 504*, AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 33-34 (2015-2016), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.authcheckdam.pdf [hereinafter ABA, STANDARDS].
97. See, e.g., Susan Fortney, *Law Students Admissions and Ethics—Rethinking Character and Fitness Inquiries*, 45 S. TEX. L. REV. 983, 988 (2004) (stating that even for initial nondisclosures later amended, admission is typically not revoked). See also, Patricia A. Sexton, *When Character and Fitness Disclosures Collide: The Dilemma of Inconsistent Law School and Bar Admission Applications*, 21 PROF. LAW 1 (2012).

ever need assistance,⁹⁸ a dean of students will allow the entering student to feel good about the steps already taken, and to appreciate the support offered by the law school. Furthermore, as the student begins to settle in, should further situations arise, the student knows that s/he can and should access support through the law school. A significant note of caution here: Students with challenges in their background are potentially more sensitive to their surroundings and to the perception others have of them; a dean of students needs to carefully evaluate whether his or her approach is viewed as supportive and nonjudgmental. Even a kind offer of assistance may not always be welcome. It should always be clear that conversations with a student about his or her past or current substance use or mental health issues are voluntary.

ACTION: Admissions offices can carefully use relevant application information in a caring, productive way.

2. Administration

The dean of students or the student services administrator performing the functions of that position (hereinafter “dean of students”) plays a crucial role in raising awareness of law student wellness issues and in helping students to cope effectively with the stressors of law school. These officials are in a position to strategize how best to support awareness of the issues addressed. At the same time, the results of this survey show that no more than 15% of students would seek assistance from a dean of students for alcohol/drugs or mental health issues.⁹⁹ Consequently, changes must be made to raise the comfort level for a student to seek the assistance of a dean of students. In addition, efforts should be made to develop prominently displayed and publicized alternative sources of information. A dean of students must ensure that the appropriate contact points, as set forth below, are in place.

a. Orientation

First-year orientation is one of the most important times to address law student wellness issues. Entering students are eager to absorb early on how they can succeed in law school. The dean of students should ensure that each first-year orientation includes a presentation on each or all the following topics: coping effectively with stress and anxiety, the incidence and prevalence of substance use and depression/anxiety in law school and the legal profession, the character-and-fitness bar application questions as related to substance use and mental health, and an overview of the mental health services available through the law school, the university, and the local LAP.

To further underscore the relevance of the issues, particularly if wellness is not raised during orientation, a professor in each first-year section can set aside

98. See, e.g., Lawrence Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002) (suggesting also that faculty consider how they approach their teaching and curriculum in preventing student issues from arising).

99. See *infra* note 106 and accompanying text.

time for discussion of these topics during an early or relevant portion of the semester; for faculty who hold a midterm exam, for example, the lead-up to the exam may prove a good time to raise these issues.

b. Wellness Policy or Statement

A law school that relies solely on its undergraduate institution for a substance use and/or mental health policy might consider whether that policy serves the particular needs of the law school population. Law students are usually of legal drinking age, which is one reason for a different policy. Law students will want assurances that disclosure of substance use or mental health issues to a dean of students will not result in negative academic consequences, and that disclosure will not be an impediment to bar admission. Although deans of students are not in a position to guarantee bar admission, a policy or statement can debunk myths and explain the process, emphasize that receiving help for an issue will improve a student's position both in the short and long term, and reemphasize available resources, and the level of confidentiality the resource offers.

A dean of students can develop a wellness statement or policy by identifying and involving the groups or individuals¹⁰⁰ necessary for support of the statement. At a minimum, the statement should affirm support for students, identify potential issues that may arise, and emphasize available resources. Working from the inside out enhances the likelihood of buy-in from the student community. Focus groups may provide a student perspective on how a statement will be most effective; at the same time, faculty and staff should be aware and supportive of any reporting obligations of matters brought to their attention. In the end, the goal of a policy or a statement should be to encourage help-seeking behavior by being affirming rather than punitive.¹⁰¹

c. Publicity of Available Resources

Law schools' websites are often aimed at an external audience and consequently do not serve as a primary resource for current students. However, a law school should consider the many prospective students—particularly those who have had prior substance use or mental health issues and/or are addressing such challenges at present—who seek law schools that embrace a welcoming and healthy atmosphere. For example, the results of an online search of law schools using “substance use” or “mental health” do not include a number of law schools with recognized wellness programs. Accordingly, administrators may want to consider the interrelationship among substance use, mental health, and wellness both when developing their programs and when publicizing them

100. The student governing board, journals if their membership encompasses a strong percentage of the student population, the Honor Code or Code of Conduct prosecutor, and the student organization championing wellness all have a stake in developing a positive statement.

101. Schools may wish to consider, for example, *Supporting Students: A Model Policy for Colleges and Universities*, JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L., <http://www.bazon.org/LinkClick.aspx?fileticket=2sA8atOxLT0%3d&tabid=225> (last updated May 15, 2007).

internally and externally. Active publicity of wellness resources normalizes the process for seeking assistance and taking care of oneself, while ensuring the accessibility of those resources. The stigma associated with these issues, the apprehension about character-and-fitness questions, the culture of law school—suggesting to some students that “being tough” is the only way to see it through—can result in a fear of seeking assistance. The Yale Law School reported that “students overwhelmingly feared exclusion and stigma from a variety of sources, including state bar associations, faculty, administrators, and peers.”¹⁰² Making wellness a priority can help counteract these fears. Given the SLSWB results indicating law students’ reluctance to seek out a dean of students, the need for alternative resources is great.¹⁰³

A law school should provide on-campus and off-campus alternative resources. Administrators want to ensure that resources are confidential and that they are publicized on a regular basis, particularly in advance of and during peak stress times. A dean of students should coordinate regular meetings with the law school dean, the local Board of Law Examiners, and the state LAP to develop a concerted approach to wellness. Working with the state bar sends the message that the matters are real-world and need to be addressed while in school. Ideally, a full-time law school mental health counselor would be available to address issues when they arise. Having a counselor available at the law school may help to destigmatize the act of seeking help, while bringing this resource closer to students may increase the likelihood that a student will seek immediate assistance.¹⁰⁴ Some deans of students have cited “losing” their students between a conversation with them and the anticipated follow-up at the university counseling center. On the other hand, if concerns about stigma make it less useful to have a counselor in the law school, it may be fruitful to have a counselor available near the law school. If financial resources present an issue, the law school should consider a partnership with the local LAP to include a counselor at the law school on a regular basis.¹⁰⁵

ACTION: A dean of students must ensure that affirmative messages to support students are readily available at orientation, through statements and policy, and on the school’s website and social media platforms.

102. AGATSTEIN ET AL. FALLING THROUGH THE CRACKS, *supra* note 6, at 3. *See also supra* notes 19-20 and accompanying text.

103. *See infra* note 106 and accompanying text.

104. *See Personal Counseling*, GEO. L., <https://www.law.georgetown.edu/campus-life/advising-counseling/personal-counseling/> (last visited July 31, 2016).

105. Texas was able to implement such a project through its Lawyers Concerned for Lawyers group. *Texas Lawyers Assistance*, STATE BAR TEX. <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/TexasLawyersAssistanceProgram/SheeranCrowleyMemorialTrust/default.htm> (last visited July 31, 2016).

3. Faculty

The SLSWB shows that students with the most significant challenges to wellness are often the least likely to seek help.¹⁰⁶ Although many students will only rarely see the dean of students, every student interacts with faculty. Students look up to faculty, and meet with them regularly for academic and career development support. Faculty, if properly educated and willing to play this role, can spot potential issues before they become a crisis. It is critical that faculty be trained to recognize the signs and risk factors associated with common mental health and substance use issues, and to respond appropriately to a student in need.¹⁰⁷ A number of faculty around the country have set examples by addressing wellness issues, as well as sharing their personal experiences.¹⁰⁸ The following are areas in which faculty can assist in promoting wellness.

a. Class Attendance

A range of law school attendance policies exist around the country, as the American Bar Association Section of Legal Education and Admissions to the Bar has taken a largely hands-off approach to this law school practice.¹⁰⁹ At the

106. See *supra* sec. IV (D)(2).

107. See Danna Ethan & Erica J. Seidel, *On the Frontlines of Student Crisis: Urban Community College Professors' Experiences and Perceived Role in Handling Students in Distress*, 31 COLL. STUD. AFFS. J., 15 (2013).

108. For example, Brian Clarke at Charlotte Law blogged quite personally about his depression and also authored *Coming Out in the Classroom: Law Professors, Law Students, and Depression*, 64 J. LEGAL EDUC. 403 (2015). See Brian Clarke, *Law Professors, Law Students and Depression ... A Story of Coming Out (Part 1)*, FACULTY LOUNGE (Mar. 31, 2014, 7:00 AM); Brian Clark, *Law Professors, Law Students and Depression ... A Story of Coming Out (Part 2)*, FACULTY LOUNGE (Apr. 2, 2014, 7:30 AM), <http://www.thefacultylounge.org/2014/04/in-part-i-of-this-little-series-i-laid-out-some-of-the-statistics-regarding-the-scope-of-the-problem-of-depression-and-anxie.html>; Brian Clark, *Law Professors, Law Students and Depression ... A Story of Coming Out (Part 3)*, FACULTY LOUNGE (Apr. 7, 2014, 10:05 AM), <http://www.thefacultylounge.org/2014/04/the-coming-out-trilogy-part-3.html>. In addition, there are articles or blogs by others, such as Elyn Saks, who published *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* (2008), about her challenges with schizophrenia and acute psychosis. See also Lisa McElroy, *Worrying Enormously About Small Things*, SLATE (July 18, 2013, 8:16 AM), http://www.slate.com/articles/health_and_science/medical_examiner/2013/07/living_with_anxiety_and_panic_attacks_academia_needs_to_accommodate_mental.html; Marjorie Silver, who talks with students at Touro Law Center about her depression. Marjorie A. Silver, *Commitment and Responsibility: Modeling and Teaching Professionalism Pervasively*, 14 WIDENER L.J. 329 (2005). See also James Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor*, 57 J. LEGAL EDUC. 349 (2008). Some professors are working on helping students manage stress and maintain mental health through mindfulness. See, e.g., Scott Rogers, Lecturer in Law and Director of the Mindfulness in Law Program. *Mindfulness in Law Program*, MIAMI L., <http://www.miamimindfulness.org/Program/jurisight/index.html> (last visited July 31, 2016).

109. Accreditation standards previously required each law school to have an attendance policy. ("A law school shall require regular and punctual class attendance."). *Standard 304(d)*, Am. Bar Ass'n, ABA Standards and Rules of Procedure for Approval of Law Schools 2013-2014, at 24, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_

same time, any counselor or expert who has worked with a student in crisis will attest that class absences are less likely a result of apathy than of a student nearing or in crisis.¹¹⁰ Further, students care not only about missing class but also about what their faculty think.¹¹¹ Some faculty wish not to be directly involved with student absences, owing to feeling ill-equipped, or otherwise not wanting to be pulled into a student's personal life, or out of concern that classroom dynamics may change if a student feels singled out. One law school's student affairs office has responded to this challenge by conducting random "check-in"-style student outreach, asking students to come in for brief conversations. This outreach method allows for a student about whom a concern has been raised to be folded quietly into the outreach.¹¹² Another school has established a procedure whereby anyone concerned about a student can send an email containing only the student's name; trained law school officials then check in with one another and investigate further to determine if a meeting with the student is warranted.¹¹³ A third law school has established an online protocol for a student to self-report absences in advance; this teaches the students the professional practice of providing advance notice, and also enables the dean of students to follow up as appropriate when medical or other personal problems are noted.¹¹⁴

of_law_schools_body.authcheckdam.pdf. At its annual meeting in 2015, the ABA, over objection, voted to adopt what some perceive to be a softer standard *Standard 308(a)*, ABA, STANDARDS, *supra* note 114, at 20. ("A law school shall adopt, publish, and adhere to sound academic standards, including those for regular class attendance, good standing, academic integrity, graduation, and dismissal."). For comment on the proposal, see http://americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20150320_notice_comment_march_2015.authcheckdam.pdf.

110. See BRUCE S. SHARKIN, *COLLEGE STUDENTS IN DISTRESS: A RESOURCE GUIDE FOR FACULTY, STAFF, AND CAMPUS COMMUNITY* 10 (2006).
111. Kent Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 251 (1993).
112. The "check-in" style is currently practiced at American University Washington College of Law.
113. The "Safety Net" Program at Georgetown has this feature. E-mail from David Jaffe, Assoc. Dean., American University Washington College of Law, to Mitchell C. Bailin, Assoc. V. Pres. and Dean of Students, Georgetown University Law Center (June 23, 2015, 13:46 EDT) (on file with author).
114. *Dean of Students: Absence Notification*, U. MIAMI SCH. L., described at <http://www.law.miami.edu/students/dean-of-students> (last visited July 31, 2016). It should be noted that some mental health crises do not lend themselves to giving advance notice. In such a case, it might be a reasonable accommodation of disability to excuse a student's attendance for the period in which he or she was managing symptoms and/or seeking care.

b. Recognizing a Student Potentially in Crisis and Referring the Student for Help

A faculty member should anticipate having conversations with students expressing concerns¹¹⁵ and can learn and implement skills essential for facilitating conversations in which a student may be seeking assistance. Among these skills are nodding while the student is speaking, maintaining eye contact to demonstrate active listening, and reflecting the student's feelings or paraphrasing what the student is saying.¹¹⁶ It is important to remember both content and feeling when students are speaking. Details are important so the student knows the faculty member is listening and has accurately heard the story. Hearing a student's feelings and then reflecting them back builds rapport and helps a student feel he or she really is being understood. Asking open-ended questions is also helpful: "Tell me how you feel about your law school experience" will yield a more helpful response than "Do you like law school?" Being comfortable with silence also helps, as it allows a student to gather thoughts and think about them more deeply before speaking; it also prevents the faculty member from attempting to rush a solution, as the student will develop more insight and mastery if encouraged to find preliminary answers solutions on his/her own. Finally, encouraging a student through unconditional positive regard and rewarding positive behavior will be more helpful than blaming or shaming the student (i.e., by using phrases such as "you should have . . ." or "why didn't you . . .?"). It can be very helpful to be affirming. For example, when a student has refrained from turning to alcohol for stress relief one can acknowledge that choice: "Instead of drinking, you dealt with the situation in a healthy manner and continued to communicate your feelings."

ACTION: Faculty should establish and follow sound attendance policies in coordination with their dean of students, and be prepared to assist students who approach them by being active listeners. Law schools should require regular trainings for faculty on recognizing symptoms of mental health issues and warning signs of suicide.¹¹⁷

115. A research document from the Higher Education Research Institute at UCLA states that 38% of students believed that there was a very good chance that they would be communicating with their professors. HIGHER RES. INST., *THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2010* (2011), http://www.heri.ucla.edu/PDFs/pubs/briefs/HERI_ResearchBrief_Norms2010.pdf.
116. Examples might be: "That sounds very frustrating; this must be very hard for you" or "So you became angry with the situation and went out drinking to calm yourself down."
117. Often campus counseling centers can provide this training; other options include: KOGNITO, <HTTPS://WWW.KOGNITO.COM/> (last visited July 31, 2016); QPR INST., <HTTPS://WWW.QPRINSTITUTE.COM/> (last visited July 31, 2016). QPR focuses on suicide prevention. It stands for Question, Persuade, Refer. *See also* ASIST, <https://www.livingworks.net/programs/assist/>; The Dave Nee Foundation can provide training and/or can share the best-practices registry for this type of training. DAVE NEE FOUND., <HTTP://WWW.DAVENEFOUNDATION.ORG/> (last visited July 30, 2016).

4. State Bar/Board of Bar Examiners

The SLSWB confirms that one of the most significant obstacles to seeing a health professional for alcohol or drug or mental health issues is a fear of not being admitted to the bar, owing to the character-and-fitness component of bar applications.¹¹⁸ The United States Department of Justice (DOJ) recently concluded an investigation into the mental health inquiries on Louisiana's character-and-fitness examination. The Department determined that questions about bar applicants' mental health status violated the Americans with Disabilities Act because "[i]nquiring about applicants' medical conditions substitutes inappropriate questions about an applicant's status as a person with a disability for legitimate questions about an applicant's conduct."¹¹⁹

As a result, Louisiana and other states subsequently changed their questions,¹²⁰ and the National Conference of Bar Examiners (NCBE), the body that provides questions for several jurisdictions, recommended the same changes in the jurisdictions to which it supplied the questions.¹²¹ At about the same time, DOJ expressed similar concerns in response to an inquiry from the Vermont Human Rights Commission.¹²² An investigation also has commenced in Florida, a jurisdiction that does not rely on the NCBE for character-and-fitness questions.¹²³ In August 2015, the American Bar Association passed a resolution urging state bar licensing bodies to "to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner."¹²⁴ It remains to be seen how quickly state-licensing authorities will take responsive action. We have seen

118. See *supra* Section IV, D, 2. Jennifer Jolly-Ryan also has written about these concerns in her recent article *The Last Taboo: Breaking Law Students with Mental Illnesses and Disabilities Out of the Stigma Straitjacket*, 79 UMKC L. Rev. 123 (2014) [hereinafter Jolly-Ryan, *The Last Taboo*].
119. See Letter from U.S. Department of Justice to Louisiana Supreme Court, Feb. 5, 2014, at 19 (available at <https://www.ada.gov/louisiana-bar-lof.pdf>); see also Alyssa Dragnich, *Have You Ever . . . ? How State Bar Association Inquiries into Mental Health Violate the Americans with Disabilities Act*, 80 BKLYN L. REV. 677 (2015) [hereinafter Dragnich, *Have You Ever*].
120. Settlement Agreement Between the United States of America and The Louisiana Supreme Court Under the Americans with Disabilities Act (Aug. 13, 2014), http://www.ada.gov/louisiana-supreme-court_sa.htm.
121. See Memorandum from Erica Moeser, Pres., Nat'l Conf. of Bar Examiners, to Bar Admission Administrators (Feb. 24, 2014) (on file with authors).
122. See Letter from U.S. Department of Justice to Vermont Human Rights Commission, January 21, 2014, *supra* note 119 (the Letter to Vermont follows immediately after the Letter to Louisiana starting on page 36).
123. See Letter from U.S. Dep't of Justice, Civil Rights Div., to Chief Justice Jorge Labarga, Fla. Supreme Court (Dec. 10, 2014) (on file with authors).
124. AM. BAR ASS'N, RESOLUTION (REVISED 102) (2015) <http://www.americanbar.org/content/dam/aba/images/abanews/2015annualresolutions/102.pdf>.

already that the Georgia State Bar does not plan to adjust the questions despite the resolution.¹²⁵

A level of distrust or lack of understanding may also be present. State boards of law examiners may feel that law schools have not taken seriously enough character-and-fitness issues when admitting students to law school or when certifying students to sit for the bar upon graduation. Law school administrators, in turn, may fear that providing adverse student information will result in a student's not being admitted to the bar, or may fear that litigation will ensue over the type of information provided. Ideally, these two bodies could agree on a set of mutually satisfying parameters and allow students to seek the assistance they need while in law school.¹²⁶

With these concerns in mind, it is imperative that the parties invested in the health of the country's future lawyers—from the Department of Justice to state supreme courts to the National Conference of Bar Examiners—work together to eliminate discriminatory character-and-fitness questions, while simultaneously strengthening and spreading the message that seeking help while in law school is appropriate, necessary, and acceptable.

ACTION: The process for each state character-and-fitness application should be transparent and nondiscriminatory. Law schools and state bar examiners should be in regular and open dialogue about these issues. A universal message to the students that getting help now generally will not delay the bar admission process should be clearly articulated. At a minimum, bar officials should meet with all law students in their jurisdiction, standing side by side with the law school's dean of students and/or LAP designee to communicate that getting assistance while in law school can only enhance their position for being admitted to the bar.

B. Call for Collective Action

This survey should be a call to action for law school faculty, staff and administrators, for the ABA and state LAPs and for the NCBE and state

125. See Alyson Palmer, *Georgia Doesn't Plan Changes in Wake of ABA Push Against Mental Health Inquiries on Bar Applications*, DAILY REP. (Aug. 18, 2015), <http://www.dailyreportonline.com/id=1202735065671/Georgia-Doesnt-Plan-Changes-in-Wake-of-ABA-Push-Against-Mental-Health-Inquiries-on-Bar-Applications?sIreturn=20150803100338>.

126. It is worth noting here that research suggests little correlation between those flagged for character-and-fitness issues during the bar admission process and later misconduct as a practicing attorney. See Dragnich, *Have You Ever*, *supra* note 119 at 721-22 (citing Leslie C. Levin, et al., *A Study of the Relationship Between Bar Admissions Data and Subsequent Lawyer Discipline*, 13 LAW SCH. ADMISSIONS COUNCIL GRANTS REPORT SERIES 1 (2013), [http://www.lzac.org/docs/default-source/research-\(lsac-resources\)/gr-13-01.pdf](http://www.lzac.org/docs/default-source/research-(lsac-resources)/gr-13-01.pdf)). Also of note, relatively few bar applications that include a mental health issue result in denial of admission. Dragnich, *Have You Ever*, *supra* note 119, at 728. Taken together, one may wonder whether (invasive) character-and-fitness questions are serving their stated purpose and intent.

boards of law examiners.¹²⁷ Incremental efforts by a handful of people at a handful of law schools will not solve this problem—it is a problem that requires a coordinated and sustained effort by a variety of stakeholders. A number of academics have highlighted these concerns over the past three decades, and the AALS Special Report focused on the substance use concerns as of the early 1990s. But despite the efforts of many individuals to bring attention to these concerns and despite the concerted effort of the AALS Special Committee in the early 1990s, little progress has been made on these issues.

Law schools and state LAPs and boards of law examiners need to explore best practices and develop empirically supported solutions. Research needs to center on suicide,¹²⁸ on faculty attitudes and beliefs about law students' wellness (it is possible that law school faculty themselves affect the wellness of our law students; do faculty members contribute to the stigma or do they help to destigmatize?), and on the efficacy of suggested best practices (guidance on best practices; effectiveness of various interventions; assessment of the law school with the "healthiest" law students and how it became that way, or whether the law school influenced them, etc.). Legal education also can look to other professional educational contexts for possible insights.¹²⁹

This coordinated and sustained effort will require communication and data. Some entities that don't always trust one another or talk to one another—such as law schools and boards of law examiners—need to be in direct communication. Some experimental efforts need to be commenced and assessed so that we can identify and disseminate ideas that truly are best practices. Who will lead this charge remains to be seen. If the various stakeholders do not come together to work on improving this situation, however, twenty years from now we will find ourselves in the same place—a place where our students are suffering and where some of their clients ultimately will be suffering because legal education will remain a culture that fosters excessive drinking and drug use, that causes stress and triggers mental health issues, and yet discourages the students (and lawyers) who need help from seeking the help they need.

127. We are not the first to call for such action. The AALS REPORT, *supra* note 2, at vi-vii, set forth a list of recommendations. Laura Rothstein, in her 2008 article *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531 (2008), also has several recommendations, as does Jennifer Jolly-Ryan in her recent article, *The Last Taboo*, *supra* note 118.

128. Attention needs to be given to an in-depth analysis of law students who have died by suicide; qualitative interviews with deceased students' friends, family, and law school administrators; and a review of students' law school applications to better predict suicidality among law students and how to appropriately intervene.

129. Stuart J. Slavin et al., *Medical Student Mental Health 3.0: Improving Student Wellness Through Curricular Changes*, 89 ACAD. MED. 573 (2014).

APPENDIX C



Bar Admissions Questions Pertaining to Mental Health, School/Criminal History, and Financial Issues
Last Updated: February, 2019 (unless otherwise noted)

The following chart is a compilation of the questions asked on bar admission questions pertaining to mental health, school/criminal history, and finances. Please note that this is NOT a comprehensive list. Given the wide variety of questions that fall into those categories, this chart only includes those subject areas that may be of the greatest interest to students. You are encouraged to review the bar exam application you are interested in to confirm the full scope of what is asked on that application. This chart is updated bi-annually, but you must still check the questions applicable in your jurisdiction as this list may not be up to date or exhaustive. By publishing this information, the Bazelon Center is not endorsing or commenting on the quality or legality of any of these questions. This document is provided for informational purposes only. This chart is an updated version of the 2017 chart produced by Yale Law School available here: https://law.yale.edu/system/files/area/department/cdo/document/50_state_survey_bar_exams_and_mental_health_fall_2017.pdf.

State	Mental Health/ Substance Use Provisions	School, Criminal History, and Other Disciplinary Provisions	Financial Provisions	Links
<p>NCBE</p> <p>The following jurisdictions utilize NCBE without supplemental questions: DC, LA, MT, NM, NC, ND, TN, VT, WV, WY</p> <p>The following jurisdictions utilize NCBE, but have an additional supplemental application: HI, OH, OK, SD</p>	<p>Question 30: Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? Note: In this context, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer. Are the limitations caused by your condition or impairment reduced or ameliorated because you</p>	<p>Question 10: Have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney?</p> <p>Question 11: Have you ever been the subject of any charges, complaints or grievances (formal or informal) concerning your conduct as an attorney, including any now pending?</p> <p>Question 12: Have you ever been the subject of any charges, complaints, or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>Question 13: Have sanctions ever been entered against you, or have you ever been disqualified from participating in any case?</p> <p>Question 16: Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, allowed to resign in lieu of discipline, otherwise subjected to discipline, or requested to discontinue your studies by any law school?</p> <p>Question 18: Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, or allowed to resign in lieu of discipline from any college or university?</p>	<p>Question 28: Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 38: Have you ever had a credit card or charge account revoked that was not resolved in bankruptcy?</p> <p>Question 39: Have you ever defaulted on a student loan?</p>	<p>Sample NCBE Character and Fitness application (general)</p> <p>Character and fitness guidelines</p>

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	<p>receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Question 31: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 21: Have you ever been terminated, suspended, disciplined, laid-off, or permitted to resign in lieu of termination from any job?</p> <p>Question 23(1): Were you ever court-martialed?</p> <p>Question 23(2): Were you ever awarded non-judicial punishment (Art. 15 UCMJ)?</p> <p>Question 23(4): Were you allowed to resign in lieu of court-martial?</p> <p>Question 25: Have you ever been denied a license or had a license revoked for business, trade, or profession?</p> <p>Question 26: Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 27: Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?</p> <p>Question 29: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 32: Have you ever been a named party to any civil action? Note: Family law matters (including divorce actions and continuing orders for child support) should be included here.</p> <p>Question 33: Have you ever had a complaint or action (including, but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p> <p>Question 34: Have you ever been cited for, arrested for, charged with, or convicted of any violation of any law other than a case that was resolved in juvenile court? Note: Include matters that have been dismissed, expunged, subject to a diversion or deferred prosecution program, or otherwise set aside. Omit traffic violations.</p>	<p>Question 40: Have you ever defaulted on any other debt other than a student loan that was not resolved in bankruptcy?</p> <p>Question 41: Have you had a debt of \$500 or more that has been more than 90 days past due within the past three years that was not resolved in bankruptcy?</p> <p>Question 42: Have you ever failed to timely pay any personal taxes due, including but not limited to any federal or state income taxes; state, county or municipal private property taxes; or real estate assessment taxes?</p> <p>Question 43: Have you ever filed a petition for bankruptcy?</p>	
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<p>Alabama</p>	<p>Question 41 : Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? NOTE: As used in this question, “currently” means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.</p>	<p>Question 35: Have you ever been cited for, arrested for, charged with, or convicted of any alcohol or drug related traffic violation other than a violation that was resolved in juvenile court? Note: Include matters that have been dismissed, expunged, subject to a diversion or deferred prosecution program, or otherwise set aside.</p> <p>Question 36: Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? Note: Include matters that have been dismissed, expunged, subject to a diversion or deferred prosecution program, or otherwise set aside. Omit parking violations.</p> <p>Question 13 [College or University]: ...Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, or allowed to resign in lieu of discipline from this institution, or otherwise subjected to discipline by this institution or requested or advised by this institution to discontinue your studies there?</p> <p>Question 14 [Law School. Note: asked twice because asks about other law schools attended]: ... Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, or allowed to resign in lieu of discipline from this institution, or otherwise subjected to discipline by this institution or requested or advised by this institution to discontinue your studies?</p> <p>Question 17: ...Have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney?...Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as an attorney, including any pending now?...Have sanctions ever been entered against you, or have you ever been disqualified from participating in any case?</p> <p>Question 18: Have you ever been the subject of any charges, complaints, or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>Question 22: Have you been denied a license or had a license revoked for this business, trade, or profession (e.g., CPA, real estate broker, physician, patent practitioner)?</p>	<p>Question 32: Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 34: Have you ever filed a petition for bankruptcy?</p> <p>Question 35: Have you ever had a credit card or charge account revoked?</p> <p>Question 36: Have you ever defaulted on any student loans?</p> <p>Question 37: Have you ever defaulted on any other debt (not including student loans)?</p>	<p>Rules governing admission to the Alabama state bar</p> <p>Sample bar exam application</p> <p>Sample character and fitness questionnaire - digital</p> <p>Sample character and fitness questionnaire - print</p>
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<p>Question 42: If your answer to Question 41 is YES, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Question 43: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 23: Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 24: Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?</p> <p>Question 25: If you select yes as having served in the military, you are subsequently asked for "Type of discharge or separation." Additionally you are asked "Were you ever court-martialed?" and "Were you ever awarded non-judicial punishment?"</p> <p>Question 28: Have you ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation? NOTE: Include matters that have been dismissed, expunged, subject to diversion or deferred prosecution program, or otherwise set aside.</p> <p>Question 29: Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? NOTE: Include matters that have been dismissed, expunged, subject to diversion or deferred prosecution program, or otherwise set aside. Do not include parking violations.</p> <p>Question 30: Have you ever been a named party to any civil action? NOTE: Family law matters (including continuing orders for child support) should be included here.</p> <p>Question 31: Have you ever been cited for, arrested for, charged with, or convicted of any violation of law (not including traffic violations already disclosed)? NOTE: Include matters that have been dismissed, expunged, subject to a diversion or deferred prosecution program, or otherwise set aside.</p> <p>Question 33: Have you ever had a complaint or action (including, but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p>	<p>Question 38: Have you had any debts of \$500 or more (including credit cards, charge accounts, and student loans) that have been more than 90 days past due within the past three years?</p> <p>Question 39: If you have filed a petition for bankruptcy, are there any additional debts (not previously disclosed) that were not discharged in bankruptcy?</p> <p>Question 44: Do you owe any student loans (regardless of when the loan originated)?</p>	
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		<p>Question 40: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 45: Is there any other incident(s) or occurrence(s) in your life, which is not otherwise referred to in this application, which has bearing, either directly or indirectly, upon your character and fitness for admission to the Alabama State Bar?</p>	
<p>Alaska</p> <p>Question 17: Are you currently using narcotics, drugs or intoxicating liquors to such an extent that your ability to practice law would be impaired?</p> <p>Question 18: Are you currently suffering from any disorder that impairs your judgment or that would otherwise adversely affect your ability to practice law?</p>		<p>Question 7: Have you previously applied for admission to the practice of law? ... If not admitted, state the reason(s) (e.g. failed, withdrew, denied, etc.). If admission was denied, explain.</p> <p>Question 8: Have you ever applied to and/or taken the Alaska Bar Examination?... If not admitted, state the reason(s) (e.g. failed, withdrew, etc.). If admission was denied, explain.</p> <p>Question 11: If you answer yes to "Have you ever been a member of the armed services?" you must enter "Type of discharge" and "Circumstances surrounding your discharge."</p> <p>Question 13: Have you ever applied for or held a business or professional license?...[If denied] Reason for denial... Was this license revoked or suspended?... Reason for the action taken.</p> <p>Question 14: Has any disciplinary complaint or grievance, or fee arbitration request, been lodged against you by or with any jurisdiction or court?</p> <p>Question 14(a): Have you ever been charged with or convicted of, or plead guilty or no contest to, a felony charge? (Please note that this does not exclude suspended imposition of sentences, vacated judgments, pardons, or such similar dispositions.)</p> <p>Question 14(b): Have you ever been charged with or convicted of, or plead guilty or no contest to, a misdemeanor charge (excluding traffic violations that could not have resulted in incarceration upon conviction)? (Please note that this does not exclude suspended imposition of sentences, vacated judgments, pardons, or such similar dispositions.)</p>	<p>Rules governing admission to the Alaska state bar</p> <p>Sample admission application - digital</p> <p>Sample admission application - print</p>

		<p>Question 15: As a juvenile, were you ever charged with or convicted of, or plead guilty or no contest to, a violation that could have resulted in incarceration upon conviction? (Please note that this does not exclude suspended imposition of sentences, vacated judgments, pardons, or such similar dispositions.)</p> <p>Question 16: Have you ever been a party in a civil action?</p> <p>Question 31: While a member of the armed forces of the United States, were you ever awarded non-judicial punishment?</p> <p>Question 32: While a member of the armed forces of the United States, were you ever court-martialed?</p> <p>Question 33: While a member of the armed forces of the United States, were you administratively discharged?</p> <p>Question 34: While a member of the armed forces of the United States, were you allowed to resign in lieu of court-martial?</p> <p>Question 36: While a member of the armed forces of the United States, were you discharged?</p> <p>Question 42: Have you ever at any time been dropped, suspended, expelled or disciplined by any school or college for any cause whatsoever, including scholastic deficiency?</p> <p>Question 44: Have you ever at any time been questioned or accused with respect to cheating, plagiarism or honor code violation in the course of your schooling or elsewhere?</p> <p>Question 52: Were you ever the subject of a hearing or hearings related to bar admission or any other professional license?</p> <p>Question 56: Have you ever at any time had a business, trade or professional license denied or revoked?</p> <p>Question 58: Have you ever had any charges, complaints or grievances (formal or informal) filed against you?</p>	<p>Question 80: Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 95: Have you ever had a credit card revoked?</p> <p>Question 97: Do you have any debts, including student loans, which are more than 90 days past due? Respond affirmatively even if the debt is barred by the statute of limitations.</p>	<p>Character and fitness application sample</p> <p>Character and fitness guidelines adopted by the Arizona Supreme Court</p> <p>Rules governing admission to the Arizona state bar</p>
<p>Arizona</p>				

