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QUESTIONING THE QUESTIONNAIRES: BAR ADMISSIONS AND CANDIDATES WITH DISABILITIES

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I. INTRODUCTION

SHOULD law school graduates who apply to the bar be required to answer questions about their disabilities—past and present—that employers lawfully cannot ask? How far into a candidate’s sensitive past can bar examiners’ probe? The Clinical Law Office at the University of Maryland School of Law had to resolve such queries in order to recently represent a client.¹ Our client had passed the bar examination, but because of her affirmative and candid answers to questions about past mental health and alcohol abuse treatment, she felt that her application was in limbo. This Article not only recounts her experience, but suggests that applicants in many states could experience similar difficulties if questionnaires and procedures are not reformed.

Over seven years after the enactment of the Americans with Disabilities Act (ADA),² some state bars still need to revise their questionnaires and take other steps to comply with the letter and the spirit of this law.³ The ADA applies to law examiners as state

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¹. To protect the client’s confidentiality, this Article refers to her under the pseudonym “Jane Doe.” The author expresses his appreciation to her for giving permission to have this story told. He also acknowledges the outstanding advocacy on the part of Ms. Doe’s other co-counsel, then second-year law student and student-attorney Betty S. Diener, and Mary Ann Ryan and Anna M. Coyle of the law firm of Ryan & Coyle, acting pro bono. They each volunteered in the highest traditions of the legal profession, contributing to the successful representation of Ms. Doe in her quest to be admitted to the bar and to obtain revisions of the bar questionnaire to benefit future applicants. See Memorandum from Stanley S. Herr, Supervising Attorney, Betty S. Diener, Ph.D., Student-Attorney, Clinical Law Office, and Mary Ann Ryan and Anna M. Coyle of Ryan & Coyle, to Jonathan A. Azrael, Chairman of the Maryland State Board of Law Examiners (June 10, 1996) (on file with the Villanova Law Review) [hereinafter Doe Memorandum].


³. See id. § 12101(b)(1) (stating purpose of the Americans with Disabilities Act of 1990 (ADA) is, among other things, “to provide a clear and comprehensive
government entities under Title II of the Act and as administrators of licensing examinations under Title III. Although the ADA has been hailed as a Magna Charta for the disability rights movement and an emancipation proclamation for its members, change has often been grudging and uneven. Professional credentialing in general, and bar admission procedures in particular pose cases in point. This Article demonstrates that change can come not only through litigation, but through fact finding, negotiation and the submission of petitions and legal memoranda to bar examiners. In addition to state-by-state reforms, this topic deserves searching national attention as the legal profession burdens thousands of its entrants with intrusive questions into their mental health histories with nary a rejection solely on mental health grounds. As a policy and humanistic matter, putting aside issues of legality, one can surely question whether this questioning game is worth the candle.

The ADA applies to bar examiners as state government agencies under the Title II definition of "public entit[ies]." See id. § 12131(1)(B) (defining "public entity" as "any department, agency, special purpose district, or other instrumentality of a state or states or local government"). The Title II regulations prescribe policies that pose unnecessary burdens on persons with disabilities in the licensing process that are not imposed upon others. See 28 C.F.R. §§ 35.130(b)(3)(i), (6) (1997) (stating that public entity may not use criteria, nor administer licensing or certification programs, that subjects qualified individuals to discrimination based on disability). A few commentators have argued that Title III of the ADA does not apply to bar examiners. See, e.g., Stephen Fedo & Kenneth M. Brown, Accommodating the Disabled Under the ADA: The Issues for Bar Examiners, B. EXAMINER, Aug. 1992, at 6 n.l. Many commentators, however, believe that bar examiners are bound by Title III of the ADA. See Francis P. Morrissey, The Americans with Disabilities Act: The Disabling of the Bar Examination Process?, B. EXAMINER, May 1993, at 15 (noting that ADA challenge might be successful against bar examinations); W. Sherman Rogers, The ADA, Title VII and Bar Examination: The Nature and Extent of the ADA’s Coverage of Bar Examinations and an Analysis of the Applicability of Title VII to Such Tests, 36 How. L.J. 1, 2 (1993) (noting that Title VII challenge to bar examination might render state bar examinations invalid). For a further discussion of case law on alleged discrimination, see infra notes 131-66 and accompanying text.

4. See 42 U.S.C. § 12131(1)(B) (defining "public entity" as "any department, agency, special purpose district, or other instrumentality of a state or states or local government").

5. See id. § 12189 (applying ADA to administrators of examinations and courses).


This Article is organized in four Parts. Part I places the issue in a national context of rising numbers of candidates with disabilities seeking bar admission, certain examiners' persistent defense of disability inquiries and mounting critiques of such probes. It also features a survey of bar questionnaires that reveals wide disparities of approach among the states. Part II presents a case study of a candidate's experience in winning admission to the bar, and the results of a call by her lawyers and other Maryland law professors for systemic reforms in bar admission procedures for candidates with disabilities or a history of past disabilities. Part III analyzes the case law on alleged discrimination in such bar queries. Part IV suggests some further reforms to avoid discrimination or the appearance of discrimination against candidates with disabilities—changes that could be achieved without resort to litigation. In addition, Part IV also identifies some of the forces that are especially well-positioned to take on this advocacy role, such as clinical law offices and disability law programs. Finally, Part V calls for an end to the stigma and discrimination that generations of candidates with disabilities or treatment histories have faced.

II. THE ISSUE IN NATIONAL CONTEXT

The issue of lawyers with disabilities seeking entry to the bar is of growing importance. First, the pool of law students with a current or past disability is rising. In 1987, nearly nine percent of law students in the United States had some type of disability. Although no precise data is currently available on law school enrollment, anecdotal information and statistics collected on students requesting testing accommodations suggest that their numbers are growing. For a further discussion of the growing numbers of candidates seeking admission, the various defenses asserted by bar examiners, critiques of these probes and a national survey of bar questionnaires, see infra notes 13-94 and accompanying text.

For an analysis of Ms. Doe’s case study, see infra notes 95-130 and accompanying text.

For an in-depth discussion of relevant case law applicable to ADA issues and bar exams, see infra notes 131-66 and accompanying text.

For a discussion of the possible reforms that states could implement, see infra notes 167-217 and accompanying text.

For the author’s conclusions and suggestions to avoid discrimination in bar questionnaires, see infra note 218 and accompanying text.

Second, many of those law students have enjoyed reasonable accommodations and exercised other disability rights in their prior school and undergraduate careers and are increasingly assertive in the face of perceived disability discrimination. Third, the bar has a high obligation to model compliance with all civil rights laws and to set an example for employers in general, and employers of lawyers in particular. Fourth, despite an increasing public awareness of the need to end disability discrimination, controversy lingers as to how far bar officials can go in soliciting information from candidates about their disability or treatment history.

A. In Defense of Inquiries

Some bar examiners continue to defend the usefulness of these inquiries. They argue that the bar must inquire into an applicant's mental health in order to protect the public, citing to malpractice cases involving mentally unstable counsel. In In re Peek, an attorney failed to pursue a civil suit related to a rape, and in the malpractice action that followed, the court found that the attorney committed professional misconduct, but noted that the attorney "suffered from chronic depression and that his misconduct was substantially affected by his mental problems." Some commentators

14. See Cathy Henderson, American Council on Education, College Freshmen with Disabilities, A Triennial Statistical Profile 6, 7 (1995) (stating that one indicator of this trend is increasing pool of college freshmen with disabilities). In 1978, only 3% of freshmen reported a disability, but by 1988 that number was 7%, by 1991 it was 8.8% and by 1994 it was 9.2%. Id.; see also American Council on Educ., Post-Secondary Students with Disabilities, 6 Res. Brief 2 (1995) (summarizing U.S. Department of Education's "Post-Secondary Student Aid Survey" on professional and graduate schools in 1992-93 and its finding that four percent of students, totaling 78,056, had disabilities); Donald H. Stone, The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study, 44 Kan. L. Rev. 567, 568-69 (1996) (reporting that two percent of 58,932 students in 80 law schools surveyed requested accommodations in examinations for mental or physical disability).

15. See Cathy Henderson, supra note 14, at 7 (noting that not only are one of every eleven freshman enrolled full-time in college reporting at least one disability, but many have had to be successful advocates for themselves to enter higher education and to overcome disability barriers).

16. See Thomas A. Pobjecky, Mental Health Inquiries: To Ask, or Not to Ask—That is the Question, B. Examiner, Aug. 1992, at 31 [hereinafter Inquiries] (arguing that bars must inquire into mental health); see also Thomas A. Pobjecky, Everything You Wanted to Know About Bar Admissions and Psychiatric Problems But Were Too Paranoid to Ask, B. Examiner, Feb. 1989, at 14 (arguing from existence of three disciplinary cases in which mental fitness of attorney was issue that "significant number of bar applicants have psychiatric disorders," and that bar examiners who do not spot applicants with such problems are "not looking very hard").


18. Id. at 633.
believe that preserving the litany of mental health questions lessens the possibility of this type of negligent representation, suggesting that substance abuse in particular is often related to disciplinary actions against members of the bar. 19

Bar examiners also argue that only their direct inquiries will expose those applicants who are mentally unfit to practice. They suggest that regular background investigations, such as the use of references from former employers and other character references, are of limited value because employers or character references may only have superficial contact with the applicant. In addition, third parties may be reluctant to disclose adverse information because of the fear of lawsuits. Finally, some character references may not reply candidly to requests for information. 20

Another justification is that public officials can invade the privacy of others as long as the government’s interest is compelling. In this case, examiners assert a compelling government interest to protect the public from applicants who are not capable of practicing law. 21 On this theory, some bar examiners believe that it is legally permissible under the ADA to make these types of inquiries. 22

B. In Criticism of Inquiries

A growing body of literature is critical of broad bar inquiries into a candidate’s mental health and the rationales supporting this practice. 23 Although sharing a uniform disapproval of broad bar


20. See Inquiries, supra note 16, at 36 (arguing that untruthful remarks regarding applicant’s mental health are sometimes made because of animosity toward applicant).


22. See Inquiries, supra note 16, at 33 (arguing ADA does not prevent mental health inquiry).

23. See Stephen T. Maher & Lori Blum, A Strategy for Increasing the Mental and Emotional Fitness of Bar Applicants, 23 Ind. L. Rev. 821, 823 (1990) (examining positions for and against inclusion of mental health questions on bar exams); Deborah L. Rhode, Moral Character as a Professional Credential, 94 Yale L.J. 491, 560 (1985) (noting that conclusive assessments of future difficulties are possible only for individuals with marked incapacity, and doubting that those diagnosed with such severe problems can complete law school, pass bars and open practice); Laura F. Rothstein, Bar Admissions and the Americans with Disabilities Act, 32 Hous. Law. 34, 34 (1994) (advocating change in mental health inquiries on bar questionnaires); Carol J. Banta, Note, The Impact of the Americans with Disabilities Act on State Bar
inquiries, these commentators have differed in their opinion of how far inquiries should be limited under the ADA. Some critics argue that the only valid questions relate to current or relatively recent disabilities (or treatment for such disabilities) because such information bears on the applicant's ability to practice law.24 Procedural critiques, in turn, stress putting the "burden on bar examiners to prove unfitness," requiring that they be permitted to ask only questions they can "properly demonstrate are relevant in predicting current and future ability to practice."25

Civil rights-oriented critiques suggest that in light of the ADA, any questions concerning mental disabilities or treatment for such disabilities are "inherently suspect."26 As one prominent clinical psychiatrist notes, "the prejudice arising from a history of psychiatric diagnoses or treatment far outweighs its value as a predictor of future competence as an attorney."27 Many bar applications still ask whether an applicant has (or had within the past five or ten years) a particular condition that could render him or her psychotic.28

Examiner's Inquiries into the Psychological History of Bar Applicants, 94 Mich. L. Rev. 167, 170 (1995); Mary Elizabeth Cisneros, Note, A Proposal to Eliminate Broad Mental Health Inquiries on the Bar Examination Applications: Assessing an Applicant's Fitness to Practice Law by Alternative Means, 8 Geo. J. Legal Ethics 401, 403 (1995) (stating that ADA may force changes in bar questionnaire format); Gail Edson, Comment, Mental Health Inquiries on Bar Applications: Overbroad and Intrusive, 43 U. Kan. L. Rev. 869, 870 (1995) (stating that most mental health questions on bar exams are not supported by empirical data); Lanny King, Note, The Kentucky Board of Bar Examiners' Character and Fitness Certification Questionnaire: Are Mental Health Inquiries a Violation of the Americans with Disabilities Act?, 84 Ky. L.J. 685, 686-87 (1995-96) (outlining positions for and against inclusion of mental health questions on bar exams); see also McKenna, supra note 7, at 336 (analyzing propriety of compelling bar applicants to answer mental health questions); Rogers, supra, note 3, at 3 (stating that ADA requires modification of bar exam questionnaires); Sarah O'Neil Sparboe, Comment, Must Bar Examiners Accommodate the Disabled in the Administration of Bar Exams?, 30 Wake Forest L. Rev. 391, 393 (1995) (examining bar rules requiring change because of ADA implementation).

24. See Reischel, supra note 21, at 21.


26. See John Parry, Mental Disabilities Under the ADA: A Difficult Path to Follow, 7 Mental & Physical Disability L. Rep. 100, 109 (1993) (arguing that "[a]s soon as a question diverges from qualifications and crosses into the more abstract realm of potential indicators that a person may not be qualified, the question becomes suspect").

27. Interview with Dr. Spencer Eth, Clinical Director of the Department of Psychiatry at St. Vincent's Hospital, in Englewood, N.J. (Nov. 23, 1996).

28. See Parry, supra note 26, at 109 (noting that questions that refer to diagnoses or treatment for psychotic disorders include those from National Conference of Bar Examiners (NCBE)). Alabama, Indiana, Kentucky, Louisiana, Missouri, Nebraska, New Jersey, Ohio, Texas, Wyoming and the NCBE all make inquiries about
porters of examiners using this question often assume that most applicants experiencing a psychotic episode would be incapable of practicing law in a competent manner.\textsuperscript{29} Other commentators, however, would argue that this question violates the ADA because some people who manage their psychosis with appropriate regimens may still be competent to practice law.\textsuperscript{30} Experts also contend that these categories cut too wide a swath because they do not affect the ability to make good judgments\textsuperscript{31} and single out persons with mental illness as "a class suspected of being unfit to practice law, which is discriminatory, and for which there is no scientific basis and support."\textsuperscript{32} In addition, a knowledgeable bar examiner could adequately determine an individual's fitness to practice law by asking about specific behaviors that may demonstrate incompetence or misconduct that may reveal untrustworthiness, without resorting to a diagnostic label.\textsuperscript{33} Guidelines for revisions of questionnaires would require specific fact-gathering on psychiatric disorder. For further discussion of these questionnaires, see infra notes 46-94 and accompanying text.

\textsuperscript{29} See Parry, \textit{supra} note 26, at 109.

\textsuperscript{30} See, e.g., Commission on Disability Law on Proposed Connecticut Bar Association Application, Report of the Section on Human Rights and Responsibilities and the Resolution Concerning Inquiries Into Mental Health Treatment of Bar Applicants 5 (Feb. 1994) [hereinafter Report on Proposed Connecticut Bar Association Application] (stating that mental health treatment does not suggest inability to practice law competently). This report stated:

Treatment for mental disorder provides no basis for assuming that an applicant's ability to practice law in a competent and ethical manner is impaired . . . . Research and clinical experience demonstrate that the receipt of mental health treatment is not predictive of a person's ability to carry out responsibilities with competence and integrity. Nor does the evidence in the field indicate that bar examiners or mental health professionals can predict inappropriate or irresponsible behavior on the basis of a person's mental health history.


\textsuperscript{31} See Telephone interview with Dr. Bernard Aron, Director, Center for Mental Health Services, U.S. Department of Health & Human Services (HHS) (Nov. 15, 1996).

\textsuperscript{32} Interview with Dr. Spencer Eth, \textit{supra} note 27.

\textsuperscript{33} See Parry, \textit{supra} note 26, at 109 (arguing that questions concerning mental health are suspect as potential indicators that person is not qualified to be attorney). See, e.g., \textit{In re A.T.}, 408 A.2d 1023, 1025, 1028 (Md. 1979) (admitting candidate with history of drug use that led to shoplifting where rehabilitation was "convincing," last offense occurred 13 years before and last illicit drug use was 12 years before board's hearing).

There is little or no agreement in the psychiatric community as to which diagnoses bear on the bar's stated purpose of protecting the public. Dr. Aron, for instance, counsels government agencies against the use of specific diagnostic categories. See Interview with Dr. Bernard Aron, \textit{supra} note 31. In reviewing the NCBE questions, Dr. Eth concluded that not only is question 27 and its search for infor-
tionnaires suggest limiting inquiry into episodic outpatient mental health treatment or into behavior or conduct that occurred before an applicant's eighteenth birthday or over five years in the past.\textsuperscript{34} Finally, in response to the objection that an affirmative answer to a question does not disqualify one for admission, but simply provokes an investigation, there is doubt that the candidate's own explanations or the "expert" opinion of a medical examiner can lead to accurate predictions of dangerous unfitness to practice law.\textsuperscript{35}

Other arguments focus on the ineffectiveness and under inclusiveness of bar queries. Very few candidates answer affirmatively, and only in the rarest case is a candidate actually denied admission to the bar.\textsuperscript{36} Moreover, many state bars do not ask questions about physical conditions that might pose a risk to fitness to practice, such as narcolepsy or chronic fatigue syndrome. Bar screening is also under inclusive in terms of the public's protection. If these questions truly served that purpose, then practitioners might have to periodically answer them to identify conditions that originated or manifested during the postadmission stage of a lawyer's career. Although this Article is not advocating any of these extensions, these arguments suggest that the bar questionnaires ferret out few candidates, impose intrusions on the privacy of novices that their more senior and powerful colleagues do not bear and single out mental health conditions for more stigmatizing examinations. Given the porousness of the screening process, the many double

\begin{quote}

mation about past illness and treatment "suspect and invalid," but "although it identifies certain major mental illnesses, it curiously omits disorders that may be more relevant for the stated purpose of public protection, with Alzheimer's disease and related dementias, antisocial personality disorders, and pedophilia, as examples." Interview with Dr. Spencer Eth, supra note 27. In his view, if any question has to be asked, the general question on a current condition affecting competent practice is sufficient, and additional questions reflect bias against persons with mental illness. See id. For the text of Pennsylvania Board of Bar Examiners, Application for Permission to Sit for the Pennsylvania Bar Examination and for Character and Fitness Determination (Aug. 1996) [hereinafter Pennsylvania Bar Application], which focuses on conduct rather than disability, see Appendix C.

