

Civil Rights

DOJ says bar officials violate ADA by asking applicants too much about their mental health

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By [Martha Neil](#)

Asking would-be lawyers standard questions about their mental health, including their history of diagnosis and treatment, could violate the Americans with Disabilities Act, according to the civil rights division of the U.S. Department of Justice.

In a lengthy Feb. 5 [letter](#) (PDF) to the Louisiana Supreme Court, its committee on bar admissions and the state attorney disciplinary board that is likely to reverberate throughout the country, the division says some, but not all, of the questions asked in a standard [National Conference of Bar Examiners](#) questionnaire are unduly broad and violate the ADA. The DOJ also found that the state violates the ADA in evaluating bar applications from individuals with a history of mental health issues and admitting them to practice conditionally.

"In particular, we find that Louisiana's attorney licensure system discriminates against bar applicants with disabilities by: (1) making discriminatory inquiries regarding bar applicants' mental health diagnoses and treatment; (2) subjecting bar applicants to burdensome supplemental investigations triggered by their mental health status or treatment as revealed during the character and fitness screening process; (3) making discriminatory admissions recommendations based on stereotypes of persons with disabilities; (4) imposing additional financial burdens on people with disabilities; (5) failing to provide adequate confidentiality protections during the admissions process; and (6) implementing burdensome, intrusive, and unnecessary conditions on admission that are improperly based on individuals' mental health diagnoses or treatment," the DOJ letter states.

Explaining that an individual's prior behavior, rather than a mental health diagnosis or treatment, is the best predictor of future success in law practice, the civil rights division says questions in character and fitness applications should focus on conduct rather than status of the applicant.

Taking a conciliatory tone, the letter notes the importance of the court's role in safeguarding the administration of justice by ensuring that bar admittees are both fit to practice law and worthy of trust and confidence. The letter suggests that the DOJ hopes to resolve the situation amicably, but notes that prior efforts at resolution have not completely succeeded.

"Though we sincerely appreciate the court's expressed willingness to work with the department, and acknowledge the steps the court has taken thus far to attempt to address some of our findings, we respectfully disagree that these measures resolve the violations of the ADA we have identified," the letter states.

A similar but shorter letter concerning bar admission standards in Vermont was sent by the civil rights division to the Vermont Human Rights Commission on Jan. 21, 2014.

It says the DOJ is ready to work with the National Conference of Bar Examiners in developing new questions to ask bar applicants that do not violate the ADA.

Erica Moeser, the NCBE's president, declined to comment when contacted by the ABA Journal.

A spokeswoman for the Louisiana Supreme Court did not immediately respond Wednesday afternoon to a request for comment by the ABA Journal.

See also:

[Judge David L. Bazelon Center for Mental Health Law](#): "U.S. Justice Dept. Finds States Violate ADA If Inquire into Mental Health Condition or Treatment when Assessing Fitness to Practice Law"

[Understanding the Americans with Disabilities Act \(ADA\)](#): "The ADA and Bar Examiners: Uphill Climb for Wannabe Attorneys may have just become less so"

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