	<p>Question 60: Have you ever been reprimanded, censured, suspended, disbarred or otherwise disqualified from professional licensure?</p> <p>Question 62: Have you ever been accused of or charged with fraud, perjury, misrepresentation, or false swearing in a judicial or administrative proceeding?</p> <p>Question 64: Have you ever been involved as a party, directly or indirectly, in any disciplinary proceeding, formal or informal?</p> <p>Question 66: Have you ever resigned in lieu of suspension, revocation, disqualification or disbarment?</p> <p>Question 68: Have you ever been accused of the unauthorized practice of law in any state or jurisdiction?</p> <p>Question 76: Were you ever discharged or have you ever resigned from any employment listed in the above question after being told that your conduct or work was unsatisfactory?</p> <p>Question 78: In the course of any employment since the age of 21 (regardless of current age), have you ever been accused or charged with dishonesty, misrepresentation, misappropriation, theft, fraud, moral turpitude, or the commission of a crime? Include any situation even if it did not result in discharge, resignation or criminal charge.</p> <p>Question 82: Have you been a party to any type of civil action (including divorce) in the past ten years?</p> <p>Question 84: Have you ever failed to comply with any court order including, but not limited to, not appearing for jury duty?</p> <p>Question 86: Have you ever had a complaint filed against you in any civil, criminal or administrative forum, alleging fraud, deceit, misrepresentation, forgery, or legal malpractice?</p>	<p>Question 99: Are you in default in any way in the performance or discharge of any duty or obligation imposed upon you by decree or order of any court, including, but not limited to, civil judgments, alimony, maintenance and support orders and decrees?</p> <p>Question 101: Other than listed above, have you ever failed to meet your financial obligations and/or defaulted on any debt or loan?</p> <p>Question 103: Have you ever filed a petition under any Chapter of the Bankruptcy Code?</p> <p>Question 105: Do you intend to file, or are you in the process of filing a petition for bankruptcy?</p>
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Appendix C-1

		<p>Question 88: Have you either as an adult or juvenile, ever been served with a criminal summons, questioned, arrested, taken into custody, indicted, charged with, tried for, pleaded guilty to or been convicted of, or ever been the subject of an investigation concerning the violation of any law, statute, ordinance, rule, regulation, or canon? (In answering this question, include all incidents, no matter how trivial or minor the infraction or whether guilty or not, whether expunged or not, whether you were believed or were advised that you need not disclose any such instance.)</p> <p>Question 90: Have you ever been convicted of a felony?</p> <p>Question 93: In the past ten years, have you received any traffic citations?</p> <p>Question 109: Is there any other information, incident(s), or occurrence(s) which is not otherwise referred to in your response to this application which, in your opinion, may have a bearing, either directly or indirectly, positively or negatively, upon your ability to practice law actively and continuously?</p>	
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<p>Arkansas</p>	<p>Question 10(e): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or condition) that in any way currently affects your conduct, or if untreated could affect your conduct, and therefore, your ability to practice law in a competent, ethical, and professional manner in this jurisdiction? If yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program? NOTE: "Currently" means sufficiently recent so that the condition could reasonably affect your ability to function as a lawyer.</p>	<p>Question 5: Have you ever been discharged or asked to resign from any employment?</p> <p>Question 7: Regardless of whether the record has been expunged, cancelled, annulled, or whether no record was ever made, were you ever dismissed, suspended, placed on probation (excluding academic probation) or expelled from any college, postsecondary institution or university; accused of any Honor Code violations; or asked or advised by any institution to discontinue your studies there?</p> <p>Question 8 (b): Are you presenting serving? If you have been discharged, attach a copy of the document evidencing discharge.</p> <p>Question 8 (c): Have you ever been a defendant in any court- martial?</p> <p>Question 10(a): Have you ever been a party to, or had, or claimed any interest in, civil proceedings, including...domestic relation matters?</p> <p>Question 10(b): Have you ever been charged with, arrested for, convicted of, or plead guilty or nolo contendere for a violation of any law? Exclude minor traffic violations not resulting in or subject to incarceration, unless you have received three (3) or more such citations within the last two (2) years.</p> <p>Question 10(c): Have you ever been accused of or charged with fraud, deceit, conversion of the property of another, or assault or battery of another in any civil proceedings? (civil includes any proceedings other than criminal)</p> <p>Question 15(c) [regarding licenses to practice law]: Have you ever been subject to a disciplinary action, received a disciplinary sanction, or had your license suspended or revoked?</p>	<p>Question 9(a): Presently, I have established credit with the following three creditors...</p> <p>Question 9(b): I presently owe money which has been past due for more than 90 days to the following... (List all such debt, including any past due taxes)</p> <p>Question 9(c): Are there any unsatisfied judgments against you?</p> <p>Question 10(a): Have you ever been a party to, or had, or claimed any interest in, civil proceedings, including bankruptcy...?</p> <p>Question 12(a): Have you ever been bonded under a Fidelity or Surety Bond?</p>	<p>Arkansas bar exam application</p> <p>Rules governing the Arkansas state bar</p>
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	<p>Question 10(f): Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course, of any inquiry, any investigation, or any administrative or judicial proceeding by an education institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 16(a) Have you ever applied for or been granted a license, other than as an attorney at law, the procurement of which required proof of good moral character or examination, (i.e., Certified Public Accountant, Patent Attorney, Real Estate Broker, etc.)? ...if withdrawn or denied, provide details. If any license has been revoked or terminated, state the date the license was revoked or terminated, the manner of termination or revocation, and the reasons for the termination or revocation. Also, on the separate sheet, list whether any disciplinary action was ever taken against you by the authority issuing the license or governing your conduct as a licensee? If yes, state the dates such action was taken, the details of each complaint, and the results of any action taken by the issuing or governing authority.</p> <p>Question 17: Are there any unfavorable incidents in your life, whether in school, college, law school, business or otherwise, which may have a bearing upon your character or your fitness to practice law, not called for by the questions contained in this questionnaire or disclosed in your answers?</p> <p>Question 18: Do you, knowing its aims and having the specific intent to bring them about, belong to, or have you ever belonged to, any organization or group which advocates the overthrow of the Government of the United States or of Arkansas by force and violence?</p>	<p>Question 12(b): Have you ever been refused a fidelity or other bond?</p>	
<p>California¹</p>	<p>Question 12.6: Are you currently the subject of a conservatorship?</p> <p>Question 14.1: Do you have any chemical dependency issues that would currently interfere with your ability to practice law?</p>	<p>Question 6.1: Have you ever applied for (or applied for and then withdrew an application) or held a license for a business, trade, or profession, other than as an attorney at law, the procurement of which required proof of good character and/or examination (e.g., certified public accountant, patent practitioner, or real estate broker)?</p> <p>Question 7.1(A): Have you ever been denied a business, trade or professional license?</p> <p>Question 7.1(B): Have you ever been disbarred, suspended, censured, or otherwise disqualified or had your license revoked as a member of any business, trade, or profession (e.g., attorney, certified public accountant, real estate broker, physician, etc.), or as a holder of public office?</p>	<p>Question 10.2: Have you ever held a bonded position?</p> <p>Question 10.3: Has a bond ever been refused where you were to be the bonded person?</p>	<p>Extension of moral character determination application form</p>

¹ The Moral Character Determination Application is inaccessible without registering. However, we could locate the Extension of Moral Character Determination Application Form (link in the far right column). The questions provided are based upon that form.

	<p>Question 7.1(C): To the best of your knowledge, have there ever been, or are there now pending, any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any business, trade, or profession, or as a holder of public office?</p> <p>Question 8.1(A): Have you ever resigned your business, trade, or professional license while charges were [p]ending?</p> <p>[You are excluded from answering questions regarding the following incidents: (A) Arrests that did not result in a conviction unless you are awaiting final adjudication of the matter; (B) Any arrest, conviction or other proceeding the record of which has been ordered or is required to be sealed, obliterated, dismissed, or destroyed pursuant to [California code] or pursuant to a similar statute of another jurisdiction... (C) Any arrest, conviction or other proceeding, the record of which has been ordered or is required to be sealed, obliterated, dismissed, or destroyed pursuant to the statute of another jurisdiction...If you believe you come within this exclusion, you MUST include with your application a copy of the applicable statute and any supporting annotations and answer yes to question 9.5 below.]</p> <p>Question 9.1: Have you ever been convicted of the violation of a misdemeanor or felony? As used herein, a conviction includes a plea of guilty or nolo contendere, or a verdict of finding of guilt, regardless of whether sentence is imposed by the court.</p> <p>Question 9.2: Are you awaiting final adjudication for any investigation or arrest?</p> <p>Question 9.3: Have you ever been held in contempt of court?</p> <p>Question 9.4: Have you ever been granted immunity in lieu of criminal prosecution?</p> <p>Question 9.5: Are you submitting a statute of another jurisdiction pursuant to Section "C" above?</p>	<p>Question 10.4: Are you in default in any way in the performance or discharge of any duty or obligation imposed upon you by decree, judgment, or order of any court or administrative agency, including alimony, support orders and decrees?</p> <p>Question 11.1: Do you owe any debts, including student loans, that are past due (include those barred by the statute of limitations and past due credit account balances)?</p> <p>Question 11.2: Have you ever defaulted on any student loan?</p> <p>Question 11.3: Have you ever been adjudicated as bankrupt?</p>	<p>Information about the moral character requirement Moral character determination application instructions and form Rules governing admission to the California state bar</p>
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	<p>Question 10.1: Have you ever been found to have violated a college or university honor code or been informally or formally dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, or requested to resign or allowed to resign in lieu of discipline by any college or university (including law school), or otherwise subjected to discipline by any such institution or requested or advised by any such institution to discontinue your studies therein?</p> <p>Question 12.1: Have you ever been a party to or are you presently a party to any civil action or administrative proceeding (this includes, but is not limited to, divorce, dissolution, small claims court proceedings, lawsuits, licensing or other administrative proceedings, worker's compensation actions, etc.)</p> <p>Question 12.2: Has any company of which you are or were an officer, director or majority shareholder ever been a party to or presently is a party to a civil action or administrative proceeding?</p> <p>Question 12.3: Have any judgments been filed against you?</p> <p>Question 12.4: Have you ever had a complaint alleging fraud, deceit, misrepresentation, forgery, or legal malpractice filed and sustained against you in any civil, criminal or administrative forum? This includes corporations of which you were an officer or director and partnerships of which you were a member.</p> <p>Question 12.5: Is there any issue that would currently interfere with your ability to practice law in accordance with the duties and ethical obligations of an attorney?</p> <p>Question 13.1(c): While a member of the armed forces of the United States: Did you receive an honorable discharge? Were you ever court-martialed? Were you allowed to resign in lieu of court-martial? Were you administratively discharged? Were you ever awarded non-judicial punishment?</p>	<p>Question 11.4: Has a petition in bankruptcy (personal or business related) ever been filed by you or against you, either alone or in association with others?</p> <p>Question 11.5: Do you have a bankruptcy pending under a Chapter 13 reorganization?</p> <p>Question 11.6: Have you ever been sued by a receiver, trustee, or other authority of any bankruptcy estate, for unlawful preference, conspiracy to conceal assets, or any other fraud or offense, whether or not punishable by law?</p>	
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<p>Colorado</p>	<p>Question 39: Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner? As used in Question 39, "currently" means recently enough so that the condition or impairment could reasonably have an impact on your ability to function as a lawyer.</p> <p>Question 40: If your answer to Question 39 is YES, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p>	<p>Question 2: Has your license to practice law in any jurisdiction ever been limited, restricted, suspended, disbarred or revoked (include periods of inactive or nonresident status and any period of administrative suspension or transfer to disability status) since the date of your admission?</p> <p>Question 3: Have you ever been denied admission to the practice of law in any jurisdiction (other than for failure of the bar examination), been denied access to the bar exam of any jurisdiction, been accused of misconduct during the administration of any bar exam, or had an exam score nullified?</p> <p>Question 4: Have you ever had your fitness to practice law questioned through an informal interview, formal hearing, or through any other means?</p> <p>Question 5: Are there any jurisdictions in which you have applied for a license, including any jurisdiction in which you have taken the bar exam, but have not been admitted to practice law?</p> <p>Question 18(c): As a member of the armed forces of the United States: Were you ever the subject of charges in any court-martial? Were you allowed to resign in lieu of court-martial? Did you ever receive non-judicial punishment? Have you ever received a discharge for medical or other than "honorable" reasons? Were you administratively discharged?</p> <p>Question 12: Have you ever applied for a professional, state or local license in order to pursue a career in a field (other than law) requiring licensure? If YES, provide for each application...whether an examination was required, whether proof of good character was required....If no license was issued upon application, state the full reason.</p> <p>Question 22: Are you currently the subject of any charges, complaints, disciplinary or grievance actions (formal or informal) and/or have you ever been suspended, censured, or otherwise reprimanded or disqualified as an attorney or a member of any other profession, or as a holder of public office?</p> <p>Question 23: Have you ever been the subject of any charges, complaints or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any pending matters?</p>	<p>Question 17: Have you ever been required to pay alimony, maintenance or child support payments as a result of a divorce, annulment or other court proceeding?</p> <p>Question 27: Have any decrees, judgments, liens, or orders (including child support, maintenance, alimony or tax liens) ever been entered against you in favor of a creditor or other entity?</p> <p>Question 28: Have you been delinquent by more than 90 days in the payment of any debt, including student loans, had a credit card involuntarily revoked or canceled, a credit account involuntarily closed or any debt referred to a collection agency or "charged off" as not collectible?</p>	<p>Bar application sample</p> <p>Character and fitness standards and guidelines</p> <p>Character and fitness process</p> <p>Frequently asked character and fitness questions</p> <p>Rules governing admission to the Colorado state bar</p>
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<p>Question 41: Within the past five (5) years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding, by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an employment or termination procedure?</p> <p>Question 42: Have you ever been declared incompetent or had a conservator appointed to help conduct your affairs?</p>	<p>Question 24: Have you ever been accused of a violation of an honor code or student conduct code, warned, placed on scholastic or disciplinary probation, suspended, requested or advised to discontinue your studies, dropped, expelled or requested to resign or otherwise subjected to discipline by any college, law school or other post-secondary institution?</p> <p>Question 25: Regardless of whether the record has been expunged, canceled, or annulled, or whether no record was made, have you ever been accused of cheating, plagiarism, or other academic dishonesty at any school you attended?</p> <p>Question 26: Have you ever been terminated, suspended, disciplined, laid-off or permitted to resign in lieu of termination from any job?</p> <p>Question 31: Have you ever had a complaint or action (including but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p> <p>Question 32: Have you ever been named a party to any civil action?</p> <p>Question 33: Have you ever been held in contempt of court for any reason, have sanctions ever been entered against you or have you ever been disqualified from participating in any case?</p> <p>Question 34: Regardless of whether the record has been expunged, canceled or annulled have you ever been investigated, arrested, cited for, charged with, or convicted, imprisoned, placed on probation or parole or forfeited collateral for any offense against the law? Include matters that have been dismissed, expunged, sealed, subject to a diversion or a deferred prosecution program or otherwise set aside.</p> <p>Question 35: Have you ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation?... Include matters that have been dismissed, expunged, sealed, subject to a diversion or a deferred prosecution program or otherwise set aside.</p> <p>Question 36: Have you been cited for, charged with, or convicted of any traffic violations during the past seven (7) years, excluding parking violations?</p>	<p>Question 29: Have you ever failed to file federal, state, and/or local income tax returns since first becoming obligated to do so by law, excluding years not required to file based upon lack of income?</p> <p>Question 30: Have you ever filed a petition for bankruptcy or for establishment of a wage earners plan?</p>
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<p>Connecticut (Updated April, 2019)</p>	<p>Question 41: Except as provided in Questions 39 and 43 above, have you ever been a party to any civil or administrative proceeding or has any civil or administrative proceeding been instituted by you, on your behalf or against you including, but not limited to...competency or commitment proceedings...[or] guardianship...?</p> <p>Question 42: Have you ever been convicted of a criminal charge [and] been acquitted by reason of mental disease or defect...?</p>	<p>Question 38: Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 43: Is there any additional information with respect to possible misconduct or lack of moral qualifications on your part, which is not otherwise disclosed by your answers to questions in this application?</p> <p>Question 14: Have you ever been expelled, dropped, suspended, warned, placed on scholastic or disciplinary probation or been the subject of or party to any disciplinary proceeding by any college, university or law school?</p> <p>Question 15: Have you ever been absent from any post-secondary educational institution for more than ten consecutive days, other than for regularly scheduled school vacations?</p> <p>Question 18: Have you ever been discharged or terminated by an employer?</p> <p>Question 19: Have you ever resigned or been requested to resign in lieu of impending or anticipated disciplinary action by an employer?</p> <p>Question 20: Have you ever been absent from a job for more than ten consecutive work days, other than regularly scheduled vacations?</p> <p>Question 23: (a) Have you ever been reprimanded, suspended, disbarred or otherwise disciplined, or (b) are there any charges or complaints pending against you as an attorney, or (c) have you ever been accused of the unauthorized practice of law, (d) have you ever resigned or been requested to resign from the bar in lieu of impending or anticipated disciplinary action, or (e) have you ever been subject to any discipline or been penalized as a bar applicant in another jurisdiction?</p> <p>Question 24: Have you been entitled to practice law in each of the jurisdictions specified in Question 22 above and before each court continuously from the date you first became entitled until the date hereof? If not, state the dates during which you have not been so entitled, the nature of the disqualification, and the name and address of the person or authority in possession of the record thereof.</p>	<p>Question 27: Have you failed to file any local, state or federal income tax return as required by law or failed to pay any taxes when due?</p> <p>Question 31: Have you ever been bonded?</p> <p>Question 32: Have you ever been refused a bond or has anyone ever sought to recover on or cancel such bond?</p>	<p>Bar Exam Application</p> <p>Character and fitness - protocol for requesting, reviewing and handling medical documentation</p> <p>Rules governing admission to the Connecticut state bar</p>
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	<p>Question 28: Have you ever been offered or been granted immunity, or have you ever testified or been called as a witness in any criminal action or proceeding in which you were not a party?</p> <p>Question 29: Have you ever applied for or held a license or permit, other than as an attorney at law, the procurement of which required proof of good character? If so, state the name of authority to which the application was made, the date granted or denied and the current status of that license or permit.</p> <p>Question 30: Have you had any license or permit suspended or revoked because of unprofessional conduct?</p> <p>Question 33: Within the past five years, have you engaged in any conduct that: (1) resulted in an arrest, discipline, sanction or warning; (2) resulted in termination or suspension from school or employment; (3) resulted in loss or suspension of any license; (4) resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or (5) endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules?</p> <p>Question 34: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 39: Have you ever filed a grievance against an attorney or a judge?</p> <p>Question 40: Have you ever been a defendant in any civil proceeding in which allegations of fraud, misrepresentation or other improper conduct were made against you? If so, provide the information below and submit a copy of the complaint, answer, judgment and any pending motions.</p>	<p>Question 35: Do you have any student loans which are currently overdue or have you ever been in default in the performance of an obligation on a student loan? If so, list each such loan, the name of the creditor, account number, amount owed and the steps you have taken to bring the account up to date.</p> <p>Question 36: Has a judgment ever been entered against you in favor of a creditor? If so, submit a copy of the complaint, answer, judgment and satisfaction of judgment.</p> <p>Question 37: Are you in arrears or default in the performance of any court ordered duty or obligation?</p>
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	<p>Question 44: Except as provided in Questions 36 and 40 above, have you ever been a party to any civil or administrative proceeding or has any civil or administrative proceeding been instituted by you, on your behalf or against you including, but not limited to, suits in equity, actions at law, suits or petitions in bankruptcy, statutory proceedings, competency or commitment proceedings, divorce, civil restraining orders, guardianship, probate, paternity, any other civil and administrative proceeding, or any proceeding before a government agency, professional organization, licensing authority, the Law School Admission Council (LSAC), the National Collegiate Athletic Association (NCAA) or similar entity, or through online dispute resolution?</p> <p>Question 42: Have you ever been convicted of a criminal charge, been acquitted by reason of mental disease or defect, entered a pretrial diversion program or been the respondent in a criminal protective order or a family violence temporary restraining order? If so, submit a copy of the arrest report and all other documents relating to each conviction, acquittal by reason of mental disease or defect, pretrial diversion program, criminal protective order or family violence temporary restraining order. Submit an affidavit reciting in detail the facts and circumstances of each reported event. If you are uncertain as to whether a matter ought to be disclosed in accordance with this question, we advise you to disclose the matter fully.</p> <p>Question 43: Are there any criminal charges pending against you? If so, submit a copy of the arrest report and all other documents related to each pending charge. Submit an affidavit reciting in detail the facts and circumstances related to each pending charge.</p> <p>Question 44: Within the last five years, have you been charged with reckless driving, evading responsibility, driving under the influence (DUI) or driving while intoxicated (DWI)?</p> <p>Question 45: List every jurisdiction and submit a certified driving record (or “no record” or “clearance” letter) from the Department of Motor Vehicles for each of the following.... Any jurisdiction in which your driving privileges have ever been suspended or revoked.</p>	<p>Question 37: Are you presently, or have you ever been, in arrears or default in the performance of any court approved agreement, judgment or court order concerning child support?</p>
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<p>Delaware</p>	<p>Question 27 (A): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent and professional manner? For purposes of this question, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.</p> <p>Question 27(B): If you answered 'Yes' to Question 27A, are the limitations or impairments caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring or support program?</p>	<p>Question 4: Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled or requested to resign or allowed to resign in lieu of discipline from any college, university, law school or otherwise subjected to discipline by any such institution or requested or advised by any such institution to discontinue your studies therein?</p> <p>Question 5: Have you ever submitted an application to be admitted by examination, motion, or diploma privilege, or to be reinstated to the Bar in any state? ... Provide a brief narrative explanation of the circumstances surrounding the reasons for any withdrawals of applications or failures to be admitted (including denials other than those due to failing the examination).</p> <p>Question 8(A): Have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney?</p> <p>Question 8(B): Have you ever been the subject of any formal or informal charge, complaint, grievance, investigation, or inquiry regarding your conduct as an attorney?</p> <p>Question 9: Have you ever been the subject of any formal or informal charge, complaint, grievance, investigation, or inquiry regarding the unauthorized practice of law?</p> <p>Question 10: Have sanctions ever been entered against you or have you ever been disqualified from participating in any case?</p> <p>Question 13 (A): Have you ever been terminated, suspended, disciplined or permitted to resign in lieu of termination from any job?</p> <p>Question 13 (B): Have you ever had an offer of employment rescinded, withdrawn, or altered in a way that you understood limited your ability to accept it, or that the prospective employer discouraged you from accepting?</p> <p>Question 14 (A): Have you ever been denied a license for a business, trade, or profession (e.g., CPA, real estate broker, physician, etc.)?</p> <p>Question 14 (B): Have you ever had a business, trade or professional license revoked?</p>	<p>Question 16: Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 18: Have you or an Affiliated Entity ever failed to file a federal, state, or local income tax return when due and without a lawful extension or have you or an Affiliated Entity ever failed to pay federal, state, or local income taxes when due?</p> <p>Question 19: Have you or an Affiliated Entity ever filed a petition for bankruptcy?</p> <p>Question 24(A): Have you or an Affiliated Entity had any debts which have been more than 90 days past due within the past seven years?</p>	<p>Bar application sample</p> <p>Rules governing admission to the Delaware bar</p>
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	<p>Question 28: Within the past five years, have you asserted any condition, disability, or impairment as a defense to, in mitigation of, or as an explanation for your conduct in response to or in the course of: (a) any arrest; (b) any proposed or actual discipline, sanction, or warning; (c) any proposed or actual termination or suspension from school or employment; (d) any proposed or actual loss or suspension of a license; (e) any inquiry, investigation, or proceeding by an employer, educational institution, government agency, professional organization, or licensing authority; (f) any proceeding administrative or judicial proceeding by an employer, educational institution, government agency, professional organization, or licensing authority; or (g) any allegation that you endangered the safety of others, breached</p>	<p>Question 15 (A): Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 15 (B): Have you ever been the subject of any formal or informal charge, complaint, grievance, investigation, or inquiry regarding your conduct as a member of another profession or occupation, or as a holder of public office?</p> <p>Question 17 (A): Have you or an Affiliated Entity ever been named as a party in any civil, administrative, or other proceeding?</p> <p>Question 17 (B): Has there ever been a civil, administrative, or other proceeding in which an allegation was made against you or the Affiliated Entity of fraud, deceit, misrepresentation, forgery or legal malpractice, without regard to whether you or the Affiliated Entity was a party in the proceeding? NOTE: Family law matters (including orders for child support) should be included here. For an Affiliated Entity, "other proceeding" includes criminal proceedings.</p> <p>Question 20: Have you ever been cited, arrested, charged, accused, prosecuted, or convicted for any offense, misdemeanor, felony, or other violation of any law (including moving traffic violations), which involved alcohol or drugs? NOTE: This includes matters that have been expunged, been subject to a diversionary program, pardoned or otherwise cleared.</p> <p>Question 21: Have you ever been cited, arrested, charged, accused, prosecuted, or convicted for any offense, misdemeanor, felony, or other violation of any law, in which alcohol or drugs were not involved? NOTE: This includes matters that have been expunged, been subject to a diversionary program, pardoned, or otherwise cleared. This does not include moving traffic violations, which are covered by Questions 20 and 22.</p> <p>Question 22: Have you been charged with any moving traffic violations during the past ten years? NOTE: This does not include moving traffic violations involving drugs or alcohol, which are covered by Question 20, and it does not include parking tickets.</p>	<p>Question 24(B): Have you or an Affiliated Entity ever had a credit card or charge account revoked?</p> <p>Question 24(C): Have you or an Affiliated Entity ever defaulted on any debt?</p> <p>Question 24(D): Have you or an Affiliated Entity ever surrendered a credit account in lieu of recovery action by one or more of your creditors?</p>	
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	<p>fiduciary obligations, or violated workplace or academic conduct rules?</p>	<p>Question 23: Have you ever been offered or granted immunity, testified or been called as a witness in any criminal action or criminal proceeding in which you were not a party?</p> <p>Question 26: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 29: Is there any information (event, incidence, occurrence, etc.) that was not specifically addressed and/or asked of you in this application and/or in the instructions that could be considered a character issue?</p>	<p>Question 25: For you and any Affiliated Entity, list all creditors you have confirmed are not identified on the credit reports from the three major credit bureaus (TransUnion, Equifax, Experian), including the name, address, and telephone number of the creditor, the account number (if applicable), and the balance on the debt or account as of the date of this application. Upload a copy of the credit reports from the three major credit bureaus listed above you reviewed in order to respond to this question, which must have been obtained thirty (30) or fewer days before you filed your application.</p>	
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<p>District of Columbia [Note: Uses NCBE Character and Fitness Application]</p>	<p>NCBE</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Rules governing admission to the District of Columbia bar</p>
<p>Florida² (2015- see footnote; Also Updated April 2019)</p>	<p>Question 25: Within the past 5 years have you been diagnosed with, suffered from or been treated for a mental illness involving a severe thought disorder (including, but not limited to, schizophrenia), a severe mood disorder (including, but not limited to, major depressive disorder or bipolar disorder) or substance use disorder (including, but not limited to, abuse of or addiction to/dependence on alcohol, marijuana, cocaine, or prescription medications)?³</p>	<p>Question 9(a): Have you ever been accused of a violation of an honor code or student conduct code, warned, placed on academic, scholastic or disciplinary probation, suspended, requested or advised to discontinue your studies, dropped, expelled or requested to resign or otherwise subjected to discipline by any college, law school or other post-secondary institution?</p> <p>Question 9(b): Regardless of whether the record has been expunged, canceled, or annulled, or whether no record was made, have you ever been accused of cheating, plagiarism, or other academic dishonesty at any school you attended?</p> <p>Question 12(a): Have you ever been discharged, terminated, suspended, relieved from duty with or without pay, or placed on paid or unpaid administrative leave with regard to any disciplinary action or potential disciplinary action taken by any employer?</p> <p>Question 12(b): Have you ever been requested, formally or informally, to resign from or terminate employment?</p> <p>Question 12(c): Have you ever applied for a position that required proof of good character and had that application denied for reasons involving your background or character, or in which you withdrew that application after questions about your character arose?</p> <p>Question 12(d): Has any charge or complaint, formal or informal, ever been made or filed or proceedings instituted against you by any employer?</p>	<p>Question 14(a): Within the past 5 years, have you been delinquent by more than 90 days in the payment of any tax, credit obligation, judgment, or other indebtedness?</p> <p>Question 14(b): Within the past 5 years, have you been delinquent by more than 90 days in the payment of any student loans?</p>	<p>Bar exam FAQ regarding moral character</p> <p>Rules governing admission to the Florida state bar</p> <p>Checklist to File Bar Application</p>

² Due to restricted online access, questions here are from a 2015 copy.

³ The Florida bar FAQ says the following: “Item 25 on the Florida Bar Application asks applicants to disclose any treatment for, or recurrence of, certain thought disorders (Schizophrenia and other psychotic disorders) and mood disorders (Bipolar Disorder and Major Depressive Disorder) that could impair an applicant’s ability to practice law. When applying, you should read Item 25 carefully. If you are unsure of how to answer it, consider consulting with your mental health provider. The Board supports applicants seeking mental health treatment, and views effective treatment from a licensed professional as enhancing the applicant’s ability to meet the essential eligibility requirements to practice law.”

	<p>Question 26: Do you currently (as hereinafter defined) have a mental health condition (not reported above) which in any way impairs or limits, or if untreated could impair or limit, your ability to practice law in a competent and professional manner?⁴</p>	<p>Question 16(j): Have you ever been held in contempt by any court for any reason?</p> <p>Question 19(a): In your entire life, have you ever been arrested, detained or restrained, taken into custody or accused formally or informally of a felony, whether or not the charge was later reduced to a misdemeanor or other lesser charge?</p> <p>Question 19(b): Have you ever been convicted of a felony?</p> <p>Question 19(c): Have you served time in any correctional institution, work-release program, or had any such sentence imposed and then suspended?</p> <p>Question 19(d): Are you currently serving any part of a sentence of felony probation, regardless of adjudication of guilt?</p> <p>Question 19(e): If you have been convicted of a felony, have your civil rights been restored?</p> <p>Question 20: Other than those incidents listed under Items 19, 21, and 22, since age 16 have you ever been arrested, detained or restrained, given a notice to appear or taken into custody for the violation of a law or ordinance or for committing a delinquent act?</p> <p>Question 21: In your entire life, have you ever been arrested, detained, or restrained, taken into custody or accused of driving while intoxicated, driving under the influence of alcohol or drugs, driving with an unlawful blood alcohol level or charged with vehicular manslaughter or vehicular homicide?</p> <p>Question 22(a): Since age 16, have you been charged with a traffic violation that resulted in a fine of \$200 or more, charged with a traffic violation that resulted in time spent in jail, or had your driver license or your driving privileges revoked or suspended?</p>	<p>Question 14(c): Whether or not they have been satisfied, have any judgments ever been entered against you, or have state or federal tax liens been placed against your property?</p>
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⁴ The Florida Bar FAQ says the following “Item 26 on the Florida Bar Application asks you to disclose any treatment for, or recurrence of, a substance-related disorder that could impair your ability to practice law. “Substance-related” includes, without limitation, alcohol, marijuana, cocaine, and misuse of prescription drugs.”

