



FILED
IN THE OFFICE OF THE
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NOVEMBER 18, 2013
STATE OF NORTH DAKOTA

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VIA US Mail and Electronic Copy

November 15, 2013

Ms. Penny L. Miller
Clerk of the Supreme Court
State Capitol
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

Re: Lawyer Assistance Program
Proposed Amendments to:
North Dakota Admission to Practice Rules – Rule 2 (Standards for Admission); and
North Dakota Supreme Court Administrative Rule 49 (Lawyer Assistance Program)

Dear Ms. Miller:

On behalf of the North Dakota Lawyer Assistance Committee, please consider this letter as a petition for amendment of certain rules in accordance with section 3 of the Rule on Procedural Rules, Administrative Rules and Administrative Orders of the North Dakota Supreme Court. Specifically, our committee unanimously supports expanding the Lawyer Assistance Program to law students at the University Of North Dakota School Of Law.

Although we, as a committee together with a dedicated cadre of volunteers, are pleased and proud of our successes in our charge to protect the public by assisting struggling lawyers in maintaining and improving “the integrity of the legal profession”. We believe we need to include law students in this endeavor.

A number of studies, including those conducted by various BAR associations, have concluded lawyers fall victim to mental health and substance abuse issues far above the norm. Indeed, even the incidents of suicide are more prevalent among lawyers than any other profession.

Unfortunately, many of those problems occur and are fostered at a very young age. We commend to the Court, and its designated committee, an extremely relevant video on this subject prepared by the Washington D.C. BAR Lawyers Assistance Committee, accessible at <http://media.wcl.american.edu/Mediasite/Play/acf55debf3d4910930e8657b168983e>. You will note that drinking, drugs and depression are major causes of concern among law school student ranks. The video further describes the increase in those problems as students progress through law school.

We are informed that most state lawyer assistance programs include law students in their service objectives. Our law school, particularly through Dean Kathryn Rand, and Assistant Dean for Student Life, Brad Parrish, has been very supportive and has assisted us in this effort. The stress of being a lawyer finds its origin in law school and as the video depicts, “It’s a

mistake to put off getting healthy now, hoping it will take care of itself later." Our program can effectively address these issues by providing education and resources designed to help our students.

Attached are the proposed amendments. Changes to the Administrative Rule 49 simply extends our program to law students (Attachment 1). Changes to Rule 2 (Standards for Admission) are patterned after a provision adopted by the Supreme Court of Arkansas (Attachment 2). Also attached is per curium opinion issued on November 11, 2010, cited at 2010 Ark. 443 (Attachment 3).

Please note the Court's discussion on including law students in the lawyer assistance program and its emphasis on the preservation of confidentiality. The language proposed in this rule change will make it abundantly clear that seeking help will not negatively impact or derail an otherwise promising career.

Therefore, we ask that the Supreme Court consider and adopt these amendments in accordance with the stated goals. If an appropriate standing committee is assigned to review this matter, our committee, and the law school officials mentioned in this letter, stand ready to provide any assistance or information deemed helpful.

Thank you and the Court for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John M. Olson', written over the text 'Respectfully submitted,'.

John M. Olson
Lawyer Assistance Program, Chair

Cc: Members of Lawyers Assistance Committee – Electronic Copy
Tony Weiler, Executive Director, State Bar Association of North Dakota – Electronic Copy
Kathryn Rand, Dean of University of North Dakota School of Law – Electronic Copy
Bradley W. Parrish, Assistant Dean of Student Life – Electronic Copy

Proposed Amendments to North Dakota Supreme Court Administrative Rule 49

Lawyer Assistance Program

Section 2. Lawyers Assistance Program – Establishment.

The State Bar Association of North Dakota may establish an assistance program for lawyers **and for students attending the University of North Dakota School of Law** to aid in preventing and alleviating problems that may adversely influence a lawyer's performance.

Section 4. Confidentiality.

Information regarding a lawyer's **or a student's** participation in a lawyer assistance program and any communications made to or information received by a committee member, peer counselor, or program staff of the program are confidential and may not be disclosed without the consent of the affected party. Confidentiality under this section does not prohibit the disclosure of information when disclosure is considered reasonably necessary to prevent the commission of an act that is believed to result in imminent death or imminent substantial bodily harm.

Section 6. Effective Date.

This rule is effective August 1, 2004, **and as amended** _____.

