



Northwest Justice Project

401 Second Ave S. Suite 407
Seattle, WA 98104
Tel. (206) 464-1519
Fax (206) 382-2509

Toll Free 1-888-201-1012
www.nwjustice.org

César E. Torres
Executive Director

April 7, 2016

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: Proposed Admission to Practice Rules 20 to 25

Dear Chief Justice Madsen and Honorable Justices:

The Northwest Justice Project (NJP) is the largest provider of free civil legal aid in Washington. Our mission is to secure justice through high quality legal advocacy that promotes the long-term well-being of low-income individuals, families and communities. In pursuing this mission, we strive to achieve justice and fairness for all persons in Washington, including a justice system that is itself fair and equitable for all. NJP also supports its professional commitment to this goal through my participation as member of the ABA Commission on Disability Rights, which is dedicated to ensuring fair treatment and access to the legal profession for lawyers with disabilities. Based on these commitments, we submit these comments in support of the pending proposed changes to APRs 20-25.

In order to ensure a fair and equitable justice system, we believe that system must be open and accessible to all persons. This includes all persons who are qualified to practice law regardless of being a person with a disability, being it visible or hidden. Indeed, one of the persistent and harmful areas of discrimination within the legal profession is implicit bias with respect to disabilities.¹

Persons with disabilities are our nation's largest minority. Yet they are grossly underrepresented in the legal profession. According to the National Association for Legal Placement (NALP), of the 73,081 lawyers surveyed in 2014, partners and associates with disabilities accounted for only one-third of one percent of respondents.² Those who seek to enter the profession confront many barriers, including fear of disclosing a mental disability due to implicit bias associated with physical impairment and mental health issues.³ More importantly, such fear also can often chill a new lawyer or law student with from seeking accommodations or even treatment for mental health issues that will help them to be a

¹ See Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER L. & JUST. 32, 36-37 (2010).

² See table 4 at http://www.nalp.org/lawfirmdiversity_feb2015.

³ Adam J. Shapiro, *Defining Rights of Students with Disabilities*, 58 U. Miami L. Rev. 923, 939-940 (2004).

successful lawyer or to compete in the law school setting.⁴ Given the number of people nationally who experience mental health problems⁵ it is critical that the legal profession be open to all persons who are capable of practicing law and making worthwhile contributions to the profession, regardless of a disability or need for accommodation unless or until a lawyer, by way of conduct or failure to act demonstrates incapacity to practice law or commits professional misconduct sufficient to impair the lawyer's ability to practice law.

In light of the above, the Washington State Bar Association's proposal to eliminate questions related to mental health conditions and/or treatments of bar applicants is a major step on the path toward eliminating discrimination in the profession. An applicant's prior conduct is the primary determinant of good moral character and a barometer of future competence and use of conduct in place of diagnoses and treatments avoids unwarranted assumptions based on factors unrelated to an applicant's fitness to practice law. It further brings the WSBA in line both with the majority of other state bars that have stopped asking applicants about their mental health and treatment experience⁶ and with the emerging disability rights law including the Americans with Disabilities Act (ADA).⁷

The proposed changes to APR 20-25 are commendable and reflect the highest values and aspirations of the profession. NJP proudly endorses the changes.

Sincerely,

Deborah Perluss

Deborah Perluss

Director of Advocacy/General Counsel

C César E. Torres, Executive Director

⁴ *Id.* at 936-937 discussing the range of mental health problems experienced by law students including generalized anxiety disorder, extreme stress, depression, and specific learning disabilities. Other mental disabilities that many professionals including lawyers suffer from autism spectrum disorder, attention deficit disorder, obsessive compulsive disorder, lingering impacts of traumatic brain injury, stroke, sexual or physical abuse, gender dysphoria, etc. *See, e.g.,* ABA Journal, *The Biggest Hurdle for Lawyers with Disabilities: Preconceptions*, available at http://www.abajournal.com/magazine/article/the_biggest_hurdle_for_lawyers_with_disabilities_preconception

⁵ *Id.* ABA Journal, "The fastest-expanding and sharpest-edged issue for diversity in the legal profession concerns mental disabilities, such as ADD, bipolar disorder and depression. Lawyers are 3.6 times more likely than others to suffer depression, according to a 1990 Johns Hopkins University study."

⁶ *See*, Alyssa Dragnich, *Have You Ever...? How State Bar Association Inquiries into Mental Health Violate the Americans with Disabilities Act*, 80 Brook. L. Rev. 677 (2015), stating that as of 2015 only 14 States still inquired about an applicant's mental health.

⁷ *Id.* at 699-701, discussing a 2014 Department of Justice Opinion issued against the Louisiana State Court citing the ADA as authority to compel the Court to refrain from inquiring into a mental health diagnosis or treatment, unless the applicant voluntarily disclosed the information, or information from a third party raised a mental health diagnosis or treatment as an explanation for the applicant's conduct that may warrant denial of admission. Even in such cases, the DOJ required strict methods for a "narrowly, reasonably, and individually tailored" inquiry, including requests for independent medical examinations. At pages 687-699, Dragnich also discusses court decisions throughout the country in litigation challenging state bar inquiries on mental health status and treatments of applicants.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
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To: Tracy, Mary
Subject: FW: Comments on Proposed APRs 20-25
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For you!



Supreme Court Clerk's Office

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Subject: Comments on Proposed APRs 20-25

Please find Northwest Justice Project Comments on the above-referenced proposed changes to APRs 20-25. Thank you.

Deborah Perluss
Northwest Justice Project
(206) 707-0809



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