		<p>Question 22(b): Other than those incidents listed under Item 22.a., during the last 3 years have you been given a citation or a written warning, taken into custody, or accused of the violation of a traffic law or ordinance, other than parking tickets, regardless of the result?</p> <p>Question 23(a): Have you ever been the target or subject of a grand jury investigation or other criminal investigation from which no formal charges against you resulted?</p> <p>Question 23(b): Have you ever been offered or granted immunity to testify in any grand jury proceeding, criminal action or criminal proceeding?</p> <p>Based upon the checklist online, applicants must provide military service information, information regarding arrests, charges or accusations of violation of law or ordinance, and their fingerprints.</p>	<p>Question 14(d): Within the past 2 years, have you issued a personal or business account check, draft, or other written order on any bank or depository, or used a debit card for the payment of money or its equivalent, that was returned, refused or reversed by the bank for insufficient funds, or have you ever had a worthless check, draft or debit card order turned over to the State Attorney's Office, or other agency, for collection or prosecution regardless of whether the item was later made good?</p>	
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<p>Georgia</p>	<p>Question 18.1: Have there been any instances of litigation (...lunacy, guardianship...) in which you have been a party or which you initiated or which was initiated on your behalf?</p>	<p>Question 5.3: Have you ever, other than as a routine practice, had your fitness to practice law questioned through an informal interview, a formal hearing or by any other means?</p> <p>Question 7.1: Have you ever been denied admission to the practice of law in any jurisdiction, other than for failure of the bar examination, or been denied permission to take the bar examination of any jurisdiction?</p> <p>Question 8.5: Have any complaints been filed against you as an attorney with the disciplinary authority of any state in which you have been admitted to practice?</p>	<p>Question 16(d): Have you ever filed a petition in bankruptcy, been the subject of an involuntary petition for bankruptcy, or made an assignment for benefit of creditors or had a receiver, conservator or liquidator appointed for any assets?</p> <p>Based upon the checklist, the applicant must provide financial information about delinquent credit, defaulted credit, judgments/liens, unfiled tax returns, payments returned for insufficient funds, and delinquent student loans</p>	
			<p>Question 4.1: Have you ever been under court ordered obligation to pay alimony or child support payments?</p>	<p>Character and fitness questionnaire sample (digital)</p> <p>Character and fitness questionnaire sample (print)</p>

<p>Question 25: Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? As used in this question, "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.</p> <p>Are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Note: Please be aware that you may be asked to contact your treating physician, counselor and/or hospital and request that your records and/or a summary of your treatment be sent to the</p>	<p>Question 8.6: Have you been the subject of any form of lawyer discipline, whether private or public, whether oral or written, in any jurisdiction in which you have been admitted to the practice of law?</p> <p>Question 12.1: Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled or requested to resign from any college, university or law school or otherwise subjected to discipline by any such institution or requested or advised by any such institution to discontinue your studies therein?</p> <p>Question 12.2: Have you ever been formally charged with cheating, lying or otherwise taking unfair advantage of fellow students at any college, university or law school you attended or are presently attending?</p> <p>Question 12.3: Regardless of whether the record has been expunged, cancelled or annulled, or whether no record was made, have you ever been subject to proceedings before a school honor court or council (or any similar body)?</p> <p>Question 13.1: If you have been a member of the US armed forces you must provide your type of discharge. Additionally you must answer the following questions:</p> <p>Question 13.4: As a member of the armed forces, were court martial charges ever made or proceedings instituted against you?</p> <p>Question 13.5: As a member of the armed forces, was non-judicial punishment imposed upon you?</p> <p>Question 13.6: As a member of the armed forces, were you asked to resign or given the opportunity to resign in lieu of judicial or administrative proceedings being instituted or carried out against you?</p> <p>Question 13.7: Have you ever received a medical discharge or an administrative discharge for medical reasons?</p> <p>Question 14.2: Have you ever been discharged from any employment?</p>	<p>Question 4.2: State your compliance with such support payments and list the name and last known address of your former spouse(s) or the custodial parent of your child(ren) to whom support is or was to be paid. Please also provide a copy of the court order unless it is already provided by the requirements of the previous question.</p> <p>Question 15.3: Have you ever had any type of account or debt turned over to a collection agency or an account that has been charged off?</p> <p>Question 15.4: Has a judgment ever been entered against you in favor of a creditor or any other entity?</p>	<p>Podcast on "Applying for Certification of Fitness"</p> <p>Policy statement of the board to determine fitness of bar applicants</p> <p>Rules governing admission to the Georgia state bar</p>
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	<p>Office Bar Admissions. The Board to Determine Fitness of Bar Applicants is aware of HIPAA requirements</p> <p>Question 26: Has your functioning at school or at work ever been sufficiently impaired (as the result of substance abuse, alcohol abuse, or a mental, emotional, or nervous or behavior disorder or condition) as to require inpatient or outpatient treatment?</p> <p>Question 27: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 14.3: Have you ever been disciplined by an employer, or requested, formally or informally, to resign from or terminate employment?</p> <p>Question 17.3: Have you ever been involved in any litigation or arbitration related to the business or businesses referred to in the previous section?</p> <p>Question 17.4: Have there been had any decrees, judgments, or liens against the business or businesses referred to in the previous section?</p> <p>Question 18.1: Have there been any instances of litigation (equity, actions at law, statutory proceedings, lunacy, guardianship or any other civil or administrative proceeding, other than bankruptcy) in which you have been a party or which you initiated or which was initiated on your behalf?</p> <p>Question 19.1: Excluding parking violations, have you ever been cited or charged with any traffic violation within the last 10 years (including violation(s) to which you were allowed to enter a "nolo- contendere" plea)?</p> <p>Question 19.4: Has your driver's license ever been suspended or revoked?</p> <p>Question 20.1: Have you ever been charged with or cited for driving under the influence of alcohol or drugs?</p> <p>Question 21.1: Have you ever been detained, arrested, formally accused, cited or prosecuted for the violation of any law?</p> <p>Question 21.6: Are you currently serving a probated sentence as a result of any criminal charge?</p> <p>Question 22.1: Have you ever been charged with or been under investigation for the unauthorized practice of law?</p> <p>Question 23.1: Have you ever been offered immunity from prosecution in any criminal action or criminal proceeding?</p>	<p>Question 15.5: Have you ever had any liens or garnishments filed against you?</p> <p>Question 15.6: Have you ever filed a petition in bankruptcy or for establishment of a wage earners plan?</p> <p>Question 16.1: Have you ever obtained a student loan?</p> <p>Question 16.2: Are your student loans in deferment?</p> <p>Question 16.3: Are your student loans in forbearance?</p> <p>Question 16.4: Total amount of student loans owed.</p> <p>Question 16.5: Have you ever defaulted on a student loan?</p>
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<p>Hawaii [Note: Uses combination of Hawaii state and NCBE applications for character and fitness questions]</p>	<p>NCBE</p>	<p>NCBE and the following state specific questions:</p> <p>Question 15: Have you been the subject of any grievance, charge, or complaint (formal or informal) about your conduct as an attorney, or have you been investigated concerning your conduct as an attorney? Include grievances, charges, or complaints that are pending, that have been dismissed, that did not result in discipline, or that resulted in discipline.</p> <p>Question 16: Other than parking violations, have you been charged with traffic violations in the past ten (10) years?</p>	<p>NCBE and the following state specific question:</p> <p>Question 17: Within the past ten (10) years, have you had a credit card or charge account revoked, defaulted on any loan or filed for bankruptcy?</p>	<p>Bar application Rules governing admission to the Hawaii bar</p>
<p>Idaho</p>	<p>Question 26: Have you ever been declared a ward of any court or adjudicated an incompetent person (including designation as a conservatee or protected person)?</p>	<p>Question 11(e): If you have ever served in the Armed Forces, whether or not you received less than an honorable discharge.</p> <p>Question 11(f): If you served in the Armed Forces, whether or not you were ever court martialled or subject to any court martial proceedings.</p>	<p>Question 25: Have you ever held a bonded position? Has anyone ever sought to recover on or cancel such a bond?</p>	<p>Bar application Rules governing admission to the Idaho state bar</p>

<p>Question 31: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination by an educational institution, employer, government agency, professional organization or licensing authority?</p> <p>Question 32(b): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or condition) that in any way affects your ability to practice law in a competent and professional manner?</p>	<p>Question 19: Have you ever been arrested, served a summons, cited, questioned, indicted, taken into custody, charged, tried, or investigated for a felony, misdemeanor, infraction (including traffic tickets), or probation violation? Include all incidents as a juvenile or adult, no matter how minor the charge, whether guilty or not, whether exonerated or not, whether sentencing was withheld, excluding only non-moving traffic violations that resulted in a penalty less than \$25.00. You must include criminal and/or juvenile matters that have been expunged.</p> <p>Question 20: Have you ever, in any capacity, been a party to, named, or described in any civil proceeding, action, or suit, including divorce, any court case, bankruptcy, or administrative proceeding?</p> <p>Question 21: Have you ever been the subject of any complaint, grievance, or proceedings that either sought or resulted in your admonition, reprimand, censure, suspension, discipline, citation, contempt, or fine as a member of any profession or occupation, or as the holder of any license? This includes complaints made against you as an attorney in other states.</p> <p>Question 22: Have you ever been terminated from employment or requested to resign by an employer?</p> <p>Question 23: Have you ever been charged, formally or informally, with misrepresentation, fraud, misapplication, perjury/false swearing, or misappropriation of property, either individually or in a representative capacity (i.e., as an officer of a business entity, partner or other fiduciary relationship)?</p> <p>Question 24: Have you ever been investigated, suspended, expelled, or disciplined, formally or informally, by any school, college, or university above the high school level? This includes any academic probation.</p> <p>Question 27: Have you ever applied for a license or certificate requiring proof of good moral character? This includes any applications to the practice of law. Have you ever been denied any license or certificate requiring proof of good moral character?</p> <p>Question 28: Have you ever been denied admission or readmission to any school, college, law school or professional organization?</p>	<p>Question 29: Have you at any time in the past ten (10) years, either individually or in association with others, been in default on or past due for more than sixty (60) days on any indebtedness, including those barred by a Statute of Limitations?</p> <p>Question 30: Are you, either individually or in association with others, in default in any way in the performance or discharge of any duty or obligation imposed on you by decree of any court, including, but not limited to alimony, maintenance or child support?</p>
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	<p>Question 32(c): If your answer to the question 32(b) is affirmative, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?</p>	<p>Question 32(a): Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 33: Has your conduct ever been called into question with reference to the unauthorized practice of law in Idaho or any other jurisdiction?</p> <p>Question 34: Have you ever engaged in conduct which might be regarded as evidencing an inclination to be dishonest, to take unfair advantage of others or to be disloyal to those to whom a loyalty is legally owed?</p> <p>Question 35: Have you ever supported or advocated the overthrow of the U.S. government by force?</p> <p>Question 36: Have you ever had a record sealed which contained facts related to you?</p> <p>Question 37: Are there any facts not disclosed by your answers concerning your background, history, experience or activities which may cause one to question your character, fitness or ability to practice law?</p> <p>Question 12: Have you ever been a member of the armed forces? A “yes” answer takes you to Form 12 which asks the following questions: Did you receive an honorable discharge? Were you ever court martialled? Were you ever awarded non-judicial punishment? Were you allowed to resign in lieu of a court marshal? Were you ever administratively discharged?</p> <p>In answering question 17, you are advised that no advice of counsel, statute, court order, or legal or administrative proceeding withholding adjudication, expunging information from any record, sealing any record, or purporting to authorize any person to deny the existence or occurrence of any information or matter shall excuse less than full disclosure of the information required.</p> <p>Question 17(a): Have you ever been accused of or charged with any social, academic, or other misconduct, including, without limitation, the violation of any statute, ordinance, code of student conduct, or institutional policy, practice, or requirement, by any school, university, law school or other educational institution above the age of 13?</p>		
<p>Illinois</p>			<p>Question 7: Have you ever been required to pay child support, alimony, or family support as a result of a divorce, annulment, dissolution of civil union or legally recognized domestic partnership, or other court proceeding, or is such matter pending?</p>	<p>Character and fitness questionnaire sample (digital)</p> <p>Rules governing admission to the Illinois bar</p>

	<p>Question 17(b): Have you ever been the subject of a probable cause hearing or other initial inquiry or have you ever accepted or elected a lowering of grade or other academic discipline in lieu of or in addition to participation in the disciplinary procedures of such institution?</p> <p>Question 17(c): Have you ever been dropped, suspended, warned, placed on social probation, academic probation, or disciplinary probation, expelled, requested to resign, or requested or advised by any such institution to discontinue your studies therein?</p> <p>Question 20: Have you ever submitted documents for permission to provide legal services pursuant to Illinois Supreme Court Rule 707, 718, and/or 756?... Has permission to practice as reported above ever been terminated, or has a motion to terminate ever been filed?</p> <p>Question 23: Have you ever submitted to any jurisdiction other than Illinois an application for admission on examination, on motion, or any other basis, or withdrawn such an application that did not result, or has not, or not yet resulted, in your admission to the bar of that jurisdiction?... Indicate whether application (a) is pending, (b) has been withdrawn, (c) has been denied due to failure of the bar exam, or (d) has been denied on character and fitness grounds. If (a), (b), or (d), explain under question 44.</p> <p>Question 28: In any paid or volunteer employment setting and including unpaid internships and jobs of less than six months' duration not listed in response to questions 23 and 24, have you ever been accused of misconduct, disciplined, permitted to resign in lieu of discipline or discharge, discharged or permitted or requested, formally or informally, to resign from or terminate employment?</p> <p>Question 29: Have you ever applied for (or applied for and then withdrawn) or held a license, certification or permit for a business, trade, profession, or occupation other than attorney at law, the procurement of which required proof of good character and/or examination (e.g., CPA, real estate broker, physician, teacher, patent practitioner)?</p> <p>Question 30: Have you ever been denied a business, trade, professional or occupational license, certification or permit other than as attorney at law (e.g., CPA, real estate broker, physician, teacher, patent practitioner)?</p>	<p>Question 35: Has any surety on any bond on which you were the principal or obligor been required to pay any money on your behalf?</p> <p>Question 36 (a): Do you CURRENTLY have any debt or obligation greater than \$500, including, without limitation, credit card debts, charge accounts, medical bills, student loans, bank loans, and court-ordered obligations to pay child support, alimony and family support reported AS MORE THAN 2 MONTHS PAST DUE?</p> <p>Question 36(b): Have you ever had a credit card revoked or any debt referred to collection or charged off?</p> <p>Question 36(c): Have you ever defaulted on any student or other loan?</p>
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	<p>Question 31: Have you ever had a business, trade, professional or occupational license, certification or permit revoked?</p> <p>Question 33: To the best of your knowledge, have there ever been or are there now any formal or informal charges, complaints, or grievances pending concerning your conduct as a member of another profession or as a holder of public office?</p> <p>Question 34: Have you ever been suspended, censured, or otherwise reprimanded, disqualified or disciplined as a member of another profession or as a holder of public office?</p> <p>Question 39: Have you ever had a complaint filed against you in any civil, criminal or administrative forum alleging fraud, deceit, misrepresentation, forgery, discrimination, or professional malpractice?</p> <p>Question 40: Have you ever been a plaintiff, defendant, or other party in any litigation or administrative forum, excluding criminal litigation and matters disclosed in response to preceding question 38?</p> <p>Question 41: Are there any decrees, judgments, liens, or orders entered against you which have not been satisfied including judgments listed in response to question 38 and 39?</p> <p>Question 42: Have you ever been held in contempt of court?</p> <p>Question 45: Have you ever been denied admission or not admitted for any reason to the bar of another jurisdiction on a ground related to character and fitness, are you the subject of a pending character and fitness hearing or have you withdrawn an application?</p> <p>NOTE: In connection with your answers to questions 4[6], 4[7] and 4[8], you are advised that no advice of counsel, statute, court order, or legal proceeding withholding adjudication reducing charges, expunging information from any record, sealing any record, or purporting to authorize any person to deny the existence or occurrence of any information or matter shall excuse less than full disclosure of the information required.</p>	<p>Question 37: Except if you were not required to file due to not meeting the minimum income threshold, have you ever failed to file any federal, state or local income tax return as required by law, failed to pay any taxes when due, including employers' withholding taxes, or entered into any repayment agreement with a taxing authority?</p> <p>Question 38: Have you ever filed for relief under federal bankruptcy law?</p>	
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		<p>Question 46: Have you ever been convicted of a felony or is there now pending against you any indictment, criminal information, or criminal complaint charging a felony offense?</p> <p>Question 47: During the last 25 years, have you been formally or informally detained, restrained, cited, summoned into court, taken into custody, arrested, accused, charged, convicted, placed on probation, placed on supervision, or forfeited collateral in connection with any offense against the law or an ordinance, or accused of committing a delinquent act, other than traffic offenses set forth in response to question 47 and as set forth in your Driving Record provided under question 48?</p> <p>Question 48: Have you ever been charged with a traffic violation involving felonious conduct, or the use of alcohol or drugs, or which resulted in time spent in custody, a fine of \$350 or more, or the revocation or suspension of your driver's license?</p> <p>Question 50: Do you have any outstanding parking violations?</p>		
<p>Indiana</p> <p>Question 14(b): Question 14: Have you ever been a party in a civil court case or proceeding?... Guardianship.</p> <p>Question 24(a): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner?</p>	<p>Question 6: Have you ever served in the armed forces of the United States or any other country? If yes, you must answer the following question: "if discharge was other than "honorable", explain the circumstances with a written description of the facts in the space provided and upload any documents or photo copies thereof.</p> <p>Question 13(a): Have you ever been disciplined, expelled, dropped, suspended, warned, placed on academic suspension, academic probation, or allowed to resign from any college, university or law school?</p> <p>Question 13(b): Have you ever been accused by any college, university, law school, other education institution, or testing service of any act of academic misconduct, including, but not limited to, plagiarism or cheating on any examination or test?</p> <p>Question 13(c): Have you ever been disciplined, suspended, warned, or allowed to resign from any profession?</p>	<p>Question 20: Have you ever filed a petition for bankruptcy?</p> <p>Question 21(a): Have you ever had a credit card or charge account revoked?</p> <p>Question 21(b): Have you ever defaulted on any student loans?</p> <p>Question 21(c): Have you ever defaulted on any other debt?</p>	<p>Rules governing admission to the Indiana bar</p> <p>Character and fitness questionnaire sample (digital)</p> <p>Character and fitness questionnaire sample (print)</p>	

	<p>Question 24(b): if your answer to Question 24(a) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Question 25: Within the past ten years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 13(d): Have you ever been removed from appointive or elective public office for cause, or have you been disciplined, suspended or disbarred as an attorney?</p> <p>Question 14: Have you ever been a party in a civil court case or proceeding?</p> <p>Question 15: Have you ever had a complaint or other action (including but not limited to, allegations of fraud, deceit, misrepresentation, forgery or malpractice) initiated against you in any administrative forum?</p> <p>Question 16: Have you ever received a warning, a ticket or been cited for, arrested for, charged with, or convicted of any traffic violation? Include all matters that have been expunged (including any matters expunged by a court pursuant to Ind. Code § 35-38-9), dismissed, subject to a diversion or deferred prosecution program, or otherwise set aside. Parking violations DO NOT need to be included.</p> <p>Question 17: Have you ever been adjudicated delinquent in a juvenile court? Include all matters that have been expunged (including any matters expunged by a court pursuant to Ind. Code § 35-38-9), dismissed, subject to a diversion or deferred prosecution program, or otherwise set aside.</p> <p>Question 18: Have you ever been convicted of any violation of law, including, but not limited to, all felonies, misdemeanors, infractions, and violations of military law? Include all matters that have been expunged (including any matters expunged by a court pursuant to Ind. Code § 35-38-9), dismissed, subject to a diversion or deferred prosecution program, or otherwise set aside.</p> <p>Question 19: In addition to the matters set forth in Questions 16, 17, and 18 above, have you ever been arrested for or accused of violations of law, been the subject of investigation of a violation of law, including, but not limited to, all felonies, misdemeanors, infractions, juvenile matters, military matters and anything else? Include all matters that have been expunged (including any matters expunged by a court pursuant to Ind. Code § 35-38-9), dismissed, subject to a diversion or deferred prosecution program, or otherwise set aside.</p>	
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<p>Iowa</p>	<p>Question 41: Are you currently, or have you been in the last three years, engaged in the illegal use of drugs?</p> <p>Question 44: : Do you currently have any condition or impairment that in any way affects your ability to practice law in a competent, ethical, and professional manner?</p>	<p>Question 22: Within the meaning of the term "good moral character" and "fitness" to practice law as set out and defined in Rule 12 of the Admission and Discipline Rules, since age 16 have you ever been involved in any incidents where there was any challenge to your character, honesty and integrity? Do not include any arrests or convictions that have been expunged by a court pursuant to Ind. Code § 35-38-9. Your answering of this question certifies that you have read and understand Rule 12. (Do not include the answers disclosed in Questions 13-21.)</p> <p>Question 22: Have you ever been a party to any judicial or administrative proceedings? (This does NOT include criminal and bankruptcy proceedings).</p> <p>Question 23: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner?</p> <p>Question 37: Are there any unsatisfied judgments against you?</p> <p>Question 38: Have you ever been formally or informally investigated, reprimanded, disciplined, discharged, or asked to resign by an employer or educational institution for misconduct including: (a) acts of honesty, fraud, or deceit; (b) lying or misrepresentations on a resume or prior application or registration; (c) academic misconduct, such as cheating or plagiarism; (d) misconduct involving student activities; (e) theft; (f) excessive absences; (g) failure to complete assignments in a timely manner; (h) actions in disregard for health, safety, and welfare of others; (i) discrimination or harassment based upon sex, religion, age, disability, race, or national or ethnic origin, sexual orientation or gender identity; (j) neglect of financial responsibilities; (k) conduct related to the use of alcohol or any other drug in the last ten years?</p> <p>Question 39(b): As a member of the armed forces, have any charges ever been made or any proceedings been instituted against you (court martial, Article 15, etc.)?</p> <p>Question 39(c): Have you ever received a discharge other than an honorable discharge from the armed forces?</p> <p>Question 40: Have you ever been arrested, cited for, or charged with a crime or a delinquent act, <u>INCLUDING ANY TRAFFIC VIOLATIONS</u>, but excluding parking tickets?</p>	<p>Question 23: Have you ever been a party to a bankruptcy proceeding?</p> <p>Question 36(a): Have you ever been required to make child support or alimony payments?</p> <p>Question 36(b): Have you ever been more than 30 days past due in the payment of any child support obligation or alimony (spousal maintenance) obligation?</p> <p>See Question 38(j) under "Criminal History Provisions."</p>	<p>Bar exam application form</p> <p>Rules governing admission to the Iowa bar</p>
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	<p>Question 45: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 41: Are you currently, or have you been in the last three years, engaged in the illegal use of drugs?</p> <p>Question 42: Have you ever, under any circumstances not explained elsewhere on this form, been accused of fraud?</p> <p>Question 43: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 46(a): Have you ever been prohibited from applying for, or applied for but been denied, a position, certificate, or license which required proof of good character?</p> <p>Question 46(b): Have you ever held a position, certificate, or license which required proof of good character, but then you were removed from the position or had the certificate or license suspended or revoked?</p> <p>Question 49: If there is any information (event, incident, occurrence, etc.) that was not specifically addressed or asked of you in this application that could be considered to reflect on your character or fitness to practice law, you are required to provide a detailed explanation for each event, incident, or occurrence. Given this requirement, do you have any additional information to disclose?</p> <p>Question 50(a): Have you ever been disbarred, suspended from practice, reprimanded, censured, or otherwise disciplined?</p> <p>Question 50(b): Have any complaints or charges, formal or informal, including any now pending, ever been made or proceedings instituted against you?</p> <p>Question 50(c): Have you ever appeared, formally or informally, before a grievance or other similar committee of any bar association or other law group?</p>	<p>Question 48: Have you filed federal and state income tax returns for all years when your income warranted such filings?</p>	
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<p>Kansas</p>	<p>Question 40: Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way affects your ability to practice law in a competent and professional manner?</p>	<p>Question 15: Have you ever served in the Armed Forces of the United States or any other country? ...if discharge was other than honorable, include a copy of your discharge papers.</p> <p>Question 26: Have you ever been dropped, suspended, placed on scholastic or disciplinary probation, expelled or been requested to resign from any school, college or university, or otherwise subjected to discipline by any school or institution or requested or advised by any such school or institution to discontinue your studies there for reasons other than failure to maintain a minimum GPA?</p> <p>Question 27: Despite whether the record has been expunged, canceled or annulled, or whether no record was made, have you ever been accused of personal or academic dishonesty at any school you attended or have you ever been subject to proceedings before a school honor court, honor council, or similar body?</p> <p>Question 30: Have you ever made application to take the bar examination in a state other than Kansas?... State the outcome of each application. For example: passed but not admitted, passed and admitted, failed, withdrew, denied for character and fitness, etc. If you were denied permission to take the examination for any reason, please list the reason for the denial.</p> <p>Question 31: Have you ever been the subject of a formal proceeding or requested to appear in person before a board of law examiners, or a representative of the board, in connection with an application filed on your behalf in any other state?</p> <p>Question 38: Have you ever been a party to an action in divorce?... If you were under a court-ordered obligation to pay alimony, maintenance, or child support, provide a detailed explanation regarding the status of each obligation immediately following this page.</p> <p>Question 39: Have you ever been a party to a civil law suit, other than an action in bankruptcy or divorce?</p>	<p>Question 41: At the present time, does your personal debt exceed \$150,000, excluding real estate loans?</p> <p>Question 42: Do you have any debts, including student loans, which are presently past due or which have been placed in collection?</p> <p>Question 43: Have you ever had a credit card revoked?</p> <p>Question 44: Has a creditor ever filed suit against you?</p> <p>Question 45: Have you ever been a party to bankruptcy proceedings?</p> <p>Question 46: Have you, within the last ten (10) years, failed to timely file any applicable local, state, or federal income tax return, schedule, or report required by law?</p>	<p>Bar application</p> <p>Character and fitness</p> <p>qualifications for admission to the bar</p> <p>Rules governing admission to the Kansas bar</p>
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	<p>Question 49: Despite whether the record has been expunged, have you ever been summoned, charged, arrested, taken into custody, or indicted for driving under the influence of alcohol or any other controlled substance?</p> <p>Question 50: Despite whether the record has been expunged, other than listed above, have you ever been issued a citation, notice to appear or summons, charged, arrested, taken into custody, or indicted for any felony, misdemeanor, or infraction of the law excluding minor traffic infractions?</p> <p>Question 51: Since attaining the legal driving age, has your license to operate a motor vehicle ever been suspended or revoked?</p> <p>Question 52: Have you ever represented to the public or any court that you were an attorney when you were not in fact admitted to practice in that jurisdiction?</p> <p>Question 53: Have you ever been disqualified from practicing law for any reason before any state or federal trial or appellate court?</p> <p>Question 54: Have you ever been disbarred, suspended, censured, admonished, or otherwise reprimanded or disqualified as an attorney, as a member of another profession, or as a holder of public office?</p> <p>Question 55: Have there ever been or are there now any charges or complaints (formal or informal) concerning your conduct as an attorney, as a member of any other profession, or as a holder of public office?</p> <p>Question 56: Have you ever withdrawn any license application, have you ever been denied a license, or have you ever had a license revoked?</p> <p>Question 58: Has any professional liability claim been asserted against you arising out of your alleged errors or omissions?</p> <p>Question 59: Have you ever applied for (including applications that were withdrawn) or held a license for a business, trade or profession other than as an attorney at law, the procurement of which is required proof of good character and/or an examination (such as certified public accountant, patent practitioner, or real estate broker)?</p>	<p>Question 47: Have you, within the last ten (10) years, failed to timely pay any taxes owed pursuant to state or federal law?</p> <p>Question 48: Have you, within the last ten (10) years, collected federal withholding, social security, or medicare taxes from the wages of your employees and failed to timely forward such monies to the Internal Revenue Service?</p> <p>Question 57: Has a surety on any bond on which you were the principal been required to pay money on your behalf, or have you ever been refused a fidelity or other bond?</p>	
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<p>Kentucky⁵</p>	<p>Question 17: Are you currently, or have you been, within the last five (5) years, (a) addicted to, or (b) undergone treatment for the use of narcotics, drugs, prescription drugs or the excessive use of intoxicating liquor? Treatment would include not only any medical program but also any rehabilitation, professional assistance or monitoring program, such as Alcoholics Anonymous, Narcotics Anonymous, or Cocaine Anonymous.</p>	<p>Question 6(a) Have you ever been disciplined, requested formally or informally to resign from or terminate employment?</p> <p>Question 6(b) Have you ever been discharged from any employment?</p> <p>Question 6(c) Have you ever been absent from a job for more than 30 consecutive days?</p> <p>Question 9: Have you ever been charged with fraud, deceit, misrepresentation, forgery, or other acts of dishonesty in any civil, criminal, administrative or other proceeding?</p> <p>Question 10: Have you ever been adjudged liable in a civil action or proceeding involving a claim of fraud, conversion, breach of fiduciary duty or professional malpractice?</p> <p>Question 12: Have you ever been charged with or convicted of DUI/DWI?</p> <p>Question 13: Have you ever received a citation for a code or ordinance violation, been taken into custody or been charged with any misdemeanor (excluding speeding and parking tickets), or any felony? A positive response is to be given when appropriate, regardless of the ultimate disposition of a citation or charge and regardless of whether a citation or charge has been expunged, sealed, segregated, voided or diverted?</p> <p>Question 14: If convicted of a felony, have you received a full pardon, and/or restoration of political rights for that crime?</p> <p>Question 15: If convicted of a felony did the conviction result in a sentence of confinement in a state prison or penitentiary, even if such sentence or imprisonment was suspended?</p> <p>Question 16: Have you ever been offered or granted immunity in any criminal proceeding? expunged, sealed, segregated, voided or diverted.</p>	<p>Question 7(a): Are there any unsatisfied judgments, liens or court orders of continuing effect against you?</p> <p>Question 7(b): Have you ever had a credit card revoked?</p> <p>Question 7(c): Do you currently have any unpaid collection or charged off accounts?</p> <p>Question 7(d): Have you ever filed or been the subject of a petition in bankruptcy?</p> <p>Question 7(e): Have you ever defaulted on a student loan?</p> <p>Question 7(f): Have you ever been adjudged bankrupt or insolvent?</p>	<p>Character and fitness FAQs</p> <p>Rules governing admission to the Kentucky bar</p>
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⁵ Due to restricted online access, questions here are from 2015 copy.

	<p>Question 18: Are you currently, or have you been within the last five years, (a) diagnosed with or, (b) treated for any of the following: Schizophrenia or any other psychotic disorder, delusional disorder, bipolar or manic depressive mood disorder, major depression, antisocial personality disorder, or any other condition which significantly impaired your behavior, judgment, understanding, capacity to recognize reality, or ability to function in school, work, or other important life activities? (If you are uncertain of a diagnosis, it is your responsibility to check with your treating health care professional)</p>	<p>Question 22: If convicted of a felony, have you received a full pardon, and/or restoration of political rights for that crime?</p> <p>Question 23: If convicted of a felony did the conviction result in a sentence of confinement in a state prison or penitentiary, even if such sentence or imprisonment was suspended?</p> <p>Question 24: Have you ever been offered or granted immunity in any criminal proceeding?</p>		
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	<p>Question 19: Are you currently, or have you been within the last five years, (a) diagnosed with or, (b) treated for any physical condition (e.g., stroke, head injury, dementia, brain tumor, heart disease) that has resulted in significant memory loss, significant loss of consciousness or significant confusion?</p> <p>Question 20: Within the past five years have you suffered from, been diagnosed with or been treated for kleptomania, compulsive gambling, pedophilia, exhibitionism or voyeurism?</p>			
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	<p>Question 21: Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous, or behavioral disorder or condition as a defense, mitigation or explanation for your actions in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination or suspension by an educational institution, employer, government agency, professional organization, or licensing authority?</p>			
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	<p>Question 22(a): Do you currently have any condition or impairment including, but not limited to, (a) any related substance or alcohol abuse, or (b) a mental, emotional, or nervous disorder or condition not reported above which in any way affects, or if untreated could affect your ability to perform any of the obligations and responsibilities of a practicing attorney in a competent and professional manner? "Currently" means recently enough so that the condition could reasonably have an impact on your ability to function as a practicing attorney.</p>			
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<p>Louisiana [Note: Uses NCBE Character and Fitness Application]</p>	<p>Question 22(b): If your answer to Question 30(a) is "Yes", are the limitations or impairments caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?</p> <p>Question 23: Have you been declared legally incompetent within the last five years?</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Character and fitness overview</p> <p>Character and fitness FAQs</p> <p>Rule governing admission to the Louisiana bar</p>
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<p>Maine</p>	<p>Question 25(A): Do you currently use any drug, narcotic or substance which use is illegal under state or federal law?</p> <p>Question 25(B): Have you ever claimed to be or been declared legally incompetent?</p> <p>Question 26(A): Within the last three years have you had any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice law in a competent and professional manner?</p>	<p>Question 5: Have you ever been dropped, suspended, placed on disciplinary probation, expelled or requested to resign or allowed to resign in lieu of discipline from any school (including law school) or otherwise subjected to discipline by any such institution? NOTE: Academic probation need not be reported.</p> <p>Question 6(A): Have you ever been admitted to the bar in any other jurisdiction? If yes, has your admission been subject to any conditions and/or have you been admitted under a conditional admission agreement in any other jurisdiction?</p> <p>Question 9(A): Have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney in any jurisdiction?</p> <p>Question 9(B): Have there ever been or are there now any charges, complaints, or grievances (formal or informal) pending concerning your conduct as an attorney in any jurisdiction?</p> <p>Question 10: Have there ever been or are there now any inquiries, charges, complaints, or grievances (formal or informal) pending alleging that you engaged in the unauthorized practice of law?</p> <p>Question 11: Have sanctions ever been entered against you or have you ever been disqualified from participating in any case?</p> <p>Question 14(A): Have you ever been terminated, suspended, disciplined or permitted to resign in lieu of termination from any job?</p> <p>Question 14(B): Has an employer of yours ever been convicted of a violation of a state or federal law, rule or regulation, in whole or in part because of your conduct?</p> <p>Question 15: Have you or any business you had an ownership interest in ever applied for (even if the application was subsequently withdrawn) or held a license for a business, trade, or profession, other than as an attorney at law?</p> <p>Question 16(A): Have you or any business you had an ownership interest in ever been denied a license for a business, trade or profession (e.g., CPA, real estate broker, physician, patent practitioner)?</p>	<p>Question 18(A): Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 18(B): Have you or any business in which you had an interest ever been refused a fidelity or other bond?</p> <p>Question 23: Have you ever filed a petition for bankruptcy?</p> <p>Question 24(A): Have you had any debts of \$500 or more (including alimony, child support, credit cards, charge accounts and student loans) which have been more than 90 days past due within the past three years?</p> <p>Question 24(B): Have you ever had a credit card or charge account revoked?</p>	<p>Application procedures for Maine bar</p> <p>Bar application</p> <p>Rules governing admission to Maine state bar</p>
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	<p>Question 26(B): If your answer to Question 26(A) is Yes, are the limitations or impairments caused by your mental health condition or substance abuse problem reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?</p>	<p>Question 16(B): Have you or any business you had an ownership interest in ever had a business, trade or professional license revoked?</p> <p>Question 16(C): Are there any businesses, including but not limited to corporations, partnerships, professional associations or individual partnerships, which you now or previously operate(d) or control(led) or in which you have or had an ownership interest? (Ownership of 10% or less in any business in which the stock is publicly traded need not be disclosed).</p> <p>Question 17(A): Have you or any business you had an ownership interest in ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 17(B): Have there ever been or are there now pending any charges, complaints of grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office?</p> <p>Question 17(C): Have you ever been disciplined in any profession or other setting (excluding employment, educational or military) for any violation of the rules applicable to your behavior?</p> <p>Question 17(D): Have you ever been asked to resign or given the opportunity to resign in lieu of disciplinary action or termination from any organization for any reason?</p> <p>Question 19: Have you ever been a named party to any civil action? NOTE: Family law matters (including divorces and continuing orders for child support) should be included here.</p> <p>Question 20: Have you ever had a complaint filed against you in any civil, criminal or administrative forum alleging fraud, deceit, misrepresentation, forgery or legal malpractice?</p> <p>Question 21(A): Have you ever been cited for, arrested for, charged with, or convicted of any alcohol or drug related traffic violation other than a violation that was resolved in juvenile court?</p>	<p>Question 24(C): Have you ever defaulted on any student loan?</p> <p>Question 24(D): Have you ever defaulted on any other loan?</p> <p>Question 24(E): Have you filed state and federal income tax returns for each of the last five years?</p>
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	<p>Question 27(A): Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous, or behavioral disorder or condition as a defense, in mitigation of, or as an explanation for your actions in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination by an educational institution, employer, government agency, professional organization, or licensing authority?</p>	<p>Question 21(B): Have you been cited for, arrested for, charged with, or convicted of any moving traffic violations during the past ten years? (Not parking violations.) Question 21(D): Has your driver's license in any state ever been suspended or revoked? Question 22: Have you ever, as an adult, been cited, arrested, charged or convicted for any violation of law (except traffic violations)? NOTE: This answer should include matters that have been expunged or been subject to a diversionary program. Question 27(B): Are there any other facts not disclosed hereto concerning your background, history, experience or activities which may have a negative bearing on your character, moral fitness, or eligibility to practice law in Maine?</p>		
<p>Maryland⁶</p>	<p>8(a). The following is a complete list of all civil actions, including suits in ... and other statutory proceedings,... lunacy, guardianship... to which I am or ever have been a party.</p>	<p>Question 1(h): Have your driving privilege in any U.S. jurisdiction ever been suspended or revoked? Question 4(d) Have you ever been expelled, suspended, reprimanded, or otherwise formally disciplined by any school, college, or university? 4(e). Have you ever been charged for any reason by any school, college or university with a disciplinary violation which charge was resolved without formal discipline, including by voluntary permanent resignation or temporary leave of absence from the institution, participation in a diversionary program, or other informal disposition?</p>	<p>7(a). Attach a current credit report. 7(b). I presently owe money to the following creditors not appearing on the credit report attached in response to Question 7(a)</p>	<p>Information regarding character and fitness process Rules governing admission to the Maryland bar</p>

⁶ Due to restricted online access, questions here are from 2017 copy.