34. See Stone, supra note 25, at 416 (arguing that these restrictions on mental health questions are necessary to truly predict current and future ability to practice law).

35. See Bruce J. Ennis & Thomas R. Litwack, Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom, 62 CAL. L. REV. 695, 696 (1974) (concluding that there is "no evidence warranting the assumption that psychiatrists can accurately determine who is 'dangerous'").

36. See Report on Proposed Connecticut Bar Association Application, supra note 30, at 3, 11 n.16 (noting that, in 1993, 31% of first-year students surveyed at University of Connecticut School of Law reported past treatment while only 47 of 1,072 applicants, constituting 4.4%, disclosed such treatment to bar examiners in that same year). For a case study of a candidate winning admission to the bar after lengthy delay, see infra notes 95-130 and accompanying text.

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standards between entrants and veterans, or mental health conditions and other conditions and the risks of arbitrary handling of individual cases, critics will continue to ask if the benefits of the mental health questions justify their price.

Sustained criticism of questionnaires probing mental health issues is not unique to bar admissions. In November 1995, the federal government overhauled its security clearance procedures to narrow: (a) the question to a mental or emotional disorder affecting the employee’s ability to perform the particular job; (b) the type of sensitive government positions for which any such questions could be posed; and (c) the number of follow-up questions that could be asked in the security investigation interview of an employee who had given an affirmative answer. 37 Employees working in security-classified positions or holding high-level positions of public trust are no longer asked questions in terms of specific psychiatric diagnoses or required to sign general releases to permit investigators to freely examine their medical records or interrogate their therapists. 38 If the government could adopt such changes in the face of security concerns about employees entrusted with the nation’s secrets or nuclear arsenals, surely bar examiners can limit their own fishing expeditions into a candidate’s mental health status and any treatment records. 39

Indeed, these two developments were not unrelated. The U.S. Department of Justice, playing a leadership role on the interagency group that revised the government’s employment forms, had sought to harmonize its positions with the ADA, and avoid the inconsistencies posed by its Civil Rights Division pressing bar examiners to delete certain disability questions while its Civil Division defended federal agencies who asked analogous questions of their own employees. 40 White House officials had also supported the

37. See Interview with Dr. Bernard Aron, supra note 31.
39. See Interview with Dr. Bernard Aron, supra note 31. Dr. Aron noted that the national security agencies and nuclear regulatory agencies had initially argued that they needed the old extensive questions, but ultimately recognized that the “elaborate and costly efforts” had not produced a net gain because few, if any, employees were not cleared on the basis of concerns over mental illness. See id. In these discussions, the argument was also made that such questions were under inclusive because physical health conditions such as diabetes or other disabilities could potentially compromise an employee’s job performance. See id.
40. In addition to the Justice Department and HHS, the agencies involved in these interagency discussions were the Central Intelligence Agency (CIA), the Departments of Defense and Energy, and other stakeholders.
government-wide review, begun before Vincent Foster's tragic suicide, when it became known that Foster had hesitated to see a psychiatrist because it "could jeopardize his White House security clearance." The existence of periodic questioning about psychiatric treatment was a real deterrent to seeking such help because Foster was aware that "many security checkers consider that consulting a psychiatrist is a blemish that requires further exhaustive investigation into the subject's mental stability." The message to avoid mental health treatment in order to avoid trouble with investigators, however, is a costly one. Although Foster and other Arkansas lawyers of his day were not asked if they had received mental health treatment, today the entrants to that bar face inquiries about any "mental or emotional infirmity" and may decide to steer away from mental health treatment to avoid embarrassment in the bar admission process or later in life.

C. In Search of a Model Questionnaire

As a guide, the National Conference of Bar Examiners (NCBE) publishes its own character questionnaire form for bar applicants. Although few states actually use this form as part of their application process, some states borrow questions directly from the NCBE's character application, while other states paraphrase or follow the broad outlines of that application. Therefore, questions pertaining to mental disabilities in the NCBE's character question-
naire serve as an indicator of future trends in state bar applications.48

The character report of the NCBE makes several inquiries into the mental health of bar applicants. Before being revised, these inquiries were especially broad in scope and vague in content. Questions 28 and 29 of the old NCBE character and fitness form asked, respectively, "Have you ever been treated or counseled for any mental, emotional, or nervous disorder or condition?"49 and "Have you ever voluntarily entered or been involuntarily admitted to an institution for treatment of a mental, emotional, or nervous disorder or condition?"50 These questions have been modified over the past few years because of pressure exerted by the American Bar Association (ABA), various disability groups, and NCBE's realization that reform was needed in this post-ADA era.51

The ABA issued a strong call for reform in 1994. Acting on the report of a joint committee composed of representatives of the ABA Commission on Mental and Physical Disability Law, the ABA Section of Legal Education and Admission to the Bar, the National Conference of Bar Examiners and the Association of American Law Schools (AALS), the House of Delegates passed a resolution condemning broad inquiries into mental health and treatment as unnecessarily invading the privacy interests of bar applicants.52 The ABA urged state bar examiners to adopt a narrower set of mental health questions that addressed only current, not past disabilities.53

Responding to this report, the NCBE decided to limit the scope and duration of its mental health inquiries by adopting a new

48. See Clark v. Virginia Bd. of Bar Examiners, 880 F. Supp. 430, 434 (E.D. Va. 1995) (explaining process whereby NCBE prepares questions that are then used by states in their respective bar questionnaires). The court noted that the NCBE's changes in the bar questionnaires signify the overall impact the ADA is having on the formulation of mental health inquiries. See id. at 441.
49. Id. at 441.
50. Id.
53. See id.
set of questions. Questions 27 and 28 on the NCBE character and fitness form, revised as of March 20, 1995, deal with mental health issues and make narrower inquiries. Question 27 asks "within the past five years have you been diagnosed with or have you been treated for bi-polar disorder, schizophrenia, paranoia, or any other psychotic disorder?" Question 28 inquires, "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?" While these changes would commendably narrow the scope and duration of disability inquiries in some states, they have neither been universally adopted by the examiners, nor accepted by the critics.

D. A National Survey of Bar Questionnaires

In September 1996, the author requested the application materials from the bars of the fifty states, the District of Columbia, Guam, the Marianna Islands and Puerto Rico. At the time of writing this Article, forty-one states and territories had responded with copies of their questionnaire.

54. See id.
55. See NCBE Character Report, supra note 46, at 12 (listing revised questions concerning character).
56. Id. Question 28(b) makes the following mental health inquiry: "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?" Id. Question 29 also makes a mental health inquiry:
With 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?
Id. at 13.
57. Unfortunately, the NCBE Character Report still has broad language that unnecessarily intrudes on an applicant's mental health history in the medical release form. This form authorizes the National Conference to obtain "information, including copies of records, concerning advice, care or treatment ... relating to mental illness, use of drugs or alcohol" as part of the NCBE investigation into the candidate's moral character and fitness for practice of law. NCBE, Form 16, Authorization to Release Medical Records 1 (Mar. 20, 1995).
58. The states that are not included in this survey either (1) did not respond to two separate inquiries requesting a copy of their bar questionnaire or (2) insisted on payment of a fee before releasing their questionnaire, even when the Villanova Law Review requested a copy for this academic purpose. These states are
Although this survey is not intended as an exhaustive analysis of all bar applications across the country, it does highlight the different approaches that states take in making or not making inquiries as to a candidate’s disabilities. This survey categorizes the bars’ approaches under the following three categories: states with very intrusive inquiries, states with moderately intrusive inquiries and states with no or nonintrusive inquiries. Each heading below is followed by discussion and examples of the types of questions asked by state bar examiners. The final section summarizes the main findings from this survey.

1. **States with Intrusive Inquiries**

Questionnaire intrusiveness refers to a combination of the breadth of the inquiry and the length of the period for which responses are sought. Thus, bar applications included in this category compelled answers to questions that were both broad in scope and far-reaching in time.

The Kansas application is a prime example of such a sweeping bar questionnaire. Kansas’s mental disability queries are parsed into two parts, one dealing with substance abuse and the other addressing mental disabilities. The substance abuse questions are fairly straightforward, but reach far back into the applicant’s past. In contrast, the mental disability questions are breathtakingly open-ended. Question 15(c) asks the applicant whether he or she has “ever been hospitalized or institutionalized for reasons of mental health” and question 15(d) inquires into whether the applicant has “ever been adjudged a mentally incapacitated or disabled person . . . or declared a ward of the Court for any reason.” Both questions are ambiguous and unlimited in scope. The bar examiners never state what the terms “mental health” or “mental disability” mean, leaving it to the applicant to determine whether his or her

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59. See Kansas Board of Bar Examiners, Petition for Admission to the Bar of the State of Kansas by Written Examination 6 (1996). Questions 15(a) and (b) inquire about substance abuse, while questions 15(c) and (d) inquire about mental disabilities. See id.

60. See id. The two questions dealing with substance abuse are very broadly phrased. See id. Question 15(a) asks “have you ever been addicted to, or excessively used, narcotics, drugs, or intoxicating liquors.” Id. Question 15(b) asks “have you, within the past 10 years, undergone treatment for or consulted any doctor about the use of drugs, narcotics, or intoxicating liquors.” Id.

61. Id.

62. Id.
hospitalization resulted from a mental health problem. Moreover, the application does not define how long a period the candidate has to be hospitalized or institutionalized before reporting becomes mandatory. Is hospitalization for just a few hours, a day, or at least a couple days enough to meet the bar examiners' criteria? The application gives no guidance to resolve such a question. Finally, the bar examiners put no time limits on this inquiry, allowing the questions to intrude deeply into the applicant's history.

North Carolina's bar application is another glaring illustration of the intrusive inquiry. North Carolina has a total of seven questions relating to mental disabilities alone. These inquiries cover a wide range and breadth of conditions and are unlimited in scope. For instance, North Carolina's character questionnaire asks the applicant whether he or she ever suffered from "blackout spells or periods of amnesia or memory loss." This question is extremely intrusive because it covers a wide range of medical diagnosis, ranging from some impairment in memory to periodic epileptic

63. North Carolina Board of Law Examiners, Application for Admission to the North Carolina Bar Examination (Aug. 1995). North Carolina's questionnaire makes the following inquiries into mental health:

- Have you ever been impaired as a result of any other medical, surgical, or psychiatric condition, or have you ever been told that you were impaired as a result of any medical, surgical, or psychiatric condition? (Q. 27)
- Have you ever been diagnosed with or have you been treated for bipolar disorder, schizophrenia, or any other psychosis or psychotic disorder, or organic brain syndrome? (Q. 28)
- Have you suffered from blackout spells or periods of amnesia or memory loss? (Q. 29)
- Have you ever been involuntarily committed to any inpatient or outpatient medical, mental health, or substance abuse facility for treatment or evaluation? (Q. 30)
- Have you ever been admitted at the request of any person other than yourself, to any inpatient or outpatient mental health or substance abuse facility for treatment or evaluation? (Q. 31)
- Have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservator, or committee; or has any petition or other proceeding ever been brought requesting that you be declared legally incompetent, or requesting that your property be placed under any guardianship, conservator, or committee? (Q. 32)

Id. at 21-24.

64. See id. (listing seven mental disability questions).

65. See id. The North Carolina application also asks the applicant the following question about drug abuse: "Have you within the last seven years been impaired as a result of your use of alcohol or drugs, or have you been told that you were, or are, impaired as a result of your use of alcohol or drugs." Id. at 21. Needless to say, this question covers a wide variety of activities. Read literally, if an applicant was ever told that he was drunk at a party, then he would have to report it to the bar examiners.

66. Id. at 21-22.
seizures. So for example, a candidate who experiences even mild epileptic seizures would seemingly have no choice but to report this condition to the North Carolina Character Committee.67

2. States with Moderately Intrusive Inquiries

States with moderately intrusive approaches delve into mental health problems that may be current or relatively remote in time.68 Some of these states ask fairly detailed and far-ranging questions about the prospective candidate’s mental health. For example, Kentucky unleashes a barrage of mental and physical health questions that could require extensive details about the past five years of an applicant’s life.69

67. In addition to the Kansas and North Carolina queries described above, the questions of Alaska, Connecticut, Florida, Indiana, Louisiana, Nevada, Oregon, South Carolina, South Dakota, Tennessee, Texas and Washington can be included in the category of states with intrusive inquiries. Although Rhode Island initially fell in this category, a recent order of the Supreme Court of Rhode Island has made its questions among the least intrusive in the nation. For a discussion of the Rhode Island case and its potential national influence, see infra notes 151-60 and accompanying text.

68. Some states in this category impose even greater demands. For instance, the Michigan application asks:

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?

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? (Q. 52).


69. See Kentucky Board of Bar Examiners, Application for Admission to the Kentucky Bar 8 (1996). Kentucky asks the following questions about an applicant’s mental health:

Are you currently, or have you been within the last 5 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? (Q. 27)

Are you currently, or have you been, within the last 5 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? (Q. 28)
Other states seek information about an applicant's mental health nearer to the time of application. New Jersey, for instance, asks whether the applicant currently has an emotional, mental or nervous disorder that would adversely affect the ability to practice law.\textsuperscript{70} It also asks whether the individual has been admitted to a hospital "or other facility" for treatment of any psychotic disorder within the past twelve months.\textsuperscript{71} Several other states similarly leave the applicant with the latitude to answer in the negative if past treatment does not affect current fitness to practice.\textsuperscript{72}

3. States with No or Minimal Disability Inquiries

Several states find it unnecessary to ask any questions about mental disabilities.\textsuperscript{73} Illinois, for example, does not make any inquiries into the mental disabilities of bar applicants.\textsuperscript{74} Other states are sparing in the scope of questions asked, focusing primarily on substance abuse.\textsuperscript{75}

Within the past five years have you suffered from, been diagnosed with or been treated for kleptomania, compulsive gambling, pedophilia, exhibitionism, or voyeurism? (Q. 29)

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. (Q. 31)

Have you been declared legally incompetent within the last 5 years. (Q. 32)

\textit{Id.} at 8-10. Alabama, Arkansas, Georgia, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Virginia, and Wyoming are also included in this moderate category, along with the District of Columbia.

70. \textit{See} Committee on Character Appointed by the Supreme Court of New Jersey, Certified Statement of Candidate, Question XV(B), at 13 (Sept. 1996).

71. \textit{Id.}

72. \textit{See}, e.g., State of Washington, Application to Take the Bar Examination and for Admission to the Washington State Bar Association, Question I (May 1996) ("Have you experienced, or undergone treatment for any psychiatric problem, or for alcohol or drug dependency during the past five years, that would interfere with your ability to practice law? If yes, give full details on an attached sheet.").

73. \textit{See} Illinois Board of Admission to the Bar Application, Final Application for Bar Examination (May 23, 1996) [hereinafter Illinois Bar Application]; Pennsylvania Bar Application, \textit{supra} note 33.

74. \textit{See} Illinois Bar Application, \textit{supra} note 33.

75. \textit{See} Pennsylvania Bar Application, \textit{supra} note 33, at 3 (asking questions concerning substance abuse). New Hampshire is another state where current drug abuse, rather than mental health, is a focus of inquiry. \textit{See} Supreme Court of New Hampshire, Petition and Questionnaire for Admission to the Bar of New Hampshire 4 (Aug. 20, 1996). The New Hampshire application asks "have you ever been addicted to the use of narcotics, drugs, or intoxicating liquors?,” or whether the applicant in the past 10 years has undergone treatment for substance abuse. \textit{Id.} Although this period is a lengthy one, New Hampshire can be counted as a progressive state because of the absence of any probes into other disabling conditions.
The Pennsylvania bar application is a prototype for this type of questionnaire.76 Its drafters admirably avoid mental disability questions and only ask whether the applicant is currently “addicted to or dependent upon narcotics, intoxicating liquors, and other substances.”77 Other questions properly focus on conduct and behavior, such as the applicant’s confrontations with an employer, supervisor or teacher about one’s truthfulness, competence or safeguarding of confidential information.78

Hawaii is another state that has taken a very enlightened and nonintrusive approach on its bar questionnaire. Hawaii limits its drug history question to only the previous year, and does not include a specific “mental health” question.79 Instead, question forty-six on Hawaii’s application for admission to the bar reads: “Do you know of any factors that would impair your ability to competently practice law or to carry out your ethical responsibilities to clients or as an officer of the court?”80 A question like this one adequately fulfills that state’s responsibility to protect the citizens of that state, without unnecessarily infringing on the privacy of qualified applicants.81 Unfortunately, the bar application formats of Illinois, Pennsylvania and Hawaii are not emulated by most states. Instead, as previously documented, the mental health questions on many bar applications are intrusive, vague or open-ended.

76. See Pennsylvania Bar Application, supra note 33, at 3. For the relevant conduct-oriented questions, see Appendix C. Puerto Rico also uses a questionnaire that focuses on conduct. See Puerto Rico Commission on Character and Admission, Declaration of Information, Question 33 (1996).

77. Pennsylvania Bar Application, supra note 33, at 3.

78. See id. at 3 (asking about conduct and behavior in question 11(b)).

79. See Hawaii Board of Examiners, Application Information 13 (1996). Question 47 asks if the candidate has “illegally used drugs” in the past year, while question 48 asks about current illegal use. Id.

80. Id.

81. For strong arguments for eliminating disability inquiries, see infra notes 170-78 and accompanying text.
4. **Summary of the Questionnaire Analysis**

In contrast to earlier surveys, this data suggests that inquiries concerning outpatient treatment and inpatient hospitalization are becoming narrower and less widespread.\(^{82}\) For instance, a 1994 survey reported that over three-fourths of the responding bars asked about the applicant’s outpatient mental health treatment and nearly ninety-six percent asked about such inpatient treatment.\(^{83}\) Even more striking, over two-thirds of these bars placed no time limit on how far back these questions reached.\(^{84}\) In this analysis, only fourteen of the thirty-seven states that reported fell into the very intrusive category. Thirteen states and the District of Columbia fell into the moderately intrusive category and ten states fell into the less intrusive or nonintrusive category.\(^{85}\) This data suggests that, despite a lack of consensus, the prevailing trend across the country is towards less intrusive disability-related inquiries.