Proposed Amendments to North Dakota Admission to Practice Rules

Rule 2 (Standards for Admission)

B. Character and Fitness Standards and Investigation

1. The applicant shall have the burden of proving that the applicant possesses good moral character and fitness to practice law.
 - a. The Board shall determine whether an applicant's moral character is such as permits a positive recommendation when the applicant's record of conduct indicates that the applicant is presently honest, trustworthy, diligent, and reliable.
 - b. The Board shall determine whether an applicant possesses the present fitness to carry out professional duties to clients, courts and the profession. Fitness involves the assessment of mental and emotional health as it affects the competence of a prospective lawyer. An applicant may be of good moral character, but may be incapacitated from proper discharge of the duties as an [sic] lawyer by a mental or emotional illness or condition.
 - c. When an applicant's record of conduct includes inappropriate behavior – such as, for example, an instance of any of the items listed below – the Board will make further inquiry before deciding whether an applicant possesses the good moral character and fitness to practice law required for a positive recommendation:
 - 1) unlawful conduct;
 - 2) academic misconduct;
 - 3) making false statements;
 - 4) misconduct in employment;
 - 5) acts involving dishonesty, fraud, deceit or misrepresentation;
 - 6) abuse of legal process;
 - 7) neglect of financial responsibilities;
 - 8) neglect of professional obligations;
 - 9) violation of an order of a court;
 - 10) evidence of mental or emotional instability;
 - 11) evidence of drug or alcohol dependency;
 - 12) denial of admission to the bar in another jurisdiction;
 - 13) disciplinary action by a lawyer disciplinary agency or other professional agency of any jurisdiction.

d. In determining whether the present moral character and fitness of an applicant qualifies the applicant for a positive recommendation, the Board will assess the weight and significance of any inappropriate conduct by considering the following factors:

- 1) the applicant's age at the time of the conduct;
- 2) the recentness of the conduct;
- 3) the reliability of the information concerning the conduct;
- 4) the seriousness of the conduct;
- 5) the factors underlying the conduct;
- 6) the cumulative effect of conduct or information;
- 7) the evidence of rehabilitation;
- 8) the applicant's positive social contributions since the conduct;
- 9) the applicant's candor in the admissions process;
- 10) the materiality of any omissions or misrepresentations.

2. The Board may employ such assistance in conducting the character and fitness investigation as it deems necessary, including a character report by the National Conference of Bar Examiners or further investigation by the Character and Fitness Committee.
3. At any stage of the registration or application proceedings, the Board may request the applicant to appear before it or a designated Board member to answer any questions.
4. **Seeking counsel from the State Bar Association of North Dakota Lawyer Assistance Program (LAP) for mental health or substance abuse issues that might impact law practice administration or compromise professional competence shall not be considered adversely by the Board in its evaluation. Further, should the applicant choose to participate in a program designed for him or her by LAP, and successfully complete that program by the time of graduation, the evidence of such rehabilitation and recovery shall be considered favorably by the Board when evaluating the applicant's character and fitness. The applicant's failure to complete a treatment program may be considered adversely by the Board.**¹

¹ Source: Appendix to Arkansas Rules Governing Admission to the Bar (Regulation 8d)

Cite as 2010 Ark. 443

SUPREME COURT OF ARKANSAS

No.

Opinion Delivered 11-11-10

IN RE JUDGES AND LAWYERS
ASSISTANCE PROGRAM

PER CURIAM

The Judges and Lawyers Assistance Program Committee (Committee) and the deans of the state's two law schools have requested this court to modify provisions of the Judges and Lawyers Assistance Program (JLAP) and related rules of the court to include law students. In response to this request, this court is initiating a three-year "pilot program" under which students at the University of Arkansas at Fayetteville School of Law and the University of Arkansas at Little Rock Bowen School of Law will be covered by the JLAP program.

A history of the JLAP program is in order. On November 29, 1999, a petition was filed with this court by the Arkansas Bar Association and the Pulaski County Bar Association. The essence of the petition was to ask this court to create a program to "assist lawyers, law students, and judges" with matters arising from substance abuse, depression, and other similar problems. The words "law students" are repeated throughout that petition as part of the

Cite as 2010 Ark. 443

population to be served by the program. The petition, however, does not explain why law students should be included. On December 7, 2000, this court adopted a per curiam order by and large implementing the proposal and establishing the Arkansas Lawyers Assistance Program (ALAP). In Rule I, "scope of program," it is made clear that the assistance program shall "provide immediate and continuing help to *lawyers and judges* (hereafter members of the legal profession)." (Emphasis added.) We offered no comment as to why law students were not included within the program.

JLAP has just celebrated ten years of existence. Members and staff of the JLAP Committee, together with the deans of both law schools, have reported that JLAP has matured and is sufficiently stable in terms of procedures, resources, and finances to consider the addition of law students, on a three-year temporary basis, as parties who might take advantage of JLAP.