<p>14(a) Do you have any condition or impairment, including but not limited to any physical condition, alcohol, drug or other substance abuse, or any mental, emotional, nervous or behavioral condition, that in any way currently affects, or if untreated or not otherwise actively managed, could affect your ability to practice law in a competent, ethical and professional manner? (In this question "currently" means recently enough that the condition could reasonably have an impact on your ability to function as a lawyer. "Actively managed" means that you receive appropriate therapy (with or without use of medication), participate in supervised monitoring and/or a recognized peer support program, and/or utilize other appropriate support systems to manage your condition or impairment.)</p>	<p>5(c). Have you ever been investigated and/or disciplined for any alleged violation of any applicable ethical standard by the attorney or judicial disciplinary authority of any jurisdiction?</p> <p>6(b). Have you ever been a defendant in any court martial?</p> <p>8(a). The following is a complete list of all civil actions, including suits in equity, actions at law, divorce, annulment and other family law actions, administrative proceedings, suits in bankruptcy and other statutory proceedings, civil citations, matters in probate, lunacy, guardianship and every other judicial proceeding of every nature and kind except criminal matters disclosed in response to Question 9, below, to which I am or ever have been a party. When listing any divorce or annulment action, include in your brief description the grounds for divorce or annulment.</p> <p>9(a). The following is a complete list of all criminal proceedings (by case number, filing date, court name and location, offense charged, nature and circumstances of the offense, and disposition), arrests and summonses, including all traffic citations for moving violations to which I am or ever have been a party.</p> <p>9(b). I have attached to my Bar application certified copies of all charging documents, judgment/disposition documents and docket entries in each proceeding identified above; except that you need not attach documents related to motor vehicle offenses where a court appearance was not required. For any arrest or proceeding where you have NOT attached documents, describe below your efforts to obtain documents related to that arrest or proceeding, and/or the reason why documents are not attached. If your explanation exceeds 200 characters, attach a separate signed statement containing the requested information.</p> <p>10(b). If your answer to 10(a) is "Yes," are you now or were you ever subject to any disciplinary complaint or proceeding, or denied a license, by any licensing authority in connection with any professional license you hold or held or applied for?</p> <p>11. Are you now, or have you ever been subject to any disciplinary complaint or proceeding in connection with your membership in any labor union or any trade or professional organization?</p>	<p>7(c). I presently owe money, SOME PART OF WHICH HAS BEEN DELINQUENT FOR MORE THAN 90 DAYS, to the following:</p> <p>7(d)(ii). Are you currently involved in any ongoing dispute(s) over any obligation to pay taxes to the U.S. Internal Revenue Service and/or to the tax collection authorities of all U.S. jurisdictions?</p>
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	<p>14(b) If your answer to 14(a) is "Yes," are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing therapy or treatment (with or without medication) or because you participate in a monitoring program or other support system? If your answer to 14(b) is "Yes," in the space below, describe the treatment or therapy utilized to reduce or ameliorate the effects of your condition, disorder or substance abuse problem. If your description exceeds 200 characters, attach a separate signed statement containing the information requested.</p>	<p>13(b). Have you ever been terminated, suspended, laid off, discharged or permitted to resign in lieu of termination from any employment?</p> <p>13(c). Account for each period of unemployment lasting three (3) months or more occurring during the last five (5) years.</p> <p>15. Has there been any other unfavorable conduct or incidents in your life, whether at school (college, graduate school or law school), at work, at home, in business, or otherwise, which may reasonably call into question your character or fitness to practice law, that were not specifically called for in response to the previous questions contained in this questionnaire or not previously disclosed in your answers?</p> <p>8(d) State whether any court has ever ruled or determined that you acted in bad faith or without substantial justification in filing or maintaining any civil case or action, or in filing or serving any pleading or discovery in any civil case or action?</p>	<p>8(b). I have attached to my Bar application certified copies of any judgments rendered in the actions listed in the response to this question, whether favorable or adverse to you and whether satisfied or unsatisfied. If any judgment is adverse to you and is currently unsatisfied, set forth in the space provided below the name and address of the judgment holder, and your explanation as to why the judgment remains unpaid. If your explanation exceeds 200 characters, attach a separate signed statement containing the requested information.</p> <p>12(a). Has any surety, on any bond on which you were the principal, been required to pay any money on your behalf?</p>
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	<p>14(c) Within the past three (3) years, have you asserted any condition or impairment as a defense, mitigation or explanation for conduct in any judicial or administrative proceeding or investigation (including any inquiry or investigation by an educational institution, employer, governmental agency, professional organization or licensing authority)? If your answer to 14(c) is "Yes," in the space below, explain the circumstances under which you raised such issue. If your explanation exceeds 200 characters, attach a separate signed statement containing the requested information.</p>		<p>12(b). Have you ever been refused a fidelity or other bond?</p>	
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<p>Massachusetts</p>	<p>If you answer "Yes" to any part of Question 14, you MUST supply in the space provided and/or in a separate signed statement, a description of the condition/impairment and of any treatment or therapy you have received in the past year. If you have been under the care or supervision of a healthcare professional for such condition/impairment, you MUST also attach a statement from that healthcare professional specifying the current diagnosis, treatment regimen, prognosis, and its bearing on your fitness to practice law.</p>	<p>Have you ever been reprimanded, sanctioned, disciplined or suspended or expelled from a college, university or law school?</p> <p>Have you ever been a member of the Armed Services? If yes, state the type of discharge. If dishonorably discharged, state circumstances surrounding your release and the details thereof, where the record can be obtained, your service number and rank, and the branch and dates of actual service.</p> <p>Have you ever been terminated, or resigned in lieu of termination, from any position? Have you ever filed any application for an official position or for professional licensure, other than as an attorney, that required proof of good character?</p>	<p>Have you ever been adjudged bankrupt or insolvent?</p>	<p>Application for bar exam (pdf)</p> <p>Character and fitness FAQs</p>
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	<p>Have you ever held any license, other than as an attorney, which required proof of good character?</p> <p>Have any charges, grievances or complaints ever been made concerning your conduct as a member of any profession, other than an attorney, or as a holder of any public office?</p> <p>Have any of your licenses or positions ever been suspended or revoked as a member of any profession, other than an attorney, or as a holder of any public office?</p> <p>Have you ever been charged with or been the subject of any investigation pertaining to the unauthorized practice of law?</p> <p>Have any charges, grievances or complaints ever been made concerning your conduct as an attorney?</p> <p>Have you ever been disbarred, suspended, reprimanded, censured, admonished or otherwise disciplined or disqualified as an attorney?</p> <p>Have you ever been a party on either side in a civil action or proceeding involving a claim of fraud, conversion, breach of fiduciary duty, professional malpractice or other wrongful conduct?</p> <p>Have you been a party, other than as representing counsel, in any other legal or administrative proceedings?</p> <p>Have you ever been charged with or been the subject of any investigation for a felony or misdemeanor other than a minor traffic charge?</p> <p>Are there <u>any</u> unsatisfied judgments or <u>any</u> court orders of continuing effect against you?</p>	<p><u>Character and fitness standards of admission: Rules governing admission to the Massachusetts bar</u></p>
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<p>Michigan</p>	<p>Question 52(A): Have you ever used, or been addicted to or dependent upon, intoxicating liquor or narcotic or other drug substances, whether prescribed by a physician or not, the use of, addiction to, or dependency upon which permanently, presently or chronically impairs or distorts your judgment, behavior, capacity to recognize reality or cope with the ordinary demands of life?</p>	<p>Question 21: Since leaving high school have you, for other than scholastic performance, ever been: denied enrollment; disciplined; denied course credit; had a grade lowered or were allowed to withdraw from a class in lieu of other disciplinary action; warned; reprimanded; suspended; been the subject of a probable cause hearing or other initial inquiry*; expelled or requested to terminate your enrollment; or withdrew from school while allegations were pending by any college, university, law school, other educational institution, or any entity whose existence is sanctioned by any of the above schools? If so, provide the name and address of each institution, the dates, and explain the circumstances. *For purposes of this question, an inquiry is defined as any instance where an applicant has been accused of a violation of a school's or school sanctioned entities' honor code/code of conduct/disciplinary code/rules of equivalent such that he or she has been required to respond in writing.</p> <p>Question 28: Have you ever been disciplined by any employer, discharged, asked to resign, or resigned from any employment for reasons other than career advancement or full-time schooling?</p> <p>Question 30: Have you ever been convicted in any military service court martial proceeding including a proceeding under Article 15 of the Uniform Code of Military Justice?</p> <p>Question 31: Have you ever been discharged other than honorably from military service, or have you ever been medically or administratively discharged?</p> <p>Question 32: Have you ever been rejected for military service?</p> <p>Question 36: Have you ever applied for or held a license, other than as an attorney, which required that you possess good moral character and fitness?</p> <p>Question 37: To your knowledge, have you ever been accused of engaging in the Unauthorized Practice of Law in any jurisdiction?</p> <p>Question 38: Have you ever been suspended, disbarred or otherwise disciplined from practicing law, or from membership in any professional organization, or as the holder of any office or license?</p>	<p>Question 25: Have you ever made application for or obtained employment that required bonding?</p> <p>Question 26: Have you ever been refused bonding? If so, give the date of the application for the bond, the purpose for bonding, the name of the company refusing coverage and the reasons for refusal.</p> <p>Question 27: With regard to employment listed in Question 25: Has anyone ever sought to cancel or collect upon the bond?</p> <p>Question 46: Do you have any debts which are more than 90 days past due?</p>	<p>Bar application sample Questions about character and fitness</p> <p>Rules governing admission to the Michigan bar</p> <p>Supplemental information: Unraveling the Mystery of the Character and Fitness Process</p>
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	<p>Question 52(B): Have you ever used, or been addicted to or dependent upon, intoxicating liquor or narcotic drug substances, whether prescribed by a physician or not, the use of, addiction to, or dependency upon which permanently, presently or chronically impairs your ability to exercise such responsibilities as being candid and truthful, handling funds, meeting deadlines, or otherwise representing the interest of others?</p> <p>Question 53: Are there any pending proceedings, or is there any presently effective order, for the appointment of a legal guardian or conservator for you?</p>	<p>Question 39: Have you ever been reprimanded, censured or otherwise publicly or privately disciplined as an attorney, or as a member of any professional organization, or as the holder of any office or license?</p> <p>Question 40: Have formal charges by a grievance, investigative or similar body ever been made against you as an attorney, or as a member of any professional organization, or as the holder of any office of license, or is there presently pending any complaint against you which could result in such charges being made?</p> <p>Question 43: For each business identified in your answers to Questions 41 and 42, during the period indicated: Has the business been a party to any civil litigation, commercial arbitration or administrative proceedings, or has the business been convicted of committing a crime?</p> <p>Question 44: Have you ever been a party to any civil litigation; including but not limited to: divorce, child support matters, personal protection orders, bankruptcy, show cause orders, administrative agency proceedings, arbitration or small claims actions?</p> <p>Question 45: Have judicial enforcement proceedings ever been instituted against you alleging your nonperformance of any judgment, order, decision or award against you?</p> <p>Question 48: Are there any criminal charges against you: (a) which are currently pending? (b) for which you are currently on supervised or unsupervised probation? (c) in which sentencing has been delayed or not disposed of? (d) in which a pretrial diversion program has not been completed? (e) in which there is any other non-final status?</p>	<p>Question 47: Have you personally or in any fiduciary capacity, had a check or transaction returned or rejected for insufficient funds during the twelve months preceding the filing of this application? (Also to be considered for your response to this question, the activation of “overdraft protection” more than four times during the same time frame should prompt a positive response.)</p>
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	<p>Question 54(A): Have you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs or distorts your judgment, behavior, capacity to recognize reality or ability to cope with ordinary demands of life?</p> <p>Question 54(B): Have you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs your ability to exercise such responsibilities as being candid and truthful, handling funds, meeting deadlines, or otherwise representing the interest of others?</p> <p>Question 55: Have you ever engaged in compulsive gambling?</p>	<p>Question 49: Have you ever been convicted of any felony or misdemeanor offense? Include any conviction resulting from an appearance in court in which a judge or jury made a finding of guilt, or in which a guilty plea or <i>nolo contendere</i> plea was accepted by the court. Exclude driving convictions that do not require a court appearance, and which are or would be presently treated as civil infractions... Disclose all convictions stemming from originally charged driving offenses that retain criminal status, such as all alcohol or drug-related driving offenses and reckless or felonious driving, or convictions for driving while privileges are suspended or revoked.</p> <p>Question 50: Have you ever: (a) Entered a guilty plea or a no contest plea to a criminal offense which was taken under advisement or otherwise did not result in a conviction? (b) Had a criminal conviction expunged or set aside?</p> <p>Question 51: Have you ever agreed to testify or provide information or assistance to prosecuting officials in order to obtain immunity from criminal prosecution?</p>		
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<p>Minnesota</p>	<p>Question 4.34: Have you EVER raised the issue of consumption of drugs or alcohol, or the issue of a mental, emotional, or behavioral disorder or condition, or the issue of compulsive gambling as a defense, in mitigation, or as an explanation for your actions in any administrative or judicial proceeding or investigation?</p> <p>Question 4.35: Since the age of eighteen have you EVER been declared legally incompetent, been placed under conservatorship or guardianship, been involuntarily hospitalized, or been placed under an involuntary hold?</p> <p>Question 4.36: Have you EVER been diagnosed with and/or received treatment for pedophilia, exhibitionism, voyeurism, kleptomania, pyromania, or compulsive gambling?</p>	<p>Question 4.01: Have you EVER been charged with, arrested for, pleaded guilty to, or been convicted of a felony or gross misdemeanor or the equivalent?</p> <p>Question 4.02: Have you EVER been charged with, cited for, arrested for, pleaded guilty to, or been convicted of a violation of any law, including traffic laws?</p> <p>Question 4.03: Has your Driver’s License EVER been canceled, suspended, or revoked for any reason?</p> <p>Question 4.04: Are you currently subject to a court-ordered probation of any kind?</p> <p>Question 4.05: Have you individually, or as an officer or director of a corporation, as a member of a partnership, or as a fiduciary of a trust EVER been accused of or charged with, or found to have committed civil fraud, criminal fraud, misconduct, or dishonorable conduct in ANY legal, administrative, or military proceeding, or in any decision or finding made by an administrative agency?</p> <p>Question 4.06: Have you EVER been a party to any legal proceeding? This includes any civil, criminal, administrative, family law or domestic abuse proceeding, or arbitration.</p> <p>Question 4.07: As an officer or director of a corporation, as a member of a partnership, or as a fiduciary of a trust, have you EVER been a party to or a witness in any legal proceeding?</p> <p>Question 4.08: Have you EVER been found in contempt by any court, tribunal, or legislative body?</p> <p>Question 4.09: Have you EVER failed to comply with any court order directed against you, including child support and other family law orders?</p> <p>Question 4.12: Have you EVER been discharged or terminated from employment for any reason?</p> <p>Question 4.13: Have you EVER been suspended, disciplined, reprimanded from employment, or permitted to resign in lieu of termination, for any reason.</p>	<p>Question 4.10: Have you EVER been ordered by a court to pay or otherwise agreed to pay child support?</p> <p>Question 4.11: Have you EVER been ordered by a court to pay or otherwise agreed to pay spousal maintenance or alimony?</p> <p>Question 4.20(A): Do you currently have any debt, loan, or other credit account that is 120 days or more past due, is in a “charged off” status, or is in collections?</p> <p>Question 4.20(B): Have you EVER had any debt, loan, or other credit account that was charged off or placed in collections?</p>	<p>Bar application</p> <p>Character and fitness for admission to the bar</p> <p>Character and fitness FAQs</p> <p>Character and fitness requirements</p> <p>Rules governing admission to the Minnesota bar</p>
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	<p>Question 4.37: Do you have, or have you had within the last two years, any condition, including but not limited to the following: (a) an alcohol, drug or chemical abuse or dependency condition, (b) a mental, emotional, or behavioral illness or condition, (c) a compulsive gambling condition, that impairs, or has within the last two years impaired, your ability to meet the Essential Eligibility Requirements for the practice of law set forth in Rule 5A of the Rules for Admission to the Bar?</p>	<p>Question 4.14: Have you EVER been requested (formally or informally) to resign from or terminate any employment?</p> <p>Question 4.15: Have you EVER been denied an employment-related or occupational license or bond?</p> <p>Question 4.16: Has a report of misconduct or irregularity or a written charge of alleged misconduct or irregularity EVER been issued against you by the Law School Admission Council in connection with the admission process to law school?</p> <p>Question 4.17: Have you EVER been warned, placed on probation, suspended, requested to discontinue your studies, allowed to discontinue your studies in lieu of discipline, expelled, or otherwise disciplined, from a post-secondary school, college, university, or law school for academic or non-academic reasons?</p> <p>Question 4.18: Have allegations, complaints, or charges (formal or informal) EVER been made against you during your enrollment in a post-secondary school, college, university, or law school alleging academic or personal misconduct, including but not limited to, honor code violations or plagiarism?</p> <p>Question 4.19: Have you EVER been warned, placed on probation, suspended, requested to discontinue your studies, allowed to discontinue your studies in lieu of discipline, expelled, or otherwise disciplined, by any educational institution for conduct in any way related to alcohol or other drugs?</p> <p>Question 4.28: Have you EVER held a license, other than as an attorney, the issuance of which required proof of good character (e.g., certified public accountant, teacher, real estate broker, patent agent, securities broker, or law enforcement officer)?</p> <p>Question 4.29: Have any charges or complaints EVER been filed, or are any charges or complaints presently pending concerning your conduct as an attorney, as a member of any other profession, or as a holder of a public office?</p>	<p>Question 4.21: Have you EVER failed to file ANY local, state or federal tax return when required to do so?</p> <p>Question 4.22: Have you EVER failed to pay any taxes due, including employers' withholding taxes, or entered into any repayment agreement with a taxing authority?</p> <p>Question 4.23: Have any liens or judgments EVER been filed against you?</p> <p>Question 4.24(A): Do you currently have any student loans in default or student loans alleged to be in default?</p> <p>Question 4.24(B): Have you EVER had any student loans in default or student loans alleged to have been in default?</p>	
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<p>Question 4.38: If your answer to Question 4.37 is “Yes,” is the condition that impairs or has impaired your ability to meet the Essential Eligibility Requirements for the practice of law set forth in Rule 5A reduced or ameliorated because you have had treatment, are receiving ongoing treatment, are taking medication, or are participating in a support program (such as Alcoholics Anonymous), counseling, or therapy?</p> <p>Question 4.39: Within the past two years, have you continued to use drugs or alcohol after a professional advised you to discontinue use?</p> <p>Question 4.40: Within the past two years, have you continued to gamble after a professional advised you to discontinue gambling?</p>	<p>Question 4.30: Have you EVER been disciplined, suspended, reprimanded, censured, disbarred, the subject of a grievance, or formally or informally warned by an attorney-regulating authority, by the disciplinary authority of any other profession, or while you were a holder of public office?</p> <p>Question 4.31: Have you EVER been sanctioned in a legal matter of have you EVER been disqualified from participating in any legal matter?</p> <p>Question 4.32: Have you EVER failed to fulfill the obligations of a professional license, including but not limited to, maintaining records of accounts, complying with continuing professional education, or paying required fees?</p> <p>Question 4.33(A): Have you EVER filed an application for a professional, occupational, or business license or certificate that was denied, that was withdrawn by you after question about your character or qualifications arose, or that otherwise was unfavorably acted upon by the licensing authority?</p> <p>Question 4.33(B): Have you ever been accused of, or investigated for, cheating on a professional exam?</p> <p>Question 4.33(C): In connection with your application for admission to practice law in any jurisdiction, were you required to appear before any board, committee, or other examining authority for examination or inquiry about any matter, other than a written examination on the law?</p> <p>Question 4.43: Notwithstanding the answers to Questions 4.01 through 4.42, are there any other incidents or circumstances that may relate to your character and fitness for admission to the bar?</p>	<p>Question 4.25: Are there any unsatisfied judgments against you?</p> <p>Question 4.26: Have you EVER owned a property which was foreclosed upon or given a mortgage holder a deed in lieu of foreclosure?</p> <p>Question 4.27: Have you EVER filed a voluntary petition for relief under the U.S. Bankruptcy Code or been the subject of an involuntary petition?</p>	
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<p>Question 4.41: Within the past two years, have you discontinued treatment or medication for a condition that at any time impaired your ability to meet the Essential Eligibility Requirements for the practice of law set forth in Rule 5A?</p>	<p>Question 4.42: Within the past two years, have you failed in any way to comply with the recommendations of a professional that treatment or medication was necessary to avoid negatively affecting your ability to meet the Essential Eligibility Requirements for the practice of law set forth in Rule 5A?</p>			
<p>Question 4.44: If you answered "Yes" to any questions between 4.01 and 4.43: Have you provided an explanation and attached supplemental records as required?</p>				

<p>Mississippi</p>	<p>Question 15: Have you ever been suspended, placed on disciplinary probation, expelled or requested to resign from high school, college, university or law school, or otherwise subjected to discipline by any such school or other institution or requested or advised by any such school or institution to discontinue your studies therein for disciplinary reasons?</p> <p>Question 16: Have you ever been involved in any student or honor code violation(s)?</p> <p>Question 19: Have you ever been terminated, suspended, disciplined, or permitted to resign in lieu of termination from any job?</p> <p>Question 20(a): Have you ever been a named party to any civil court action, with the exception of adoption? NOTE: Family law matters (including divorce or continuing orders for child support) should be included here.</p> <p>Question 20(b): Have you ever had a complaint filed against you in any civil, criminal, or administrative forum, alleging fraud, deceit, misrepresentation, forgery or professional malpractice?</p> <p>Question 21: Have you been charged with any moving traffic violations during the past ten years? NOTE: Alcohol or drug-related traffic violations should be discussed in this question.</p> <p>Question 22(a): Have you, either as an adult or a juvenile, been cited, arrested, charged or convicted for any violation of any law (except traffic violations)? NOTE: This should include matters that have been expunged or been subject to a diversionary program.</p> <p>Question 22(c): Have you ever had your driving privileges suspended or revoked?</p> <p>Question 23: Did any of the instances listed in questions 20a, 20b, 21 or 22a result in conviction of a misdemeanor?</p> <p>Question 24: Did any of the instances listed in questions 20a, 20b, 21 or 22a result in conviction of a felonious crime?</p>	<p>Question 25(a): Have you ever been adjudicated a bankrupt, or has a petition in bankruptcy ever been filed by you or against you, either alone or in association with others?</p> <p>Question 25(b): Have you ever been brought in as a party to any proceedings in a bankruptcy court; or have you ever been sued or threatened with suit by the receiver, trustee, or other authority of any bankruptcy estate, for unlawful transfer, conspiracy to conceal assets, or any other fraud or offense, whether or not punishable by criminal law?</p>	<p>Bar application sample</p> <p>Rules governing admission to the Mississippi bar</p>
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	<p>Question 30: Have you ever applied for or held a license, other than as an attorney at law, which required proof of good character? (E.g. certified public accountant, real estate broker, etc.)</p> <p>Question 32: Have you engaged in any inappropriate, illegal, immoral or irresponsible behavior over the last five years that you or others have attributed to consumption or use of prescription, non-prescription or other drugs, alcohol or other intoxicating substances?</p> <p>Question 33: Have you engaged in any inappropriate, illegal, immoral or irresponsible behavior over the last five years that resulted in an investigative process, disciplinary or legal consequences or your separation from employment or from an educational institution?</p> <p>Question 34: Within the past five years, have you been involved in any inquiry, any investigation, any insurance claim, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p> <p>Question 36: Have you ever submitted an application to be admitted by examination, reciprocity/comity/motion or diploma privilege, or to be reinstated to the bar of any Jurisdiction in the United States (including Mississippi) or foreign country? ...For each withdrawal of application or failure to being admitted, other than those due to failing the examination, in the comment box below provide a brief narrative explanation of the circumstances surrounding the reason.</p> <p>Question 37: Have you ever been denied admission to the practice of law in any jurisdiction of the United States (including Mississippi) or foreign country, other than for failure of the bar examination, or been denied admission to the bar examination of any jurisdiction or foreign country?</p> <p>Question 39: Have any complaints been filed against you as an attorney with the disciplinary authority of any jurisdiction in the United States (including Mississippi) or foreign country in which you have been admitted to the practice of law?</p>	<p>Question 26(a): Are you presently, or have you ever been, in default on any loan(s) or indebtedness, including, but not limited to, child support obligations and guaranteed student loans?</p> <p>Question 26(b): Within the three (3) years preceding the date of this Application, have you had any debt or financial obligation (this includes child support obligations, guaranteed student loans, credit cards, bank notes, tax liens, etc.) exceeding \$500 in amount, become ninety (90) days or more past due?</p> <p>Question 31: Have you ever applied for or held a bonded position?</p>	
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<p>Missouri</p>	<p>Question 17: In the past ten years, have you been the subject of any proceeding for commitment based upon incompetency, mental health, or substance abuse?</p> <p>Question 21: In the past five years, have you been required to undergo any court-ordered evaluation or treatment for the use or abuse of any substance including drugs or alcohol? (Include evaluations or treatment required in connection with any arrest for DWI, DUI, etc.)</p>	<p>Question 40: Have you been the subject of any lawyer discipline, whether private or public, whether oral or written, in any jurisdiction of the United States (including Mississippi) or foreign country to which you have been admitted to the practice of law?</p> <p>Question 5: Regardless of whether the record has been expunged, cancelled, annulled, or whether no record was ever made, have you ever been suspended, placed on probation, expelled, warned, reprimanded, or disciplined formally or informally for any academic or non-academic reason at any college, university, or law school?</p> <p>Question 5(a): Were you ever the subject of a complaint, probable cause hearing or other initial inquiry for any academic or non-academic reasons at any college, university, or law school?</p> <p>Question 6: Have you ever been absent from school for 30 or more consecutive days, other than regularly scheduled vacations and semester breaks?</p> <p>Question 8(a): Have you ever applied to sit for the bar examination or applied to the bar admissions authority in any U.S. jurisdiction (state, territory, or D.C.) or foreign jurisdiction for admission on examination, on motion, or any other basis that DID NOT RESULT, OR HAS NOT RESULTED, in your admission to practice law in that jurisdiction?... If you withdrew your application or your application was denied, explain in detail the reason for withdrawal or denial.</p> <p>Question 8(b): In connection with any application, regardless of admission status, were you required to appear for a hearing or inquiry before any board, committee, or admissions authority?</p> <p>Question 9(b): Has your license to practice law in any jurisdiction ever been limited, restricted, monitored, or conditioned upon compliance with any terms or conditions?</p> <p>Question 10(a): As an attorney, have you ever been disbarred, suspended, censured, placed on probation, reprimanded, disciplined, or allowed to resign or offered diversion in lieu of disciplinary action? Include matters where discipline was stayed or held in abeyance subject to a diversion or other agreement and include matters deemed confidential or closed.</p>	<p>Question 22: Has any surety on any bond on which you were a principal been required to pay any money on your behalf?</p> <p>Question 23: Have you ever been required to pay child support or maintenance obligations?</p> <p>Question 24: In the past five years, have you been delinquent by more than 90 days in the payment of any credit account (student loans should be reported under Q25), had a credit card involuntarily revoked or canceled, a credit account involuntarily closed, or a debt referred to collection or "charged off" as not collectable?</p>	<p>Application for Character and Fitness Report (digital)</p> <p>Application for Character and Fitness report (print)</p> <p>Character and Fitness FAQs</p> <p>Rules governing admission to the Missouri bar</p>
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<p>Question 29(a): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner?</p> <p>Question 29(b): If you answered "YES" to question 29.A., are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p>	<p>Question 10(b): Have you ever been the subject of any formal or informal charges, complaints, or grievances concerning your conduct as an attorney, including any now pending? Disclose all matters, even if the outcome was favorable, it was dismissed, no discipline was imposed, discipline was stayed or held in abeyance subject to a diversion or other agreement, or it is deemed confidential or closed.</p> <p>Question 11: Have you ever been the subject of any formal or informal charges, complaints, or grievances (regardless of outcome) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>Question 12: Have you ever been held in contempt of court, had sanctions entered against you, or otherwise been disqualified from participating in any case?</p> <p>Question 14(a): As a holder of public office, or as a member of any profession other than law, including those you have/had a license for, have you ever been suspended, censured, reprimanded, disqualified, subject to discipline, or allowed to resign in lieu of discipline? Include matters where discipline was stayed or held in abeyance subject to a diversion or other agreement and include matters deemed confidential or closed.</p> <p>Question 14(b): As a hold of public office, or as a member of any profession other than law, including those you have/had a license for, have you ever been the subject of any formal or informal charges, complaints, or grievances concerning your conduct, including any now pending? Disclose all matters, even if the outcome was favorable, it was dismissed, no discipline was imposed, discipline was stayed or held in abeyance subject to a diversion or other agreement, or it is deemed confidential or closed.</p> <p>Question 15: In the past ten years, have you been a party to any noncriminal legal proceeding, including but not limited to any civil, administrative, family court, or domestic abuse proceeding, or any arbitration?</p>	<p>Question 25: In the past five years, have you been delinquent by more than 90 days in the payment of any student loan account?</p> <p>Question 26: In the past ten years, have you filed or been the subject of a petition in bankruptcy?</p> <p>Question 27(a): Have you ever failed to file any federal, state, or local tax return, when required by law?</p> <p>Question 27(b): Have you ever failed to timely pay any personal taxes due, including but not limited to any federal or state income taxes; state, county, or municipal private property taxes; or real estate assessment taxes?</p>	
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	<p>Question 30: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 16: Has any business entity that you owned, managed, or participated in the control or management of been charged with fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, or similar misconduct, in any civil, criminal, or administrative legal proceeding?</p> <p>Question 18(a): Have you ever been issued a summons, cited, charged, taken into custody, or arrested for a felony, whether or not the charge was later reduced to a misdemeanor or other lesser charge?</p> <p>Question 18(b): Have you ever been convicted of a felony?</p> <p>Question 18(c): Have you served time in any correctional institution or work-release program?</p> <p>Question 18(d): Have you served any part of a sentence of felony probation, regardless of adjudication of guilt?</p> <p>Question 19: Have you ever been taken into custody, issued a summons, cited, charged, or arrested for driving under the influence (DUI), driving while intoxicated (DWI), driving with an unlawful blood alcohol level, minor in possession (MIP), public intoxication, or for any other alcohol or controlled substance related offense?</p> <p>Question 20: Have you ever been taken into custody, issued a summons, cited, charged or arrested for the violation of any law? (Exclude violations of traffic laws unless it resulted in time spent in jail or resulted in revocation or suspension of your driver's license. Exclude incidents included in Q. 19.)</p> <p>Question 28: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical or professional manner?</p>	<p>Question 27(c): Have you or any business or corporation or other entity in which you hold or held more than 20% equity interest or for which you served as an executive officer ever failed to pay or remit any business related taxes, including but not limited to, excise taxes, FICA taxes, income taxes, sales taxes, unemployment taxes, or withholding taxes?</p>
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<p>Montana [Note: Uses NCBCE Character and Fitness Application]</p>	<p>NCBE</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Rules for admission to the Montana bar Rules for Commission on Character and Fitness</p>
<p>Nebraska⁷</p>	<p>Question 26(A): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 26(B): If your answer to Question 26(A) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p>	<p>Question 5: Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, or allowed to resign in lieu of discipline from any college or university (including law school), or otherwise subjected to discipline by any such institution or requested or advised by any such institution to discontinue your studies there?</p> <p>Question 8: Have you ever been terminated, suspended, disciplined, laid-off, or permitted to resign in lieu of termination from any job?</p> <p>Question 11: Have you ever been the subject of any charges, complaints, or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>Question 12: Have sanctions ever been entered against you, or have you ever been disqualified from participating in any case?</p> <p>Question 13: This question refers to Form 1 which asks the following questions: Were you ever court-martialed? Were you ever awarded non-judicial punishment? Did you receive an honorable discharge? Were you allowed to resign in lieu of a court martial? Were you administratively discharged?</p> <p>Question 16: Have you ever been denied a license or had a license revoked for business, trade, or profession (e.g., CPA, real estate, broker, physician, patent practitioner)?</p>	<p>Question 18: Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 23: Have you ever filed a petition for bankruptcy?</p> <p>Question 24(A): Have you ever had a credit card or charge account revoked?</p> <p>Question 24(B): Have you ever defaulted on any student loans?</p> <p>Question 24(C): Have you ever defaulted on any other debt?</p>	<p>Character and fitness standards Rules governing admission to the Nebraska bar Form 7 Form 8</p>

⁷ Due to restricted online access, questions are not available to the public. Questions are from the 2017 NCBCE sample character and fitness application.

<p>Question 27: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p> <p>Questions 25 and 26 refer to mental health and link to Form 7 which is an authorization to release medical information. It states: By signing below, I authorize the above provider to provide information, without limitation, relating to mental illness or the use of drugs and alcohol, including copies of records, concerning advice, care, or treatment provided to</p>	<p>Question 17 (A): Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 17 (B): Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?</p> <p>Question 19: Have you ever been a named party to any civil action?</p> <p>Question 20: Have you ever had a complaint or action (including, but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p> <p>Question 21(A): Have you ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation other than a violation that was resolved in juvenile court?</p> <p>Question 21(B): Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? (Omit parking violations.)</p> <p>Question 22: Have you ever been cited for, arrested for, charged with, or convicted of any violation of any law other than a case that was resolved in juvenile court?</p> <p>Question 25: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p>	<p>Question 24(D): Have you had any debts of \$500 or more (including credit cards, charge accounts, and student loans) that have been more than 90 days past due within the past three years?</p> <p>Question 24(E): If your answer to Question 23 is yes, are there any additional debts not reported in Questions 24(A-D) that were not discharged in bankruptcy?</p>	
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	<p>me, to representatives of the Nebraska State Bar Commission who are involved in conducting an investigation into my moral character, professional reputation, and fitness for the practice of law. I understand that any such information as may be received will be reported only to the Nebraska State Bar Commission. The information will be used or disclosed at my request. This authorization will expire one year from the date of my notarized signature below.</p> <p>Form 8: Asks for dates of treatment, provider information, description of the condition, and any treatment or monitoring program.</p>			
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<p>Nevada⁸</p>	<p>Question 40: Are you now or have you ever been dependent upon, an abuser of, or treated for any condition involving your use of any drug, chemical, narcotic, hypnotic or hallucinatory or other illegal or controlled substance or alcohol?</p> <p>Question 41: Have you ever been subject to any proceedings which sought your declaration as a ward of any court, other than as a juvenile ward, or an adjudication that you were incompetent or mentally ill?</p>	<p>Question 15: With respect to each school or institution of higher learning you identified in answer to question No. 14, have you ever been dropped, placed on probation, suspended, disciplined, expelled, dismissed, or subject to discipline for violation of any school policy, including but not limited to code of conduct or honor code violations or, for any reason, including scholastic or moral?</p> <p>Question 28: Have you ever been arrested, cited, indicted, or tried for or convicted of any criminal charges including juvenile matters or moving traffic violation?</p> <p>Question 30: Have you ever had any judgment, order, or decision entered against you for any reason by any court, administrative board, or any other authority?</p> <p>Question 31: Have you ever received a pardon?</p> <p>Question 32: Have you ever applied for a security clearance for any purpose?</p> <p>Question 33: Have you ever had a record sealed which contained facts relating to you?</p> <p>Question 46: Have you ever been dismissed from any position or requested to resign by an employer?</p> <p>Question 47: Have you ever been under investigation for or charged, formally or informally, with misrepresentation, fraud, misapplication or misappropriation of property, either individually or in a representative capacity (e.g., as an officer of a corporation or other business entity, trustee, partner, joint venturer, agent or other fiduciary relationship)?</p> <p>Question 49: Have you ever been under investigation for any conduct which could result in your suspension or removal from any public or private office, trust or guardianship, before the expiration of the term of office, trust or guardianship?</p> <p>Question 48: Is there any other incident which has occurred in your past which would bear unfavorably upon your character or fitness for admission to the bar?</p>	<p>Question 29: Have you in any capacity ever been a party to, or named or described in, any civil proceedings, action or suit, including court cases, bankruptcy and administrative proceedings?</p> <p>Question 34: Have you personally or in any capacity had a check dishonored within the last five (5) years?</p> <p>Question 35: Have you ever had a credit card revoked or cancelled?</p>	<p>Rules governing admission to Nevada bar</p>
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⁸ Due to restricted online access, questions here are from 2013 copy.