As previously described, this lack of consensus is revealed by the wide disparity in the period of time for which applicants are required to report on their mental health. Some states, like North Carolina, South Carolina and Kansas have no time limitations on their mental health questions.\(^{86}\) Applicants from these states are therefore required to report any kind of treatment they have ever received, including throughout their childhood. Other states such as Louisiana and Texas request any information over the last ten years, while states like Kentucky are concerned with the applicant’s activities for the past five years.\(^{87}\) New Jersey’s inquiries extend

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82. See Rhode, supra note 23, at 581 (analyzing bar inquiry into mental and emotional fitness); Stone, supra note 25, at 332-36 (analyzing statistical review of bar applications including inpatient psychiatric hospitalization and outpatient mental health treatment).

83. See Stone, supra note 25, at 335.

84. See id. at 334, 337 (finding that bars inquired into substance abuse and/or treatment for alcohol or drugs in 98% of the jurisdictions responding).

85. These numbers do not include the nonstate jurisdictions of the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands and Puerto Rico. This Article classifies the District of Columbia and Guam as moderately intrusive, while the Mariana Islands fall into the most intrusive category. See, e.g., Application for Admission to the Bar of the Commonwealth of the Northern Marianas Islands, Question 21, at 7 (“Have you ever been treated or confined for mental or emotional disorders, adjudged incompetent or insane by any court or declared a ward of the court?”). For a discussion of Puerto Rico as one of the least intrusive jurisdictions, see supra notes 75-76.

86. For a discussion of the Kansas and North Carolina bar questionnaires, see supra notes 59-67 and accompanying text.

87. For a discussion of the Kentucky and Texas bar applications, see supra note 69 and accompanying text and infra notes 138-50 and accompanying text, respectively.
back only one year. Finally, progressive states, like Illinois, Hawaii and Pennsylvania, make no probes into disability history.

In summary, of the states responding to this survey, fourteen requested mental health information from ten or more years ago. Eleven states inquired about information dating between five and ten years back, and twelve states restricted their inquiries to less than five years. Of these twelve states, other than asking about a candidate’s current functioning, ten made no probes into a history of psychiatric disability at all.

States also show great variation in the terms they use to describe the type of mental health information that the applicant must disclose. Some of the most intrusive questionnaires asked applicants if they have ever been hospitalized for “any mental disturbance, nervous or mental disorder.” Applicants are also expected to list hospitalizations, regardless of whether or not the hospital stay was related to a disability which may pertain to the practice of law. These types of inquiries present a high risk for abuse because applicants are required to provide blanket information on a highly sensitive and private subject with no regard for the relevance of the disclosed information to the practice of law.

Some states have taken steps to mitigate the unnecessarily intrusive nature of their questions, such as the recent challenge to the Rhode Island bar questionnaire. States like Florida have attempted to respond to criticism about the high degree of generality in their questions by replacing more general language with a listing of specific illnesses. Although this does represent an improvement over the “any mental disturbance, nervous or mental disorder” language of some states, the laundry list approach has the disadvantage of seeming to place “major depressive mood disorder” on the

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88. For a discussion of New Jersey’s bar application, see supra notes 70-71 and accompanying text.

89. For a discussion of the Hawaii, Illinois and Pennsylvania bar questionnaires, see supra notes 73-81 and accompanying text. For a discussion of Rhode Island’s progressive movement, see infra notes 151-60.

90. States in this category typically asked if the applicant had been diagnosed or treated for a major mental disorder or condition that “significantly impaired” behavior, judgment or ability to function. See, e.g., Virginia Board of Bar Examiners, Applicant’s Character and Fitness Questionnaire, Question 20(b), at 21 (Nov. 1996).

91. See In re Questionnaire for Admission to the Rhode Island Bar, 683 A.2d 1333, 1335 (R.I. 1996) (adopting new inquiries that are much more consistent with less intrusive approaches of states like Illinois and Maryland). For a discussion of the Rhode Island decision that recently held that the mental disability and substance abuse questions on the Rhode Island bar questionnaire violated the ADA and the exact wording of the newly crafted inquiry, see infra notes 151-60 and accompanying text.
same footing with say "pedophilia." In addition to the heightened stigma of such lumping of illnesses, the lack of explanation of the relationship between certain illnesses and the ability to practice law is of significant concern.

A better approach would offer the applicant some explanation of the kind of information a mental health inquiry is or is not trying to tap. States like Oklahoma, Alabama and Nebraska, for example, have adopted similar preambles to their mental health questions that explain that these questions are not intended to address information "that is fairly characterized as situational counseling." The preamble details examples of situational counseling like "stress counseling, domestic counseling, grief counseling and counseling for eating or sleeping disorders" which are not to be reported.92 Preambles such as these represent a significant protection against overly intrusive inquiries. States like Iowa have refined their preambles by defining relevant terms and explaining that they are not asking the applicant to divulge "situational counseling" involving a "dramatic or upsetting event such as death, break-up of a relationship or a personal assault," even if the traumatic event "does affect the applicant's ability to practice law for a limited time."93

Although many states still include mental health inquiries on their applications for admission to the state bar, some states have eliminated these inquiries completely. Their elimination of these unnecessarily intrusive questions, along with the methods that other states have employed to narrow the focus of their questions, effectively undermines the argument that comprehensive life-long inquiries about mental health are necessary to protect the public's safety.

A further sign of flux is the frequency of change in some questionnaires. For example, in Maryland, over a span of two years, the relevant time period has plummeted from ten years, to five years, to

92. See, e.g., NCBE Character Report, supra note 46, at 12. The preamble to questions 27, 28 and 29 reads in part:

The National Conference 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 National Conference and the various boards of bar examiners do not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

Id.

93. See Supreme Court of Iowa, Application for the Iowa Bar Examination, Question 39, at 9 (expressing Board’s “understanding” that “mental health counseling or treatment is a normal part of many persons’ lives” and noting Board’s desire not “to pry into the private affairs of applicants”).

http://digitalcommons.law.villanova.edu/vlr/vol42/iss2/6
the "present." These successive changes have represented a move from very intrusive to increasingly less intrusive inquiries. The trend in Maryland, achieved through self-assessment by the bar as well as outside recommendations, is consistent with nationwide litigation in the area of bar questionnaires.\(^{94}\) Maryland's evolutionary experience provides instructive lessons for examiners and reformers alike. It also puts the often abstractly debated effects of the questioning process into a human perspective.

III. A CANDIDATE'S QUEST FOR ADMISSION AND REFORM

A. Finding Legal Counsel

"Can you represent a woman whose bar admission is on hold because of her mental health history?" With that call for help from a former student in search of counsel for a graduate of another law school, my clinical students and I began to learn about the plight of Jane Doe. The essential facts of Ms. Doe's case seemed straightforward. She had passed the written bar examination held in the summer of 1994. Because she had answered in the affirmative to questions about mental health treatment and alcohol abuse, however, a bar of Maryland character committee was still deciding whether or not she possessed the fitness to practice law. The more we learned about her case and her frustration as she tried to gain admission to the bar, the more it seemed an appropriate case for a clinical work group that focused on the civil rights of persons with disabilities.\(^{95}\) We agreed to interview her and determine if she could become a client of the Clinical Law Office.

The decision to accept Jane as a client was influenced by a variety of factors. She was unemployed, had physical and mental health conditions that could be exacerbated by the stress of a protracted bar admission process and was too poor to afford fee for service counsel.\(^{96}\) There were no other public law offices to which she could readily turn.\(^{97}\) Mary Ann Ryan, the referring attorney, and

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94. For a discussion of case law in this area, see infra notes 131-66 and accompanying text.


96. One attorney she consulted wanted a fee of $150 per hour, but that rate and the potentially time-consuming nature of the engagement placed his representation out of reach for her.

97. Without success, she had contacted over a half-dozen public interest law offices and bar-sponsored attorney referrals before her friends requested the Clinical Law Office's help.
her partner, Anna Coyle, proved willing and enthusiastic about taking on a co-counsel role on a pro bono basis. The issue was one of first impression in our state, and the ADA opened up powerful new avenues for advocacy on behalf of bar candidates like Ms. Doe. Our prospective client presented a compelling story: a person who had overcome many obstacles to attend and graduate from law school, who had successfully represented clients as part of her own law school’s clinical program and who had reached a point of despair as the months wore on after the once happy news of passing the bar. The case presented a threefold opportunity: (1) it fulfilled a lawyer’s duty to render pro bono services; (2) it would aid a potential fellow member of the legal profession; and (3) it could assist in reforming a legal institution.

98. Several Maryland precedents existed on the issue of bar admission for candidates with records of criminal conviction. See In re Admission to the Bar of Maryland of Jeb F., 558 A.2d 378, 379 (Md. 1989) (denying admission to applicant despite receipt of type of pardon absolving him of civil liabilities resulting from conviction of armed robbery); In re G.L.S. for Admission to the Bar of Maryland, 439 A.2d 1107, 1108, 1118 (Md. 1982) (granting admission to applicant convicted of driving getaway car in bank robbery because he had refrained from criminal conduct and changed his life by graduating from college and law school); In re K.B. for Admission to the Bar of Maryland, 434 A.2d 541, 546 (Md. 1981) (denying admission because of continuous criminal activity over period of years and failure to show “inborn resolve” to change his moral character); In re A.T. for Admission to the Bar of Maryland, 408 A.2d 1023, 1025, 1028 (Md. 1979) (granting admission because shoplifting was linked to drug addiction and he had successfully completed a rehabilitation program and abstained from drug use for 15 years); In re David H. for Admission to the Bar of Maryland, 392 A.2d 83, 85, 88 (Md. 1978) (denying admission to candidate who had pled nolo contendere to theft charges and had not shown inborn resolve to change); In re Allan S. for Admission to the Bar of Maryland, 387 A.2d 271, 273-74, 277 (Md. 1978) (admitting candidate who was caught but not convicted for shoplifting in 1966 and 1971); see also In re Dortch, 687 A.2d 245, 245 (Md. 1997) (refusing to entertain application to admit person to practice of law when that person, by virtue of parole status, is still directly or indirectly serving prison sentence); Dennis O’Brien, Ex-Inmate’s Bid to be Lawyer Angers Slain Officer’s Family, BALT. SUN, Nov. 12, 1996, at A1 (pending petition in Court of Appeals of convicted second-degree murderer sentenced to 15 years in 1975 and recommended for admission by Board of Law Examiners by six-to-one vote).

99. See MODEL CODE OF PROF’L RESPONSIBILITY EC 2-18 (1983) (recognizing that members of the legal profession should receive “special consideration . . . in the fixing of any fee for services rendered”). As the Doe Memorandum to the Board stated:

Our proposals stem both from our client representation and an ethical obligation to render public interest legal service. Indeed, Rule 6.1 of the Maryland Rules of Professional Conduct directs us to provide “pro bono public service,” including “service in activities for improving the law, the legal system or the legal profession.” The Maryland Rules urge all attorneys to support legal services to the disadvantaged. Historically, individuals with disabilities have had an acute social disadvantage and have been disenfranchised and unable to secure sufficient legal services. Publications of the American Bar Association (ABA) acknowledge that “persons
B. Adopting an Advocacy Strategy

Our primary goal was to obtain Ms. Doe’s prompt admission to the bar. To this end, we identified two individuals who would each write a letter supporting Ms. Doe’s admission. The most critical one was from her treating psychiatrist, a well-credentialed holistic practitioner who was treating her with acupuncture, relaxation exercises and nutritional treatment that relieved stress, provided much needed emotional support and relieved the physical pain associated with her Lupus Erythematosus. Based on his observation of her over several months, the psychiatrist had no concerns with Ms. Doe’s “judgment or her competence” and concluded there was “absolutely no reason why [Ms. Doe was] not capable of practicing law.” We offered his three-page letter in lieu of the Board’s proposal that she be examined by one of the three psychiatrists that they named (from whom she might select one). Her clinical law professor wrote the other letter, documenting that, as a supervising attorney, she found Ms. Doe’s work on behalf of her clients to be competently and professionally performed and that she possessed “the necessary positive attributes to practice law or engage in any other legal endeavor.” In our cover letter to the character committee interviewer, we stressed that the ADA and the submitted documents demonstrated that our client was entitled to be admitted to the bar.

Nearly two months of legal and factual research convinced us that we had a strong case if litigation became necessary. But because the December 1995 swearing in ceremony was fast approaching, we decided that a problem-solving approach, rather than a confrontational approach for an affirmative decision, would permit Ms. Doe to join the ranks of the bar before another year would pass.

In light of her long struggle for admission, and our success in utilizing a client-centered approach, Ms. Doe asked us to achieve a more altruistic end, thus making her struggle the first step toward achieving a higher goal. From the outset of the representation, we

with mental disabilities... have needed and not received zealous legal advocacy... People with mental disabilities often are relegated to the margins of society: ignored, forgotten, or feared.” We hope that the Bar will welcome our recommendations in the spirit of advancing the public interest and fairness to individuals with disabilities.

Doe Memorandum, supra note 1, at 3 (quoting DEBORAH ZUCKERMAN & MARC CHARMATZ, MENTAL DISABILITY LAW: A PRIMER 9 (1992)).

100. As clinical professor of psychiatry at Georgetown University School of Medicine, Ms. Doe’s psychiatrist described this condition as “a chronic, debilitating autoimmune disease, which has produced marked pain in multiple joints, extreme fatigue, severe skin lesions, anemia and weight loss.”
had agreed to pursue some systemic changes to spare future candidates from related difficulties. After all, her 568-day processing time cost her lost economic opportunities, some embarrassment and considerable emotional turmoil. Another candidate might not find sympathetic lawyers willing to invest literally hundreds of pro bono hours or, perhaps if less lucky, even attorneys willing to assist on a reduced fee basis. More importantly, we believed that the questionnaire placed would-be applicants in an extremely uncomfortable position. They faced tormenting choices: Either divulge information that might be protected from disclosure under the ADA, unilaterally interpret ambiguous terms to shield themselves from disclosing disability conditions and treatment or give evasive, if not untruthful answers. Of course, the last choice is not only morally wrong, but could expose the candidate to the risk, if discovered, to sanctions or even disbarment.

From informal conversations with such applicants, as well as with a well-respected member of the bar who had not disclosed past treatment, the author knew that these terrible dilemmas were real. It is an irony of the current system that the most candid and cooperative applicant often faces the longest ordeal, while other applicants with similar backgrounds who tick the box "no" sail into the bar with no ripple of attention. As one federal judge recently recognized, mental health questions are ineffective in identifying applicants with mental illnesses. In reality, candidates seem to be

101. She had applied to become a member of the bar in May 1994. On June 14, 1994, she received the first request for further information in response to her affirmative answers, a 541-day processing time from that milestone. She was notified of her passage of the bar examination in November 1994, yielding a 392-day interval to the time of her swearing-in.

102. While this Article does not condone dishonesty in completing bar applications, there is something dysfunctional with a system that throws its net so wide that only a handful of candidates answer "yes" to questions that epidemiological studies suggest would require hundreds of candidates to affirm their past or present disability.

103. See Clark v. Virginia Bd. of Bar Exam’rs, 880 F. Supp. 430, 437 (E.D. Va. 1995) (concluding that, as practical matter, questions concerning treatment within last five years were ineffective). The court accepted the joint testimony that:

[A]pproximately twenty percent of the population suffers from some form of mental or emotional disorder at any given time. However, despite reviewing some 2000 applications per year, the Board has received only forty-seven affirmative answers to its mental health questions in the past five years. This affirmative response rate, or “hit” rate, of less than one percent is far below the expected rate of twenty percent. The Board has presented no evidence to suggest, nor is there any reason to believe, that bar applicants are not reflective of their general population. Thus, the great discrepancy between the Board’s hit rate and the reported percentage of persons suffering from mental impairment indicates that
engaging in mass noncompliance, a form of "questionnaire nullification," as they resist undue governmental scrutiny into their private lives. Thus, to Ms. Doe and her counsel, the time seemed ripe to sharply reduce bar inquiries into the disability conditions and treatments protected by the ADA.

The experience of other jurisdictions showed mixed results where applicants litigated such issues. In contrast, we devised a strategy that we hoped would lead to a relatively rapid negotiated resolution of both Ms. Doe's personal and altruistic objectives. First, it served neither party's interests to adopt an adversarial posture if positive results could be obtained through alternative means. Second, the Board of Law Examiners was already considering a well-reasoned set of recommendations from the Maryland State Bar's Section on Legal Education (the "Sargent Report") that was compatible with several of our client's goals. Third, good personal relations between the parties could facilitate an early resolution, a classic case for applying the problem-solving negotiators' maxim to be "tough on the problem, but gentle on the people." Fourth, we hoped that we could resolve a wider range of issues than were typically presented in litigation of this type. Finally, we sought to identify a common ground between the bar and our client, urging the Board to accept our position as "a balance between considerations of public interest, which demand that applicants to the bar be screened for the requisite character and behavior befitting the practice of law, and the rights of persons with disabilities to avoid undue stigma, embarrassment, intrusion on highly personal

Question 20(b) is ineffective in identifying applicants suffering from mental illness.

*Id.* at 437. In a note to this passage, the court observed that:

Notwithstanding its receipt of forty-seven affirmative responses, the Board has never denied a license on the basis of prior mental health counseling. Plaintiff's Exhibit 5. Although the Virginia State Bar has suspended attorneys for mental disability, see Defendant's Exhibits 8-15, the Board is unable to point to a single instance where an affirmative answer to Question 20(b) has prevented licensure. Thus, Question 20(b) has failed to serve its purpose of preventing the licensure of applicants lacking the fitness to practice law.

*Id.* at 437 n.12.

104. Considerable time, however, had lapsed since the submission of the Sargent Report, and the delay in the Board's action suggested that additional advocacy was needed.

105. See Roger Fischer & William Ury, Getting To Yes: Negotiating Agreement Without Giving In 140 (1981) (noting that better relations between parties can lead to better results).

106. For a discussion of the range of issues and the results obtained to date, see *infra* notes 131-66 and accompanying text.
domains and financial and psychological costs." In assuming that the Board shared this goal, we urged them to move "to eliminate the appearance or actuality of discrimination based on disability in the Bar application process."

Ultimately, this strategy worked. Measured in terms of the time from the Clinical Law Office's intervention to Ms. Doe's admission and to the revisions to the bar's questionnaire, these results occurred more rapidly than in most of the litigated cases. Seven days after our first telephone call to a bar official, and six days after the doctor's letter accompanied by our letter with legal arguments, Jane Doe received a call from the Court of Appeals inviting her to the ceremony. On December 12, 1995, she officially became a member of the Bar of Maryland. It would be another eight months, however, before systemic changes to the bar questionnaire would be achieved.

