



**RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE**

Apr 20, 2016, 9:00 am

RECEIVED ELECTRONICALLY

Dear Honorable Justices:

Board of Directors

S. Starling Marshall, Esq.
President

Joan Pedley
Vice President

Brian Schneider, Esq.
Treasurer

Annie Farrenkopf
Secretary

Brian Clarke, JD
Director

Edward Filusch, Esq.
Director

Kara Friedman, Esq.
Director

Kacey LeGeyt, Esq.
Director

Kara Neimark
Director

Charles Ricciardelli, Esq.
Director

James Stanford
Director

Staff

Katherine Bender, PhD
Programming Director

The Dave Nee Foundation wishes to offer its support for the recent proposed changes to Admission to Practice Rules 20-25.

As an organization dedicated to educating the public about the disease of depression and encouraging the diagnosis and treatment of depression among law students, the Dave Nee Foundation seeks to reduce the stigma around disclosing one's mental health issues as a way to create pathways toward treatment and recovery. In partnership with the law firm Akin Gump Straus Hauer and Feld LLP through its Starr Initiative, we support changes to the Washington Supreme Court's Admission to Practice Rules (APR) 20-25, which both ensure the character and fitness of those admitted to practice and allow law students to seek professional help for mental health issues without fear of adverse professional consequences.

Unfortunately, the Washington State Bar Association's current admissions questions link by association an applicant's mental health status with personal irresponsibility, including past criminal conduct, and focus on the existence of a mental health condition rather than any adverse conduct that may have resulted in whole or in part from the condition. The questions broadly inquire into the mental health condition itself as well as any treatment methods sought by the applicant, regardless of whether the condition and treatment currently impact the applicant's fitness to practice law. Changing APR 20-25 in accord with the Washington State Bar Association's (WSBA) Board of Governors' consensus recommendations will allow these objectionable questions to be changed to focus on an applicant's conduct, not protected status. And though these questions are undoubtedly included on the application for the noble purpose of ensuring the integrity and competency of those admitted to practice law in the State of Washington, they are problematic for several reasons.

First, this type of inquiry is at odds with the current medical consensus on mental health, because it conflates mental health conditions with misconduct that renders an individual unsuitable for the practice of law. Second, the questions and inquiry process unduly discriminate against those suffering from a mental illness, and therefore do not comply with the U.S. Department of Justice's interpretation of the Americans with Disabilities Act as explained in its 2014 settlement with the Louisiana State Bar.

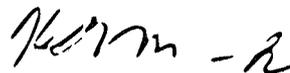
Finally, based upon our own research and conversations with law school students intending to apply for admission with the Washington State Bar, the



current questions have the unintended consequence of discouraging aspiring lawyers from seeking the medical treatment they need for fear of hindering their admission, even when the questions are prefaced by language encouraging applicants to seek help if they need it. As a result, individuals who would be worthy additions to the state bar avoid obtaining treatment. This places at risk both their health and the quality of the legal representation they provide once they join the state bar.

The proposed changes to APR 20-25 eliminate or at least mitigate most of these problems and represent a substantial step forward in the treatment of bar applicants afflicted with mental health issues. By redefining the focus of the inquiry to an applicant's ability to practice and record of conduct demonstrating such ability, the changes would reduce the stigma associated with mental disabilities and enable applicants to obtain mental health treatment without jeopardizing their legal careers. Additionally, the new rules comply with the DOJ's interpretation of the ADA, which requires that inquiries into mental disabilities relate only to an applicant's record of conduct and current conditions that might impair the ability to practice law and that such inquiries are narrowly and reasonably tailored to protect the applicant's privacy. In refraining from inquiring into a mental health diagnosis or treatment unless the applicant or a third party discloses it to explain past conduct that would otherwise require disclosure, the proposed rules eliminate the present discrimination against individuals on the basis of their disability. Moreover, the changes to a conduct based definition of fitness to practice with a more narrowly tailored inquiry into mental disabilities would more effectively screen out undesirable candidates without unnecessarily excluding individuals who would actually make valuable contributions to the state bar. The better results and more equitable treatment that will be obtained from the proposed rules appears to have been recognized by the admissions workgroup and explains why that group, which included several WSBA officials, unanimously approves of the changes.

Because the Dave Nee Foundation also supports admission to practice rules in the Washington State that protect the health of young law students as well as the integrity of the state bar, we write this comment to recommend the Court adopt the proposed changes. Thank you for your consideration.



Katherine M. Bender, PhD.
Programming Director

OFFICE RECEPTIONIST, CLERK

To: Katherine Bender
Subject: RE: Revisions to Admission to Practice Rules 20 to 25 and the Bar Application

Received 4-20-16

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Katherine Bender [mailto:kbender@daveneefoundation.org]
Sent: Wednesday, April 20, 2016 8:59 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Revisions to Admission to Practice Rules 20 to 25 and the Bar Application

Please see attached letter in support of the suggested revisions to admission to practice rules 20-25.

Thank you.

--

Katherine M. Bender, PhD, NCC
Programming Director
The Dave Nee Foundation
610.348.8422