	<p>Question 42: In the past ten years, have you been diagnosed with, been treated or sought counseling for bi-polar disorder, schizophrenia, paranoia, or any other psychiatric disorder, or have you ever been committed to any institution for the treatment of any such condition?</p>	<p>Question 36: Do you have any debts which are more than 90 days past due? <i>Debts include, but are not limited to, disputed debts, student loans, credit card accounts, promissory notes, accounts payable, child support obligations, alimony or personal support obligations, discipline costs or fines, obligations to the Internal Revenue Service, and state taxes of any nature.</i></p> <p>Question 37: Have you ever defaulted on a student loan?</p> <p>Question 38: Do you have any student loans outstanding? (This includes student loans that have not yet come due because of your status as a student (law or otherwise).</p>	
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<p>New Hampshire</p>	<p>Question 7(a): Have you ever been a named party to any civil action, including...guardianship, competency... or any other civil judicial or administrative proceeding of any kind?</p> <p>Question 11: Do you currently have any condition (including but not limited to substance abuse, alcohol abuse, or a mental, emotional, nervous, or behavioral disorder or condition) which in any way currently affects your ability to practice law in a competent and professional manner?</p>	<p>Question 4: Have you ever been the subject of any disciplinary investigation, proceeding or charges at any academic institution or have you ever been dropped, suspended, placed on probation, expelled or requested to resign from any school, college, university or law school, or requested or advised by any such school or institution to discontinue your studies? Note: Do not include academic probation, suspension, or expulsion based on grades.</p> <p>Question 5(b): Were any disciplinary charges (formal or informal) instituted against you including, but not limited to, actions under Article 15 of the Uniform Code of Military Justice and/or court martial charges or proceedings?</p> <p>Question 5(c): As a member of the armed services, were you asked to resign or given the opportunity to resign in lieu of judicial or administrative proceedings being instituted or carried out against you?</p> <p>Question 7(a): Have you ever been a named party to any civil action, including a suit in equity or action at law, bankruptcy or other statutory proceeding, guardianship, competency, divorce, arbitration, mediation or other alternative dispute resolution, or any other civil judicial or administrative proceeding of any kind? Note: Family law matters, including divorce and/or continuing orders for child support, must be included here.</p> <p>Question 7(b): Have you ever had a complaint or action filed against you asserting claims of fraud, deceit, misrepresentation, forgery, or malpractice?</p> <p>Question 7(c): Have any judgments or contempt orders ever been entered against you?</p> <p>Question 8(a): Have you ever been cited for, arrested for, charged with, or convicted of any felony, misdemeanor or violation? Note: Traffic offenses are not addressed here, but in the following sections 8 (b) and (c).</p> <p>Question 8(b): Have you been cited for, arrested for, charged with, or convicted of three or more motor vehicle violations during the past fifteen years? (Omit parking violations)</p> <p>Question 8(c): Have you ever been cited for, arrested for, charged with, or convicted of any alcohol or drug-related traffic offense?</p>	<p>Question 6(b): Have you ever had a credit card or charge account revoked?</p> <p>Question 6(c): Have you ever defaulted on any student loans?</p> <p>Question 6(d): Have you had in the past year, any debts or charges that have been more than 90 days past due?</p> <p>Question 6(e): Have you failed to file any local, state or federal income tax returns as required by law or failed to pay any taxes when due?</p> <p>Question 7(d): Are you presently, or have you ever been, in arrears or default in the performance of any court approved agreement, judgment or court order concerning child support?</p>	<p>Petition and Questionnaire for Admission to the New Hampshire Bar</p> <p>Rules on character and fitness standards</p> <p>Rules governing admission to the New Hampshire bar</p>
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	<p>Question 12: If the answer to question 11 is yes, please attach an explanation and provide the names and present addresses of the doctors or other health care professionals with whom you currently consult, or from whom you receive treatment. Note: The Committee on Character and Fitness may be requesting reports from treating doctor or other health care professionals concerning such treatment. In the event that the committee or committee staff decides to contact your treating professionals, you will be so notified prior to the contact.</p>	<p>Question 10: Have you ever been terminated, suspended, requested to resign, or permitted to resign in lieu of termination from any employment?</p> <p>Question 15(b): If the answer to (a) is yes, was your license ever revoked or suspended, or were you ever reprimanded, censured, or otherwise disciplined or disqualified as the holder of the license?</p> <p>Question 15(c): Have you ever been denied a license for a business, trade, or profession (other than law)?</p> <p>Question 15 (d): Have there ever been or are there now any charges, complaints, or grievances (formal or informal) pending concerning your conduct as a member of any other profession?</p> <p>Question 16(a): List every state or foreign country in which you have ever submitted an application to be admitted to the bar by examination, motion, diploma privilege, or sought reinstatement or readmission. ...Provide a brief narrative explanation of the circumstances surrounding any withdrawals or failures to be admitted (other than those due to failing the examination).</p> <p>Question 16(b): Have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney?</p> <p>Question 16(c): Have there ever been any letters of complaint, grievances or charges (formal or informal) submitted to any disciplinary authority concerning your conduct or have there ever been, or are there now, any charges, complaints or grievances (formal or informal) pending against you?</p> <p>Question 16(e): Have you ever been sanctioned or disqualified from participating in a case?</p>	<p>Question 7(e): Have you ever filed a petition for bankruptcy for yourself or any entity in which you have an interest?</p> <p>Question 9: Has a surety on any bond on which you were the principal been required to pay any money on your behalf?</p>	
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	<p>Question 13: Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure?</p>			
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<p>New Jersey</p>	<p>Section 9(l): Subsequent to your 18th birthday, have you or your property EVER been placed under the control of a guardian, conservator, trustee, receiver, special fiscal agent or any other custodian?</p> <p>Section 12(B): Do you CURRENTLY have any condition or impairment (including but not limited to substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical and professional manner and in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable case law?</p>	<p>Section 3(D):</p> <ul style="list-style-type: none"> After high school, have you been placed on academic probation, suspended, expelled, taken a leave of absence or had an interruption in your education for academic or personal reasons, been asked to leave school, or asked to resign or permitted to withdraw? After high school graduation, have you been disciplined, reprimanded, suspended, placed on probation, expelled, asked to resign, or permitted to withdraw from any educational institution for other than academic reasons including but not limited to housing violations, warnings, any step in progressive discipline, student code of conduct or honor code violations? Since high school, have you been the subject of a formal or informal disciplinary procedure, honor code charge, and/or student conduct code charge that was not disclosed above, regardless of the disposition of the charges? NOTE: The acceptance of a lower grade or F, the imposition of community service or other requirements or sanctions IS considered Informal Discipline. Accepting resolution in lieu of a hearing IS considered Informal Discipline. Since entering college, have you ever been approached or confronted, in person or in writing, including e-mail, by a professor, instructor, teacher, dean, or other member of the academic community concerning excessive absences, fluctuations in grades, or failure to complete assignments or any behavior or misconduct not disclosed above? <p>Section 4(B):</p> <ul style="list-style-type: none"> Have you EVER been discharged from any employment or requested or permitted to resign in lieu of disciplinary action or in lieu of criminal charges being filed against you? In connection with your employment, have you EVER been subject to any formal or informal charges of improper behavior that had any part in your quitting, being permitted to resign, being discharged or resulting in a suspension, demotion or loss of pay? Have you EVER been approached or confronted by an employer, supervisor, or colleague concerning excessive absences or lateness, lack of diligence, failure to maintain confidential material, or employment-related misconduct or deficiency? 	<p>Section 8(C): Have you EVER been charged with fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, perjury, false swearing, conspiracy to conceal, or a similar offense in any legal proceeding, civil or criminal, or in bankruptcy, regardless of the age or the disposition of the charges?</p>	<p>Character and fitness questionnaire (digital)</p> <p>Character and fitness questionnaire (print)</p> <p>Rules governing admission to the New Jersey bar</p>
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	<p>Section 13(E): Has any other jurisdiction in which you applied EVER requested that you submit to an alcohol, drug, mental health or other evaluation in connection with your application?</p>	<ul style="list-style-type: none"> ● Have you EVER applied for a position that required proof of good character and had that application denied for reasons involving your background or character, or in which you withdrew that application after questions about your character arose? ● Have you EVER applied for a position that required a pre-employment drug test and had that application denied because you failed the test? <p>Section 5(A)</p> <ul style="list-style-type: none"> ● Were any courts martial, Article 15 proceedings, or administrative discharge proceedings lodged against you during your period of service? <p>Section 6(B):</p> <ul style="list-style-type: none"> ● Have you EVER been disciplined as a member of any licensed profession or occupation (except law), including, but not limited to, being suspended from practice, reprimanded, censured, disqualified, revoked, permitted to resign, admonished, sanctioned or removed, or have any complaints or charges, formal or informal, ever been made or filed or proceedings instituted against you in such capacity? ● Have you EVER held a professional or occupational license (except law), that was administratively suspended or revoked (e.g., for failure to pay required fees or failure to complete required courses)? ● Have you EVER filed an application for a professional, occupational, or business license or certificate that was denied, that was withdrawn by you after questions about your character or qualifications arose, or that otherwise was unfavorably acted on by the licensing authority? <p>Section 7(B): Have you EVER been dismissed, discharged, reprimanded, censured, requested or permitted to resign in lieu of disciplinary action or potential disciplinary action, removed from office or otherwise disciplined as a holder of an official position or public office?</p>	<p>Section 8(G.1): Has any business in which you had a financial interest, managed or in which you actively participated in the control or management of EVER been charged with fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, conspiracy to conceal, or a similar offense in any legal proceeding, civil or criminal, or in bankruptcy?</p> <p>Section 9(A): In the past twelve (12) months, have you had any debts more than ninety (90) days overdue?</p> <p>Section 9(B): Are you now, or have you EVER been, the subject of any court-ordered obligation to provide child support or alimony?</p>	
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	<p>Section 8(A): Have you EVER been a named party (e.g., plaintiff/defendant) in any civil proceeding, regardless of the age of the matter or whether the final disposition was a dismissal or a settlement?... Have you ever been a party, complainant or participant in or to an administrative, governmental, investigative, judicial, arbitration or disciplinary proceeding, including but not limited to workers' compensation, unemployment, pension, disability, licensing boards, welfare, child protection, Title IX proceedings, conservatorship, fee arbitration or attorney disciplinary/grievance proceedings? NOTE: Simple receipt of benefits does NOT trigger an affirmative response if no proceedings were held.</p> <p>Section 8(B): Have you EVER been cited for, charged with, taken into custody for, arrested for, indicted, tried for, pled guilty to, or convicted of, the violation of any law (other than a minor traffic violation) or been the subject of a juvenile delinquent or youthful offender proceeding or received a conditional discharge, adjournment in contemplation of dismissal, or pretrial diversionary program? (NOTE: driving while intoxicated or impaired, driving without insurance, reckless driving, leaving the scene of an accident, and driving while suspended are not considered minor traffic offenses for the purposes of this section).</p> <p>Section 8(D): Have you EVER been a party to Deportation, Removal or Exclusion Proceedings, or otherwise denied entry to or removed from any country?</p> <p>Section 8(E): Have you EVER been denied access, had your access restricted for any period of time or been banned from any of the following, whether or not criminal charges were ever filed: (a) from this country or any other country; (b) from any educational, religious or charitable institution or governmental or judicial facility; (c) from a casino or gambling establishment; (d) from a bar, restaurant or any public facility; (e) from any form of transportation including, but not limited to, public transportation, including buses, trains, subways, airplanes, taxicabs, or private transportation including travel for fee (e.g. Uber or Lyft, etc.)?</p> <p>Section 8(F): Are you currently under investigation or have you EVER been offered or granted immunity to testify in any grand jury proceeding, criminal action or criminal proceeding?</p>	<p>Section 9(C): Are you now, or have you EVER been, in arrears on any court-ordered obligation including child-support or alimony not covered by Section B, supra?</p> <p>Section 9(D): Has a judgment EVER been entered against you?</p> <p>Section 9(E): Have any liens EVER been placed against your property? Do not include real estate mortgage liens, but include any tax liens.</p> <p>Section 9(F): Have you EVER filed a petition in bankruptcy or for establishment of a wage earner plan, or has one been involuntarily filed against you?</p>	
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	<p>Section 8(G.2): To your knowledge, have you or any business that you had a financial interest in, managed, or actively participated in the control of EVER been the subject of any investigation or inquiry by any Federal, State, Local, or administrative agency relating to the alleged violation of law, rule, regulation, or other legal standard?</p> <p>Section 8(H): Are you presently on probation or parole?</p> <p>Section 11(B): Has your driver's license EVER been suspended or revoked in any state or jurisdiction, including foreign jurisdictions (including for excessive or unpaid parking tickets)?</p> <p>Section 11(C): Have you EVER been refused a driver's license by any state or jurisdiction, including foreign jurisdictions?</p> <p>Section 11(D): Have you EVER been late to timely answer or failed to answer a ticket or summons for any legal proceeding (including parking tickets)?</p> <p>Section 11(E): Have you EVER been charged with driving under the influence of drugs or alcohol or refusing to provide a breath sample?</p> <p>Section 12(A): Have you, within the last five (5) years, exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner?</p> <p>Section 13(B): Did any other jurisdiction in which you EVER applied request an interview or hearing or conduct an investigation to evaluate your character or fitness or regarding improprieties on a bar examination?</p> <p>Section 13(C): Has your application to sit for a bar examination or to be admitted to practice by examination, UBE score transfer or motion EVER been denied or withheld?</p> <p>Section 13(D): Have you ever been accused of OR ever been the subject of an inquiry for any alleged improprieties on the bar examination?</p>	<p>Section 9(G): Has any business in which you had a financial interest EVER filed for bankruptcy?</p> <p>Section 9(H):</p> <ul style="list-style-type: none"> ● Do you currently have any outstanding student loans? ● Have you EVER been in arrears or defaulted on any student loan? <p>Section 9(J): To your knowledge, has a Currency Transaction Report (CTR) or Suspicious Activity Report (SAR) EVER been filed for your activities?</p> <p>Section 10(A): Have you EVER failed to file a federal, state, or local income tax return when due and without a lawful extension or have you EVER failed to pay federal, state, or local income taxes when due?</p>
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	<p>Section 13(F): In the State of New Jersey, have you EVER applied for any of the following certifications, limited licenses, registrations and/or admissions: In-House Counsel, or Foreign In-House Counsel, Foreign Legal Consultant, Pro Hac Vice, or Multi-Jurisdictional Practitioner?... Was the application for certification denied or withheld?</p> <p>Section 14(A): Have you EVER made late disclosure, been accused of or been the subject of an inquiry for alteration, falsification, omission and/or misrepresentation of any document or copy thereof referring to your professional qualification to be a lawyer before or after law school, including but not limited to, online or late disclosures on your law school applications or applications to other bar jurisdictions, bar examination results letter, recommendation letter, report, etc. Have you ever been accused of OR been the subject of an inquiry for any alleged improprieties on a standardized test, including, but not limited to, SAT, LSAT, MPRE, MCAT, GRE, etc. Have you ever been accused of OR ever been the subject of an inquiry for any alleged improprieties on the bar examination?</p> <p>Section 14(B): Have you ever been accused of OR been the subject of an inquiry for any alleged improprieties on a standardized test, including, but not limited to, SAT, LSAT, MPRE, MCAT, GRE, etc?</p> <p>Section 14(C): Have you EVER been accused of engaging in the Unauthorized Practice of Law in any jurisdiction?</p> <p>Section 15(A): ...Have you EVER been disciplined as a member of the bar of this jurisdiction, including, but not limited to, being disbarred, suspended, disqualified, reprimanded, censured, permitted to resign, admonished, sanctioned or removed, or have any complaints, charges or grievances, formal or informal, ever been made or filed or proceedings instituted against you in such capacity? ... Have you EVER held a law license in any jurisdiction that was administratively suspended or revoked (e.g., for failure to pay required fees or failure to complete required courses)?</p>	<p>Section 10(B): Have you or any business, corporation or other entity in which you held an equity interest EVER failed to pay employer's withholding taxes or ever failed to remit sales, excise, or other taxes to the appropriate taxing authority?</p> <p>Section 10(C): Has the Internal Revenue Service or any EVER other taxing authority ever obtained a judgment or made a levy against you for unpaid taxes, assessments or penalties?</p>	
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<p>New Mexico [Note: Uses NCBE Character and Fitness Application]</p>	<p>NCBE</p>	<p>Section 17: Is there any information (event, incident, occurrence, etc.) that was not specifically addressed and/or asked of you in this application and/or in the instructions that could be considered a character issue?... Within the past five years, have you engaged in any conduct that: (1) resulted in an arrest, discipline, sanction or warning not already disclosed in Sections 1 through 16; (2) resulted in termination or suspension from school or employment not already disclosed in Sections 1 through 16; (3) resulted in loss or suspension or other discipline for any license not already disclosed in Sections 1 through 16; (4) resulted in any inquiry, investigation, administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure not already disclosed in Sections 1 through 16; or (5) endangered the safety of others, breached fiduciary obligations or violated workplace or academic conduct rules not already disclosed in Sections 1 through 16?</p>	<p>NCBE</p>	<p>Character and Fitness Statement Rules governing admission to the New Mexico bar (digital)</p>
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<p>New York</p>	<p>Question 34: Do you currently have any condition or impairment including, but not limited to a mental, emotional, psychiatric, nervous or behavioral disorder or condition, or an alcohol, drug or other substance abuse condition or impairment or gambling addiction, which in any way impairs or limits your ability to practice law? If your answer is Yes, describe the nature of the condition or impairment. If your answer is Yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program? If your answer is Yes, the Committee on Character and Fitness may require that you provide an Authorization for the Release of Health Information Pursuant to HIPAA (OCA Official Form No.:960) for some or all</p>	<p>Question 12: Have you ever been denied admission to any school, college, law school, or other similar institution for stated cause which might reflect upon your character? Question 13: Have you ever been placed on probation, dropped, suspended, expelled or otherwise been subjected to discipline by any institution of learning above elementary school level for conduct which might reflect upon your character? Question 14: Have you ever been requested or advised by any college, law school, or other professional or graduate school for any reason to discontinue your studies therein? Question 16: Are you now, or have you ever been, engaged on your own account or with others in any occupation, business enterprise, or profession (other than law and not included in question 15) in the State of New York or elsewhere?... List any action now pending against such firm or corporation and any judgment entered against it during the period of your association with it. Question 17: In connection with any employment, whether or not listed in question 15, have you ever been discharged or requested to resign from or leave your position for cause? Question 21: Have you ever engaged in or has your conduct ever been called into question with reference to the unauthorized practice of law? Question 22: Have you ever been employed by or otherwise connected with any person, firm or corporation who or which, to your knowledge, engaged in conduct that was called into question on the subject of unauthorized practice of law while you were so employed or connected? Question 26: Note: Answer <u>only</u> if you answered 'Yes' to questions 24 or 25. As a member of any armed forces, have you been the subject of any charge, or have any proceedings been instituted against you, or have you been a defendant in any court martial proceeding?</p>	<p>Question 37: As of the date this application for admission is filed, state whether you are or are not under an obligation to pay child support. If you answered 'I AM', answer the following questions: (a) Are you four months or more in arrears in the payment of child support? (b) Are you making payments by income execution or by court agreed payment or repayment plan or by plan agreed to by the parties? (c) Is the child support obligation the subject of a pending court proceeding? (d) Are you receiving public assistance or supplemental security income? Question 38: Are there any unsatisfied judgments against you?</p>	<p>Application for admission questionnaire Rules governing admission to the New York bar</p>
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	<p>of the providers of your treatment.</p>	<p>Question 27: Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations. Although a conviction may have been expunged from the records by order of a court, it nevertheless should be disclosed in the answer to this question.</p> <p>Question 28: State whether you have ever testified, refused to testify, or been granted immunity, as a complainant, party or witness in any action or proceeding, or before any prosecuting or investigative agency in any matter.</p> <p>Question 29: State whether you have ever failed to answer any ticket, summons or other legal process served upon you at any time.</p> <p>Question 30: If you answered Yes to question 29, was any warrant, subpoena or further process issued against you as a result of your failure to respond to such legal process?</p> <p>Question 31: State whether there are any <u>unpaid</u> traffic or parking tickets in your name or attributable to a motor vehicle registered in your name.</p> <p>Question 32: State whether you have ever been charged with fraudulent conduct or any other act involving moral turpitude.</p> <p>Question 33: State whether you have ever been a complainant, party or witness to or otherwise involved in any civil or criminal action, proceeding or investigation not covered by answers to the above questions 28-32.</p> <p>Question 35: Are you currently using any illegal drugs?</p>	<p>Question 39: Are you in default in the performance or discharge of any duty or obligation imposed upon you by a judgment, decree, order or directive of any court or governmental agency?</p> <p>Question 40: Do you owe any debt for \$300 or more, which is past due for over 90 days?</p> <p>Question 41: Have you ever applied for or been granted a discharge in bankruptcy?</p> <p>Question 43: Has anyone ever sought to recover on or cancel a fidelity bond on account of your conduct in connection with a bonded position held by you?</p>
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<p>North Carolina [Note: Uses NCBE Character and Fitness Application]</p>	<p>NCBE</p>	<p>Question 36: Within the past five years, have you engaged in any conduct that: (a) resulted in an arrest, discipline, sanction or warning; (b) resulted in termination or suspension from school or employment; (c) resulted in loss or suspension of any license; (d) resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an employer, educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or (e) endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules? If so, provide a complete explanation and include all defenses or claims that you offered in mitigation or as an explanation for your conduct.</p> <p>Question 42 (a): Have you ever applied for a license the procurement of which required proof of good character (other than Bar applications listed under question 18–20 above)?</p> <p>Question 42 (b): If your application for such a license was not granted, state the facts.</p> <p>Question 42 (c): If any such license was revoked or suspended, state the facts.</p> <p>Question 44: Have you ever organized or helped to organize or become a member of any organization or group of persons which, during the period of your membership or association, you knew was advocating or teaching that the government of the United States or any state or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means?</p>	<p>NCBE</p>	<p>Rules governing admission to the North Carolina bar</p>
<p>North Dakota [Note: Uses NCBE Character and Fitness Application]</p>	<p>NBE</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Rules governing admission to the North Dakota bar</p>

<p>Ohio [Note: Uses NCBCE Character and Fitness Application, submitted during 2L year, along with a supplemental questionnaire, submitted during 3L year.]</p>	<p>NCBE and the following state specific questions: Question 6: State whether, since filing the Registration Application, you:...(v) have been declared legally incompetent or placed under a guardianship or conservatorship as an adult? Question 10(a): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that was not disclosed in your Registration Application and that in any way affects your ability to practice law in a competent, ethical, and professional manner?</p>	<p>NCBE and the following state specific questions: Question 3 : State whether, since filing the Registration Application, you (a): Have been disciplined, placed on probation, suspended, expelled or requested to terminate your enrollment at any law school?(b): Have violated or been formally charged with a violation of the honor code of any law school? Question 6: State whether, since filing the Registration Application, you: (b) to your knowledge, either have been denied a security clearance or have had revoked a security clearance previously granted to you; (c) have been discharged or asked to resign by any employer; (d) have been or are a party to or otherwise involved (except as a witness) in: (1) any civil or administrative action or legal proceeding; (2) any criminal or quasi-criminal action or legal proceeding (including, but not limited to, a misdemeanor, minor misdemeanor, traffic offense, or felony); (3) any action or legal proceeding in a juvenile court; (e) have been summoned for a violation of any statute, regulation, or ordinance;...(g) have been removed, resigned, or asked to resign as a guardian, executor, administrator, trustee or other fiduciary; (h) have been granted immunity from prosecution; (i) have been cited or arrested for contempt of court for any reason including, but not limited to, failure to appear as a witness or answer a subpoena or a jury summons;...(p) have been questioned regarding the unauthorized practice of law; (q) have engaged in the unauthorized practice of law in Ohio or any other state; (r) have been employed by or otherwise connected with any person, firm or corporation whose conduct was questioned on the subject of unauthorized practice of law while you were so employed or connected; (s) have been suspended, disqualified, or disciplined as a member of any profession; (t) have had any disciplinary complaint filed against you (including any complaints that were dismissed) as a member of any profession; (u) have been removed from any office, public or private, because of conduct reflecting upon your character, or charged with conduct reflecting on your character that could result in removal from office...?</p>	<p>Rules governing admission to the Ohio bar Summary of character and fitness process in Ohio Supplemental Character Questionnaire (password: open)</p>
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	<p>Question 10(b): if your answer to Question 10(a) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Question 12(a): Since filing the Registration Application, have you suffered from, been diagnosed with, or been treated for kleptomania, compulsive gambling, pedophilia, exhibitionism, or voyeurism?</p>	<p>Question 7: (a) Since filing the Registration Application, have you held or applied for a license or certificate, including but not limited to any license or certificate to practice law in any jurisdiction, the procurement of which required proof of good character? (b) If so, as to each license or certificate state...(v) whether it was refused or revoked; and (vi) whether you have been reprimanded, censured, or otherwise disciplined as the holder of the license.</p> <p>Question 9: Since filing the Registration Application, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 11(a): Since filing the Registration Application, have you engaged in any conduct that: (1) resulted in arrest, discipline, sanction or warning; (2) resulted in termination or suspension from school or employment; (3) resulted in loss or suspension of any license; (4) resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an employer, educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or (5) endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules?</p>	<p>you that remained unpaid for more than 90 days...?</p>	
<p>Oklahoma⁹</p>	<p>NCBE</p>	<p>NCBE and the following state specific questions:</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Have you had any alcohol or drug related offenses?</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Have you been a party to any civil actions, including divorce and child support matters?</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Have you been cited, arrested, charged, or convicted for any violation of any law other than as a juvenile? This includes traffic violations. NOTE: This should include matters that have been expunged or been subject to a diversion program</p>	<p>NCBE and the following state specific questions:</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Have you filed a petition for bankruptcy?</p>	<p>Bar exam application (supplemental questionnaire)</p> <p>Character and Fitness FAQs</p> <p>Rules governing admission to the Oklahoma bar</p>

⁹ Oklahoma uses NCBE Character and Fitness Application, submitted during 2L year, along with a supplemental questionnaire, submitted during 3L year.

<p>Oregon</p>	<p>Question 21(o): Has any proceeding ever been instituted to declare you an incompetent person, an insane person or a mentally diseased person?</p> <p>Question 22(b): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that affects your ability to practice law in a competent, ethical, and professional manner?</p>	<p>OK Part B: Supplement to Prior Application: [Since your previous application]: Have you been the subject of a complaint or hearing in any administrative for um?</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Have you been subject to any disciplinary actions by your law school?</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Are there any additional changes not covered in the questions above that you should report?</p>	<p>OK Part B: Supplement to Prior Application: [Since your previous application]: Do you have student loans to repay?</p> <p>OK Part B: Supplement to Prior Application: [Since your previous application]: Do you have other loans to repay?</p>	
		<p>Question 10: ...if you are no longer a member of the armed forces, were you honorably discharged?</p> <p>Question 18: If, in connection with any application you made for admission to practice law in any other state, territory or country you were requested to give any information regarding character and fitness beyond completing that jurisdiction's standard application for admission, explain what occurred.</p> <p>Question 21(a): Have you ever been dropped, suspended, investigated, expelled, disciplined or subjected to a disciplinary inquiry or proceeding by any college or law school for any cause whatsoever?</p> <p>Question 21(b): Have you ever been discharged or asked to resign from employment?</p> <p>Question 21(c): Have you ever been a party to any civil proceeding, including any bankruptcy or administrative proceeding?</p> <p>Question 21(d): Have you ever been charged with fraud or dishonesty in any civil proceeding?</p>	<p>Question 9: Have you ever been required to pay child support, alimony, or family support as a result of a divorce, annulment or other court proceeding? If yes, are you current on your child support, alimony or family support payments?</p> <p>Question 21(e): Have you had more than five checks dishonored because of insufficient funds during the past three years?</p>	<p>Bar application Rules governing admission to the Oregon bar</p>

<p>Question 22(c): If your answer to Question 22(b) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Question 22(d): Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?</p>	<p>Question 21(j): Including any matters that may have been expunged, except expunged juvenile matters, have you ever been cited, arrested, charged or convicted of a criminal offense?</p> <p>Question 21(k): In the last five years, have you been cited for any civil (non-criminal) infractions such as speeding, and/or other minor traffic violations?... You may exclude parking tickets.</p> <p>Question 21(l): Have you ever been charged with contempt of court?</p> <p>Question 21(m): Have you ever been accused of dishonesty in connection with employment?</p> <p>Question 21(n): Have you ever applied for a license, other than as an attorney at law, the procurement of which required proof of "good moral character" (i.e., CPA, patent agent, notary public, real estate broker, physician, nurse)?</p> <p>Question 21(p): Have you ever been disciplined, discharged, or resigned in lieu of termination from employment for the use of a controlled substance or alcohol?</p> <p>Question 21(q): Have you or anyone you have worked with ever been charged with the unauthorized practice of law?</p> <p>Question 21(r): Have you or anyone you have worked with ever been sanctioned, censured, reprimanded, disciplined, suspended, disqualified or disbarred as a member of any profession or as a practitioner before any administrative agency?</p> <p>Question 21(s): Have you ever been suspended or removed from public office because of conduct reflecting adversely upon your character?</p> <p>Question 21(t): Within the past five years, have you engaged in any conduct or behavior that could affect your ability to practice law in a competent and professional manner?</p> <p>Question 21(t): Have you ever been subject to any disciplinary action in connection with military service?</p>	<p>Question 21(f): Have you ever had a check for more than \$100 dishonored because of insufficient funds?</p> <p>Question 21(g): Do you now have any loans, accounts, judgments or financial obligations of any nature, including child support payments and student loans, past due for payment more than 60 days?</p> <p>Question 21(h): Has any surety on any bond on which you were the principal or obligor been required to pay any money on your behalf?</p> <p>Question 21(i): Have you ever been denied a bond, had a bond revoked, or had anyone seek to recover upon or cancel a bond?</p>	
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		<p>Question 21(u): Has anyone to your knowledge, ever complained to your law school or other supervising body in connection with your conduct under a student practice or legal intern rule?</p> <p>Question 21(v): Is there any additional information with respect to possible misconduct or lack of moral qualification or general fitness on your part that is not otherwise disclosed by your answers to questions in this application?</p> <p>Question 22(a): Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner?</p> <p>Question 27: If anyone has ever complained to any bar association, court or administrative office about your professional services or conduct, state the facts fully, identifying the client, the approximate date the complaint was made, the bar association, judge or office to which it was made and the disposition made of the complaint.</p> <p>Question 28: If you have ever been the subject of any disciplinary proceeding in connection with your practice of law in any jurisdiction, or have ever received a warning, reprimand or sanction concerning your practice, state the facts fully, identifying the nature of the alleged violation, the disposition of the matter and the name and address of the person or entity who would have the record.</p>		
<p>Pennsylvania</p>	<p>Are you currently addicted to, or dependent upon narcotics, intoxicating liquors, or other substances?</p>	<p>Please list every state and country in which you were arrested, charged, cited, accused or prosecuted in, but did not live, work, attend school or serve in the military for more than 6 months.</p> <p>Please list every state and country in which you were issued a driver's license. Additionally, if you were arrested for Driving Under the Influence (DUI) or any serious traffic violation (i.e.; fleeing the scene of an accident, homicide by vehicle, fleeing and eluding police, excessive speed (100+ mph), etc.), but did not hold a driver's license from that state or country, you must list that state or country as well.</p> <p>From the date that you were first admitted as a licensed attorney, have you ever been denied to practice, for any length of time, for any reason, before any court within any of the jurisdictions that you are admitted as a licensed attorney as listed in the Bar Related - Other Bar Applications section?</p>	<p>Have you ever filed a petition in bankruptcy, or has anyone ever filed a petition in bankruptcy against you?</p>	<p>Bar application sample</p> <p>Character and fitness resources</p> <p>Rules governing admissions to the Pennsylvania bar</p>

		<p>As a licensed attorney, have any charges of professional misconduct ever been filed against you?</p> <p>As a licensed attorney, have you ever been reprimanded, censured, suspended, or disbarred (including informal admonishments) for professional conduct?</p> <p>As a licensed attorney, are there any charges for professional misconduct presently pending against you?</p> <p>Have you ever been confronted, questioned, counseled, or approached by an employer, supervisor, teacher or other educator about your truthfulness, your excessive absence, your inability to work with others, the manner in which you handled or preserved the money or property of others, the thoroughness and/or timeliness of your preparation of work and/or your work itself, your competence, your promptness, your diligence, and/or your ability to maintain the confidentiality of information? (This does NOT include constructive criticism.)</p> <p>Have you ever been terminated or suspended from a job, disciplined by an employer, or permitted to resign in lieu of termination, or have you ever had a job offer rescinded?</p> <p>Have you been rejected for induction, enlistment, or commission in the armed forces of the United States of America or any other country?</p> <p>Have you ever been a defendant in any courts-martial, or Article 15 proceedings, or have any formal charges or complaints ever been made or filed, or proceedings instituted against you as a member of the armed forces?</p> <p>Have any charges of judicial or official misconduct ever been filed against you?</p> <p>Have you ever been reprimanded, censured, suspended, or removed from judicial or public office for misconduct?</p> <p>Are you currently under investigation for judicial or official misconduct?</p>	<p>Do you currently have any debts in arrears (e.g., 120+ days past due, charge offs, bad debts/loss write offs) and/or unpaid claims against you? This includes delinquent student loans, child or spousal support, court ordered fines, costs, restitution or judgments. This does not include student loans in deferment.</p> <p>Have you ever been ordered or required to pay child or spousal support?</p>
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	<p>Have you ever been denied enrollment, dismissed, suspended, expelled, subject to discipline, including disciplinary probation for plagiarism, cheating, dishonesty, fraud, or any other reason, or withdrawn in lieu of discipline from any academic institution or organization, beyond high school, for any reason (does NOT include academic discipline or probation for poor or failing grades)?</p> <p>Have you ever altered or falsified any official or unofficial document or copy thereof (e.g., bar application or examination result letter, recommendation letter, transcript, report, law school application, etc.)?</p> <p>Are you currently, or have you ever been arrested, charged, cited, accused, or prosecuted for any crime by a law enforcement agency, or have you ever been the subject of any investigation by a law enforcement agency, civil or administrative agency, professional organization, corporation, board or any other agency (including, but not limited to the lawyer Disciplinary Board, Attorney General's Office, government entity, law firm, etc.)? This does NOT include summary (minor) motor vehicle violations for which you were given a citation (ticket). It does include all alcohol-related traffic citations (e.g. OWI, DUI).</p> <p>Have you ever applied for a permit or license, other than one to practice law, that required proof of good character (e.g., CPA, medical professional, teacher, stock broker, etc.)?</p> <p>Have you ever withdrawn an application for a permit or license (other than one to practice law), been denied a permit or license, had a permit or license revoked, and/or voluntarily surrendered a permit or license for any reason, and/or have you ever been the subject of any complaints, proceedings, investigations, or inquiries relating to a profession for which licensure is required that involved: allegations of unauthorized practice, censure, removal, suspension, revocation of license, discipline, and/or any other formal or informal charges, by any agency, organization or individual?</p> <p>Have you ever had a petition for Protection From Abuse (PFA), restraining, or peace order filed against you?</p>	<p>Have you ever failed to file any applicable local, state or federal income tax return and/or report required by law within the last 10 years? This does not include tax extensions, late filings, or returns not filed due to earned income being under the legally established income threshold.</p> <p>Have you ever been investigated for, or accused of fraud, commingling, withholding or misusing funds, or any other charges involving the handling of funds?</p>
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<p>Rhode Island¹⁰</p>	<p>Question 26(A): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?</p>	<p>Have you ever been named as a party to any civil proceeding or has any civil proceeding been instituted by you, on your behalf, or against you including, but not limited to, suits in equity, actions at law, statutory proceedings, or any other civil or administrative proceeding? Do NOT include divorce proceedings or minor motor vehicle accidents.</p> <p>If there is any information (event, incident, occurrence, etc.) that was not specifically addressed and/or asked of you in the online application and/or in the instructions that could be considered a character issue, you are required to provide a detailed explanation for each event, incident/occurrence. Do you have any additional issues to disclose before submitting your application?</p> <p>Question 5: Have you ever been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, requested to resign, or allowed to resign in lieu of discipline from any college or university (including law school), or otherwise subjected to discipline by any such institution or requested or advised by any such institution to discontinue your studies there?</p> <p>Question 6: Have you ever submitted an application to pre-register as a law student, applied for bar admission, applied as a foreign legal consultant or in-house counsel, or been admitted, licensed, or authorized to practice law in any U.S. jurisdiction (state, territory, or the District of Columbia), tribal court, or foreign jurisdiction, including admission to the bar by examination, motion, or diploma privilege?...Provide a brief narrative explanation of the circumstances surrounding the reason for any withdrawals of applications or failures to be admitted (other than those due to failing the examination).</p> <p>Question 8: Have you ever been terminated, suspended, disciplined, laid-off, or permitted to resign in lieu of termination from any job?</p> <p>Question 10(A): Have you ever been disbarred, suspended, censured, or otherwise reprimanded or disqualified as an attorney?</p>	<p>Question 23: Have you ever filed a petition for bankruptcy?</p> <p>Question 24(A): Have you ever had a credit card or charge account revoked?</p> <p>Question 24(B): Have you ever defaulted on any student loans?</p> <p>Question 24(C): Have you ever defaulted on any other debt?</p>	<p>Rules governing admission to the Rhode Island bar</p> <p>Instructions for Rhode Island bar admission application</p> <p>Rhode Island bar admission application</p>
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¹⁰ Rhode Island uses a modified NCBE application (final link in far right column) as a Petition for Admission which had restricted online access. The questions therefore refer to the modified NCBE application.