C. Revamping the Questionnaire

Ms. Doe and her counsel zeroed in on the questionnaire for obvious reasons. Her travails with the bar began when she was obliged to answer the following broad question: "Have you within the past ten years, ever been a patient in any sanitarium, hospital or mental institution for the treatment of mental illness?" She was also required to execute a very broad authorization and release, thus permitting the character committee and Board of Law Examiners to "inspect and make copies of . . . any and all medical reports, laboratory reports, X-rays, or clinical abstracts which may have been made or prepared" by medical doctors and other persons involved in her treatment. This release was not a mere formality. The character committee interviewer had requested and received a large number of Ms. Doe's confidential medical records. None of these intrusions would have occurred if the questionnaire had instead focused on a candidate's present fitness to practice law, rather than his or her past medical status.

107. Doe Memorandum, supra note 1, at 2.
108. Id.
109. Maryland State Board of Law Examiners, Application for Admission to the Bar of Maryland, Character Questionnaire, Question 14(a), at 2 (May 3, 1994) [hereinafter Maryland Bar Application]. Ms. Doe also responded affirmatively to another question with a ten-year scope of inquiry. It asked: "Are you now or have you within the past ten years ever been, addicted to, or have you undergone treatment for the use of alcohol, narcotics or drugs, as an inpatient or outpatient?" Id.
110. Id.
111. When Ms. Doe visited the interviewer, she observed a stack of her medical records that she estimated to be three to four inches thick.
By 1995 the Board had revised the questionnaire, but the revisions would not help Ms. Doe or other similarly situated candidates, although the revisions did reduce the length of the period subject to inquiry to five years. The five-year period, however, still permitted inquiries into a candidate's pre-law school history. Questions were still framed around diagnostic labels and past conditions, rather than focusing on the candidate's current fitness to practice law. In fact, it now doubled the number of disability-focused questions. The Board added new queries concerning specific psychotic disorders, the impact of treatment or therapy on a wide range of conditions and any use by the candidate of a disorder or condition as a defense, mitigation or explanation in any proceeding or investigation. In essence, the 1995 revisions appeared to take one step forward, but then two steps back.

Once Ms. Doe was admitted, we focused on revamping the two questions that involved mental health history. We urged that question fourteen, pertaining to mental disability and substance abuse, be scaled back. On the issue of substance abuse, we argued that the ADA protected an individual like Ms. Doe who had successfully completed a program of alcohol treatment and had no current drinking problem.

The focus of the Clinic's argument was on the unnecessary differential treatment of candidates with disabilities and the public policy rationales for eliminating or narrowing the disputed questions. Using the force of the ADA, we reasoned that the Board, as a public entity, could not impose eligibility criteria that could screen out individuals with disabilities without showing that the Board's criteria and questions were "necessary for the provision of that service, program, or activity being offered." With respect to issues

112. For a full text of the previous Maryland character questionnaire, including question 14, see Appendix A to this Article.

113. For the text of Maryland's previous character questionnaire, see Appendix A.

114. One difficulty posed by the Board's compounded question is that it lumped "alcohol or substance abuse" together in the same query, but alcohol consumption by adults is not illegal. Although the ADA does not protect individuals who are currently engaging in the illegal use of drugs, it protects an individual who:

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) is erroneously regarded as engaging in such use, but is not engaging in such use.


of alcohol and substance abuse, we recommended that only questions narrowly drawn to identify current abuse affecting fitness to practice were consistent with the ADA. 116 Similarly, we challenged questions on the diagnoses or treatment of specifically named mental illnesses, or “mental, emotional, nervous, or behavior disorders or conditions”117 as discriminatory because of their failure to focus on current capability, conduct or behavior. An applicant’s history of past mental illness, we contended, did not prove that a candidate lacked the present capacity to practice law.118

From a public policy perspective, we argued that bar inquiries not only discriminated on the basis of disability, but also discriminated on the basis of sex, and had profoundly chilling impacts on the timely use of therapy and counseling. Because women tend to obtain psychological and psychiatric treatment more frequently than men, under the old questionnaires they would have a disproportionate duty to report their treatment to bar examiners.119 For example, women are treated and diagnosed far more than men in response to anxiety, depression and eating disorders.120 Women are also twice as likely as men to receive prescriptions for psychotropic medication as “treatment,” thus finding it harder to deny the

116. See Maryland Bar Application, supra note 109, at 2.

117. Doe Memorandum, supra note 1, at 8-9. As we noted, ADA regulations require that “policies and procedures . . . designed to ensure that an individual [who formerly engaged in the illegal use of drugs] is no longer engaging in the illegal use of drugs” must be reasonable. 42 U.S.C. § 12210(b).

The ADA suggests that an individual presenting credible evidence that he or she is: (1) currently in or has successfully completed a supervised rehabilitation program for recent drug or alcohol abuse and (2) currently not engaged in the illegal use of drugs or abuse of alcohol, should not be denied admission to the bar. See id. Therefore, the revised versions of Maryland’s questions 14(a)(i) and (ii) are sufficient for determining current substance abuse problems. Questions 14(c) and (d) were too broad and on their face did not identify accurately the current illegal use of drugs. Therefore, we recommended eliminating those sections to question 14. Those questions are discriminatory and may provoke a cause of action pursuant to the ADA. See Doe Memorandum, supra note 1, at 8-9.

118. See Doe Memorandum, supra note 1, at 9 (referring to case that held applicant who was intellectually and morally qualified could not be denied admission on ground that he had history of mental illness, where he had never been declared incompetent, nor hospitalized).

119. See Joan Busfield, Men, Women, and Madness: Understanding Gender and Mental Disorder 80 (1996) (arguing that, in Western societies, women are more likely to admit to psychological problems, and do so at earlier stage than men).

120. See id. at 80, 239 (finding that more women than men are mental health patients and “greater willingness of women to identify [mental disorders] and to seek help for them”).
fact of mental health treatment.\textsuperscript{121} Furthermore, women seek treatment episodically, often in response to deep personal traumas such as rape, incest, battering or past abuse.\textsuperscript{122} Advocates in Florida and Minnesota had made similar arguments in their respective states, such as the anecdotal accounts presented to the Minnesota Supreme Court when it narrowed the questionnaire on public policy grounds.\textsuperscript{123} Finally, we urged the Maryland Board to eliminate or narrow the mental health questions because such questions could discourage candidates from seeking early, or any, counseling or treatment out of fear that bar authorities might view such treatment negatively.\textsuperscript{124}

\textsuperscript{121} See id. at 80, 175 (concluding that widespread use of psychotropic drugs among females stems from need of male therapists to control female patients and that more women suffer from anxiety, depression and anorexia nervosa).

\textsuperscript{122} See id.; \textit{In re Frickey}, 515 N.W.2d 741, 741 (Minn. 1994) (ordering questions in dispute to be removed from Minnesota bar application). The petitioners argued that the questions invaded applicants' privacy rights and discriminated against women, and the court disagreed that women were "disproportionally" disadvantaged. \textit{Id.} The court also ordered the examiners to disregard any answers already made to the offending questions. \textit{Id.}

\textsuperscript{123} See \textit{Frickey}, 515 N.W.2d at 741. Based on these public policy materials, the Minnesota Supreme Court ruled in favor of the petitioners. \textit{Id.} Although the court's order did not address whether the ADA had been violated, or was even applicable, the court found that:

\textit{[T]he 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 weighs against asking the questions, and believing that questions relating to conduct can, for the most part, elicit the information necessary for the Board of Law Examiners to enable the Court to protect the public from unfit practitioners.}

\textit{Id.} Therefore, the court ordered the deletion of three questions pertaining to mental health treatment. \textit{Id.} The Board was thus required to remove the relevant questions and refrain from using the answers given to the questions in their assessments. \textit{Id.}

The Florida advocates also stressed the gender disparities. See Resnick, supra note 30, at 34 (stating that, according to Professor Susan Stefan of the University of Miami School of Law, female law students had more frequently sought counseling than their male counterparts). But for all concerned students who sought her advice, Professor Stefan urged caution:

I've had students come to me and ask me what the effect would be of seeking drug counseling. I've had students come to me who were simply stressed out . . . . What I tell them is that the way the question is phrased, it's broad enough that you're going to have to disclose all counseling.

\textit{Id.} For the narrowing of the Florida inquiries as a result of litigation by lawyers from the ACLU of Florida and the U.S. Justice Department's Public Access Section of the Civil Rights Division, see infra notes 131-37 and accompanying text.

\textsuperscript{124} See Laura F. Rothstein, \textit{Bar Admissions and the Americans with Disabilities Act}, Hous. Law., Oct. 1994, at 34, 39 (stating that "individuals who may know that they will have to answer them may avoid seeking counseling for depression or other conditions because of concerns that bar authorities might view such treatment negatively"); see also Maher & Blum, supra note 23, at 830-38 (arguing that inquiry into mental health of bar applicants discourages and interferes with appropriate treatment).
To pinpoint a solution to these and other problems with the Maryland questionnaire, we offered a set of revised questions designed to elicit only information regarding a candidate’s current mental condition that had a bearing on present fitness to practice. As a preamble, we recommended that a properly managed mental illness or potential for alcohol or drug abuse “should not have an adverse impact on an individual’s performance as an attorney.” Our draft deleted the questions pertaining to past mental health or substance abuse problems, suggesting that any materials explaining a current condition should not require disclosure of treatment or therapy received over a year ago. Finally, we urged the deletion of the phrase “mental or emotional disability” from a vaguely worded question that asked about “any circumstances or unfavorable incidents in your life . . . which may have a bearing upon your character or your fitness to practice law.” This question pressed the candidate to disclose the full details of such circumstances or incidents, “including any assertions or implication of dishonesty, misconduct, misrepresentation, mental or emotional disability, financial irresponsibility, and disciplinary measures imposed.” “What exactly is an implication of emotional disability,” we asked. Does being told you’re “crazy” by some layperson count? If so, how many of us would have to answer “yes!”

In August 1996, the Board decided to revise the questionnaire and adopted many of our recommendations. In a gracious letter, the Board Chairman noted that the Board had “carefully considered these very excellent reports and thoughtful recommendations” from the Section Council of the Legal Education Section of the Maryland State Bar Association and the Clinical Law Office, and thanked the respective authors for “their valuable input and counsel.” These two independent efforts, coupled with the Board’s receptiveness to constructive change, improved

125. Doe Memorandum, supra note 1, at 15.
126. See id. (noting that health care professionals who are currently asked to provide statement on candidate’s current diagnosis, treatment regimen and prognosis would under proposed language also be asked to specify “its bearing on your fitness to practice”).
127. Maryland Bar Application, supra note 109, at 3.
128. Id. (emphasis added).
129. For the full text of the new disability-related questions in the revised Maryland Bar Application, see Appendix B of this Article.
130. Letter from Jonathan A. Azrael, Chairman of Maryland Board of Law Examiners, to Mark A. Sargent and Stanley S. Herr, University of Maryland School of Law (Aug. 5, 1996).
the bar's approach to applicants with disabilities or perceived disabilities. For each of the parties, a win-win situation resulted.

IV. LITIGATION AND OTHER LAW REFORM RESPONSES

Compared to Maryland's experience, lawsuits elsewhere have had costly and sometimes mixed results. Recent decisions under the ADA curtail the power of state licensing boards to investigate the mental health backgrounds of bar applicants. Courts responding to challenges to mental health questions in professional licensing under the ADA have concluded that broad-based inquiries either violate or are likely to violate Title II of the ADA. In Ellen S. v. Florida Board of Bar Examiners, the plaintiffs challenged questions on the Florida Board of Law Examiners' application that addressed mental health treatment history. They argued that the Florida Board's inquiries and investigatory process discriminated against applicants on the basis of their disability in violation of Title II of the ADA. The court agreed with their argument and held that inquiry by the Board into mental health treatment and diagnosis violate Title II of the ADA because they "discriminate against Plaintiffs by subjecting them to additional burdens based on their disability." Subsequently, the Florida Board narrowed its mental

131. See Clark v. Virginia Bd. of Bar Exam'rs, 880 F. Supp. 430, 444 (E.D. Va. 1995) (holding that question that "discriminates against disabled applicants by imposing additional eligibility criteria" must be deleted and amended). The litigation surrounding the Florida bar examination questionnaire is a contrasting example of how the ADA has altered the approach courts must use to evaluate the legality of bar examination questionnaires. See Ellen S. v. Florida Bd. of Bar Exam'rs, 859 F. Supp. 1489, 1492 (S.D. Fla. 1994) (holding that previous case that upheld mental health questions on bar questionnaire against state and federal constitutional challenges is inapplicable to ADA issues because it predates ADA, and because court only addressed whether it violated U.S. and Florida Constitutions).

132. See Ellen S., 859 F. Supp. at 1493 (holding that broad inquiry into bar applicant's mental health may violate Title II of ADA); Medical Soc'y of N.J. v. Jacobs, Civ. A. No. 93-3670, 1993 WL 413016, at *7-8 (D.N.J. Oct. 5, 1993) (concluding, in dicta, that licensing agency's investigation associated with affirmative answers to question "have you ever suffered or been treated for any mental illness or psychiatric illness" violates Title II); In re Underwood, 1993 WL 649283, at *2 (Me. Dec. 7, 1993) (finding that bar examiner's inquiry into diagnosis and treatment for emotional, nervous or mental disorders and accompanying medical authorization form are violations of ADA); see also Applicants v. Texas State Bd. of Law Exam'rs, No. A 93 CA 740 SS, 1994 WL 776693, at *7 (W.D. Tex. Oct. 11, 1994) (finding that "such a broad-based inquiry violates the ADA.").


134. See id. at 1491.

135. See id.

136. Id. at 1493-94.
Supporters of questions about applicant's mental health history often rely on *Applicants v. Texas State Board of Bar Examiners*, which held that the ADA permitted the Board to inquire into an applicant's mental health. In this case, however, the court reviewed a revised version of the Texas Board questionnaire, which addressed only so-called "serious mental illnesses"—specific disorders of a psychotic nature that it assumed would produce behaviors that could interfere with the practice of law. The earlier broad-based questions, found to be in violation of the ADA in other jurisdic-

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137. See id. at 1494. Following the decision in *Florida Board of Bar Examiners*, the Florida board revised its questions to be similar with the question used by the Texas State Board of Bar Examiners. Telephone interview with Thomas A. Pobjecky, General Counsel, Florida Board of Bar Examiners (Dec. 19, 1996). At the time of the district court decision in *Florida Board of Bar Examiners*, question 29 of the application to the Florida Bar read as follows:

Consultation with Psychiatrist, Psychologist, Mental Health Counselor or Medical Practitioner.

a. ___ Yes ___ No Have you ever consulted a psychiatrist, psychologist, mental health counselor or medical practitioner for any mental, nervous or emotional condition, drug or alcohol use? If yes, state the name and complete address of each individual you consulted and the beginning and ending dates of each consultation.

b. ___ Yes ___ No Have you ever been diagnosed as having a nervous, mental or emotional condition, drug or alcohol problem? If yes, state the name and complete address of each individual who made each diagnosis.

c. ___ Yes ___ No Have you ever been prescribed psychotropic medication? If yes, state the name of each medication and the name and complete address of each prescribing physician. Psychotropic medication shall mean any prescription drug or compound effecting the mind, behavior, intellectual functions, perceptions, moods, or emotions, and includes anti-psychotic, anti-depressant, anti-manic and anti-anxiety medications.

Id. at 1491 n.1. The revised Florida question added three more categories of psychological disorders not included in the Texas State Board question: "Major Depressive mood disorder," "Antisocial Personality disorder" and "Pathological Gambling."


139. See id. at *9.

140. See id. at *10 n.5. The questions that were upheld in *Texas State Board* are as follows:

a) Within the last ten years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?

b) Have you, since attaining the age of eighteen or within the last ten years, whichever period is shorter, been admitted to a hospital or other facility for the treatment of bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?

If you answered "YES" to any part of this question, please provide details on a Supplemental Form, including date(s) of diagnosis or treatment, a description of the course of treatment, and a description of your present condition. Include the name, current mailing address, and telephone number.
QUESTIONING THE QUESTIONNAIRES

Predictions, had been removed from the Texas Board of Bar Examiners questionnaire in 1992.141 Other authorities have limited or criticized the Texas approach. In *Clark v. Virginia Board of Bar Examiners*,142 the court found that the Texas holding had limited application, and did not support the claim that broad mental health questions are valid under the ADA.143 Other supporters of revision have gone further, arguing that even the limited inquiry approved in *Texas State Board* is invalid under the ADA.144 The Department of Justice, for example, maintains that questions like those reviewed in *Texas State Board* violate the ADA because they focus on a person's "status" as an individual with a disability, instead of the applicant's past behavior.145 The U.S. government takes the position that state boards may inquire about "conduct or behavior" that may be associated with a mental illness.146 To focus on a person's "status" as disabled or not, however, means that the disability can be used to "singl[e] out persons . . . [and] impo[se] more burdensome requirements on persons with histories of disabilities than on other applicants."147 Even questions like those used in *Texas State Board* "are not focused on actual, current impairments of candidates' abilities or functions,

number of each person who treated you, as well as each facility where you received treatment, and the reason for treatment.

Id. 141. See id. at *10 nn.3-4 (explaining earlier versions of questions).
143. See id. at 444.
144. See id. at 444 n.25 (recognizing that United States, appearing as amicus curiae before the district court in litigation surrounding Virginia bar examination questionnaire, argued that even "limited inquiry" into severe mental disabilities violates Title II of ADA because diagnoses listed are unnecessary classifications). Government lawyers reasoned that "applicants whose fitness to practice law should be investigated further most likely will have exhibited conduct or behavior that raises a question of fitness" thereby making the classifications of diagnosis unnecessary. Kate M. Nicholson & Sheila M. Foran, *Using the ADA to Open Gateways to the Professions*, CONSUMER & PERS. RTS. LITIG. NEWSLETTER., May 1995, at 8.
145. See Nicholson & Foran, supra note 144, at 6.
146. See id.
147. Id. at 4. An emotional disability is a label used to categorize people, but it does not reliably predict specific behaviors of a particular individual that may present a risk to the public in the different contexts in which law is practiced. Although a public entity has the right to impose requirements on applicants in the interests of safety, they must be careful that these safety requirements "are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities." DISABILITY RIGHTS SECTION, U.S. DEP'T OF JUSTICE, THE AMERICANS WITH DISABILITIES ACT: TITLE II TECHNICAL ASSISTANCE MANUAL 13 (1993) [hereinafter TECHNICAL ASSISTANCE MANUAL]. Why should a public entity rely on a label under the assumption that this label is predictive of further behavior when they could simply ask about the specific behaviors that present legitimate safety concerns?
and are not narrowly tailored to determine current fitness to practice the profession.”  