In May of 1993, the Executive Committee of the Association of American Law Schools published the *Report of the AALS Special Committee on Problems of Substance Abuse and the Law School* (Report). The fundamental conclusion in the Report is: "in the judgment of the Committee, it is extremely likely that virtually every law school in this country has some current students (and possibly some faculty members) who are impaired by the use of alcohol or other substances, or who more than occasionally abuse alcohol or drugs. It is also highly probable that virtually every law school has current students (and possibly faculty members) whose present behavior indicates the substantial risk that they will in the future suffer from

Cite as 2010 Ark. 443

the effects of substance abuse. Thus the problem of substance abuse is one to which every law school should devote attention.” (Page 12 of the Report) Although this language was written seventeen years ago, there is no reason to believe that the conclusion reached at that time is no longer valid.

On page 53 of the Report, recommendation 10 appears as follows: “[T]he law schools should consider coordinating their internal substance abuse programs with relevant lawyer assistance programs.” (Emphasis added.) Dean Cynthia Nance with the UA Fayetteville School of Law, Dean John DiPippa of the UALR Bowen School of Law, and JLAP representatives have asked this court to do just that. At this writing, nineteen states include law students in their JLAP programs.

We grant the request of the law school deans and JLAP representatives and hereby authorize JLAP to take the appropriate steps immediately to initiate, administer, and monitor the pilot program for law students and report its observations to the court on an annual basis. This pilot program will conclude after three years from the date of this order unless the court, by subsequent order, extends it.

However, in order for this project to be undertaken, it is necessary to modify Rule 1 of the Rules of the Arkansas Lawyer Assistance Program and Reg. 8 of the Rules Governing Admission to the Bar.

First, there is the concern of “confidentiality” of law students who might want to approach JLAP for help, but are reluctant to do so. This reluctance is because the bar exam

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application contains a question (question 9.d) that specifically asks whether the law student has been treated for “alcoholism, substance abuse, the use of controlled substances as defined by the Arkansas code or addiction to drugs of any form?” Correspondingly, when certifying graduates to sit for the bar exam, the dean of each law school is also asked to comment on whether the applicant has anything in his or her law school record that could reflect adversely on his or her character and fitness to practice law in the state of Arkansas. Hence, there is a tension between the need of the student to seek assistance and the fear of having to reveal the plea for help.

A solution lies in the modification of Regulation 8 – “Standards for Admission,” which appears in the appendix to the Rules Governing Admission to the Bar. Regulation 8 lists certain actions taken or behavior exhibited by the applicant as evidence of the “good moral character and mental and emotional stability” of the applicant, which is the fundamental standard of character and fitness for admission to the Bar of Arkansas.

The addition of language to that list will make clear that the act of seeking counseling or advice from JLAP shall not be viewed by the Board of Law Examiners as negative; furthermore, the student’s participation in a program of recovery sanctioned by JLAP and the successful completion of that program, appropriately documented by JLAP, should be considered favorably by the Board when evaluating the applicant’s character and fitness for admission to the Bar of Arkansas.

The JLAP Committee suggests an amendment to Regulation 8 by adding the

Cite as 2010 Ark. 443

following subsection (d):

d. Seeking counsel from the Judges and Lawyers Assistance Program (JLAP) for physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age that might impair the applicant's ability to practice (impairments) shall not be considered adversely by the Board in its evaluation. Further, should the applicant choose to participate in a program designed for him or her by JLAP, and successfully complete that program by the time of graduation, the evidence of such rehabilitation and recovery shall be considered favorably by the Board when evaluating the applicant's character and fitness. The applicant's failure to complete a treatment program may be considered adversely by the Board.

We concur with the suggestion of the Committee and hereby amend Regulation 8 of the Rules Governing Admission to the Bar as set forth above.

In addition, it is necessary to amend the original JLAP (then ALAP) per curiam order which was entered on December 7, 2000, to add law school students to the group of individuals eligible for JLAP services. Therefore, we amend our per curiam order of December 7, 2000, and particularly Arkansas Lawyer Assistance Program R. 1(A) as follows:

Rule 1. – Scope of Program

(A) *Establishment.* There is hereby established a statewide lawyer assistance program to be known as Arkansas Lawyer Assistance Program (ALAP) which shall provide immediate and continuing help to lawyers and judges (hereinafter "members of the legal profession") as well as students attending the University of Arkansas at Fayetteville School of Law and the UALR Bowen School of Law, who suffer from physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age and that might impair their ability to practice or serve.

The balance of Rule 1 is not affected by this order.