	<p>Question 26(B): If your answer to Question 26(A) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p> <p>Question RI-23: During your adulthood, have you ever been placed under guardianship or conservatorship in any legal proceeding?</p>	<p>Question 10(B): Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as an attorney, including any now pending?</p> <p>Question 11: Have you ever been the subject of any charges, complaints, or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>Question 12: Have sanctions ever been entered against you, or have you ever been disqualified from participating in any case?</p> <p>Question 16: Have you ever been denied a license or had a license revoked for business, trade, or profession (e.g., CPA, real estate, broker, physician, patent practitioner)?</p> <p>Question 17 (A): Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 17 (B): Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?</p> <p>Question 19: Have you ever been a named party to any civil action? NOTE: Family law matters (including divorce actions and continuing orders for child support) should be included here.</p> <p>Question 20: Have you ever had a complaint or action (including, but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p> <p>Question 21(A): Have you ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation other than a violation that was resolved in juvenile court?</p> <p>Question 21(B): Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? (Omit parking violations.)</p>	<p>Question 24(D): Have you had any debts of \$500 or more (including credit cards, charge accounts, and student loans) that have been more than 90 days past due within the past three years?</p> <p>Question 24(E): If your answer to Question 23 is yes, are there any additional debts not reported in Questions 24(A-D) that were not discharged in bankruptcy?</p> <p>Question RI-5: Were you required to pay support or alimony payments?</p>
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	<p>Question 22: Have you ever been cited for, arrested for, charged with, or convicted of any violation of any law other than a case that was resolved in juvenile court?</p> <p>Question 25: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question RI-8: Have you ever been involved in, reprimanded for, or disciplined by an employer or educational institution for misconduct including: acts of dishonesty, fraud or deceit; lying on a resume, or misrepresentation; academic misconduct, including such acts as cheating; misconduct involving student activities; theft; excessive absences; failure to complete assignments in a timely manner; actions in disregard of the health, safety and welfare of others; sexual harassment; neglect of financial responsibilities; or conduct related to the use of alcohol or any other drug in the last ten (10) years</p> <p>Question RI-9: Have you ever been terminated or granted a leave of absence by an employer or withdrawn from an educational institution? (Do not include leaves of absence specifically authorized by state or federal law, e.g., family and bereavement leave, etc.)</p> <p>Question RI-16: Have any of the entities listed above been involved in litigation or other proceedings (including every cease and desist order, or other order) in any court of law or equity or any criminal court or before any government board or agency, or any arbitration board (a) during the period of time in which you owned 10% or more of the capital stock or other property interest in any said entity listed above or (b) during the period of time in which you were an officer, director or trustee, managing or general partner of any said entity listed above?</p> <p>Question RI-18: List all suits in equity, actions at law, or other statutory proceedings, matters in probate, support, administrative proceedings, quasi-judicial proceedings and every other judicial proceeding of every nature and kind, except criminal proceedings, to which you are or have ever been a party if none, please write N/A or NOT APPLICABLE.</p>	<p>Question RI-10: List all sources from which you borrowed or with which you have established credit, including any credit cards, during the last five (5) years, and the status, i.e. current or delinquent. [Information regarding student loans should be listed in subsection Question RI-12.] A reference to your credit report will not answer this question sufficiently. If none, please write N/A or NONE.</p> <p>Question RI-11: List all current debts over five hundred dollars (\$500.00), and indicate status, i.e. current or delinquent. A reference to your credit report will not answer this question sufficiently. If none, please write N/A or NONE</p>	
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Appendix C-1

		<p>Question RI-19: List all instances in your life (including while you were a juvenile) in which you have been arrested, detained or restrained, given a warning or taken into custody or accused, formally or informally, of violating a law or ordinance, or accused, formally or informally, of committing a delinquent or wayward act. Also include any instance in which you have been questioned regarding any criminal matter. Traffic violations should be listed in NCBE Questions 21A and 21B, as applicable. If none, please write N/A or NOT APPLICABLE.</p> <p>Question RI-20: List all criminal proceedings to which you were or have been a party and all proceedings in which you were or have ever been a party and all delinquent or wayward act or violation of the law while you were a juvenile. If none, please write N/A or NOT APPLICABLE.</p> <p>Question RI-21: Have you ever been offered or granted immunity, testified or been called as a witness in any grand jury proceeding, criminal action or criminal proceeding in which you were not a party?</p> <p>Question RI-25: In connection with your any prior or current application for admission to practice law, were you required to appear before any board, committee, or other examining authority for examination or inquiry about any matter, other than on examination upon legal subjects?</p>	<p>Question RI-12: List all student loans and indicate status, i.e., current, deferred, or delinquent. A reference to your credit report will not answer this question sufficiently. If none, please write N/A or NONE.</p> <p>Question RI-13: Have any judgments ever been entered against you in favor of a creditor?</p> <p>Question RI-17: Are any judgments, liens, orders and decrees which have entered against any entity listed above unsatisfied as of the present date?</p>	
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<p>South Carolina</p>	<p>Question 11(b): [B]elow list all...incapacity [or] guardianship [proceedings] to which you are or have ever been a party.</p>	<p>Question 2(b): [Regarding prior character and fitness applications: ...if not admitted or if your application was withdrawn, specify the reason for each instance.</p> <p>Question 9: Has any disciplinary proceeding of any kind, formal or otherwise, been taken against you at any school or college you have attended?</p> <p>Question 11(a): Are you now or have you ever been a party to any civil proceeding?</p> <p>Question 12(a): Have you ever been arrested or taken into custody or accused, formally or informally, of the violation of a law including instances which have been expunged by Order of the Court and including juvenile offenses whether or not the records are sealed?</p> <p>Question 13: Have you ever invoked the protection of the Fifth Amendment to the Constitution of the United States, or of any other provision of the Constitution of the United States or of any State, in refusing to testify under oath in any proceeding on the ground or for the reason that your answer might tend to incriminate you?</p> <p>Question 14(a): Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p>	<p>Question RI-22: Have you ever been bonded under a surety bond? Have you ever been refused a bond? If you have ever been bonded, has anyone ever sought to recover upon such bond or to cancel the same?</p> <p>Question 10(a): Have you ever held a bonded position?</p> <p>Question 10(b): Have you ever been denied a bond?</p> <p>Question 10(c): Have you ever been denied a position because you could not be bonded?</p> <p>Question 14(h): Are you delinquent in the payment of any financial obligations?</p> <p>Question 15: Are there any pending actions or suits or any unsatisfied judgments or decrees against you?</p>	<p>Bar application sample</p> <p>Rules governing admission to the South Carolina bar</p>
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<p>Question 14(b)(i): Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner? As used in Question 14 (b), "currently" means recently enough that the condition or impairment could reasonably affect your ability to function as a lawyer.</p> <p>Question 14(b)(ii): If your answer to Question 14 (b)(i) is YES, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?</p>	<p>Question 14(c): Have you ever been discharged from employment or accused by any person of dishonesty in connection therewith?</p> <p>Question 14(d): Have you ever been denied any license or certificate, the obtaining of which required proof of good moral character?</p> <p>Question 14(e): Has your conduct, or that of anyone by whom you have been employed or with whom you have been associated, ever been called in question with reference to the unauthorized practice of law?</p> <p>Question 14(f): Have you, or has anyone by whom you have been employed or with whom you have been associated, ever been censured, reprimanded, disciplined, suspended, disqualified or disbarred as a member of any profession or as a practitioner before any administrative agency, or have you ever been suspended or removed from any public or private office because of conduct reflecting upon your character?</p> <p>Question 14(g): Have you ever been charged with professional misconduct?</p> <p>Question 16(a): Have you ever knowingly organized or helped to organize or become a member of any organization or group of persons which, during the period of your membership or association, you knew was advocating or teaching that the government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence, or any unlawful means?</p> <p>Question 16(b): If your answer to (a) is YES, did you, during the period of such membership or association, have the specific intent to further the aims of such organization or group of persons to overthrow or overturn the government of the United States or any State or political subdivision thereof by force, violence, or any other unlawful means?</p> <p>Question 18: Are there any other facts not disclosed by your answers herein but concerning your background, history, experience, or activities which in your opinion may have a bearing on your character, moral fitness, or eligibility to practice law in South Carolina and which should be placed at the disposal or brought to the attention of the examining authorities?</p>	
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<p>South Dakota [Note: South Dakota uses the NCBE Character and Fitness application as well as its own separate bar application.]</p>	<p>NCBE</p>	<p>NCBE and the following state specific questions: Part 7, Question : Have you ever been cited, arrested, charged or convicted for any violation of any law as a juvenile? Part 8, Question 1: Within the past five years, have you engaged in any conduct that: a. resulted in an arrest, discipline, sanction or warning; b. resulted in termination or suspension from school or employment; c. resulted in loss or suspension of any license; d. resulted in any inquiry, any investigation, or any administrative or judicial proceeding by an employer, educational institution, government agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure; or e. endangered the safety of others, breached fiduciary obligations, or constituted a violation of workplace or academic conduct rules?</p>	<p>NCBE</p>	<p>Bar application sample Rules governing admission to the South Dakota bar</p>
<p>Tennessee [Note: Uses NCBE Character and Fitness Application]</p>	<p>NCBE</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Rules governing admission to the Tennessee bar</p>
<p>Texas</p>	<p><u>In State Application Questions</u> Question 7.1: Since filing your Declaration of Intention to Study Law, have you abused, been addicted to, or received treatment (including court-ordered treatment) for the use or abuse of alcohol or any other substance?</p>	<p><u>In State Application Questions</u> Question 2.3: Since the filing of your Declaration, have you been disciplined in any way for any matter by any college, university, law school, or other institution of higher learning, or by any professor, administrator, employee or entity representing any college, university, law school or other institution of higher learning, or have you been allowed to withdraw from such an institution to avoid such discipline, whether or not the record of such action was retained in your file? (Discipline includes, without limitation, a letter or other written notice of reprimand or warning, suspension, expulsion, adjustment of grade, assignment of community service, any form of probation, or any other adverse action). (Entity includes, without limitation, residential facilities or other facilities owned or managed by a college, university, law school or other institution of higher learning.) Question 2.4: Since the filing of your Declaration, have you been the subject of a determination of misconduct or irregularity by the Law School Admission Council (LSAC)?</p>	<p><u>In State Application Questions</u> Question 8.2: Since filing your Declaration of Intention to Study Law, have you filed or been the subject of a petition in bankruptcy? Question 8.3: Since filing your Declaration of Intention to Study Law, have you been ordered by a court to pay child support?</p>	<p>Bar exam application for in-state law students (digital) Bar exam application for in-state law students (print) Bar exam application for out-of-state law students (digital)</p>

	<p>Question 7.3: Since filing your Declaration of Intention to Study Law, do you have bipolar disorder or any psychotic disorder (including but not limited to schizophrenia or paranoia) that in any way might affect your activities of daily living or ability to practice law in a competent, ethical, and professional manner?</p>	<p>Question 3.2: Have you ever initiated the process to become licensed to practice law, or have you ever filed an application to take a bar examination, in any jurisdiction (including Texas) and were not licensed in that jurisdiction?</p> <p>Question 4.3: Since the filing of your Declaration, have there been any formal or informal charges, complaints, or grievances filed (regardless of the outcome) concerning your conduct as a member of any profession, licensed occupation, or as the holder of any public office?</p> <p>Question 4.4: Since filing your Declaration of Intention to Study Law, are there now pending any formal or informal charges, complaints, or grievances concerning your conduct as a member of any profession, licensed occupation, or as the holder of any public office?</p> <p>Question 5.1: (Non-legal employment): Were you terminated, suspended, disciplined, or permitted to resign in lieu of termination suspension or discipline, from this employment?</p> <p>Question 5.2: (Legal employment) Were you terminated, suspended, disciplined, or permitted to resign in lieu of termination suspension or discipline, from this employment?</p> <p>Question 6.1: Since filing my Declaration of Intention to Study Law, have you been formally charged with any violation of law, excluding cases which have been dismissed for reasons other than technical defects in the charging instrument; cases in which you have been found not guilty; minor traffic violations; cases in which the record of arrest or conviction has been expunged by court order; pardoned offenses; and Class C misdemeanors?</p> <p>Question 6.2: Since the filing of your Declaration of Intention to Study Law, have you become the target or subject of a grand jury or other governmental agency investigation?</p> <p>Question 7.2: Since filing your Declaration of Intention to Study Law, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p>	<p>Question 8.4: Since filing your Declaration of Intention to Study Law, have you been past due in any such court-ordered child support payments?</p> <p>Question 8.5: Since filing your Declaration of Intention to Study Law, have you had an arrearage judgment taken against you?</p> <p>Question 9.1: Since filing your Declaration of Intention to Study Law, do you have any student loan debts that are 90 days or more past due?</p>	<p>Bar exam application for out-of-state law students (print)</p> <p>Character and fitness information</p> <p>Rules governing admission to the Texas bar</p>
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<p>Question 7.4: Since filing your Declaration of Intention to Study Law, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, investigation, or administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an unemployment claim, employer discipline, or termination procedure?</p> <p>Out of State Application Questions</p> <p>Question 8.1: Within the last 5 years, have you abused, been addicted to, or received treatment (including court-ordered treatment) for the use or abuse of alcohol or any other substance? Have you received any treatment as part of this abuse?</p>	<p>Question 8.1: Since filing your Declaration of Intention to Study Law, have you been a party to any civil suit or proceeding?</p> <p>Question 8.6: Since filing your Declaration of Intention to Study Law, have you been held in contempt of court or sanctioned by a court?</p> <p>Question 9.6: Since filing your Declaration of Intention to Study Law, have you been the subject of an investigation for the unauthorized practice of law in Texas or any other jurisdiction?</p> <p>Out of State Application Questions</p> <p>Question 2.4: Have you ever been disciplined in any way for any matter by any college, university, law school, or other institution of higher learning, or by any professor, administrator, employee or entity representing any college, university, law school or other institution of higher learning, or have you been allowed to withdraw from such an institution to avoid such discipline, whether or not the record of such action was retained in your file? (Discipline includes, without limitation, a letter or other written notice of reprimand or warning, suspension, expulsion, adjustment of grade, assignment of community service, any form of probation, or any other adverse action). (Entity includes, without limitation, residential facilities or other facilities owned or managed by a college, university, law school or other institution of higher learning.)</p> <p>Question 2.5: Within the last 10 years, have you been the subject of a determination of misconduct or irregularity by the Law School Admission Council (LSAC)?</p> <p>Question 3.6: In connection with any application, regardless of admission status, were you required to appear for a hearing or inquiry before any board, committee, or admissions authority?</p> <p>Question 3.7: Have you ever been disbarred, suspended from practice, disciplined, disqualified, placed on a diversion program, or allowed to resign in lieu of disciplinary action, or has your license ever been qualified or conditioned in any way, as a member of any profession, licensed occupation, or as the holder of any public office?</p>	<p>Question 9.2: Since filing your Declaration of Intention to Study Law, do you have any other debts that are 90 days or more past due (including tax debts owed pursuant to federal or other law)?</p> <p>Question 9.3: Since filing your Declaration of Intention to Study Law, have you failed to timely file any applicable state or federal income tax return and/or report required by law?</p> <p>Question 9.4: Since filing your Declaration of Intention to Study Law, have you failed to pay any taxes owed pursuant to state or federal law at the time such taxes were due?</p>	
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	<p>Question 8.3: Do you currently have bipolar disorder or any psychotic disorder (including but not limited to schizophrenia or paranoia) that in any way might affect your activities of daily living or ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 8.4: Within the past 5 years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, investigation, or administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an unemployment claim, employer discipline, or termination procedure?</p>	<p>Question 3.8: Have there ever been any formal or informal charges, complaints, or grievances filed (regardless of the outcome) concerning your conduct as a member of any profession, licensed occupation, or as the holder of any public office?</p> <p>Question 4.3: Have there ever been any formal or informal charges, complaints, or grievances filed (regardless of the outcome) concerning your conduct as a member of any profession, licensed occupation, or as the holder of any public office?</p> <p>Question 4.4: Are there now pending any formal or informal charges, complaints, or grievances concerning your conduct as a member of any profession, licensed occupation, or as the holder of any public office?</p> <p>Question 5.1: [Regarding non-law-related employment] Were you terminated, suspended, disciplined, or permitted to resign in lieu of termination suspension or discipline, from this employment?</p> <p>Question 5.2: [Regarding law-related employment] Were you terminated, suspended, disciplined, or permitted to resign in lieu of termination suspension or discipline, from this employment?</p> <p>Question 6: Were any courts martial, Article 15 proceedings, or administrative discharge proceedings lodged against you during your period of service?</p> <p>Question 7.1: Have you ever been convicted of an offense, placed on probation, or granted deferred adjudication or any type of pretrial diversion? You must report any such offenses involving alcohol or drugs. You must report any failure to appear conviction resulting from any offense. You must report any conviction for failure to maintain financial responsibility (legally required auto insurance). You may exclude only Class C misdemeanor traffic violations.</p>	<p>Question 9.5: Since filing your Declaration of Intention to Study Law, have you collected federal withholding, social security, or Medicare taxes from the wages of your employees, and failed to timely report and forward such monies to the Internal Revenue Service?</p> <p>Out of State Application Questions</p> <p>Question 9.2: Within the last 10 years, have you filed or been the subject of a petition in bankruptcy?</p> <p>Question 9.3: Have you ever been ordered by a court to pay child support?</p>	
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	<p>Question 7.2: Have you, within the last 10 years, been arrested, cited or ticketed for, or charged with any violation of the law? You must report any such offenses involving alcohol or drugs. You must report any failure to appear charge or warrant resulting from any such offense. You must report any failure to maintain financial responsibility (legally required auto insurance) arrest, citation, ticket or charge. You may exclude only Class C misdemeanor traffic violations.</p> <p>Question 7.3: Are you currently the target or subject of a grand jury or other governmental agency investigation?</p> <p>Question 8.2: Within the past 5 years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?</p> <p>Question 9.1: Within the last 10 years, have you been a party to any civil suit or proceeding?... Were there any allegations of fraud in this civil proceeding?</p> <p>Question 9.6: Have you ever been held in contempt of court or sanctioned by a court?</p> <p>Question 10.6: Within the last 10 years, have you been the subject of an investigation for the unauthorized practice of law in Texas or any other jurisdiction?</p>	<p>Question 9.4: Are you now, or have you been within the last 10 years, past due in any such court-ordered child support payments?</p> <p>Question 9.5: Have you ever had an arrearage judgment taken against you?</p> <p>Question 10.1: Do you have any student loan debts that are 90 days or more past due?</p> <p>Question 10.2: Do you have any other debts that are 90 days or more past due (including tax debts owed pursuant to federal or other law)?</p> <p>Question 10.3: Within the last 10 years, have you failed to timely file any applicable state or federal income tax return and/or report required by law?</p>	
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<p>Utah</p>	<p>Question 60: Within the last five years have you used illegal drugs or substances, or prescription medications without the authorization or supervision of a licensed health care professional, or in a manner contrary to the health care professional's recommendations?</p>	<p>Question 10(c): Have you ever had a driver's license suspended or revoked?</p> <p>Question 22: Has a report or charge of misconduct or irregularity ever been issued against you by the Law School Admission Council in connection with the admission process to law school? The admission process includes, but is not limited to, application for admission to law school, application to take the LSAT, and sitting for the LSAT.</p> <p>Question 23(a): Have you ever been investigated for a violation of any policy (academic or non-academic) at a college, university or law school, whether or not any action was taken against you or whether or not the school agreed not to disclose the incident on your permanent record? Include pending matters.</p>	<p>Question 10.4: Within the last 10 years, have you failed to pay any taxes owed pursuant to state or federal law at the time such taxes were due?</p> <p>Question 10.5: Within the last 10 years, have you collected federal withholding, social security, or Medicare taxes from the wages of your employees, and failed to timely report and forward such monies to the Internal Revenue Service?</p>	<p>Question 18: Are you the obligor on any spousal and/or child support? If yes, are you current on all spousal and/or child support payments?</p>	<p>Bar admissions FAQs</p> <p>Bar application sample</p> <p>Rules governing admission to the Utah bar</p>
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	<p>Question 61: Within the last five years have you conducted yourself in such a manner as to endanger the health or safety of yourself or others? (Examples: suicide attempts, reckless driving, substance abuse).</p> <p>Question 62: Do you have a current condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which affects your conduct that has not been or is not currently being treated effectively or for which the treatment is unstable?</p>	<p>Question 23(b): Have you ever been dropped, suspended, warned, sanctioned, placed on scholastic or disciplinary probation, expelled or requested to resign or allowed to resign in lieu of discipline, been advised to discontinue your studies, or otherwise had disciplinary action of any sort taken against you (academic or non-academic) by a college, university or law school?</p> <p>Question 26(a): Have you ever been confronted by an employer, supervisor, or colleague concerning excessive absences or lateness, lack of diligence, failure to maintain confidential material or employment-related misconduct or deficiency?</p> <p>Question 26(b): Have you ever been laid-off, terminated, suspended, disciplined, permitted to resign in lieu of termination, or otherwise discharged from any job?</p> <p>Question 29: Have you ever been denied a license for a business, trade, or profession (e.g., CPA, real estate broker, physician, patent practitioner) or had a business, trade or professional license revoked?</p> <p>Question 30: Have you ever been disciplined by a professional licensing or regulatory agency?</p> <p>Question 33: Have you ever had a judgment against you?</p> <p>Question 43: Have you, in any capacity, ever been a party to or named or described in any civil proceeding, action, suit, arbitration, or administrative proceeding, including family law cases such as divorce or child support matters? Include suits against businesses or law firms of which you are an owner, partner, or fiduciary.</p> <p>Question 44: Have you ever been found in contempt by any court, tribunal, or legislative body?</p> <p>Question 45: Have you ever failed to comply with any court order directed against you, including child support or other family law orders?</p>	<p>Question 28: Has any business that you had a financial interest in, managed, or actively participated in the control of been investigated or charged, formally or informally, with fraud, larceny, embezzlement, misrepresentation, conspiracy to conceal, or a similar offense?</p> <p>Question 34: In the last ten years, have you had an account or a bill charged off, sent to collections, or settled for less than the full balance?</p> <p>Question 35: In the last two years, have you been more than 60 days late on any payment to a creditor, including the holder of student loans?</p>
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	<p>Question 63: Are there any other incidents, issues, or behaviors, not herein before described, having bearing on your character or fitness for admission to the Bar? This would include, but is not limited to, excessive alcohol use (e.g. drinking at work, binge drinking) or illegal activities (e.g. domestic abuse, drunk driving, stealing) that may not have come to the attention of law enforcement.</p>	<p>Question 46: As an adult or a juvenile, have you ever been arrested, served with a summons, cited, indicted, charged, tried, or investigated for an infraction, felony or misdemeanor in any jurisdiction? Include all such incidents no matter how minor, whether guilty or not. Please include all matters that have been expunged or subject to a diversionary program. Include traffic offenses that involved drugs or alcohol. (Do not include other traffic violations as these will be addressed in Q.47.)</p> <p>Question 47: Within the last ten years have you ever been cited for a traffic violation, moving or non-moving, other than parking offenses? Include all such incidents, no matter how minor, whether guilty or not, and regardless of whether they were dismissed or subject to a diversionary program. (If the traffic violation involved drugs or alcohol, it must be reported under Q.46.)</p> <p>Question 47(a): Have you ever had a bench warrant issued for failure to appear or failure or failure to comply related to a traffic citation?</p> <p>Question 48: Are you in violation of any federal or state criminal statute?</p> <p>Question 49: Have you ever been charged, accused, or indicted, formally or informally, civilly or criminally, for misrepresentation, fraud, misapplication, perjury/false swearing, or misappropriation of property, either individually or in a representative capacity (e.g., as an officer or owner of a business entity, partner or other fiduciary relationship)?</p> <p>Question 50: Have you ever been suspended, censured, or otherwise reprimanded or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 51: Have there ever been or are there now any formal or informal charges, complaints, or grievances concerning your conduct as a member of any other profession, or as a holder of public office?</p> <p>Question 54: Have you ever engaged in the unauthorized practice of law in the state of Utah, or has such a complaint ever been filed against you?</p>	<p>Question 36: In the last ten years have you had a credit card or charge account revoked or closed for nonpayment?</p> <p>Question 37: Have you ever been adjudicated a bankrupt, or has a petition for bankruptcy been filed at any time by you or against you, either alone or in association with others, either personally or in a business capacity?</p>
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	<p>Question 55(a): Have you ever been investigated for, questioned about or disciplined for cheating on a bar examination or otherwise violating a bar examination rule or policy? Include pending matters.</p> <p>Question 57: Have you ever or do you currently have difficulty communicating with others in an organized, clear, and professional manner?</p> <p>Question 58: Have you ever or do you currently struggle to act diligently and reliably in fulfilling your obligations to others? (Examples: failing to comply with deadlines or time constraints, frequent or excessive work absences, etc.).</p> <p>Question 59: Have you ever or do you currently fail to conduct your business, fiduciary and financial dealings in an honest, trustworthy and competent manner?</p> <p>Question 65: Have there ever been or are there now any public or private, formal or informal claims, allegations, complaints, charges, or grievances concerning your conduct as an attorney?</p> <p>Question 66: Have you ever been disbarred, suspended, censured, sanctioned, disciplined or otherwise reprimanded or disqualified, whether publicly or privately, as an attorney?</p> <p>Question 67: Have you ever been sanctioned in a legal matter or have you ever been disqualified from participating in any case?</p>	<p>Question 38: Have you ever been brought in as a party to any proceedings in a bankruptcy court; or have you ever been sued or threatened with suit by the receiver, trustee, or other authority of any bankrupt estate, for unlawful preference, conspiracy to conceal assets, or any other fraud or offense, whether punishable by criminal law or not?</p> <p>Question 39: Has an adversary proceeding ever been filed against you to except a scheduled debt from discharge?</p> <p>Question 40: Have any state or federal tax liens ever been placed against your personal or business property?</p>
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<p>Vermont [Note: Uses NCBE Character and Fitness Application]</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Question 41: Have you ever failed to file a personal income or business tax return, filed late without an extension, or failed to pay your taxes when due?</p> <p>Question 42: Have you or your business or corporation or other entity in which you hold or held more than 20% equity interest or for which you served as an executive officer ever failed to pay employer's withholding taxes or failed to remit sales or excise taxes paid by customers?</p> <p>Question 52: Has any surety bond on which you were the principal been required to pay any money on your behalf?</p>	<p>Rules governing admission to the Vermont bar</p>
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<p>Virginia (Updated April 2019)</p>	<p>Question 17.1(B): Within the past five (5) years, have you sought or been directed to seek treatment for your conduct or behavior?</p> <p>If the previous two questions apply to an applicant, they must complete the Character and Fitness Health Form: The Character & Fitness Healthcare Form addresses recent mental health and chemical or psychological dependency matters. The purpose of such inquiries is to determine the current fitness of an applicant to practice law. The Board does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board does not view these types of counseling as germane to the issue of</p>	<p>Question 4.5: Have you had any actions filed in any domestic court, including but not limited to, motions, citations in contempt, child custody actions, or motions filed in any jurisdiction by any person or agency?</p> <p>Question 6.1: Have you ever been academically, administratively or otherwise disciplined, placed on probation, suspended, expelled, requested to terminate your enrollment, or allowed to resign in lieu of disciplinary action at any college, university, law school, trade school or any other post-high school educational facility?</p> <p>Question 6.2: Have you ever been charged with violating the honor code of any educational facility (regardless of the disposition of the charge)?</p> <p>Question 6.3: Have you ever been accused of or investigated for improper conduct or alleged cheating on any standardized test or licensing exam?</p> <p>Question 7.1: Have you ever been rejected for service in any branch of the Armed Forces of the United States?</p> <p>Question 7.4: While serving in the Armed Forces of the United States, were you ever a defendant in any court- martial?</p> <p>Question 8.2: Have you ever been terminated by any employer?</p> <p>Question 8.3: Have you ever been asked to resign or been given the choice of resigning in lieu of being terminated by any employer?</p> <p>Question 10.4: Are you currently or have you ever been granted conditional admission to practice law in any jurisdiction (even if you were later admitted without conditions)?</p> <p>Question 10.5 Have you ever applied for admission to practice law in any jurisdiction where the outcome resulted in your not being admitted (i.e., failed, denied, withdrawn, etc.) to the bar of such jurisdiction (even if you were later admitted)?</p> <p>Question 10.7: Have you ever been denied permission to take the bar examination in any jurisdiction?</p>	<p>Question 4.3: Have you ever been or are you currently under any obligation to pay spousal support?</p> <p>Question 4.4: Have you ever been or are you currently under any obligation to pay child support?</p> <p>Question 14.2: Do you have any <u>outstanding or unpaid fines, court costs, or tickets, including those for traffic or past-due parking violations?</u></p> <p>Question 14.4: Have you ever been removed, resigned, or asked to resign as a guardian, executor, administrator, trustee, or other fiduciary?</p>	<p>Bar application sample</p> <p>Character and fitness resources</p> <p>Character and fitness questionnaire sample</p> <p>Rules governing admission for the Virginia bar</p> <p>Character and Fitness Healthcare Form</p>
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<p>whether an applicant is qualified to practice law.</p> <p>Question 18.1: Within the past five (5) years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous or behavioral disorder/condition as a defense, mitigation, or explanation for your actions in the course of any of the following: (A) Administrative proceeding or investigation? (B) Judicial proceeding or investigation? (C) Probation, suspension or dismissal by an educational institution?</p>	<p>Question 11.1: Other than applications for bar admission, have you ever applied for, or held a license or certificate (e.g., CPA, real estate broker, physician, patent practitioner, etc.) which required proof of good character?</p> <p>Question 11.2: Have you ever been suspended, censured, reprimanded, disqualified or otherwise disciplined as a member of any profession?</p> <p>Question 11.3: Have there ever been or are there now pending any charges, complaints or grievances (formal or informal) concerning your conduct as a member of any profession or as a holder of public office?</p> <p>Question 11.4: Have you ever been removed from any office, public or private, because of conduct reflecting upon your character, or have any charges been made or filed, or proceedings instituted against you because of conduct reflecting on your character?</p> <p>Question 11.5: To your knowledge, have you ever been investigated or charged with the unauthorized practice of law?</p> <p>Question 11.6: To your knowledge, have you ever been employed by or otherwise affiliated with any person, firm or corporation who was investigated or charged with the unauthorized practice of law while you were so employed or affiliated?</p> <p>Question 11.7: To your knowledge, have you ever been denied a security clearance or has a security clearance previously granted to you ever been revoked?</p> <p>Question 13.1: Are you presently or have you ever been a party to or otherwise involved (except as a witness) in any civil or administrative action or legal proceeding?</p> <p>Question 13.2: Are you presently or have you ever been a party to or otherwise involved (except as a witness) in any action or legal proceeding in a juvenile court?</p>	<p>Section 15 - Credit Information: ALL APPLICANTS: You must attach ONE (1) current credit report meeting the following criteria: Obtained from Experian, Equifax OR TransUnion ONLY Dated within sixty (60) days of the date of filing this Questionnaire Credit summary or profiles are NOT acceptable. A FULL credit report is required.</p> <p>Question 15.1: I enclose a credit report (dated within sixty (60) days of the date of filing this Character & Fitness Questionnaire) obtained from Experian, Equifax OR TransUnion ONLY. Credit summary or profiles are not acceptable.</p>
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	<p>Question 18.2: Within the past five (5) years, has the issue of drugs or alcohol or the issue of a mental, emotional, nervous or behavioral disorder/condition brought about a termination, proposed termination, request to resign, or any other disciplinary action by any of the following: (A) Educational institution? (B) Employer? (C) Government agency? (D) Professional organization? (E) Licensing authority?</p>	<p>Question 13.3: Are you presently or have you ever been a party to or otherwise involved (except as a witness) in a criminal or quasi-criminal action or legal proceeding, whether involving a felony, misdemeanor, minor misdemeanor, or any traffic offense or infraction, (including charges which did not require your appearance in court, such as any camera violations)?</p> <p>Question 14.1: Other than provided in Section 13 - Legal Proceedings (Civil and Criminal), have you ever been summoned for a violation of any other statute, regulation or ordinance?</p> <p>Question 14.3: Have you ever failed to comply with any court-ordered obligation(s)?</p> <p>Question 14.5: Have you ever been granted immunity from prosecution?</p> <p>Question 14.6: Have you ever been cited or arrested for contempt of court for any reason, including, but not limited to, failure to appear as a witness, or answer a subpoena or jury summons?</p> <p>Question 14.7: Has your driver's license been suspended or revoked within the last ten (10) years?</p> <p>Question 15.7(C): Have any of your businesses or enterprises ever been involved in litigation?</p> <p>Question 17.1: Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner?</p>	<p>Question 15.2: Within the last seven (7) years, have you had a credit card revoked?</p> <p>Question 15.3: Currently, do you have any debts that are more than 90 days past-due, including student loans? This should include current claims, settlement offers, payment plans in effect with any creditor or taxing authority (local, state, or federal).</p> <p>Question 15.4: Do you any unsatisfied judgments against you?</p> <p>Question 15.5: Have you ever filed or been the subject of a petition in bankruptcy?</p>	
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			<p>Question 15.6: Have you ever been the subject of a trusteeship, receivership, wage attachment, or garnishment proceeding?</p> <p>Question 15.7(B): Have any of your businesses or enterprises ever been insolvent or filed for protection from its creditors?</p> <p>Question 15.8: Have you failed to timely file any state or federal tax return?</p> <p>Question 16.2: Have you ever defaulted on any student loan? (Answer yes even if the debt is now satisfied)</p> <p>Question 16.3: Has a judgment ever been entered against you in favor of a student loan guarantor or lender?</p>	
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<p>Washington</p>	<p>Question 5: Have you ever been dropped, suspended, warned, placed on academic or scholastic probation, placed on disciplinary probation, expelled, requested to withdraw, or allowed to withdraw in lieu of discipline from any college or university (including law school), or otherwise subjected to discipline or investigation by any such institution or requested or advised by any such institution to discontinue your studies there?</p> <p>Question 6: Have you ever submitted an application to pre-register as a law student, applied for bar admission, applied as a foreign legal consultant or in-house counsel, or been admitted, licensed, or authorized to practice law in any U.S. jurisdiction (state, territory, or the District of Columbia), tribal court, or foreign jurisdiction, including admission to the bar by examination, motion, or diploma privilege?...Provide a brief narrative explanation of the circumstances surrounding the reason for any withdrawals of applications or failures to be admitted (other than those due to failing the examination).</p> <p>Question 8: Have you ever been investigated, warned, terminated, suspended, disciplined, laid-off for misconduct or dishonesty, or permitted to resign in lieu of termination from any job?</p> <p>Question 10(A): Have you ever been disbarred, suspended, censured, or otherwise disciplined or sanctioned or disqualified as an attorney by any regulatory or licensing agency or court?</p> <p>Question 10(B): Have you ever been the subject of any charges, complaints, investigations, or grievances (formal or informal) concerning your conduct as an attorney, including any now pending?</p> <p>Question 11: Have you ever been the subject of any charges, complaints, investigations, or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>Question 12: Have sanctions ever been entered against you, or have you ever been disqualified from participating in any case?</p> <p>Question 15: Have you ever been denied a license or had a license suspended, terminated or revoked for a business, trade, or profession (e.g., CPA, real estate broker, physician, patent practitioner, etc.)?</p>	<p>Question 17: Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>Question 22: Have you ever filed a petition for bankruptcy?</p> <p>Question 23(A): Have you ever defaulted on any student loans?</p> <p>Question 23(B): Have you ever defaulted on any other debt?</p> <p>Question 23(C): If your answer to Question 22 is yes, are there any additional debts not reported in Questions 23(A & B) that were not discharged in bankruptcy?</p>	<p>Bar application sample</p> <p>Character and fitness FAQ</p> <p>Rules governing admission to the Washington bar</p>
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	<p>Question 16(A): Have you ever been suspended, censured, or otherwise disciplined or disqualified as a member of another profession, or as a holder of public office?</p> <p>Question 16(B): Have you ever been the subject of any charges, complaints, investigation, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?</p> <p>Question 18: Have you ever been a named party to any civil action? NOTE: Family law matters (including continuing orders for child support) should be included here.</p> <p>Question 19: Have you ever had a complaint or action (including, but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p> <p>Question 20(A): Have you ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation including any cases resolved in juvenile court?</p> <p>Question 20(B): Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? (Omit parking violations.)</p> <p>Question 21: Have you ever been cited for, arrested for, charged with, or convicted of any violation of any law including any cases resolved in juvenile court? (Report traffic violations at Questions 20.)</p> <p>Question 24: Within the past five years, have you been confronted, questioned, warned, or asked or encouraged to resign or withdraw by an employer, supervisor, teacher or other educator based on: a) your truthfulness, b) your excessive absences, c) the manner in which you handled or preserved the money or property of others, d) a serious or repeated failure to submit your work in a timely manner, e) your competence or diligence in the performance of job or academic duties, f) your ability to maintain the confidentiality of information, or g) your endangering the safety of others?</p>		
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<p>West Virginia [Note: Uses NCBE Character and Fitness Application]</p>	<p>NCBE</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Rules governing admission to the West Virginia bar</p>
<p>Wisconsin</p>	<p>Question 33(a): Within the past five years have you ever cited consumption of drugs or alcohol in the course of any inquiry or investigation, administrative or judicial proceeding, or proposed termination or other disciplinary action as an explanation for your failure to meet a deadline or as a defense, mitigation or explanation of those matters?</p>	<p>Question 17(a): Have you ever been the subject of any charges, complaints, or grievances concerning you as an attorney? (Include all allegations of misconduct of which you have been notified on a formal or informal basis by a lawyer disciplinary authority despite the outcome. Include all allegations, charges, complaints, or grievances now pending.)</p> <p>Question 17(b): Have you ever been disbarred, suspended, reprimanded, admonished, warned, censured, or otherwise disciplined or disqualified as an attorney? (Include both private and public dispositions.)</p> <p>Question 17(c): Have you ever been denied admission in any jurisdiction for reasons other than Bar exam failure?</p> <p>Question 17(d): Have you ever been accused of practicing law without a license in any jurisdiction?</p> <p>Question 17(e): Have you ever been or are you now conditionally admitted in any other jurisdiction?</p> <p>Question 18: Are any claims pending or have any been paid by your professional liability carrier(s)?</p> <p>Question 19: Have you ever been suspended, terminated, permitted to resign in lieu of termination in any position (paid or voluntary), regulated profession, or as a holder of any public office?</p> <p>Question 20(a): Have you ever been charged with misconduct, dismissed, dropped, suspended, expelled, asked to withdraw, placed on academic, social or administrative probation, or disciplined, or allowed to withdraw to avoid the same by a college, university, or law school in any way, or been subject to proceedings before an honor court, council, or similar body?</p>	<p>Question 25: Have you ever been adjudged bankrupt or insolvent, or are you presently the subject of any such proceedings?</p> <p>Question 26: Has any surety on any bond on which you were the obligor ever been required to pay any money on your behalf?</p> <p>Question 30: Are there any unsatisfied judgments or court orders of continuing effect against you, or are you in default in the performance of any court-ordered duty or obligation? (Include orders to pay child support.)</p>	<p>Bar applicant questionnaire and affidavit sample</p> <p>Rules governing admission to the Wisconsin bar</p>