Although the Department of Justice presented these arguments to the court in Virginia Board of Bar Examiners, the court reached its decision without addressing this issue.

Recently, Rhode Island took an even more impressive step towards bringing disability inquiries on state bar questionnaires into line with the ADA. In In re Questionnaire for Admission to the Rhode Island Bar, the Supreme Court of Rhode Island found that the procedures for admission to the bar were the “functional equivalent” of the hiring process of a private employer, therefore obliging the Rhode Island bar to follow the ADA when crafting its questionnaire. The court enunciated principles of broad significance to all bar examiners by squarely holding that application questions that ask about “the existence of a disability or treatment ... may be deemed to violate the ADA, absent a showing of a direct threat to public safety” that would result from an applicant with a disability being admitted to the bar. After noting that the bar must bear the burden of demonstrating actual increased risk to the public from applicants with histories of mental health or substance abuse treatment, the court endorsed findings that showed “no empirical evidence” that lawyers who had received psychiatric help were more prone to disciplinary action than other lawyers. The Rhode Island Supreme Court then exercised its supervisory role over the process by which applicants seek admission to the bar in

150. See id. at 444 n.25. More recently, in Doe v. Judicial Nominating Commission, 906 F. Supp. 1534 (S.D. Fla. 1995), the United States District Court for the Southern District of Florida again found that questions that inquire into “any hospital confinement” or “any form of mental illness” or “any form of emotional disorder or disturbance” to be vivid demonstrations of the “over-inclusiveness of the mental health question.” Id. at 1544. This decision, however, involves a judicial nomination committee and not a bar licensing board, and thus, the public protection stakes are arguably higher. Id.
152. See id. at 1335.
153. Id. at 1336.
154. See id. The court also expressed doubt that character committee interviewers as lay persons with no mental disability training could reliably perform the screening function, particularly when nearly half of all Americans who go to mental health practitioners have no diagnosable mental disorder. Id. The legal literature, now over a decade old, is in accord. See Rhode, supra note 23, at 560, 582 (noting that conclusive assessments of future difficulties are possible only for individuals with marked incapacity).

http://digitalcommons.law.villanova.edu/vlr/vol42/iss2/6
order to revise questions 26 and 29 of the questionnaire. These newly adopted questions narrow the State's disability inquiry significantly, now focusing exclusively on "current" impairments to practice. The court concluded that questions that do not inquire about the history of a disability, but rather focus on "current" conditions, would allow the State to efficiently "carry out its inquiry into an applicant's background within the constraints imposed by the ADA." 

The Rhode Island case should prove influential in terms of its process as well as its substance. First, an official of the Rhode Island bar has commendably placed copies of the opinion in the hands of each jurisdiction's bar examiners. Second, the court created a model of organized fact finding and a climate for "meaningful dialogue" between not only the American Civil Liberties Union (ACLU) and the character committee, but between "all interested members of the community." It appointed a special master with degrees in both law and medicine, and her report based on the input of the community and the gathering of scientific and other information was thorough and persuasive. The court then held a public hearing on the report and invited written comments, ultimately receiving briefs or comments from eighteen organizations and from a prominent professor of psychiatry. Third, this very public process shed light on stereotypes and myths, offered political "cover" for the committee to make extensive changes in the ques-

155. See Rhode Island Bar, 683 A.2d at 1336. For the text of questions 26 and 29 of the Rhode Island bar questionnaire, see infra note 156.
156. See Rhode Island Bar, 683 A.2d at 1337. The new questions read as follows: Question 26: Are you currently using narcotics, drugs, or intoxicating liquors to such an extent that your ability to practice law would be impaired? Yes_ No_.
Question 29: Are you currently suffering from any disorder that impairs your judgment or that would otherwise adversely affect your ability to practice law? Yes_ No_.

Id.
157. Id. at 1336.
158. Telephone interview with Cathie Cacchiotti, Executive Secretary of the Committee on Character and Fitness and the Board of Bar Examiners of the State of Rhode Island (June 4, 1997). Ms. Cacchiotti mailed copies of the October 6, 1996 Supreme Court opinion shortly after it was issued.
159. See Rhode Island Bar, 683 A.2d at 1333-35; In re Questionnaire for Admission to the Rhode Island Bar, 658 A.2d 894, 895 (R.I. 1995). Professor Howard Zonana of Yale University, the professor of psychiatry, has been an expert witness in several of the leading cases, including Clark and Texas State Bar. The organizations included the character committee, the U.S. Justice Department, the state's protection and advocacy system, the state chapter of the National Association of Social Workers, five state agencies and several providers of mental health services.
tions and ultimately realized the proper goal of reassuring the public that it could have “competent counsel while protecting the individual applicant from unnecessary intrusions into his or her zone of privacy.”

In summary, the case law suggests that broad-based questions into an applicant’s mental health history on a bar questionnaire will be strictly reviewed and will usually fail to meet the standards under Title II of the ADA. When a bar questionnaire uses more “narrowly tailored” questions that ask about specific disabilities as they may relate to the practice of law, then at least one court has been willing to uphold the state’s inquiry under the ADA. When states employ questions that ask about specific and potentially severe mental disabilities, courts may be tempted to apply a balancing test, similar to the one employed in *Texas State Board*. In theory, this test harmonizes the congressional goals of preventing discrimination against persons with disabilities and integrating them into society with the countervailing goal of protecting the public from harm at the hands of persons holding a public trust. In applying this calculus, courts should pay particular attention to the extent to which the questions employed by different states are as “least intrusive” and as “narrowly tailored” as necessary to accomplish important public safety goals. They should also skeptically examine the

160. *Questionnaire for Admission to the Rhode Island Bar*, 658 A.2d at 896.

161. See *Campbell v. Greisberger*, 865 F. Supp. 115, 121-22 (W.D.N.Y. 1994) (finding that Campbell’s request for preliminary injunction to prevent Character and Fitness Committee from conducting further inquiry into his background failed to meet standard for injunctive relief because plaintiff failed to establish irreparable harm), aff’d, 80 F.3d 703 (2d Cir. 1996); *McCrady v. Illinois Bd. of Admissions to the Bar*, No. 94 C 3582, 1995 WL 29609, at *1, 4 (N.D. Ill. Jan. 24, 1995) (dismissing for failure to state claim upon which relief could be granted and critiquing plaintiff’s “erudite complaint” as “artlessly drawn” and “peppered with invective argument, interrupted by headings that ostensibly serve to organize the verbiage into identifiable legal theories”).

162. See *Applicants v. Texas State Bd. of Bar Exam’rs*, No. A 93 CA 740 SS, 1994 WL 776693, at *4 (W.D. Tex. Oct. 11, 1994) (holding that narrowly focused inquiries into “mental fitness of applicants ... who have been diagnosed or treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder do not violate the ADA”). For a discussion of *Texas State Board*, see *supra* notes 138-41 and accompanying text.


164. See id.; *Texas State Board*, 1994 WL 776693, at *9 (holding that questions used by Texas Board of Examiners “strik[e] an appropriate balance between important societal goals”).

165. See *TECHNICAL ASSISTANCE MANUAL*, *supra* note 147, at 13-14 (allowing public entity to “impose legitimate safety requirements” but not allowing “unnecessary inquiries into the existence of a disability”). See generally Bryan P. Neal, Com-
relevance of mental health questioning to these goals in light of psychiatry's disclaimers and the growing number of states that have discarded such inquiries.166

V. NEXT STEPS TOWARD REFORM

Bar examiners can avoid proliferating lawsuits and controversies related to the admission of candidates with disabilities if they draw the appropriate lessons from both precedent and the cooperative Maryland experience. The visibility of bar admission activities, the legal training of aggrieved applicants and the interest of the U.S. Department of Justice in this subject matter all point to the potential for further litigation.167 Bar officials, however, can and should take preventive action by revamping questionnaires now. Rather than continuing to defend a status quo that too often results in the candidate's right to privacy being invaded without demonstrable advantage to the public, bar officials can rechannel their energies to more positive ends. As the ABA has recognized, examiners should carefully consider the applicant's "privacy concerns," narrowly tailor any mental health questions "to elicit information about current fitness to practice law," and ensure that bar processes "do not discourage those who would benefit from seeking professional assistance ... from doing so."168

Unfortunately, despite the 1994 ABA resolution and mounting decisional law on the ADA, flawed and otherwise unnecessary questions continue to be asked around the country.169 Clearly more

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166. For a discussion of the relevance of mental health questioning, see supra notes 82-94 and accompanying text.

167. See Telephone Interview with Sheila M. Foran, Trial Attorney, U.S. Department of Justice, Civil Rights Division, Public Access Section (Sept. 30, 1996) (noting that although Department of Justice had no current litigation pending regarding bar applications or other professions' applications with disability queries, they were in process of responding to complaints regarding bar questionnaires). Because those matters are still in an investigatory stage, the Department cannot release information about them to the public. See id.; see also Nicholson and Foran, supra note 144, at 3-10, 14-17 (discussing U.S. Department of Justice's activities and positions on enforcing ADA as it pertains to professional licensing).

168. Turnbull et al., supra note 52, at 598. The commentators found that "fitness determinations may include specific targeted questions about an applicant's behavior, conduct or any current impairment of the applicant's ability to practice law." Id.

169. For a discussion of flawed and overly intrusive questions, see supra notes 59-67 and accompanying text.
than broadly phrased resolutions on a national level are needed to bring about change. Reformers drawn from the ranks of disability-related committees of state bar associations, clinical law offices, disability organizations, public interest law firms or elsewhere will need to work closely with state bar examiners not only to revise questionnaires, but to make improvements in procedures for reviewing applicants who give affirmative answers to questions about disability and for requests for testing accommodations. In developing those state agendas, the following issues should be considered.

A. The Case for Eliminating Disability Questions

There is a compelling case that bar examiners should entirely eliminate questions pertaining to mental health and other disabilities to comply with the ADA. Although we suggested that option to the Maryland Board of Law Examiners, we did not strenuously argue that point. Instead, we used the experience of the several states that eliminated such mental health questions to argue that our proposed revisions represented “a modest compromise.”

As a strategic matter, we put forward this compromise, not out of the sense that it was all that the ADA required, but rather to achieve an incremental gain. In many ways, the argument for elimination is the more principled and practical one. First, the ADA does not permit private employers to probe into a job applicant’s disability status, even for more sensitive posts. Thus, many disability rights specialists argue that it is inappropriate to ask about an applicant’s mental health and treatment, “especially given the possibility that all such questions might be prohibited by the [ADA].”

Second, law schools and other institutions of higher education similarly no longer inquire into mental illness or other disability in their

170. Doe Memorandum, supra note 1, at 10. We had identified those states as Arizona, Hawaii, Illinois, Massachusetts, Nevada, New Mexico, Pennsylvania and Utah.

171. See 42 U.S.C. §§ 12112(d)(2)(A), (4) (1994) (prohibiting employer from conducting “medical examination or mak[ing] inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability”). The ADA does allow inquiries concerning job-related functions. See id. § 12112(d)(2)(B); Grenier v. Cyanamid Plastics, Inc., 70 F.3d 667, 672, 677-78 (1st Cir. 1995) (finding that although employer is prohibited from making any preoffer inquiry of job applicant as to whether he or she has disability or its nature or severity, because prohibition’s purpose is to “ensure that an applicant’s hidden disability remains hidden,” employer can ask former employee with recent known disability seeking re-employment for medical certification as to his or her ability to return to work).

172. Turnbull et al., supra note 52, at 597.
admissions processes. Third, the bar examiners have the burden of demonstrating that these questions solicit information predictive of fitness to practice law, and thus, that such inquiries are necessary for the public’s protection. Until scientific proof can be convincingly presented that these inquiries in fact serve this purpose, these questions on disability should be “sunsetted.” Fourth, disparities between the states permit social scientists to frame empirical research questions that could help to end the use of disability questions and the resulting geographic inequities. Are the residents of states without disability questions at greater risk of representation by mentally aberrant lawyers than those in states with such questions? Do these queries effectively screen out candidates who are incompetent in the practice of law? Do these queries also effectively identify enough applicants, let alone genuinely risky applicants, to merit exposing the entire candidate pool to these profoundly privacy-denying questions? Fifth, there are grounds for deep skepticism that, even if an appropriately narrow (and legal) question could be framed, applicants would answer it accurately and bar examiners would process and store that information sensitively. In this sense, the jury is still out on the incremental reform adopted in Maryland.

For current applicants, however, the new Maryland questionnaire offers immediate relief from an anxiety-provoking choice. As one recent graduate informed me, before the revised questionnaire was circulated she contemplated either filing a lawsuit, telling a lie or taking the bar in another state without such intrusive questions. After much soul searching, she hired an attorney who advised her not to respond to the two offending questions. The attorney then wrote to the Board to this effect, and the Board sent the applicant a

173. See, e.g., University of Maryland School of Law, Application for Admission 4 (1996) (containing questions about dismissals from schools, discharges from employment and criminal charges). On the recommendation form, references are asked to answer more general questions that might reveal other aberrant conduct or untreated disorders such as: “Do you know of any facts as to the applicant’s character which indicate a risk that he or she might not be a credit to a law school or the legal profession?” Id. at 7.

174. See Janet Elliott, Senate Softens Licensing Rules; Substance Abusers Would Be Guaranteed Right to Practice, TEX. LAW., at 5 (May 20, 1991) (noting that in Texas, one legislator-lawyer became so irate over board’s “very cold treatment of candidates with drug or alcohol abuse problems that he threatened to even abolish it under the state’s Sunset Act”). Ultimately, legislation was adopted to require probationary licensing for candidates with such problems and to deny the Board the discretion to withhold a two-year probationary license solely because of an individual’s chemical dependency or because of a conviction or participation in a community program for a first offense of operating a vehicle while intoxicated. See TEXAS GOVT. CODE § 82.038(d)(1)-(2) (1996).
copy of the revised questionnaire and asked her to complete it if
the narrower inquiry was acceptable. Because the new questions
did not ask about her specific diagnoses and left appropriate room
for interpretation about the affect of her illness on her capacity to
practice law, she was able to answer the mental health question in
the negative. As she would later explain:

I always felt that a question about my bipolar condition
was unfair since it never was a problem for me in law
school and never affected or interfered with my perform-
ance there or in part-time jobs. After all, if you can bottle
up a little bit of hypomania in law school it can be a great
and creative thing. A lot of powerful people in the profes-
sion are a bit hyper, too. I never understood why I should
have to advertise the fact of my condition or be penalized
for it.175

The reality, of course, is that many individuals with disabilities
become members of the bar. Very few disclose their conditions in
the bar screening process. Most do not. Even for the handful who
disclose, the outcome is generally favorable even if the process is
stressful. As the Rhode Island Committee on Character and Fitness
reassures applicants, the Rhode Island Supreme Court, "conse-
quent upon the Committee’s recommendation, regularly admits ap-
plicants with a history of mental ill-health, substance abuse, and
utilization of the services of mental health professionals."176 But
the so-called “low hit rate” (i.e., the number of applicants who an-
swer such questions affirmatively) calls the utility—and fairness—of
the whole enterprise into question. As Professor Howard Zonana
of Yale University’s medical and law schools has testified, not only is
prior psychiatric treatment not relevant to the question of current
impairment,177 it is a very inefficient screen for detecting individu-
als who will not be fit lawyers:

175. Telephone interview with Joan Valjones (November 7, 1996). Mental
health experts confirm this view that persons treated for bipolar disorder can per-
form sensitive and stressful work perfectly well. See Interview with Dr. Bernard
Aron, supra note 31.

176. Rhode Island Committee on Character and Fitness, Questionnaire for
Admission to the Rhode Island Bar, at 14 (1997). Despite its recent positive
changes, the Committee still reasserts its need to “assess effectively the mental
health of each applicant. A lawyer’s untreated or uncontrolled mental disorder or
pattern of substance abuse may result in injury to the public.” Id.

177. Trial Transcript, at 46, Clark v. Virginia Bd. of Bar Exam’rs, 880 F. Supp.
You do this broad screening and, by and large, you come up with nothing, and that's true with most bar examiners across the board. That's why so many states have been willing to drop it, because most people don't see it as producing anything that is useful or that gives any criteria on which you can either deny or make any other judgments about. So you end up collecting all this data that's not useful.  

B. The Need to Limit Medical Releases

Candidates also find objectionable the examiners' demands for virtually unlimited personal medical information. At the time of completing the character questionnaire, some states require candidates to execute broad information releases that extend to every medical doctor they have seen and "any and all medical records, laboratory reports, x-rays or clinical abstracts which may have been made or prepared pursuant to, or in connection with, any examination or examinations, consultation or consultations, test or tests, evaluation or evaluations." In Maryland, Ms. Doe was not only compelled to sign away these privacy rights, but was also required to sign a second release of information giving further carte blanche to access her medical records. Her character interviewer received a considerable number of such records, undoubtedly further slowing down the processing of her application.

Bar examiners should limit their releases and record requests to documents and information that truly bear on the applicant's present condition and fitness to enter the profession. This argument rests on familiar public policy considerations. At present,
such requests for medical data are often open-ended. The requests, in essence, cast a net for sensitive information remote in time and relevance to current fitness and potentially requiring statements from numerous health care professionals in many parts of the country. As one state court acknowledged, such requests can result in the candidate having "over disclosed" concerning a private matter not related to any legitimate inquiry by the Board.\textsuperscript{181} These types of record disclosures, especially for treatment of alcohol or drug abuse, can contravene federal regulations.\textsuperscript{182} As we argued in Maryland, bar inquiries should not penalize, through intrusive and humiliating disclosures, the applicant who prudently obtained treatment while the applicant in psychological denial about his or her substance abuse or mental dysfunction can avoid making any disclosure. Rather than exposing applicants to sweeping requests for the candidates' own explanations of their health status or compelled breaches of doctor-patient confidentiality, bar officials should drastically curtail investigations into health and disability conditions.

In response to such arguments, the Maryland Board substantially revised its authorization and release form. As Appendix A reveals, the Board struck the passage dealing with "any and all" medical records.\textsuperscript{183} It deleted the reference to "every medical doctor" from the list of persons authorized and requested to furnish to go in retrieving records; and (4) adopt procedures which do not deter potential applicants from seeking treatment because of the reasonable fear that such treatment might one day have to be involuntarily disclosed to Bar examiners.

\textit{Id.}

\textsuperscript{181} Texas State Bd. of Law Exam'rs v. Malloy, 793 S.W.2d 753, 760 (Tex. Ct. App. 1990).