<p>Question 33(b): Within the past five years have you ever cited physical or mental illness, or an emotional, nervous or behavioral disorder in the course of an inquiry or investigation, administrative or judicial proceeding, or proposed termination or other disciplinary action as an explanation for your failure to meet a deadline or as a defense, mitigation or explanation of those matters?</p> <p>Question 33(c): Within the past five years have you ever cited consumption of drugs or alcohol as an explanation for your poor academic or professional performance?</p> <p>Question 33(d): Within the past five years have you ever cited physical or mental illness, or an emotional, nervous or behavioral disorder as an explanation for your poor academic or professional performance?</p>	<p>Question 21(a): Have you ever received a traffic citation, including those for moving violations within the past five (5) years? Applicants must report any citations received at any time involving the use of a motor vehicle (e.g., auto, boat, motorcycle) while under the influence of either alcohol and/or a controlled substance(s). However, parking violations may be omitted.</p> <p>Question 21(b): Has your driver's license ever been revoked or suspended?</p> <p>Question 21(c): Have you ever been <u>required</u> to attend a driver's safety course?</p> <p>Question 22: Have you ever been arrested for, charged with, or issued a citation for any criminal violations, civil law violations, or local ordinance violations (non-traffic)? You must disclose each instance however adjudicated, whether or not the charge and the plea or conviction differ, whether arrest, judgment, conviction, or sentence has been withheld or expunged, or the record sealed. Include instances where you ever paid restitution or served probation in lieu of being arrested, charged, convicted, or entering a plea (whether a plea of guilty or no contest). Any and all non-traffic violations must be reported in their entirety on Law Violations Form (BE-008), regardless of when they occurred.</p> <p>Question 23: While in the military, were you ever court-martialed or the subject of a non-judicial punishment? You must disclose each instance however adjudicated, whether or not the charge and the plea or conviction differ, whether arrest, judgment, conviction, or sentence has been withheld or expunged, or the record sealed. Include instances where you ever paid restitution or served probation in lieu of being arrested, charged, convicted, or entering a plea (whether a plea of guilty or no contest). Any and all non-traffic violations must be reported in their entirety on Law Violations Form (BE-008), regardless of when they occurred.</p> <p>Question 24: Have you ever been offered or granted immunity to testify in any grand jury proceeding, criminal action, or criminal proceeding?</p> <p>Question 27: Have you ever been adjudged liable or entered into a settlement agreement in a proceeding involving a claim of fraud, conversion, breach of fiduciary duty or legal malpractice, or are any such proceedings pending?</p>	<p>Question 31(a): Have you had any debts of \$1,000 or more (including credit cards, charge accounts, and student loans) which have been more than 90 days past due within the past ten years?</p> <p>Question 31 (b): Have you had a credit card or charge account revoked or charged off within the past ten years?</p> <p>Question 31(c): Have you defaulted on any other financial obligation (including student loans) within the past ten years?</p> <p>Question 32(a): Have you, in a personal or professional capacity, within the last ten years, failed to file any local, state or federal income tax return/or report <u>as required by law</u>?</p>
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Appendix C-1

<p>Wyoming [Note: Uses NCBCE Character and Fitness Application]</p>	<p>Question 34: Within the past five years, have you been diagnosed and or treated for dependency upon any drug, including alcohol, or been compelled to submit to an assessment or screening for same?</p>	<p>Question 28: Has any business that you owned, managed, or in which you actively participated in the control or management of, ever been charged with fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, or similar offenses (including conspiracy to conceal, etc.) in any legal proceeding, civil or criminal, or in bankruptcy?</p> <p>Question 29: Are you or have you ever been a party to an small claims or civil action? (Omit probate and family law matters.)</p> <p>Question 35: Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner? If you answer 'yes,' please provide an explanation on Page 12.</p>	<p>Question 32(b): Have you, within the last ten years, in a personal or professional capacity, failed to pay any taxes pursuant to local, state, or federal law?</p> <p>Question 32(c): Have you, within the last ten years, had tax liens filed against you or your property?</p>	
	<p>NCBE</p>	<p>NCBE</p>	<p>NCBE</p>	<p>Bar application</p> <p>Rules governing admission to the Wyoming bar</p>



**NEW YORK
CITY BAR**

**COMMENT ON AUGUST 13, 2019 REPORT BY THE NEW YORK STATE BAR
ASSOCIATION WORKING GROUP ON ATTORNEY MENTAL HEALTH:**

**“THE IMPACT, LEGALITY, USE AND UTILITY OF MENTAL DISABILITY
QUESTIONS ON THE NEW YORK STATE BAR APPLICATION”**

The New York City Bar Association supports eliminating Question 34, the mental health-related question, in the NYS Bar Application. The question penalizes law students with disabilities who have the fitness and character for admission to the bar (which can be fully evaluated through other channels such as interviews, academic records, and background checks), and is not sufficiently probative considering that the applicant has never practiced law and is without the knowledge or experience to answer the question presented. We do not see a meaningful distinction between this question and a pre-employment inquiry as to an applicant’s disability, which the American with Disabilities Act prohibits. We believe that the question is anachronistic in that it presumes that a disability, and particularly a mental health condition, is a defect of character rather than a medical condition that does not necessarily impair an individual’s performance of work-related duties. We are mindful that the legal profession has well-above average instances of substance use and dependence. The question subtly suggests to applicants to the bar that they should not reveal mental or emotional conditions or challenges, which we believe makes attorneys more likely to self-medicate through substance use, to the detriment of themselves, their families and clients, and the legal profession generally.

We applaud and greatly appreciate the work of NYSBA’s Working Group on Attorney Mental Health and fully support the recommendations in the report.

October 17, 2019

Roger Juan Maldonado
President, New York City Bar Association

Disability Law Committee
John W. Egan, Chair

Lawyer Assistance Program Committee
Ralph L. Wolf, Chair

Mental Health Law Committee
Karen P. Simmons, Chair



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OF ERIE COUNTY**

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October 15, 2019

Via email to
reportsgroup@nysba.org

Henry M. Greenberg, Esq.
New York State Bar Association
1 Elk Street
Albany, NY 12207

*Re: Impact Legality, Use and Utility of Mental Disabilities Questions
on the New York State Bar Application*

Dear Mr. Greenberg,

The Board of Directors for the Bar Association of Erie County and our Lawyers Helping Lawyers Committee has reviewed "The Impact, Legality, Use and Utility of Mental Disability Questions of the New York State Bar Application."

This letter is submitted in support of the report and recommendation made by the Working Group on Attorney Mental Health of the New York State Bar Association in the report, "The Impact, Legality, Use and Utility of Mental Disability Questions of the New York State Bar Application."

The Working Group's conclusion and recommendation that "mental health inquiries should be eliminated from the application for admission to the Bar of New York State" is fully supported by the Bar Association of Erie County (BAEC).

Thank you to the New York State Bar for championing this issue.

Best Regards,

BRIDGET M. O'CONNELL
President

cc: Kathleen Baxter, Esq., NYSBA General Counsel
Anne M. Noble, Executive Director
David Gutowski, BAEC, LHL Chairman
Pamela Thibodeau, ECBF President



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October 2, 2019

Mr. Hank Greenberg
President
New York State Bar Association
One Elk Street
Albany, NY 12207

Dear President Greenberg:

This letter is submitted in support of the report and recommendation made by the Working Group on Attorney Mental Health of the New York State Bar Association To Review The Bar Admission Questionnaire Mental Health Questions ("Working Group") in the report, "The Impact, Legality, Use and Utility of Mental Disability Questions of the New York State Bar Application."

Members of the Committee on Legal Education and Admission to the Bar ("Committee") have participated in the creation of the Report as members of the Working Group. In addition, the Report, including the recommendation that Question 34 be eliminated, has been presented to the members of the Committee who support the conclusions and recommend that it be submitted to the NYSBA House of Delegates at its November 2019 meeting.

The elimination of mental health questions from the bar application is a positive step that will help reduce stigma around seeking mental health treatment. Law students, and the entire profession, will benefit from this change. Thank you to the New York State Bar for championing this issue.

Sincerely yours,

Larry Cunningham (Associate Dean and Professor, St. John's)
Marta Galan Ricardo (Assistant Dean and Dean of Career Services, Columbia)



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #13

REQUESTED ACTION: Approval of the report and recommendations of the Task Force on the Parole System.

In June 2019, President Henry M. Greenberg appointed the Task Force on the Parole System to study the parole system, with a focus on release practices, revocation of parole, and reincarnation. The Task Force was tasked with identifying problems in the current system and proposing reforms regarding the administration of the parole system and changes in the law.

The Task Force's initial report and recommendations are attached.

The first recommendation deals with the issue of revocation of parole status following a technical violation of the conditions of parole. The recommendation would eliminate mandatory pre-adjudication detention for alleged technical parole violators and substantially reduce the use of incarceration for adjudicated technical parole violators.

The second recommendation addresses the issue of "good time" credits through which parolees can reduce the amount of time they spend on parole if they comply with those conditions.

The third recommendation deals with the number of parole commissioners and consideration of the need for full and fair consideration of the complicated matters that they are called upon to resolve.

The report concludes that these reforms, if implemented, will result in a more efficient and fair parole process.

This report was posted for comment in October 2019. A waiver of the rules for submission of reports was granted to allow timely consideration of the report at the November meetings.

The report will be presented at the November 2 meeting by task force co-chairs Seymour W. James, Jr. and William T. Russell, Jr.

INITIAL REPORT OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON THE PAROLE SYSTEM¹

INTRODUCTION

New York has for many years been viewed as a national leader in criminal justice reform. Among other achievements, the State has dramatically reduced its prison population, closing more than a dozen prisons over the last decade alone;² dismantled its notorious and seemingly invulnerable Rockefeller Drug Laws; raised the age of criminal responsibility and, in recent months, enacted historic reforms to its criminal procedure statutes governing cash bail, pre-trial discovery and speedy trial.³ In tandem with these reforms, crime in the State has declined to historic lows. According to the FBI, reported “Index” crime⁴ in New York declined for the sixth consecutive year in 2018, with 348,267 Index crimes reported. This is the fewest number of crimes reported since statewide reporting began in 1975. The historic low in reported Index crime has resulted in New York’s Index crime rate declining by 23 percent between 2009 and 2018. During that 10-year period, moreover, the violent crime rate in the State decreased 10 percent and the property crime rate declined 26 percent.⁵

A closer look at New York’s criminal justice system, however, reveals that serious deficiencies persist, particularly at the “back end” of the system -- the parole process. The Task Force on the Parole System is conducting a detailed review of parole rules, regulations, practices and procedures in New York and other states, and is in the process of developing recommendations for areas in which the process can be improved.

This initial report of the Task Force focusses on a handful of specific reforms that will result in better decision-making as to whom should be granted parole and when parole should be revoked, reduce the costs associated with the parole process by reducing the number of parolees who are needlessly reincarcerated, and increase public safety by improving the quality of decision-making and enabling parole officers to devote more resources and focus to the parolees most in need of supervision. The report reflects the initial work of a number of subcommittees of the Task Force, whose recommendations have been approved by the full Task Force membership. The first recommendation deals with the issue of revocation of parole status following a technical violation of the conditions of parole. The second recommendation addresses the issue of “good time” credits in which parolees are able to reduce the amount of time they spend on parole if they comply with those conditions. The third recommendation deals with the number of parole commissioners and consideration of the need for full and fair consideration of the complicated matters that they are called upon to resolve.

The work of the Task Force is ongoing and the Task Force intends to submit further reports with additional recommendations for reform as we continue our review and analysis.

I. NEW YORK SHOULD SUBSTANTIALLY REDUCE THE USE OF INCARCERATION IN DEALING WITH TECHNICAL PAROLE VIOLATORS

A. BACKGROUND

A person released from a New York State prison to parole supervision is required to comply with a number of conditions during the period of that supervision. These conditions typically include things such as making all required office reports, paying all required fees and surcharges, refraining from using or possessing illegal drugs, complying with the instructions of the parole officer, and, of course, refraining from any new criminal conduct. Under the State's Executive Law, the failure to comply with *any* condition of parole can lead to the issuance of a warrant for the alleged violator's arrest and, upon execution of the warrant, the immediate reincarceration of the alleged violator pending a parole violation hearing.⁶

As explained below in greater detail, a large number of persons on parole each year are re-incarcerated for minor, "technical," violations of the conditions of their supervision. A "technical" parole violation is one that does not involve the alleged commission of a new crime, but does involve prohibited conduct such as missing a curfew, changing one's residence without approval or failing to attend a mandated program. This longstanding policy of reincarceration is counterproductive and costly, both in human and financial terms, and should be promptly addressed through remedial legislation.

Regardless of the seriousness (or lack thereof) of the alleged violative conduct, as long as "reasonable cause" for the violation exists and the parole officer and his or her senior officer believe the violation is "in an important respect," the accused violator can immediately be jailed and held for 15 days pending a preliminary hearing to determine probable cause (if not waived by the accused), and up to 90 additional days while the alleged violation is adjudicated in the final hearing stage.⁷ No release on recognizance is permitted nor can any amount of bail free an accused parole violator during this adjudication period. In this regard, the Executive Law makes no distinction between accused technical parole violators and those charged with a new felony or misdemeanor. Like any other accused parole violator, the alleged technical parole violator must remain in "remand" status on the violation warrant until the violation charge has been fully resolved. This mandatory remand system means that, even if a hearing officer ultimately decides to return an adjudicated technical parole violator to the community, that person may have spent up to 105 days, and sometimes longer, in jail before being freed.

The Executive Law currently requires that parole violation proceedings be administratively adjudicated by a member of, or a hearing officer designated by, the Board of Parole.⁸ Notably, the law is silent as to the penalties the Board or hearing officer may impose for a purely technical parole violation. Pursuant to regulations adopted by the Board, however, a hearing officer has the discretion to either return an adjudicated parole violator to the community (upon consideration of five enumerated factors⁹) or return him or her to prison by imposing a fixed period of incarceration (a “time assessment”), the minimum and maximum of which are based on the violator’s crime of conviction, type of sentence, and criminal history.¹⁰ This regulatory scheme means that technical parole violators can be sent to prison for the same amount of time -- be it months or even years -- as a parole violator who has engaged in misconduct constituting a misdemeanor or felony offense. Indeed, under the “mandatory minimum” provisions of the existing regulations, a technical parole violator charged, for example, only with a minor curfew or marijuana violation could face a mandatory minimum time assessment of 15 months in prison and a maximum time assessment equal to the remaining number of months or years owed on parole.¹¹

There is no question that parole officers, their supervisors and parole hearing officers are often tasked with making very difficult decisions when persons under supervision recidivate and commit new crimes or otherwise fail to meet their parole mandates, as some invariably will. Many parole officers consider the ability to secure a warrant and return to prison those on parole who fail to comply with parole rules to be an important community supervision tool to incentivize compliance. They point out that many technical violation charges are brought only after repeated warnings and threatened violations have failed. People on parole with frequent drug relapses, they say, are often violated in order to secure drug treatment for them at Department of Corrections and Community Supervision (“DOCCS”) treatment facilities because the person has refused to seek voluntary treatment in the community.

As discussed below, however, there is little or no evidence that the current revocation process for technical parole violators in New York actually enhances public safety or reduces recidivism as intended. A more forceful argument exists that incarcerating people for technical parole violations plays a decidedly negative role in terms of integrating these persons back into the community, and is extremely costly in human and economic terms. These issues raise troubling questions about the fundamental fairness of the process, and strongly support legislative action to substantially reduce incarceration for technical parole violations in New York.

B. INCARCERATING TECHNICAL PAROLE VIOLATORS: THE SCOPE OF THE PROBLEM

In spite of New York’s hard earned reputation for reform in other areas of criminal justice, it is a distinct outlier when it comes to the numbers of people it sends to prison for technical parole violations. It has been reported that New York ranks second highest (after Illinois) in sending technical parole violators back to prison.¹² It is estimated that nearly 40 percent of persons sent to state prison in New York each year are incarcerated not for a new criminal conviction, but for a technical parole violation.¹³ In 2018, the State returned approximately six times as many people on parole to state prison for a technical parole violation

-- nearly 7,500 people, including 1,648 who were re-incarcerated to receive drug treatment -- than for a new criminal conviction.¹⁴ As of March 31, 2019, approximately 4,300 people were incarcerated in New York State prisons for technical parole violations.¹⁵

Because the Executive Law codifies the right of an accused violator to have an administrative violation hearing in the county or city where the arrest warrant is executed, most accused parole violators are detained in local jails during the pendency of the violation proceedings.¹⁶ The practice of arresting and holding large numbers of alleged technical parole violators often, therefore, negatively impacts county jails across the State on both a fiscal and resource level. It is estimated that, in 2018, an average of 1,740 people were incarcerated each day in local jails in New York State on technical parole violations, a five percent increase from 2017.¹⁷ This includes an average of 718 people per day in New York City jails and 1,022 people in county jails across the rest of the State.¹⁸ Although the average daily population in New York City jails fell from approximately 10,900 in 2014 to about 8,400 in 2018, a decline of 23%, the average daily population of persons held for suspected technical parole violations grew from 550 to 650 over that same period, an increase of 20%.¹⁹ It has been noted that the large number of alleged technical parole violators being held at New York City's largest jail, Rikers Island, has impeded the City's ongoing efforts to reduce the Rikers population and, ultimately, close the jail.²⁰

The financial cost to the State and its localities of incarcerating all these technical parole violators is substantial. It has been estimated that, each year, New York State spends approximately \$359 million incarcerating people returned to state prison for technical parole violations,²¹ and that localities across the State, including New York City, spend a total of nearly \$300 million incarcerating these alleged violators while they await disposition of the charges.²²

The human cost of incarcerating thousands of technical parole violators each year in the State's prisons and local jails is enormous. The statutory requirement in New York that persons arrested on a warrant for a technical parole violation be held without bail, sometimes for as long as 105 days or more before being eligible for release, can have devastating consequences for the person charged while having no appreciable positive impact on public safety. In 2015, the average time statewide from the lodging of a parole violation warrant to the completion of the final violation hearing was 61 days -- 67 days in New York City and 58 days in the rest of the State.²³ A more recent, one-day, snapshot of 701 persons held in New York City jails in late November of 2017 for technical parole violations revealed that one-third of those individuals had their parole violation warrants lifted after spending an average of 53 days in jail, while two-thirds were transferred to state prison after an average 60-day stay.²⁴

Even a brief period of incarceration on a technical parole violation -- let alone a period of nearly two months -- can result in the person losing his or her job and housing and can render both them and their families homeless and with no viable source of income. It can also interrupt ongoing community-based treatment services and educational opportunities the person may have been pursuing in order to improve his or her chances of a successful reentry into the community. Further, where a person on parole is fortunate enough to have a partner, parents and/or children, very frequently those family members will count on the paroled person for child care, care of elderly family members and the like. Sending the person back to jail or prison for a technical

parole violation disrupts these vital stabilizers for the person and their family, often with detrimental consequences to the children or other family members of the paroled person who must deal with the trauma of suddenly losing their parent or other family member yet again.

While studies have *not* shown that incarcerating people for violating the conditions of community supervision actually reduces recidivism, they have demonstrated the converse: that long periods of incarceration can be counterproductive by making the reentry process much more difficult.²⁵

[M]any violations [of community supervision] reflect long-standing and chronic behaviors, which can be most effectively addressed with a combination of accountability though fair, quickly imposed responses and incentives and programming that offers motivation to change negative behavior . . . Research indicates that community-based responses are at least as effective in changing behavior and promoting supervision success as jail terms and cost less . . . In fact, one study indicated that jail sanctions can *increase* the likelihood of future revocation, rearrest and reconviction.²⁶

Recent data on the incarceration rate for persons detained on parole violation warrants in New York City jails suggest that the practice of incarcerating, without bail, persons charged with technical parole violations in the City has a profoundly disproportionate impact on African-Americans. A 2018 NYC Open Data²⁷ analysis conducted by Columbia University revealed that, while the incarceration rate for white persons on parole who were detained in New York City jails was 1.30 per 100,000 white New York City residents on January 18, 2018, the rate for African-Americans was 16.09 per 100,000 African-American residents of the City.²⁸ Based on this analysis, African-Americans on parole in New York City are 12.4 times more likely to be detained for a parole violation than a white person on parole.²⁹ Given that in 2018, an average of 718 people were incarcerated in New York City jails each day on technical parole violations,³⁰ it can be assumed that the racial disparities among the City's overall parole violation jail population similarly impacted the subset of alleged violators charged with technical parole violations.

C. HOW NEW YORK AND OTHER STATES ADDRESS TECHNICAL PAROLE VIOLATORS

New York has taken steps in recent years to try to reduce the population of people with parole violations in its local jails and prisons. In 2015, for example, DOCCS introduced a pilot program in Manhattan and Rochester, called “Recidivism Elimination Supervision Teams,” focused on reducing recidivism and parole violations through more intensive supervision of higher-risk persons following their release from prison, along with “swift and certain” responses to parole violations.³¹ In 2014, the State created the Council on Community Re-entry and Re-integration to address barriers that formerly incarcerated persons face upon re-entering the community.³² And, in January of this year, the Parole Board proposed amendments to its regulations to, among other things, eliminate consideration of a parole violator’s underlying crime of conviction and criminal history in determining the length of any time assessment imposed for the violation, and create a list of “mitigating” and “aggravating” factors that must be

considered by the hearing officer in determining the disposition following a parole revocation.³³ In addition, New York City and State officials have been working together to explore ways to reduce unnecessary delays in the parole violation hearing process.³⁴ While these efforts are worthwhile, and some may even have had a marginal impact on the number of alleged technical parole violators being incarcerated in the State,³⁵ they all fail to directly address the statutory scheme that authorizes the immediate and extended incarceration of technical parole violators, both pre- and post-adjudication.

As New York continues to incarcerate large numbers of its alleged and adjudicated technical parole violators, other states have adopted common sense reforms, such as graduated sanctions and incarceration caps for technical and other violators of community supervision, that can serve as a roadmap for addressing this problem in New York. As part of the Justice Reinvestment Initiative,³⁶ for example, 17 states have instituted caps on the amount of time imposed for violations of parole and/or probation; 18 states have established or expanded their laws governing “earned discharge” from community supervision and 22 states have authorized “graduated responses” to violations of community supervision.³⁷

According to a recent Report from Pew Charitable Trusts, three states, in particular, have adopted successful “research-based” reforms to their procedures governing technical violations of probation and parole:

Across the country, policymakers are adopting [community corrections] reforms that prioritize scarce resources for higher-risk individuals while removing lower-risk people from supervision caseloads. Changes include shorter terms, earned compliance credits, and reduced or inactive supervision . . . Some states also reduced revocations for technical violations and provided a range of options for addressing noncompliance. After South Carolina adopted graduated sanctions, compliance revocations decreased 46 percent, and people under supervision were 33 percent less likely to be incarcerated or reincarcerated than before the reforms. Similarly, after Louisiana implemented a 90-day cap on jail or prison terms for first-time technical violations, length of incarceration declined by 281 days and new-crime revocations fell 22 percent. And after Missouri adopted earned discharge—in which probationers and parolees accrue time off their sentences for compliance—supervision terms dropped by 14 months, the supervised population fell 18 percent, average caseloads decreased 16 percent, and recidivism rates did not change.³⁸

New York has itself codified the use of “graduated sanctions” for parole violators, at least to the extent of directing the Chair of the State Board of Parole to “consider the implementation of a program of graduated sanctions” and requiring that any program so implemented “include various components including the use of alternatives to incarceration for technical parole violations.”³⁹ In view of the large number of adjudicated technical parole violators currently serving time assessments in New York State’s prisons, however, it would appear any existing program of “alternatives to incarceration” for technical parole violators in the State is woefully underutilized, ineffectual, or both.

D. RECOMMENDATIONS FOR REFORM

1. ELIMINATE MANDATORY PRE-ADJUDICATION DETENTION FOR ALLEGED TECHNICAL PAROLE VIOLATORS.

Governor Andrew Cuomo, in his 2018 State of the State address, noted that, “[t]hirty-three percent of individuals released [from prison] in 2012 were returned to prison within three years due to technical parole violations. New York jails and prisons should not be filled with people who may have violated the conditions of their parole, but present no danger to our communities.”⁴⁰ The Task Force wholeheartedly agrees with this sentiment, and believes that the laws of the State governing technical parole violators should be changed in the following ways to reflect it:

First, the Task Force recommends that the Legislature amend the Executive Law to eliminate the authority to issue a warrant for any person believed to have committed only a technical parole violation (*i.e.*, a violation that does not include the alleged commission of a new crime). For all technical parole violations, the Task Force recommends that a written “notice of violation” be issued and served on the alleged violator in lieu of a warrant. The sole exception to this requirement would be where the technical violation charges the person with willfully failing to appear in response to a written notice of violation.

Second, the Task Force recommends that, where a warrant is issued and executed for the alleged willful failure to appear in response to a written notice of appearance, the alleged violator, within 24 hours of execution of the warrant, be brought before a local criminal court for a recognizance hearing where the accused violator would be entitled to representation by counsel, and to the assignment of counsel if the alleged violator is unable to afford representation.⁴¹ At the recognizance hearing, the burden would be on the State to prove that the warrant was properly issued. At a minimum, this would include proof that the alleged violator’s failure to appear in response to the written notice of appearance was, in fact, willful.

Together, these two proposed reforms would replace New York’s current “hair-trigger” approach to accused technical parole violators – an approach that calls for the immediate arrest and detention for up to 105 days, without bail, of the accused – with a model that is less punitive and far more likely to yield a positive outcome, both for the person under supervision, his or her family and the community at large. While the proposed model would permit the pre-adjudication incarceration of those who willfully fail to appear in response to a notice of violation, it would provide appropriate Due Process protections, in the form of prompt judicial review and the assistance of counsel, to ensure that any such pre-adjudication incarceration is in accordance with law.