\textsuperscript{182} \textit{See}, e.g., 42 C.F.R. \S 2.3(b)(2) (1997) (stating that patients in federally assisted alcohol or drug abuse programs should not be "made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug treatment problem and who does not seek treatment"). Federal law strongly protects the confidentiality of records of the identity, diagnosis, prognosis or treatment of any such patient receiving substance abuse treatment or rehabilitation, by levying fines for their violation. \textit{See} 42 U.S.C. \S\S 290dd-2(a), 2(f) (1996). The exceptions to the rule are very narrowly drawn. They include a "bona fide medical emergency" or a court order "showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm" \textit{Id.} \S 290dd-(b)(2)(C). "In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services." \textit{Id.} \S 290dd-(b)(2)(C). Federal law prohibits state law from either authorizing or compelling any disclosure prohibited by these regulations. \textit{See} 42 C.F.R. \S 2.20. Thus, this body of law would seem to preclude routine bar expeditions into such treatment records.

\textsuperscript{183} For a discussion of the changes adopted by the Board, see \textit{supra} notes 129-30 and accompanying text.
documents, records and other information to the bar officials. Although, arguably, the Board could still seek information from doctors and other medical personnel by resort to the residual category of "every other person . . . having control of any documents" pertaining to the candidate's good moral character and fitness, a fairer reading of this change is that most medical records are now off limits to the Board. 184

C. Creating a System to Assure Timely, Sensitive and Fair Processing

Commentators have given scant attention to possible procedural reforms that would make bar questionnaires timely, fair to the applicant, and more sensitive to the mandates of the ADA. As questionnaires evolve during this transitional period, and bar examiners more frequently encounter disability issues, Boards should consider changes in interviewer sensitivity, better communication with the applicant with an alleged disability and avenues for informal redress of grievance.

If there has to be an inquiry into a candidate's mental health or substance abuse record, it should be done by a lawyer with an understanding of disability law, public policy and the factual context in which treatment issues arise. This suggestion would help to avoid the current practice of having "untrained examiners . . . draw inferences that the mental health community would . . . find highly dubious." 185 Adoption of this recommendation should increase the prospects for a timely and sensitive resolution of a candidate's application for admission to the bar. An interviewer with this expertise (perhaps with credentials in law and medicine) would be able to handle the file with greater efficiency because the relevant law, disability terms and medical treatments would be more familiar to him or her.

Based on evidence from ADA litigation and anecdotal information, most state bars receive only a small number of applications each year that include an affirmative answer to a disability question. 186 The logistics of recruiting a new qualified interviewer or

184. If an issue of a candidate's current fitness were to arise that required the release of medical information, the Board could presumably, in consultation with the candidate and/or his or her counsel, frame an appropriately narrow release.

185. Deborah L. Rhode, supra note 23, at 582. Professor Rhode highlights the error in relying on Board examiners' inferences to determine capability to practice law when "trained clinicians cannot accurately predict psychological incapacities based on past treatment in most individual cases." Id.

186. See, e.g., Clark v. Virginia Bd. of Bar Exam'rs, 880 F. Supp. 430, 434 (E.D. Va. 1995) (finding only 2 of 47 applicants within past five years who reported having been treated or counseled for mental, emotional or nervous disorders re-
identifying an interviewer currently sitting on a character committee for such an assignment should not be burdensome.

Another problem in the current process is the risk of undue delay. Ms. Doe's counsel, for instance, had recommended to the Maryland Board that they make timely communications with applicants who answer affirmatively to mental health questions.\textsuperscript{187} Currently, the rules on admission to the bar and the Board's internal procedures do not provide a time line as to when a recommendation is to be made. In Ms. Doe's case, she spent over a year waiting for final action from the date of her passing the bar examination.\textsuperscript{188}

Delay of this type in handling an application from a person with a disability may, in and of itself, constitute invidious discrimination. In \textit{Medical Society of New Jersey v. Jacobs},\textsuperscript{189} the United States District Court of New Jersey pointed out that "it is the extra investigations of qualified applicants who answer 'yes' to [questions concerning psychiatric problems] that constitutes invidious discrimination under the Title II regulations."\textsuperscript{190} Such delay can also be a great source of inconvenience, distress, economic loss and even physical harm.\textsuperscript{191} Delay may also be a conscious strategy on the part of some examiners. A few have spoken openly about it as a tactic to "scare off" or discourage certain character interviewers. Others offer a more benign motive: They claim that keeping the candidate's file in "abeyance" allows the candidate's condition to improve or sobriety to lengthen.

To avoid such problems, the Board could attempt to ensure that for those who give affirmative answers to disability questions that initial interviews are scheduled early, and problems resolved as soon as possible. In jurisdictions which permit it, the Board might also inform all applicants of the option for early determination. Finally, the Board and Character Committee leaders could write appropriate handbooks and urge character interviewers to make an

\textsuperscript{187} See Doe Memorandum, supra note 1, at 18.

\textsuperscript{188} For a discussion of Ms. Doe's case, see supra notes 95-130 and accompanying text.


\textsuperscript{190} \textit{Id.} at *8.

\textsuperscript{191} See Doe Memorandum, supra note 1, at 17-18 (informing Board that "these delays in her admission to the Maryland Bar in a timely fashion may have even aggravated her physical condition, and certainly caused her distress and great inconvenience . . . . [As] her doctor's report noted . . . protracted delays in resolving her case caused her additional stress and may have aggravated her condition").
Early initial contact with the applicant to establish a mutually convenient time for the interview.

Even with all these measures in place, candidates with disabilities or perceived disabilities may still experience undue difficulty in the interviewing process. Given the power disparities in the relationship between the candidate and the character examiner, it may be difficult, if not impossible, for the candidate to discuss and resolve problems of communication or interview times directly with the interviewer. An informal grievance procedure or a monitor to oversee the character committee interview process could assist the applicant with a disability (or any applicant) who feels that he or she has reached an impasse with the interviewer. Although boards may in theory afford the candidate an opportunity for a formal hearing if the character committee concludes that “there may be grounds for recommending denial of the application,” this provision does not spare the applicant from harm. Instead, an earlier, informal method of resolving any communication difficulties between the candidate and the interviewer avoids the delays and the risks to reputation associated with a formal hearing.

The existence of a publicized grievance process or an intermediary or a specifically named oversight agent offers a better solution. For instance, the chair of the character committee could act in that capacity or the chair and a representative of the board of law examiners acting jointly, could name such an agent. Aggrieved or confused candidates, in the midst of a disability-related character review, need information as to how to resolve problems on an informal basis. To assume that they will identify the right person on their own, or design their own informal process is unrealistic. Even if clever and assertive enough to do so, they run the risk of alienating the board officials whose good will they may desperately need.

D. Refining the Request Process for Obtaining Testing Accommodations

Some applicants already disclose their disabilities to bar examiners voluntarily, and more might do so if they were assured that adverse consequences would not follow. This involves another major disability issue relating to bar admissions—the provision of reasonable accommodations in test taking. Although this topic need not be fully discussed in this article, reformers who cast an eye on

193. Myriad and fascinating legal and policy issues are raised by this topic. For example, there have been discussions regarding the issue of identifying or “flagging” the scores of accommodated test-takers because this practice might ad-
the character portion of the professional licensing process may well be the only individuals or officials likely to take much of an interest in bringing testing procedures into compliance with the ADA. Most candidates with mental health histories will not require testing accommodations, but candidates with current disabilities such as vision impairments, orthopedic limitations or learning disabilities may require effective accommodations. 194

It is now well-established that state law examiners must accommodate applicants having physical or learning disabilities. 195 As previously noted, the bar is defined as a public entity under Title II for purposes of the ADA 196 and is obliged to provide reasonable accommodations under Title III as a public accommodation offering examinations related to professional licensing. 197 Numerous cases detail the rights of applicants with disabilities to take the Bar examination with accommodations. 198 Equally important but less

versely affect their admission to law school. See Law School Admissions Council, Test Takers with Disabilities: A Summary of Data from Special Administrations of the LSAT, LSAC Res. Rep. Series, at 51-52 (Dec. 1993) (concluding that there is "no justification for discontinuing the practice of identifying scores earned under nonstandard conditions" because they cannot be "relied upon to provide indications of first-year performance in law school to the same extent that scores earned by students at regular LSAT administrations can ").

194. Indeed, LSATs administered with accommodations have risen 100% during the 1990 to 1993 period. Id. at 11. The majority of students requiring accommodations are students with learning disabilities, constituting 60% of the total number of applicants needing accommodations. Id. For instance, during the four-year period from 1989 through 1993, test takers with learning disabilities had 1,600 accommodated LSATs, while only 23 test takers with hearing impairments received accommodations. Id.

195. See Sarah O'Neill, Must Bar Examiners Accommodate the Disabled in the Administration of Bar Exams? 30 WAKE FOREsT L. REv. 391, 397 n.50 (1995) (explaining that "[w]hile Title II itself contains no express language covering licensing exams like the bar exam, a regulation under Title II . . . states that '[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'" (quoting 28 C.F.R. § 35.130(b)(6) (1997)); Rogers, supra note 3, at 2-3 & n.13 ("Under section 309 of Title III of the ADA, disabled individuals have direct recourse against state boards of bar examiners who select or administer the exam in a discriminatory manner.").

196. See 42 U.S.C. § 12131(1)(B) (1994) (defining public entity). Under Title II, "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 subject to discrimination by any such entity." 42 U.S.C. § 12132.

197. See 42 U.S.C. § 12189 ("[A]ny person that offers examinations or courses related to applications, licensing, certification, or credentialing for . . . professional . . . purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.").

198. See Sparboe, supra note 23, at 402-14 (giving overview of case law). For a thorough discussion of accommodations for a candidate with a learning disability,
frequently discussed or litigated, however, are issues regarding the best way to inform applicants with disabilities about the process for requesting accommodations.

The advice offered by some boards is vague and does not give the applicant sufficient guidance. In some states, such as New Jersey, the information is clear and precise. The New Jersey packet for example, reproduced as Appendix D, is a model of good practice. Other testing bodies such as the Law School Admission Council, the entity responsible for the LSAT administration, provide detailed forms and a list of types of accommodations.


199. See Maryland Bar Application, supra note 109, at 4. The application provides the following instructions for applicants with disabilities:

Special Accommodations for Applicants with Disabilities: An Applicant who has a disability may request special accommodations for the bar examination to assure that he or she receives a fair and equal opportunity to fully demonstrate his or her competence. A request for special accommodations should be addressed to the Board's Crownsville office. The request should be in the form of a letter mailed separately from the application and should include:

a. A current report from a physician or other appropriate health professional documenting the disability and explaining the effect of the disability on the applicant's ability to perform on an examination.

b. A letter from the applicant's law school dean or other appropriate official describing the accommodations the applicant received for law school examinations.

c. A letter from the applicant stating the specific accommodations desired (amount of extra time, alternative examination format, reader, writer, etc.). Contact the Board's office if you have questions about what accommodations are permitted.

Id. As one recent bar admittee explained:

I found the special accommodation section of the Maryland Bar Examination application packet to be fraught with various problems. Unlike the LSAT or GRE, which provides a set of listed instructions and forms to fill out for applicants requesting special accommodations, the Maryland Bar packet provides only a list of several instructions. These instructions are unclear and make the special accommodations application process more difficult than necessary.

First, the special accommodation section fails to state with specificity the type of data the Bar Examiners need to help them assess whether an applicant is significantly disabled for special accommodations purposes. . . . Another concern with the special accommodation section is that it does not provide a list of guidelines concerning the types of modifications a test taker can utilize. . . .

Broad guidelines concerning acceptable time limits, like the ones provided on the LSAT forms, would give each applicant a clearer framework when deciding how much extra time to seek.


200. For the text of the New Jersey Accommodation Request Forms, see Appendix D.

Although a proposal for such explicit instruction was tabled in Maryland until other reforms could be implemented, the issues of questionnaires and test-taking accommodations are sufficiently distinct that such caution seems unnecessary. Current applicants deserve the most complete and informative instructions on accommodations now rather than having to guess at what requests for accommodations will prove acceptable. For this reason, boards should provide candidates with a detailed description of the accommodation options so that the applicant and his or her licensed health professional can determine the most suitable accommodation for the bar examination.\(^{202}\)

**E. Mobilizing the Forces for Reform**

National strategies can help to minimize the disparities between the states and speed the process of change. Academics, public interest lawyers, disability organizations, law students with disabilities, reformers in various bar affiliated groups and patient-centered mental health professionals can contribute to devising such strategies. The International Academy of Law and Mental Health provided one such forum at its Twenty-Second World Congress in June 1997.\(^{203}\) The ABA Commission on Mental and Physical Health that provide step-by-step procedures for test takers seeking accommodations for disabilities).

One of the forms in the packet lists the following test accommodations as the "most commonly requested": additional test time (per section of the test), use of a reader (to be supplied by the testing agency), use of an amanuensis, additional rest time (between sections of the test) and use of scratch paper. \(\text{Id.}\) It also notes that other accommodations than those listed may be requested. Accommodations in test format are also provided for those candidates with disabilities who need the LSAT in braille, large print or audiocassette versions. \(\text{Id.}\)

An errata sheet to the *Registration and Information Book* points out that the range of accommodations is open-ended: "Depending on the nature of the disability, other accommodations may include but are not limited to the use of an amanuensis, a reader, a wheelchair-accessible test center, additional rest time between sections, additional testing time, or a separate testing room." \(\text{Id.}\) (emphasis added).

\(^{202}\) See Doe Memorandum, *supra* note 1, at 6 (arguing to Board that "such information and specialized application procedure may help to avoid cases where an applicant and his or her licensed professional request accommodations which may be denied and later ruled reasonable, or where confusion and delay in identifying appropriate reasonable accommodations prejudiced the applicant"). When the Board was initially silent in response to this recommendation, Ms. Doe's counsel submitted a follow-up letter with a supporting letter from an applicant to the 1996 examination, detailing the problems that he had as a person with a learning disability in making a request for an appropriate testing accommodation. The Board finally answered that it would not take action on this recommendation at this time, but that the candidate was free to raise the issue with them in the future.

\(^{203}\) At this meeting held in Montreal, Canada, the International Academy invited Professors Bauer, Frickey and Herr to present on this topic.
cal Disability Law can again convene key players, seeking follow-up steps to the ABA House of Delegates resolution adopted in 1994. In addition, the Commission should inform the disability-focused bar groups and committees in thirty-three states of the work that remains to be done in overhauling questionnaires and related bar admission processes. Similarly, the Protection and Advocacy programs that exist in each of the fifty states and U.S. territories have a mission to protect the rights of recipients of mental health services and persons with other disabilities and should bring their vital expertise to bear. Finally, the Department of Justice can continue to play a forceful role in informally resolving or, where alternative dispute mechanisms fail, litigating complaints that raise disability discrimination issues. Indeed, the federal government has recently underscored the ADA's prohibition of discrimination against qualified workers with mental illness, giving guidance that job application forms may not ask about a history of mental illness or an applicant's treatment or hospitalization for such illness.

National stakeholders need not, and should not, wait for lawsuits to mount. On a more proactive basis, these constituents ought to examine the types of questions that should be discarded, and the types of processes and forms for requesting testing accommodations that could improve the climate of hospitality to candidates.

204. The Commission has published several articles on this subject and can be expected to have a continuing interest in this subject. See also Deborah Piltch et al., The Americans with Disabilities Act and Professional Licensing, 17 MENTAL & PHYSICAL DISABILITY L. REP. 556 (1993) (emphasizing that "testing organizations will have to give careful scrutiny to their application and documentation procedures, their testing facilities, methods, and mechanisms ... [for] failure to consider these issues in a systematic, comprehensive way will lead to review by the courts and the [DOJ]").

205. See, e.g., 42 U.S.C. § 6042 (1994) (mandating that for states to receive allotment, they "must have in effect a system to protect and advocate the rights of individuals with developmental disabilities"). These federally funded and state designated offices have missions for persons who are recipients of mental health services, developmental disabilities, or other disabilities. See id.

206. Two recent settlement agreements do not disclose the states' names but reveal progress. According to their case summaries:

A western State Supreme Court agreed to eliminate questions on its bar application that asked about histories of mental, emotional, and nervous disorders or treatment for use of alcohol and drugs. A southern State Board of Bar Examiners agreed to provide an additional day of testing for an applicant with impaired vision to complete the bar exam.


with disabilities or perceived disabilities. If this does not occur, reformers can initiate the process for further revisions of the NCBE's forms by submitting such a request in writing to its president.208 The Association of American Law Schools, guided by its new president, Professor Deborah Rhode, and the country's many other professional responsibility teachers can offer unique leadership on this issue.209 Some have already written eloquently on this subject and flagged a second-generation problem: The risk that an entrant may be denied admission or a lawyer be subject to discipline, not because of a history of mental health treatment, but because they "falsely answered impermissible questions."210 Other issues are also likely to surface as reformers and bar examiners, each acting with good will, seek to discern the line that separates proper information needs for occupational licensing from impermissible forays into personal lives.

The legal academy is certainly equipped to provide the proper advocacy of these objectives. In several states, clinical law programs already contribute to this effort.211 With clinical law programs in

208. The current president is Erica Moeser.

209. Professor Deborah L. Rhode, Director of the Keck Center on Legal Ethics and the Legal Profession at Stanford Law School, is superbly situated to help in bringing about desired reforms. In addition to her scholarly work on these issues, she now brings a position of leadership in the Association of American Law Schools ("AALS"). She has pioneered work on character committees and disability issues. See Rhode, supra note 23, at 549 ("As long as bar members are unwilling to monitor their colleagues' parking violations, psychiatric treatment, and alimony payments, what justifies their reliance on such evidence in screening applicants? Insofar as the profession is truly committed to public-rather than self-protection, the incongruity between disciplinary and certification procedures is untenable."); see also GEOFFREY HAZARD & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 547-58 (3d ed. 1994) (same). In light of the ADA, she and David Luban have sharpened the questions about the utility and propriety of disability inquiries. See LEWIS J. BOWMAN & DEBORAH L. RHODE, LEGAL ETHICS 839-42 (2d ed. 1995) (asking readers to examine hypotheticals concerning bar admission questions to evaluate fairness and whether changes are needed); DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD 64-69 (1994) (summarizing critics' evaluations of bar questions and presenting hypotheticals to elicit reader's own conclusions). AALS could help to raise the profile of this issue through its annual meeting programs, journal and national leadership with other elements of the legal profession.