2. SUBSTANTIALLY REDUCE INCARCERATION FOR ADJUDICATED TECHNICAL PAROLE VIOLATORS.

By dramatically reducing the number of alleged technical parole violators held in local jails pending adjudication of the violation, the above-described reforms would almost certainly

have the effect of reducing the number of such violators returned, post-adjudication, to state prison. The Task Force believes that allowing persons charged with technical parole violations to remain in the community while their alleged violation is adjudicated will significantly increase the chances that an appropriate, non-incarceratory sanction will be imposed should the violation be sustained. The Task Force further believes that allowing lengthy periods of incarceration post-adjudication for persons whose violation involves no new criminal conduct is counterproductive in that it can severely disrupt or reverse progress made in reentry up to that point, while doing little or nothing to advance public safety.

With these concepts in mind, the Task Force makes the following additional recommendations:

a. PERMIT THE REINCARCERATION OF ADJUDICATED TECHNICAL PAROLE VIOLATORS ONLY WHEN ALTERNATIVES TO INCARCERATION HAVE BEEN FULLY EXHAUSTED.

First, the Task Force recommends that the Executive Law be amended to provide that a penalty of reincarceration (*i.e.*, a “time assessment”) may not be imposed on any technical parole violator until all reasonable alternatives to a prison sanction have been exhausted. The amendment should specify that graduated sanctions be utilized, and the least restrictive sanctions imposed, to bring the violator into compliance. Such graduated sanctions could include, for example, participation in a community-based drug, mental health, or cognitive behavioral treatment program, as well as a prohibition on the violator’s garnering additional “earned time credits” for a fixed period following an adjudicated violation of parole.⁴²

b. LIMIT TIME ASSESSMENTS FOR TECHNICAL PAROLE VIOLATORS TO NO MORE THAN 30 DAYS WITH THE POSSIBILITY OF INTERMITTENT SERVICE.

Second, the Task Force recommends that the Executive Law be amended to provide that, where all reasonable alternatives to reincarceration have first been exhausted for an adjudicated technical parole violator, a time assessment of up to 30 days may be imposed, with the possibility of intermittent service (*e.g.*, weekends or overnight only) for those violators with employment, childcare or educational responsibilities. As noted, a number of other states use so-called “revocation caps” and short periods of incarceration for technical parole violators and ensure that responses to these violations are proportionate to the seriousness of the conduct giving rise to the violation.⁴³ The Task Force recommends that New York follow that trend.

c. CREDIT TIME SERVED IN JAIL OR PRISON PRE-ADJUDICATION TO ANY POST-ADJUDICATION TIME ASSESSMENT IMPOSED.

Third, the Task Force recommends that the Executive Law be amended to provide that, where a “time assessment” is imposed on a technical, or any other, parole violation, the time assessment will commence running on the date that the parole violation warrant was lodged and will be calculated in the same way for all parole violators for whom a time assessment has been

imposed, irrespective of whether the violator is in a local or State correctional facility, and irrespective of whether there are criminal charges pending against the parole violator.

Although this is the current practice for parole violations, the Parole Board has, in its recently proposed amendments to the regulation governing the calculation of time assessments (*i.e.*, 9 NYCRR 8002.6(b)), eliminated this practice by moving the date on which a time assessment "commence[s] running" from the date the parole violation warrant was lodged to the date on which the final parole revocation hearing is completed. The adoption of the proposed regulation, the Task Force believes, would increase the terms of incarceration served for all adjudicated parole violations. This would be a significant step-backward in our goal of reducing incarceration for parole violations overall, including technical parole violations, in New York.⁴⁴

d. REINVEST COST SAVINGS IN ALTERNATIVES TO INCARCERATION, COMMUNITY-BASED BEHAVIORAL HEALTH ASSESSMENTS AND TREATMENT AND SUPPORTIVE HOUSING.

Finally, the Task Force recognizes that many technical parole violations are the result of relapses by persons with substance use disorders. These relapses often lead to failed drug tests, missed appointments, lost employment, failures to appear and absconding from parole supervision. Similarly, a significant number of persons charged with technical parole violations suffer from serious mental illness. The Task Force therefore recommends that the significant cost savings to the State that will result from reducing incarceration for technical parole violators be reinvested in alternatives to incarceration, community-based opportunities for behavioral health assessments and treatment and supportive housing for persons released from prison. This recommendation is consistent with New York's approach to treating substance use disorders and mental illness as public health conditions which should be addressed with medication, treatment and/or other appropriate services.

II. NEW YORK SHOULD INSTITUTE A SYSTEM OF "EARNED GOOD TIME CREDITS" TO INCENTIVIZE GOOD BEHAVIOR WHILE ON PAROLE

Over the past quarter-century, criminal justice researchers have identified a core group of "evidence-based" strategies for community supervision that can significantly reduce recidivism, and thereby increase public safety, while at the same time reducing costs:

An emerging consensus among criminal justice professionals supports a series of strategic shifts away from the current . . . time-based, isolated, and enforcement-minded model to one that . . . [f]undamentally change[s] the purpose of supervision from punishing failure to promoting success. The goal should be to help people repair the harm they have caused and become self-sufficient, law-abiding citizens, rather than simply enforcing rules set by courts and parole boards, catching violations and imposing penalties, including incarceration. . . . Striking the right balance between accountability for violations and new crimes, and incentives for compliance and progress can improve outcomes.⁴⁵

A recent report from the Harvard Kennedy School Executive Session on Community Corrections similarly recommends that community corrections systems move “from time-based to goal based.”⁴⁶ The report notes that,

[s]ince most reoffending occurs within the first year or two of supervision, resources should be “frontloaded” to that period to maximize public safety impact. Beyond then, when rearrest rates drop, continued supervision has less potential to depress criminality, and it partially deprives people of their full liberty unnecessarily while stretching community corrections resources.⁴⁷

Consistent with the research showing that most people who reoffend after leaving prison do so within a year of release,⁴⁸ New York State’s own offender data indicate that the risk of re-arrest is highest during the first few months after release on parole, significantly declines between the six and twelfth months, and continues to decrease through to the thirtieth month following release.⁴⁹

It has been noted that, in addition to reducing the overall length of supervision terms, the granting of so-called “earned early discharge” from supervision “can serve to further focus resources on those most in need of supervision while incentivizing meritorious behavior by those under supervision.”⁵⁰ As discussed above, a 2017 analysis by the Pew Charitable Trusts of 35 states participating in the federal Justice Reinvestment Initiative revealed that in 18 of those states persons on community supervision can shorten their periods of supervision up to 30 days for 30 days of compliance.⁵¹ The Task Force believes that New York should join these other states by creating a statutory system of “earned time credits” to incentivize good behavior while on parole, consistent with the following recommendation. This is similar, in effect, to the current practice of “good time” reductions in prison terms for incarcerated individuals who can have their maximum sentence reduced by one third for good behavior.

RECOMMENDATION FOR REFORM:

ESTABLISH A SYSTEM OF “EARNED TIME CREDITS” FOR PERSONS ON PAROLE SUPERVISION

The Task Force recommends that the Executive Law be amended to create a system whereby persons on parole supervision would automatically reduce the period of supervision required to be served as a reward for periods of time spent under supervision with no parole violations. Under this proposal, persons would be prohibited from accruing additional earned time credits: (1) during any period of incarceration resulting from a parole violation or a new crime; and (2) for a specified period following any final adjudication of a parole violation.

The Task Force further recommends that, upon enactment of such legislation, the new system of “earned time credits” be applied retroactively to the date the person’s community supervision began. This would ensure that those who, despite having no statutory “earned time credit” incentive for their good behavior, nonetheless complied with their parole conditions, would be able to reap the benefits of a reduction in their period of supervision.

The Task Force believes that the above-described system of “earned time credits” would, among other things, strongly encourage compliance with conditions of parole, discourage absconding from supervision and significantly reduce parole officers’ caseloads, thereby allowing them to focus their time and programmatic resources on those most in need of support and services.

III. NEW YORK SHOULD INCREASE THE NUMBER OF PAROLE COMMISSIONERS

The New York State Board of Parole is required by law to consist of “not more than nineteen members appointed by the governor with the advice and consent of the senate.”⁵² The board is responsible for hearing and adjudicating decisions about parole release in 10,000-12,000 cases annually.⁵³

The schedule for parole interviews follows a set routine—commissioners may not have any cases for weeks, but then sit as a panel of two or three members and hold an average of forty parole interviews in one week.⁵⁴ The commissioners either travel to the prison where people are due for their parole interviews, or, more commonly, to a remote office near the prison where they conduct the interviews by video conference.⁵⁵ Ideally, the commissioners have meaningful time before each interview to review the parole applicant’s file, which typically consists, *inter alia*, of the applicant’s statement to the parole board; information about the offense that resulted in his or her incarceration; a report of his or her positive achievements during their time in prison; a list of any infractions or disciplinary issues; statements from the district attorney who prosecuted the case, the defense attorney who represented the applicant, and the judge who presided over the case; and an assessment score of his or her risk to society if released; among other materials. These case files are transported by staff from the prison where the individual is incarcerated to the remote office where the commissioners will conduct the video conference interview. Usually, the files arrive the day before the interviews commence and there are so many of them as to make a thorough review of each one near impossible. As a result, commissioners are shortchanged of the opportunity to conduct a full review of the file before the interview. To manage the workload, one parole commissioner is designated as the lead for reviewing the file and conducting the parole interview among the panel of two to three commissioners.⁵⁶

Despite the Parole Board’s best efforts to allocate resources and manage the commissioners’ workload of 10,000-12,000 interviews in one year, each and every one of these interviews are not receiving the kind of time, attention, and review that such a critical decision deserves. The importance of the interview—to ascertain who can and should be safely released back to the community—should be reflected in the process. A parole board interview where one or two of the commissioners may not have had time to fully review a file, or that lasts only five

or ten minutes, or that is impeded by bad technology, does not fulfill basic expectations of due process and fairness.

The Task Force strongly believes that the Parole Board's mandate for careful and thorough consideration of each and every case before them can be better achieved by increasing the number of sitting commissioners which will permit more time for preparation and review, more face-to-face interviews, and more time for each interview conducted.

RECOMMENDATION FOR REFORM:

INCREASE THE NUMBER OF SITTING COMMISSIONERS TO 30 AT ANY GIVEN TIME

When fully staffed with nineteen commissioners, the case-to-commissioner ratio for 10,000 cases a year would be 526 cases per commissioner, a shockingly high caseload considering the importance and gravity of the release decision. Other states, including Florida, Washington, New Mexico, and New Jersey, all have commissioner to case ratios well under 500. In New Mexico and Washington, the ratio is closer to 250-300 cases per commissioner. The Vera Institute of Justice recently researched commissioner to case ratios in 24 states where information about the number of hearings annually and appointed commissioners or parole board members was readily available. The ratio was a simple analysis of the number of hearings divided by the number of known commissioners/board members. To determine ratios, an assumption was made that parole hearings would consist of only one commissioner, a practice common in some -- but not all -- states. In states that have multiple commissioners participate in a hearing or interview—such as in New York—the number of total hearings attended by each commissioner is far greater than the calculated ratio. In short, these ratios are a conservative estimate of the true number of hearings that each commissioner or board member is required to prepare and attend.

In practice, even the 526 cases per commissioner ratio has been greatly exceeded in New York. In recent years, the parole board was staffed with only twelve commissioners at any given time and was responsible for 12,000 interviews annually, at a ratio of 1,000 cases per commissioner.⁵⁷ The reality is that individual commissioners participate in well over a thousand cases a year, as the parole board requires at least two, preferably three, commissioners at each interview.⁵⁸ To be clear, it is consistent and better from a due process standpoint to have multiple commissioners attend and adjudicate decisions for parole release and New York should continue this practice. However, because of staffing shortages, until recently many parole interviews were only attended by two members of the board, with no third member to break a tie if one commissioner voted for and the other against release. In August 2017, Parole Board Chair Tina Stanford committed to ending the use of two-person boards, yet anecdotal evidence suggests that this practice remained widespread until very recently and even now still occurs occasionally.⁵⁹

Two-person panels are especially time-consuming and inefficient, as a deadlocked decision voids the parole interview and another new interview must be scheduled again for the same individual.⁶⁰ Increasing the Parole Board to 30 should eliminate the need for two person interviews and enable the Commissioners to conduct in person interviews more frequently.

New York appointed five new commissioners in the summer of 2019, which, with the resignation of one sitting commissioner, brought the current total to sixteen commissioners to hear and adjudicate approximately 10,000 cases this coming year.⁶¹ This brings the ratio of commissioners to cases in New York to 625, and still leaves three seats unfilled.⁶² To get New York's case to parole commissioner ratio to a standard that would allow for effective and fair adjudication, New York should add at least eleven more positions beyond the nineteen provided for under Executive Law § 259-b. The cost of adding these commissioner positions would not be significant in comparison to the overall State budget and would be more than offset by the cost savings that would be realized through the implementation of the additional reforms discussed above.

* * *

The Task Force believes that these initial reforms, if implemented, will result in a more efficient and fair parole process that will lead to better parole-related decision-making, facilitate the devotion of resources where they are most needed, reduce overall costs, and increase public safety.

APPENDIX A

The following individuals serve on the Task Force on the Parole System:

Daniel R. Alonso, Esq.
John P. Amodeo, Esq.
Hon. Ellen N. Biben
Catherine A. Christian, Esq.
David C. Condliffe
Kwesi Ako Dash, Esq.
Norman P. Effman, Esq.
Eric Gonzalez, Esq.
Andrew L. Herz, Esq.
Hon. Kathleen B. Hogan
Hon. David R. Homer
Seymour W. James, Jr., Esq. (co-chair)
Christopher Charles Bela Janszky, Esq.
Hon. Barry Kamins
Timothy J. Koller, Esq.
Hon. Leslie G. Leach
Sherry Levin Wallach, Esq.
Wanda Lucibello, Esq.
Lorraine McEvilley, Esq.
Denise E. O'Donnell, Esq.
Insha Rahman, Esq.
Thomas J. Richards, Esq.
William T. Russell, Jr., Esq. (co-chair)
P. David Soares, Esq.
Jean T. Walsh, Esq.
Hon. George A. Yanthis
Prof. Steven M. Zeidman

¹ The members of the Parole Reform Task Force are listed in Appendix A.

² *The Problem With Parole*, New York Times (editorial), 2/11/18. Available at: <https://www.nytimes.com/2018/02/11/opinion/problem-parole.html>. See also, *Less is More in New York: an Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, at 2. Available at: https://justicelab.columbia.edu/sites/default/files/content/Less_is_More_in_New_York_Report_FINAL.pdf

³ New York Law Journal, 4/1/19. Available at: <https://www.law.com/newyorklawjournal/2019/04/01/lawmakers-reshape-ny-criminal-justice-system-with-varied-reactions-from-das-defenders/>

⁴ “Index crimes” are the eight major categories of serious crime reported annually by the FBI. The crimes are divided into two categories: “violent crimes” and “property crimes.” The eight Index crimes are: aggravated assault, forcible rape, murder, robbery, arson, burglary, larceny-theft, and motor vehicle theft.

⁵ New York State Crime Report, DCJS, May 2019, at 1. <https://www.criminaljustice.ny.gov/crimnet/ojsa/Crime-in-NYS-2018.pdf>

⁶ See, Executive Law section 259-i(3). The Parole Board’s regulations require the field parole officer to have “reasonable cause to believe” that the person has violated one of more conditions in an “important respect,” and also require the parole officer to conference and seek approval from their senior parole officer before issuing the warrant for retaking and detention. See, 9 NYCRR section 8004.2.

⁷ See, Executive Law section 259-i(3); see also, 9 NYCRR sections 8005.6 and 8005.17.

⁸ See, Executive Law section 259-i(3)(c)(i) and 259-i(3)(f)(ii).

⁹ See, 9 NYCRR 8005.20(c)(4), which provides as follows: “(4) For the following violators, after making a finding that the releasee’s program needs could be appropriately addressed in the community with parole supervision and that restoration to supervision would not have an adverse effect on public safety or public confidence in the integrity of the criminal justice system, the hearing officer may order, or in the case of a violator serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, may recommend to the board of parole that the violator should be restored to supervision with appropriate special conditions. These violators are defined as: (i) a violator who is the custodial parent of a minor child, has actually been the primary care-giver for at least 12 months, or in the case of an infant under 12 months old since the birth or adoption of the child, prior to having been incarcerated on the parole violation warrant, and who if restored to supervision has a stable residence and means of support so that he or she would continue to care for the child; or (ii) a violator whose parole supervision prior to the behavior which resulted in issuance of the warrant is deemed acceptable by the division, who has a stable residence and prior employment; or (iii) a violator who has absconded from supervision and who voluntarily returns to supervision; or (iv) a violator with a new pending criminal charge whose new charge is being disposed of by referral to any alternatives to incarceration (“ATI”) program, provided that a condition of being restored to parole supervision will be that the violator must successfully complete the ATI program; or (v) a violator who would otherwise be a Category 2 violator but whose medical or psychiatric needs cannot be met in the Willard drug treatment campus program.”

¹⁰ See, 9 NYCRR section 8005.20(c)(1)-(5). As noted at page five of this Report, the Parole Board has proposed amendments to section 8005.20 to, among other things, eliminate consideration of a parole violator’s underlying crime of conviction and criminal history in determining the length of any time assessment imposed on the violation.

¹¹ See, 9 NYCRR 8005.20(c)(1).

¹² *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, at 4. [citing, United States Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2016 (April 2018), Appendix Table 7, BJS, 2016]. Available at: <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>

¹³ *Id.*, at 1.

¹⁴ *Id.*, at 4. See also: <http://www.doccs.ny.gov/Research/Reports/2019/Admission%20Releases%20Report%20Calendar%20Year%202018.pdf>

¹⁵ *Id.*, at 9 [citing DOCCS' *Inmates Under Custody: Beginning 2008* online Report: Available at: <https://data.ny.gov/Public-Safety/Inmates-Under-Custody-Beginning-2008/55zc-sp6m>].

¹⁶ See, Executive Law section 259-i(3).

¹⁷ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9.

¹⁸ *Id.*, at 9, 19 (fn. 45).

¹⁹ *Who Pays for the Rising Number of State Technical Parole Violators in NYC Jails?*, New York City Independent Budget Office, 8/27/19. Available at: <https://ibo.nyc.ny.us/cgi-park2/2019/08/who-pays-for-the-rising-number-of-state-technical-parole-violators-in-nyc-jails/>

²⁰ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 15.

²¹ *Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets*, Council of State Governments Justice Center. Available at: <https://csgjusticecenter.org/confinedandcostly/?state=NY>

²² *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9.

²³ New York State Board of Parole, 2015 Legislative Report, at 16. Available at: <http://www.doccs.ny.gov/Research/Reports/2015/2015%20Parole%20Board%20Leg%20Report%20-%20Final.pdf>.

²⁴ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 5, 8. Available at: https://justicelab.columbia.edu/sites/default/files/content/Less_is_More_in_New_York_Report_FINAL.pdf.

²⁵ *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, Pew Charitable Trusts, July 2019, at 2. Available at: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations> .

²⁶ *Id.*, at 8; emphasis added.

²⁷ <https://opendata.cityofnewyork.us/>

²⁸ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 5-6.

²⁹ *Id.*, at 6.

³⁰ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9, 19 (fn.45).

³¹ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 6.

³² *Id.*

³³ At the time of this Report, the proposed amendments are still under consideration. They are available at: http://www.doccs.ny.gov/RulesRegs/20190130_CCS-05-19-00006.pdf.

³⁴ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 6.

³⁵ According to the NYS Division of Criminal Justice Services, the average number of technical parole violators held in local jails across the State in August of 2019 (1,630) was 8.7 percent lower than in August of 2018 (1,786). Still, the average number of technical parole violators held in local jails statewide during that 13-month period was 1,737 per month. The average number of technical parole violators held in New York City jails in August of 2019 (675) was 2.9 percent lower than in August of 2018 (695), and the average number of technical parole violators held in New York City jails during that 13-month period was 721 per month. See, Division of Criminal Justice Services, *Jail Population in New York State, Average Daily Census by Month* (as of 9/6/19), at 1. Available at: https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf

³⁶ Launched in 2006 by the Bureau of Justice Assistance of the U.S. Department of Justice (BJA), the Justice Reinvestment Initiative is a public-private partnership, involving BJA, the Council of State Governments Justice Center, the Pew Charitable Trusts, the Crime and Justice Institute and other organizations, aimed at “provid[ing] policymakers with resources and tools to increase public safety, hold offenders accountable, and control corrections costs, resulting in a more effective justice system.” https://www.bja.gov/Programs/jri_background.html. See also, *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 1. Available at: <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/11/33-states-reform-criminal-justice-policies-through-justice-reinvestment>.

³⁷ *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 2. Available at: <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/11/33-states-reform-criminal-justice-policies-through-justice-reinvestment>.

³⁸ *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, Pew Charitable Trusts, September 2018, at 15.

³⁹ Executive Law section 259-c (12); emphasis added.

⁴⁰ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 6.

⁴¹ The Task Force recognizes that, especially in the more rural, upstate counties, it may in some cases be difficult to commence a recognizance hearing, with counsel present for the accused, within 24 hours of execution of the parole violation warrant. But the Task Force strongly believes that, for an alleged violation of a condition of supervision that involves no allegation of new criminal conduct, an expeditious recognizance hearing before a judge with the assistance of counsel for the accused is indispensable.

⁴² A more in-depth discussion of “earned time credits” for persons on parole appears in Section II of this Initial Report.

⁴³ *See*, *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, *supra.*, at 2; and *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, Pew Charitable Trusts, *supra.*, at 15. *See also*, *Levers of Change in Parole Release and Revocation*, Robina Institute of Criminal Law and Justice, 2019, at 23-24.

⁴⁴ The Board’s proposed amendment to 9 NYCRR 8002.6(b) is available at: http://www.doccs.ny.gov/RulesRegs/20190130_CCS-05-19-00006.pdf.

⁴⁵ *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, Pew Charitable Trusts, September 2018, *supra.*, at 15.

⁴⁶ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 7.

⁴⁷ *Id.*

⁴⁸ *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, Pew Charitable Trusts, July 2019, *supra.*, at 4.

⁴⁹ *The Future of Sentencing in New York State: Recommendations for Reform*, New York State Commission on Sentencing Reform, 1/30/09, at 142.

⁵⁰ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 7.

⁵¹ *Id.*, citing *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 2.

⁵² New York State Executive Law § 259-b. State board of parole; organization.

⁵³ WNYC, *Prisoner Advocates Say Parole Board is Understaffed and Overwhelmed*, Aug. 14, 2018, <https://www.wnyc.org/story/prisoner-advocates-say-parole-board-understaffed-and-bias/>.

⁵⁴ The NYS Department of Corrections and Community Supervision publishes the monthly calendar for parole board interviews on its website, <http://www.doccs.ny.gov/calendar.html>.

⁵⁵ Testimony of Parole Board Chair Tina Stanford to the New York State Bar Association Parole Reform Task Force, August 14, 2019.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ NYS Department of Corrections and Community Supervision, Board of Parole, “Making Release Determinations,” <http://www.doccs.ny.gov/ParoleBoard.html>.

⁵⁹ Parole Preparation Project and Release Aging People in Prison Campaign, *New York State Parole Board: Failures in Staffing and Performance*, 9 (Aug. 2018), <http://rappcampaign.com/wp-content/uploads/NYS-Parole-Board-August-2018.pdf>.

⁶⁰ *Id.*

⁶¹ See NYS Department of Corrections and Community Supervision, Board of Parole, “Current Parole Board Members,” <http://www.doccs.ny.gov/PB-Commissioners.pdf>.

⁶² Statement from the Release Aging People in Prison Campaign, *Parole Justice Advances as Legislature Closes—But Not Enough*, June 19, 2019, <http://rappcampaign.com/nys-parole-board-staffing-a-nominee-to-reject/>.



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #13

To supplement the materials in your package, attached is a letter from the Committee on Mandated Representation indicating support for the recommendations of the Task Force on the Parole System.



COMMITTEE ON MANDATED REPRESENTATION

ROBERT S. DEAN, CHAIR
Center for Appellate Litigation
120 Wall Street – 28th Floor
New York, New York 10005
212.577.2523, ext. 502
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October 18, 2019

Dear Executive Committee:

The Committee on Mandated Representation has reviewed the report issued by the Parole Reform Task Force, and while we support the reforms recommended in the report, we seek further clarification on their proposed implementation and effect on current Executive Law, state regulations, and Penal Law Sections.

We support eliminating consideration of the instant offense in determining a time assessment. The instant offense is a past-focused event, and if that event does not affect a violator's current violative behavior, then its consideration may amount to a re-sentencing of the violator. Nevertheless, 9 NYCRR 8005.20 (1) designates as Category 1 violators those individuals who have certain, enumerated instant offenses. We would recommend also changing 9 NYCRR 8005.20 (1) to conform to this Task Force's recommendation.

We also agree that pre-adjudication detention without a hearing runs afoul of due process. While we support the concept of a notice of violation, we encourage the Task Force to explore the process following the issuance of a notice of violation. If that process continues to include local jails as the venue for final revocation proceedings, then we propose that any hearings held for failure to respond to a notice of violation be held in the corresponding County Court or before a lawyer judge (based on the contents of the April 2018 Report presented by the Criminal Justice Section and adopted by the House of Delegates).

We also agree that alternatives to incarceration should be exhausted before a time assessment is imposed. We would like the Task Force to develop where a time assessment would be served if it has caps or is shortened. Current law mandates that a parole violator be returned to DOCCS custody (a correctional facility) upon adjudication of final revocation proceedings, but ordering violators to serve short sentences or intermittent sentences in DOCCS facilities might not be administratively feasible. It would not be fair to pass the costs of incarcerating those "state inmates" onto counties, either, even if only for a short time or intermittently. The law does not allow for that. We also would like the Task Force to explore the feasibility of transferring state savings into private, community-based organizations for the purpose of assisting parole violators. Alternatively, we would like the Task Force to explore the feasibility of training parole officers in assisting parolees with seeking private, community-based programs to address mental health and substance abuse behaviors before they become violative conduct.

We support that jail time credit run from the date that a parole warrant is executed, as it currently does under Penal Law § 70.25. We oppose the pending proposal that no jail time credit be given to a parole violator detained on a warrant while their violation charges remain pending.

We support Earned Time Credit. We understand that parolees may be awarded early release from parole supervision, currently; however, such release often is at the parole officer's discretion. We encourage the adoption of codified standards for the awarding and loss of Earned Time Credit.

We agree that Parole Board Commissioners should dedicate more time and pay more attention to each inmate who appears before them for consideration of parole release. Increasing the number of commissioners may achieve this. Nevertheless, we also recommend changing the information upon which those commissioners rely when considering release (such as eliminating the instant offense as a factor under consideration), or enhancing their training on the factors to be considered in release. Alternatively, a move toward determinate sentencing for all crimes would reduce the amount of inmates appearing for parole release; therefore, it may eliminate the need to increase the number of commissioners.

Finally, our Committee would support attorney representation at parole release hearings.

Very truly yours,

A handwritten signature in black ink that reads "Robert S. Dean". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Robert S. Dean
Chair, Committee on Mandated Representation

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 13-14, 2019**

PRESENT: Members Karina E. Alomar, Mark A. Berman, Earamichia Brown, John P. Christopher, Norman P. Effman, Donna England, Margaret J. Finerty, Evan M. Goldberg, Henry M. Greenberg, Richard M. Gutierrez, Erica M. Hines, Drew Jaglom, Scott M. Karson, Sherry Levin Wallach, Richard C. Lewis, Michael A. Marinaccio, Michael Miller, Domenick Napoletano, Marne L. Onderdonk, Aimee L. Richter, William T. Russell, Jr., Robert T. Schofield, IV, Diana S. Sen, Rona G. Shamoan, Carol A. Sigmond, Tucker C. Stanclift, Mark T. Starkman, David H. Tennant, Jean Marie Westlake.

Guests: James A. Barnes, Donald C. Doerr, Glenn Lau-Kee, Camille Mackler, David P. Miranda, Hon. Karen K. Peters, Prof. Sarah Rogerson, Thomas E. Schimmerling.

Mr. Greenberg presided over the meeting as President of the Association.

1. Mr. Greenberg called the meeting to order, and John Christopher, Donna England, Michael Marinaccio, Domenick Napoletano, Marne Onderdonk, Diana Sen, and Mark Starkman were welcomed as new members of the Executive Committee.
2. Approval of minutes of meeting. The minutes of the April 12, 2019 meeting and May 31, 2019 conference call were accepted as distributed.
3. Consent Calendar.
 - a. Confirmation of appointments to Audit Committee
 - b. Amendments to stated purpose of Committee on Civil Rights
 - c. Elder Law and Special Needs Section legislative proposal

The consent calendar, consisting of the items listed above, was approved by voice vote.

4. Report of the Treasurer. In his capacity as Treasurer, Mr. Napoletano reported that through April 30, 2019, the Association's total revenue was \$15.5 million, a decrease of approximately \$526,000 from the previous year, and total expenses were \$8 million, an increase of approximately \$37,000 over 2018. The report was received with thanks.
5. Report of staff leadership. Pamela McDevitt, Executive Director; Daniel Weiller, Managing Director of Marketing and Communications; and Victoria Shaw, Senior Director of Attorney Engagement and Retention, highlighted staff efforts with respect to changes being made to technology, marketing initiatives, non-dues revenue, and membership initiatives. The report was received with thanks.
6. Report of President. Mr. Greenberg made a presentation of the "Virtual Bar Center," stressing improvements to the association management system and website to provide better services to members. He also highlighted the information contained in his printed report, a copy of which is appended to these minutes
7. Discussion of Executive Committee liaison responsibilities and duties of Vice Presidents. Mr. Greenberg led a discussion of liaisons' roles in facilitating communication, providing guidance

on policy and procedure, and encouraging sections and committees to undertake projects. He asked liaisons to maintain regular contact with their groups, encourage them to submit reports for consideration by the Executive Committee and/or House of Delegates and comment on reports submitted by other groups, and to be mindful of the need for diversity.

Mr. Greenberg also reviewed the responsibilities of Vice Presidents, as set forth in the Bylaws, to promote relations with local bars and members in their respective districts. He noted the importance of informing local bar leaders, including those of minority and specialty bars, of Association initiatives and encouraged them to advise the Association of local bar concerns.

He encouraged both Executive Committee liaisons and Vice Presidents to make reports to the Executive Committee with respect to items of interest or concern.

8. Report of Lawyer Assistance Committee. Thomas E. Schimmerling, the committee's chair, together with LAP Director Stacey Whitely and Hon. Karen K. Peters, immediate past chair of the Judicial Wellness Committee, presented an informational report reviewing the committee's and the Program's activities during the prior year. The report was received with thanks. The committee then presented an award to Michael Miller for his support of the Program during his presidency.
9. Report and recommendations of Committee on the New York State Constitution. Hon. Karen K. Peters, chair of the committee, outlined the committee's report recommending legislation to amend the State Constitution to permit categories of judges in addition to Court of Appeals and Supreme Court judges to apply for certification to serve beyond the mandatory retirement age of 70. After discussion, a motion was adopted to approve the report and recommendations.
10. Report and recommendation of Committee on Committees. Donald C. Doerr and Carol A. Sigmond, co- chairs of the committee, reviewed the committee's report and recommendations with respect to the operation of 14 committees. After discussion, a motion was adopted to approve the report and recommendations. The co-chairs were asked to work with Glenn Lau-Kee, chair of the Special Committee on Association Structure and Operations, and return in January with recommendations for some potential consolidation/change of mission of several committees.
11. Report of Committee on Continuing Legal Education. James A. Barnes, chair of the committee, together with Katherine Suchocki, Senior Director of Continuing Legal Education, outlined committee initiatives, including the development of a CLE credit tracker and the CLE Online All-Access Pass. The report was received with thanks.
12. Reports and recommendations of Criminal Justice Section.
 - a. Mandatory federal detention. Mr. Stanclift, in his capacity as immediate past chair of the section, outlined a legislative proposal for amendment of a federal statute to give judges discretion to consider permitting defendants to remain free on bail pending sentencing. After discussion, a motion was adopted to approve the proposal.
 - b. Representation of unpopular defendants. Mr. Stanclift reviewed a proposed report and resolution in support of defense attorneys undertaking the representation of unpopular defendants. After discussion, a motion was adopted by a vote of 20-6 to table the report in order to permit time for a more thorough examination of the issues and review by interested sections and committees.

13. Report and recommendations of Committee on Immigration Representation. Camille Mackler and Prof. Sarah Rogerson, co-chairs of the Committee, presented the committee’s report recommending the enactment of a right to counsel in immigration proceedings. After discussion, a motion was adopted to endorse the following resolution for addition by the House:*

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, as well as through partnerships with Governor Cuomo’s Liberty Defense Project; and

WHEREAS, a national study of immigration court data published by the American Immigration Council shows the great disparities in outcomes between cases that have legal representation and those that don’t, including a 78% success rate for never-detained represented immigrants compared to 15% for their never-detained non-represented counterparts; and

WHEREAS, a similar study done through the evaluation of the first years of the New York Immigrant Family Unity Project (NYIFUP), the pioneering public defender system that provides universal representation to detained immigrants appearing before the Varick Street immigration court in New York City, shows that detained immigrants have a 48% chance of success with a NYIFUP attorney, compared to 4% before NYIFUP was created; and

WHEREAS, the American Bar Association has called for both a federally funded system of appointed counsel for indigent respondents in removal proceedings as well as for states and localities to provide such counsel until the federal government does so; and

WHEREAS, recent policies and immigration enforcement trends have greatly increased removal risks to immigrant New Yorkers and our immigration courts backlogs have reached historical highs; and

WHEREAS, NYSBA believes that true access to justice includes ensuring due process is served and principles of fundamental of fairness are observed in any judicial setting;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges the New York State Governor and the New York State Legislature to enact a right to counsel in immigration proceedings as a statutory requirement under New York State law.

14. Report of Special Committee on Association Structure and Operations and Special Committee on Strategic Communications. Glenn Lau-Kee and David P. Miranda, chairs of the respective com-

* An amended resolution was adopted by the House on June 15, 2019.

mittees, reviewed the committees' charges and planned work. The report was received with thanks.

15. Report and recommendations of Task Force on the Role of the Paralegal. Mr. Miller, as Immediate Past President, together with Victoria Shaw, Senior Director of Attorney Engagement and Retention, and General Counsel Kathleen Baxter, reviewed the Task Force recommendations for an amended set of "Guidelines for the Utilization of Paralegals"; recommendations regarding the regulation of non-lawyers and alternate forms of delivery of legal services; and the creation of a category of non-voting Association membership for paralegals and legal assistants. After discussion, a motion was adopted to approve the report and recommendations.
16. New Business.
17. Date and place of next meeting. The next meeting of the Executive Committee will be held on Friday, November 1, 2019 at the Bar Center in Albany.
18. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



Sherry Levin Wallach
Secretary