210. See Laura Rothstein, Protections for Persons with Mental Disabilities: Americans with Disabilities Act and Related Federal and State Law, in LAW, MENTAL HEALTH, AND MENTAL DISORDER 178, 192 (Bruce D. Sales & Daniel W. Shuman eds., 1996) (suggesting that courts should "address this catch-22 problem" or that amendments to ADA should protect such individuals from penalty).

211. For example, Professors Jon Bauer and Tanina Rostain, as supervising attorneys in the Civil Rights Clinic of the University of Connecticut School of Law, challenged the Connecticut bar inquiry. "Have you ever been treated as an outpatient for any mental, emotional or nervous disorders?" Proposed Amended Complaint, at 1, Szarlan v. Connecticut Bar Examining Comm'n, No. 3:94 CV-
virtually every state, supervising attorneys and their student-attorneys are well-positioned to counsel affected students (or recent graduates). They can apply their negotiation skills to seek non-adversarial solutions. As a last resort, alone or in association with ACLU affiliates or other pro bono counsel, these clinics can mount constitutional, statutory and/or public policy challenges to suspect admission processes on behalf of interested groups. Deans and other law faculty members can also lend their prestige, analytic skills and persuasive talents to this cause.

Experiences in Maryland and Minnesota demonstrate that law professors can play a decisive part in pressing for reform. Minnesota is a prominent example. There the deans of the state’s three law schools, along with eleven other faculty members, joined in a petition drafted by Professor Phillip Frickey that convinced their state Supreme Court to order revisions in the questionnaire. Perhaps because of the understood legitimacy of their interests, their standing to assert that the Board of Law Examiners had violated the ADA, the Minnesota Human Relations Act, federal and state equal protection clauses and the Constitutional protection of privacy went completely unchallenged.

Maryland illustrates the success of bringing together law school and pro bono resources. Then Associate Dean Mark Sargeant of

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000160(AHN) (D. Conn. May 4, 1994). They achieved a settlement that suspended the use of that broad question, and substituted the following question: "Since you became a law student, have you ever had an emotional disturbance, mental illness or physical impairment which has impaired or would impair your ability to practice law or to function as a student of law?" Stipulation and Order of Dismissal, at 2, Szarlan v. Connecticut Bar Examining Comm’n, No. 3-94 CV-000160(AHN) (D. Conn. June 27, 1995).

Although this settlement did not resolve all of the plaintiffs’ claims nor go as far as a report by two units of the Connecticut Bar Association that called for the "elimination of inquiries concerning mental health history," it clearly moved the bar in a less intrusive direction. See, e.g., Report on Proposed Connecticut Bar Association Application, supra note 30, at 8 (arguing that mental treatment queries are “not needed as a tool for screening out unfit attorneys” because questions can focus on “behavior and performance rather than on disability”).


213. For discussion of Frickey, see supra notes 122-23 and accompanying text.

214. See In re Order of This Court Directing the State Board of Bar Examiners to Delete Questions 4.22, 4.23, and 4.24 from the Application for Admission to Bar of Minnesota, 515 N.W.2d 741, 741 (Minn. 1994) (noting petitioners’ description of parties that they are “the chief administrative officers of the three state law schools and several faculty members of those schools who are particularly interested in the subject of this petition”).
the University of Maryland Law School had produced a scholarly analysis of the ADA and bar questionnaires, along with recommendations for changing the state bar examiner's questionnaire. As previously described, the combination of that analysis and the independent advocacy of the school's Clinical Law Office for one of its clients produced most of the desired reforms.\textsuperscript{215}

Law professors have a special obligation to assist in instituting these reforms. They are often the first person that a troubled candidate might turn to for advice and direction when facing intrusive or otherwise offensive questions.\textsuperscript{216} Although the pull to help is strong, in some states a professor may be caught in a catch-22 situation if the candidate were to request a letter of reference to a bar that requires the letter writer to disclose information about a candidate's mental health status.\textsuperscript{217} The professorate should not be enlisted in monitoring their students' mental health in this fashion. They should instead work with other agents for reform to narrow bar inquiries along the lines suggested by their Maryland and Minnesota colleagues.

\textbf{VI. CONCLUSION}

In many parts of the United States, bar examiners face a long agenda of disability-related issues in order to satisfy the ADA and the dictates of justice and fair play. On a national level, this Article's survey of states' application materials reveals that much unfinished business remains. Questions in the phraseology of "are you now, or have you ever been . . . " with reference to disabilities are excessive in this context, as were the McCarthy-era questions directed at ideology and political belief in the 1950s. Rather than adopt a wait-and-see posture that risks additional litigation, this survey establishes that bar examiners can act now to eliminate unnecessary questions on disability as states such as Hawaii, Illinois and Pennsylvania have done.

This Article also reveals that reformers and bar officials can work constructively to remedy intrusive inquiries through dialogue

\textsuperscript{215} For a more detailed account of the efforts in Maryland, see supra notes 95-130 and accompanying text.

\textsuperscript{216} For a discussion of one case in which law professors helped a candidate gain admission to the bar, see supra notes 95-130 and accompanying text.

\textsuperscript{217} Texas is one such state. Professors have been placed in the uncomfortable position of having to tell applicants who had disclosed their illnesses or past illnesses in confidence that either the professor would have to disclose those illnesses to the bar or the candidates could withdraw their names as references. Interview with Professor Maureen Armour, Southern Methodist University Law School, in Dallas, Tex. (Nov. 14, 1996).
and problem-solving negotiation. The Maryland model offers a useful case study of how to bring about incremental change, while laying the groundwork for more far-reaching reform. Clinical legal educators, together with other academics, civil rights lawyers and pro bono private practitioners, need to take up this issue both on a national level and in states where changes have not proved forthcoming.

The survey data and direction of case law in this area suggest that bar examiners will increasingly phase out their mental health inquiries. These inquiries are simply too difficult to defend in light of the speculative and doubtful gains they provide. If states like Hawaii, Illinois, and Pennsylvania have decided to discard their mental health questions, why should other states continue to claim a compelling need to ask them? The ADA makes it clear that state agencies may only use criteria that tend to screen out candidates with disabilities or that force such candidates to give up sensitive privacy rights upon a showing of necessity. The subject of the admission of lawyers with disabilities to the bar demands no further study, but decisive action.

In this context, not to act is also to act. With each passing month and year since the enactment of the ADA, the justifications for inertia evaporate. The experience of Jane Doe points to the searing human costs of outdated systems. It reveals that the positions of the applicant and examiner need not harden and that appeals to legality, necessity and good will can reconcile the respective goals of each side. To spare future Jane Does from suspended legal careers and interrupted dreams of pursuing their calling, her story is told. Her vindication represents progress on the journey from the stigma and discrimination of the past and to the legal profession’s open embrace of all qualified candidates with disabilities of the future. In welcoming her and her peers to the bar, we repudiate the darker suspicions of disability and its treatments.218

218. As Victor Hugo wrote in the context of past criminal offense and its ability to haunt even the rehabilitated soul, records have the ability to harm long after any valued social purpose is served. Speaking through Jean Valjean, he declares: “There is my passport, yellow as you see. That is enough to have me kicked out wherever I go.” Victor Hugo, Les Miserable 65 (Modern Library ed., 1992)(1862). Applicants with disabilities who have committed no crime deserve surcease from torment by record.
APPENDIX A
EXCERPTS OF PREVIOUS MARYLAND BAR APPLICATION

October 1995

STATE BOARD OF LAW EXAMINERS
People's Resource Center, Room 1.210
100 Community Place
Crownsville, MD 21032-2026
(410) 514-7044

APPLICATION FOR ADMISSION TO THE BAR OF MARYLAND

* * * *
14. The following questions relate to mental illness and alcohol or drug addiction. These questions are intended to elicit information which may bear on an individual's current fitness to practice law. The State Board of Law Examiners encourages applicants who may benefit from therapy or treatment to seek it. Affliction by a particular disorder or condition does not automatically disqualify an applicant. The purpose of the inquiry is to ascertain whether potentially impairing disorders or conditions are being addressed appropriately to preclude adverse impact on the individual's performance as an attorney. Candor, personal responsibility, and maturity in dealing with mental health and addiction issues are the factors of greatest significance to the Board's determination of fitness.

(a) (i) Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, nervous, or behavioral disorder or condition) that in any way affects, or if untreated could affect, your ability to practice law in a competent and professional manner?

(ii) If your answer to (a) (i) of this question is affirmative, are the limitations caused by your disorder, condition, or substance abuse problem reduced or ameliorated because you receive ongoing therapy or treatment (with or without medication) or because you participate in a monitoring program (including A.A., N.A., etc.)?

(b) Within the past five years, have you been diagnosed with or treated for bi-polar disorder, schizophrenia, paranoia, or any other psychotic disorder?

(c) Within the past two years, have you been diagnosed with or treated (including participation in a therapy or monitoring program) for alcohol or substance abuse?

(d) Within the past five years have you raised the issue of drugs or alcohol consumption or a mental, emotional, nervous, or behavior disorder or condition as a defense, mitigation, or explanation for your actions in any judicial or administrative proceeding or investigation (including any inquiry or proceeding for proposed termination by an educational institution, employer, governmental agency, professional organization, or licensing authority)?

If you answer "yes" to any of the questions above, you should attach an explanation in your own words describing the disorder or condition and any treatment or therapy you received in the past or receive now. If you have been under the care or supervision of a health care professional, you also should submit a statement by the health care professional outlining your current diagnosis, treatment regimen, and prognosis.

15. The following five persons, none of whom are married to each other, and none of whom is a law student, relative, or employer, have known me well for at least five years immediately prior to the date of this Questionnaire:

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<thead>
<tr>
<th>Name</th>
<th>Street Address</th>
<th>City, State, and Zip Code</th>
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11
Each of the five individuals listed in item 15 will be requested to provide the Character Committee with a summary of the experience of each hearing on the Applicant's conduct, general moral character and standards, major strengths and weaknesses, maturity and capabilities, and personal integrity. Applicants are responsible to complete the top half of a Notice to References for each individual identified above; such forms are to be returned to the Board with the completed application.

16. Have you previously applied or registered for admission to the bar in this state or in any other jurisdiction? ☐ Yes ☐ No

Where? ________________________ When? ________________________

If admitted, (a) attach an original, sealed certificate of good standing from each applicable jurisdiction; and (b) describe on a supplemental page in your own words all instances and circumstances of disciplinary proceedings in such jurisdiction. If not admitted, explain why not and describe the disposition of your application/registration on a supplemental page.

17. Have there been any circumstances or unfavorable incidents in your life, whether at 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? ☐ Yes ☐ No

If so, give full details, including any assertions or implication of dishonesty, misconduct, misrepresentation, mental or emotional disability, financial irresponsibility, and disciplinary measures imposed (if any) by attaching a supplemental statement.

18. BEFORE COMPLETING THIS APPLICATION, IT WILL BE NECESSARY FOR YOU TO READ THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT AND THE MARYLAND CODE OF JUDICIAL CONDUCT.

(a) I hereby certify that I have read the Maryland Lawyers' Rules of Professional Conduct and the Maryland Code of Judicial Conduct and intend to devote the necessary time toward acquainting myself, prior to the bar examination, with these standards and ideals.

Signature of Applicant

(b) Pursuant to the Annotated Code of Maryland, Business and Professions Article, Title 1, Section 204, I hereby certify to the Court of Appeals of Maryland that I have paid all undisputed taxes and unemployment insurance contributions which I am obligated to pay to the Comptroller of Maryland or the Department of Economic and Employment Development or have provided for payment in a manner satisfactory to the unit responsible for collection. (If unable to execute this certification, attach a statement of explanation.)

Signature of Applicant
QUESTIONING THE QUESTIONNAIRES

APPENDIX A (continued)

October 1995

AUTHORIZATION AND RELEASE

for the use of the
Court of Appeals of Maryland, Board of Law Examiners, and
Character Committees of the Court of Appeals of Maryland

Re Application of: ____________________________

(State of Applicant)

TO WHOM IT MAY CONCERN:

I, ____________________________________________

having filed with the State Board of Law Examiners in Maryland an Application for Admission to the Bar and fully recognizing the responsibility to the Public, the Bench, and the Bar of this State lodged with the duly appointed Character Committees and the Board of Law Examiners by the Court of Appeals of Maryland under the applicable State statutes and the Rules of the Court to determine that only those of good moral character, fitness and ability are admitted to the Bar in Maryland, hereby authorize and request every police department, employer, school official, medical doctor, and every other person, firm, officer, corporation, association, organization or institution having control of any documents, records or other information pertaining to me relevant to my good moral character and fitness to perform the responsibilities of an attorney, to furnish the originals or copies of any such documents, records and other information to said Character Committee, Board, the Court of Appeals of Maryland, or any of their representatives, and to permit any or all of the said bodies, or any of their representatives, to inspect and make copies of any such documents, records and other information (including but not limited to employment, personnel or scholastic records, or any and all medical reports, laboratory reports, X-rays, or clinical abstracts which may have been made or prepared pursuant to, or in connection with, any examination or examinations, consultation or consultations, test or tests, evaluation or evaluations, of the undersigned.

I hereby authorize all such persons as set out above to answer any inquiries and questions submitted to them by a Character Committee, the Board of Law Examiners, the Court of Appeals of Maryland or their authorized representatives, and to appear before any or all of these bodies and to give full and complete testimony concerning the undersigned including any information furnished by the undersigned. I hereby relinquish any and all rights to said reports, including but not limited to employment, personnel or scholastic records, or clinical abstracts, evaluations, or any other information incident in any way to cooperation with the Character Committees, the Board of Law Examiners, the Court of Appeals of Maryland or their authorized representatives, and fully understand that I shall not be entitled to have disclosed to me the contents of any of the foregoing.

I hereby release and exonerate every employee, school official, medical doctor, and every other person, firm, officer, corporation, association, organization or institution which shall comply in good faith with the authorization and request made herein from any and all liability of every nature and kind growing out of or in anywise pertaining to the furnishing or inspection of such documents, records and other information or the investigation made by said Character Committees, the Board of Law Examiners, the Court of Appeals of Maryland or their authorized representatives. The undersigned further waives absolutely any privilege he may have relevant to his good moral character and fitness to perform the responsibilities of an attorney under applicable law.

I hereby authorize the State Board of Law Examiners and the Court of Appeals of Maryland, with respect to any and all information received under this authorization and release, to forward said information to any other admitting authority where I have applied or may later apply for admission in the practive of law. I understand that pursuant to Bar Admission Rule 18, Confidentially, the Board may release certain identifying information (including name, Social Security Number, birthdate, date of application, and date of examinations) regarding my application to the National Conference of Bar Examiners.

In witness thereof, I have set my hand and seal this __________ day of __________, 19__.

________________________________________

Signature of Applicant

STATE OF __________________________

COUNTY OF __________________________

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, __________________________________________., to me well known to be the person described in and who executed the foregoing instrument and __________________________________________., the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at __________, County of __________, and State of __________, this __________ day of __________, 19__.

________________________________________

Notary Public

My Commission Expires __________________________.
APPENDIX B
EXCERPTS OF REVISED MARYLAND BAR APPLICATION

STATE BOARD OF LAW EXAMINERS
People's Resource Center, Room 1.210
100 Community Place
Crownsville, MD 21032-2026
(410) 514-7044

APPLICATION FOR ADMISSION TO THE BAR OF MARYLAND

* * * *
14. The purpose of the following inquiries is to determne the current fitness of an applicant to practice law. The mere fact of treatment for mental health problems or addictions is not, in itself, a basis on which an applicant is ordinarily denied admission in Maryland, and the State Board of Law Examiners routinely certifies for admission individuals who have demonstrated personal responsibility and maturity in dealing with mental health and addiction issues. The Board of Law Examiners encourages applicants who may benefit from treatment to seek it. The Board of Law Examiners does not, by its questions, seek information regarding any matter which 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 of Law Examiners does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

(a) (i) Do you have any condition or impairment (such as substance abuse, alcohol abuse, or a mental, emotional, nervous, or behavioral disorder or condition) that in any way currently affects, or, if untreated, could affect your ability to practice law in a competent 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.

☐ Yes ☐ No

(b) Within the past three years have you raised the issue of drugs or alcohol consumption or a mental, emotional, nervous, or behavior disorder or condition as a defense, mitigation, or explanation for your actions in any judicial or administrative proceeding or investigation (including any inquiry or proceeding for proposed termination by an educational institution, employer, governmental agency, professional organization, or licensing authority)?

☐ Yes ☐ No

15. The following five persons, none of whom is married to another of the persons listed, and none of whom is a law student, relative, or employer, have known me well for at least five years immediately prior to the date of this Questionnaire:

<table>
<thead>
<tr>
<th>Name</th>
<th>Street Address</th>
<th>City, State, and Zip Code</th>
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1997] QUESTIONING THE QUESTIONNAIRES 693

APPENDIX B (CONTINUED)

October 1998

Herr: Questioning the Questionnaires: Bar Admissions and Candidates wit
16. (a) Have you previously applied or registered for admission to the bar in this state or in any other jurisdiction?

☐ Yes ☐ No

IF ADMITTED, ATTACH AN ORIGINAL, SEALED CERTIFICATE OF GOOD STANDING. IF NOT ADMITTED, EXPLAIN WHY NOT ON A SUPPLEMENTAL PAGE.

Jurisdiction __________________________ Application date __________________________

(b) Have you ever been the subject of a complaint or of a disciplinary investigation or proceeding concerning your conduct as an attorney or as a member of any other profession?

☐ Yes ☐ No

If you answered yes, provide material details on a supplemental page.

17. Have there been any circumstances or unfavorable incidents in your life, whether at 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?

☐ Yes ☐ No

If so, give full details, including any assertions or implication of dishonesty, misconduct, misrepresentation, financial irresponsibility, and disciplinary measures imposed (if any) by attaching a supplemental statement.

18. BEFORE COMPLETING THIS APPLICATION, IT WILL BE NECESSARY FOR YOU TO READ THE MARYLAND LAWYERS’ RULES OF PROFESSIONAL CONDUCT AND THE MARYLAND CODE OF JUDICIAL CONDUCT.

(a) I hereby certify that I have read the Maryland Lawyers’ Rules of Professional Conduct and the Maryland Code of Judicial Conduct and intend to devote the necessary time toward acquainting myself, prior to the bar examination, with these standards and ideals.

______________________________
Signature of Applicant

(b) Pursuant to the Annotated Code of Maryland, Business and Professions Article, Title 1, Section 204, I hereby certify to the Court of Appeals of Maryland that I have paid all undisputed taxes and unemployment insurance contributions which I am obligated to pay to the Comptroller of Maryland or the Department of Economic and Employment Development or have provided for payment in a manner satisfactory to the unit responsible for collection. (If applicable, attach a certification and a statement of explanation.)

______________________________
Signature of Applicant
AUTHORIZATION AND RELEASE

for the use of the
Court of Appeals of Maryland, Board of Law Examiners, and Character Committees of the Court of Appeals of Maryland

Re Application of:__________________________

(Name of Applicant)

(Axised Name, if applicable)

TO WHOM IT MAY CONCERN:

I, ____________________________

having filed with the State Board of Law Examiners in Maryland an Application for Admission to the Bar and fully recognizing the responsibility to the Public, the Bench, and the Bar of this State lodged with the duly appointed Character Committees and the Board of Law Examiners by the Court of Appeals of Maryland under the applicable State statutes and the Rules of the Court to determine that only those of good moral character, fitness and ability are admitted to the Bar in Maryland, hereby authorize and request every police department, employer, school official, and every other person, firm, officer, corporation, association, organization or institution having control of any document, records or other information pertaining to me, or to any and all of the said bodies, or any of their representatives, and to permit any or all of the said bodies, or any of their representatives, to inspect and make copies of any such documents, records and other information including but not limited to employment, personnel or scholastic records.

I hereby authorize all such persons as set out above to answer any inquiries and questions submitted to them by a Character Committee, the Board of Law Examiners, the Court of Appeals of Maryland or their authorized representatives, and to appear before any or all of these bodies and to give full and complete testimony concerning the undersigned including any information furnished by the undersigned. I hereby relinquish any and all rights to said reports, including but not limited to employment, personnel or scholastic records, or any other information incident to any way to cooperation with the Character Committee, the Board of Law Examiners, the Court of Appeals of Maryland or their authorized representatives, and fully understand that I shall not be entitled to have disclosed to me the contents of any of the foregoing.

I hereby release and exonerate every employer, school official, and every other person, firm, officer, corporation, association, organization or institution which shall comply in good faith with the authorization and requests made herein from any and all liability of every nature and kind growing out of or in anywise permitting to the furnishing or inspection of such documents, records or other information or the investigation made by said Character Committees, the Board of Law Examiners, the Court of Appeals of Maryland or their authorized representatives. The undersigned further waives absolutely any privilege, not protected by the Constitutions of the United States or the State of Maryland, he may have regarding information bearing on his good moral character and fitness to perform the responsibilities of an attorney under applicable law.

I hereby authorize the State Board of Law Examiners and the Court of Appeals of Maryland, with respect to any and all information received under this authorization and release, to forward said information to any other admitting authority where I have applied or may here apply for admission to the practice of law. I understand that, pursuant to Bar Admission Rule 19, Confidentiality, the Board may release certain identifying information (including name, Social Security Number, birthdate, date of application, and date of examination) regarding my application to the National Conference of Bar Examiners and any agent of the National Conference of Bar Examiners.

In witness thereof, I have set my hand and seal this _______ day of ___________ 19_____.

Signature of Applicant

STATE OF ____________________________ COUNTY OF ____________________________

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, (__________________________)

so me well known to be the person described in and who executed the foregoing instrument and (__________________________)

be acknowledged before me that (__________________________)

he executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at ____________________________ of Maryland, on ___________ day of ______________, 19_____.

County of ____________________________ and State

My Commission Expires ____________________________

Neary Public
# Appendix C

**Pennsylvania Bar Application**

**Pennsylvania Board of Law Examiners**

5035 Ritter Road

Suite 1100

Mechanicsburg, PA 17055

(717) 795-7270

*Application for Permission to Sit for the Pennsylvania Bar Examination and for Character and Fitness Determination*

---

**IF ANY ANSWER TO THIS APPLICATION CHANGES PRIOR TO YOUR ADMISSION TO THE BAR, YOU ARE REQUIRED TO NOTIFY THE BOARD IN WRITING.**

---

1. **Full name:** as it is to appear on admission certificate

   Notify the Board Office immediately, in writing, of any change of address or phone number.

   All correspondence will be mailed to this address.

2. **Present address:**

3. **Date of birth:**

   **Social Security no.:**

   **Birthplace:**

4. **Telephone (home):**

   **Telephone (business):**

   *If the space provided for any question is insufficient, please complete on page 8.*

5. **State all schools (above high school) you have attended, the dates of attendance, the degree received or to be received, and the dates conferred.**

<table>
<thead>
<tr>
<th>School/College</th>
<th>City and State</th>
<th>From (Mo. -Yr.)</th>
<th>To (Mo. -Yr.)</th>
<th>Degree</th>
<th>Date</th>
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<table>
<thead>
<tr>
<th>Law School</th>
<th>City and State</th>
<th>From (Mo. -Yr.)</th>
<th>To (Mo. -Yr.)</th>
<th>Degree</th>
<th>Date</th>
</tr>
</thead>
</table>
## QUESTIONING THE QUESTIONNAIRES

### APPENDIX C (CONTINUED)

Have you ever resided in Pennsylvania?  
Yes [ ] No [ ]  
If "yes," state any principal residences in Pennsylvania you have had within the past 10 years, including college, law school, and military addresses.

<table>
<thead>
<tr>
<th>Number and Street</th>
<th>City and State</th>
<th>From (Mo. and Yr.)</th>
<th>To (Mo. and Yr.)</th>
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Have you ever resided outside of Pennsylvania?  
Yes [ ] No [ ]  
If "yes," state any principal residences outside of Pennsylvania you have had within the past 10 years, including college, law school, and military addresses.

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<th>Number and Street</th>
<th>City and State</th>
<th>From (Mo. and Yr.)</th>
<th>To (Mo. and Yr.)</th>
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1. (a) Have you ever used or been known by another name?  
Yes [ ] No [ ]  
(b) Has your name ever been legally changed by court order or marriage?  
Yes [ ] No [ ]  
If "yes" to either (a) or (b), complete:

<table>
<thead>
<tr>
<th>Name</th>
<th>Name Change</th>
<th>Reason</th>
<th>Date</th>
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9. Are you a citizen of the United States?  
Yes [ ] No [ ]  
If "no," of what country are you a citizen and what is the status of your presence in this country?

10. (a) Have you ever served or are you now serving in the armed forces of the United States or any other country, including the Reserve or National Guard?  
Yes [ ] No [ ]  
If "yes," give dates of induction or enlistment, commission, discharge, branch of service, and serial number.  
(b) Have you been separated from such service?  
N/A [ ] Yes [ ] No [ ]  
If "yes," state nature of separation, type, and circumstances surrounding your release.  
(c) Have you been rejected for induction, enlistment, or commission in the armed forces of the United States or any other country?  
N/A [ ] Yes [ ] No [ ]  
(d) Have you ever been a defendant in any courts-martial, or have any formal charges or complaints ever been made or filed, or proceedings instituted against you as a member of the armed forces?  
N/A [ ] Yes [ ] No [ ]

If you answer "yes" to any of the following questions, give a complete explanation of the circumstances on page 8.
APPENDIX C (continued)

11. (a) Are you currently addicted to or dependent upon narcotics, intoxicating liquors, or other substances?  
   [ ] Yes  [ ] No

   If you answer "yes" to any of the following questions, give details of specific incidents, including date, name, address, and position of the person(s) who made the statement to you, the circumstances, and the outcome, on page 8.

   (b) Have you ever been confronted, questioned, counselled, or approached by an employer, supervisor, teacher or other educator about:

   (1) your truthfulness?  [ ] Yes  [ ] No
   (2) excessive absence?  [ ] Yes  [ ] No
   (3) inability to work with others?  [ ] Yes  [ ] No
   (4) the manner in which you handled or preserved the money or property of others?  [ ] Yes  [ ] No
   (5) the thoroughness and/or timeliness of your preparation for work and/or your work itself?  [ ] Yes  [ ] No
   (6) your competence?  [ ] Yes  [ ] No
   (7) your promptness?  [ ] Yes  [ ] No
   (8) your diligence?  [ ] Yes  [ ] No
   (9) your moral standards?  [ ] Yes  [ ] No
   (10) your ability to maintain the confidentiality of information?  [ ] Yes  [ ] No

   (c) Have you ever been terminated or suspended from a job, disciplined by an employer, or permitted to resign in lieu of termination?  [ ] Yes  [ ] No

12. (a) Have you ever been denied enrollment, dismissed, suspended, disciplined, placed on probation, informally admonished, withdrawn in lieu of discipline, or expelled from school, college, or law school for conduct involving dishonesty or fraud?  [ ] Yes  [ ] No

   (b) Have you ever been subject to academic discipline (including probation) for plagiarism, cheating, poor academic standing, or for any other reason?  [ ] Yes  [ ] No

   If you answer "yes" to any of the following questions (13 through 19) give a complete explanation of the circumstances on page 8.

13. Have you ever altered or falsified any official document or copy thereof referring to your professional qualifications, e.g., a transcript or bar exam result letter?  [ ] Yes  [ ] No

14. (a) To your knowledge, are you currently the subject of any investigation of any law enforcement agency?  [ ] Yes  [ ] No

   (b) Have you ever been arrested, charged, cited, accused, or prosecuted for any crime (including a summary motor vehicle violation)?  [ ] Yes  [ ] No

   Note: This question requires an affirmative response notwithstanding the fact that an arrest, conviction, or sentence has been legally expunged from your record (if such applies to you).

15. (a) Have you ever filed, or had filed against you, a petition in bankruptcy?  [ ] Yes  [ ] No

   (b) Do you intend to file a petition in bankruptcy?  [ ] Yes  [ ] No

16. (a) At this time, do you have any debts, including student loans, child or spousal support, court orders or payments, in arrears, whether reduced to judgment or not?  [ ] Yes  [ ] No

   (b) Have you ever been ordered or required to pay child or spousal support?  [ ] Yes  [ ] No

If you answer "yes" to questions 15, 14, 15, and/or 16, you must send all related documentation along with this application.  See instructions.
17. Have you ever, as a member of any profession or organization, or the holder of any office or license, been the subject of any complaints, proceedings, or inquiries which involved censure, removal, suspension, revocation of license, discipline, or formal or informal charges? Yes[ ] No[ ]

18. (a) Have you ever applied for a permit or license, other than one to practice law, which required proof of good character (such as CPA, Real Estate Broker)?
If “yes,” complete:

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<tr>
<th>Date Filed</th>
<th>Type of License</th>
<th>Jurisdiction</th>
<th>Disposition</th>
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(b) Have you ever withdrawn an application for or been denied a permit or license, or had a permit or license revoked or voluntarily surrendered by you in lieu of discipline? N/A[ ] Yes[ ] No[ ]

19. Have you ever been accused of fraud, commingling, withholding, or misusing funds, or with any other charges involving handling of funds? Yes[ ] No[ ]

20. If you have been employed during the last seven (7) years, other than as a licensed attorney, complete:

<table>
<thead>
<tr>
<th>Name of Employer</th>
<th>Number and Street</th>
<th>From (aa. and b/)</th>
<th>To (aa. and b/)</th>
<th>Position Held</th>
<th>Compensation: Yes or No</th>
<th>Reason for Termination</th>
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Complete addresses must be provided.

Return with your application stamped (current 1st class rate) business envelope(s) (standard size 10 x 12), which is 4" x 9 1/2" addressed to the Board of Bar Examiners.
You should include one envelope for EACH employer named by you.
21. Have you ever applied to sit for a bar examination in this or any other state or country?  
If "yes," complete:

<table>
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<tr>
<th>Date Filed</th>
<th>Jurisdiction</th>
<th>Disposition: Pass, Fail, Results Pending</th>
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22. Have you ever applied for admission to practice as an attorney or counsellor in this or any other country or before a federal court or an administrative agency?  
If "yes," complete:

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<tr>
<th>Date Filed</th>
<th>Jurisdiction</th>
<th>Motion or Bar Examination</th>
<th>Disposition: Admitted, Not Admitted, Pending</th>
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You must obtain and file with the Board Office a certificate from the clerk of the highest court (Supreme Court of the state or county) having jurisdiction over admission to practice law certifying your admission to practice and your good standing.

This certificate must be less than thirty (30) days old when received at the Board Office. Certificates of good standing from bar associations or boards of bar examiners are NOT acceptable.

23. Have you been entitled to practice in each of the jurisdictions listed above and before each court continuously from the date you first became admitted until the date hereof?  
If "no," give dates when not entitled to practice and reasons:

N/A [ ] Yes [ ] No [ ]

24. (a) To your knowledge, have any charges of professional misconduct ever been filed against you?  
N/A [ ] Yes [ ] No [ ]

(b) Have you ever resigned as a member of any bar?  
N/A [ ] Yes [ ] No [ ]

(c) Have you ever been reprimanded, censured, suspended, or disbarred?  
N/A [ ] Yes [ ] No [ ]

(d) To your knowledge, are there any charges for professional misconduct presently pending against you?  
N/A [ ] Yes [ ] No [ ]
25. Have you ever held judicial or public office?
   If "yes," state when, where, and office held. ____________________________
   Yes[ ] No[ ]

   (a) To your knowledge, have any charges of judicial or official misconduct ever been filed against you? N/A[ ] Yes[ ] No[ ]
   (b) Have you ever resigned from judicial or public office? N/A[ ] Yes[ ] No[ ]
   (c) Have you ever been reprimanded, censured, suspended, or removed from judicial or public office for misconduct? N/A[ ] Yes[ ] No[ ]
   (d) To your knowledge, are any charges for judicial or official misconduct presently pending against you? N/A[ ] Yes[ ] No[ ]

26. State the names and addresses of the offices or places at which you were employed as a licensed attorney or engaged in private practice, the dates of employment (give exact dates if possible), the nature and extent of your duties, and the reasons for the termination.

<table>
<thead>
<tr>
<th>Name of Employer</th>
<th>Number and Street</th>
<th>From (Mo. and Yr.)</th>
<th>To (Mo. and Yr.)</th>
<th>Reason for Termination</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Return with your application stamped (current 1st class rate) business envelope(s) (standard no. 10 size which is 4" x 9.5") addressed to the Board Office.
You should include one envelope for EACH employer named by you.

27. Do you require special testing accommodations for any reason? Yes[ ] No[ ]

I verify that the statements made by me in this application are true and correct and that they are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities. I further verify that I have not omitted any facts or matters pertinent to this application.

(Date) ____________________________ (Signature) ____________________________
Authorization and Release

I, (Name) ______________________, born at (City, State) ______________________, on (Date) ______________________, having filed an application for admission to the bar of the Commonwealth of Pennsylvania, consent to have an investigation made as to my moral character, professional reputation, and fitness for the practice of law and such information as may be received reported to the Pennsylvania Board of Law Examiners. I agree to give any further information which may be required in reference to my past record. I understand that I will not receive and am not entitled to a copy of the investigation or to know its contents, and I further understand that the contents are privileged.

I also authorize and request every person, firm, company, corporation, governmental agency, court, association, or institution having control of any documents, records, and other information pertaining to me, to furnish to the Pennsylvania Board of Law Examiners any such information, including documents, records, bar association files regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, and to permit the Pennsylvania Board of Law Examiners or any of its agents or representatives to inspect and make copies of such documents, records, and other information, and on its own volition or in response to an inquiry from any agency of the Supreme Court of Pennsylvania, or of any other jurisdiction at any time in the future, to furnish to such agency, information, documents, or records contained in my file.

I hereby release, discharge, exonerate the Pennsylvania Board of Law Examiners, its agents and representatives, and any person so furnishing information from any and all liabilities of every nature and kind arising out of the furnishing or inspection of such documents, records, and other information, or the investigation made by or on behalf of the Pennsylvania Board of Law Examiners.

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and are true of my own knowledge.

(Date) ______________________ (Signature) ______________________
Use this space, if needed, to complete questions. If you have answered "yes" to any section of question(s) 10(e) through 19, 24, and/or 25, use this space to give a detailed explanation of the circumstances.

Refer to question numbers in answering.
APPENDIX D
NEW JERSEY ACCOMMODATIONS REQUEST FORM

STATE OF NEW JERSEY
Board of Bar Examiners
Appointed by the Supreme Court of New Jersey

SPECIAL TESTING ACCOMMODATIONS

The New Jersey Board of Bar Examiners endeavors to provide special testing accommodations at no additional cost to candidates with disabilities to the extent such accommodations are reasonable, consistent with the nature and purpose of the examination, and necessitated by the candidates' disabilities. The New Jersey Bar Examination is a two-day long, six-hour per day, timed test. The New Jersey Board of Bar Examiners is a "public entity" covered by the Americans With Disabilities Act (ADA). Please read these application materials carefully.

The ADA provides comprehensive civil rights protection for "qualified individuals with disabilities." An "individual with a disability" is a person who: 1) has a physical or mental impairment that substantially limits a "major life activity," 2) has a record of such an impairment, or 3) is regarded as having such a impairment. "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. An individual who currently uses illegal drugs is not protected by the ADA when a decision not to provide accommodations is made based upon his/her current illegal use of drugs.

A "qualified" individual with a disability is one who meets the essential eligibility requirements for the examination. However, the Board is not required to take any action that would result in a fundamental alteration in the nature of the examination or an undue financial and administrative burden on the Board. The Board will take any other action, if available, that will not result in a fundamental alteration or undue burden, but would ensure that individuals with disabilities are appropriately tested.

1. Any applicant seeking special testing accommodations to sit for the New Jersey Bar Examination must file the attached Application for Special Testing Accommodations and supporting forms. Applicants are encouraged to file as early as possible in order to ensure the most timely resolutions possible. The deadline for filing a completed Special Testing Accommodations application is Friday, January 10, 1997. Special Testing Accommodations applications must be filed separately from the main application to ensure faster handling. Failure to file the forms separately may seriously delay processing and prevent the granting of special testing accommodations for the February 1997 administration.

2. Applications that are filed late, incomplete, lacking documentation from law schools, lacking documentation from a physician or licensed professional in the field related to an applicant's disability, or otherwise not filed in accordance with instructions will be returned without action.

3. Any questions or inquiries must be in writing to the Secretary of the Board of Bar Examiners at the address listed above. This will provide the written response which only a written inquiry can generate.
4. The attached forms include an applicant's questionnaire with certification, law school's certification, doctor's certification, and treating professional's certification. Each applicant must submit the applicant's questionnaire, the law school's questionnaire, and at least one doctor's certification or treating professional's certification. Please make additional copies of the certification if you are submitting more than one of each. You should keep a copy of all items filed with the Secretary of the Board of Bar Examiners. Reports from doctors and treating professionals must be no older than one year for physical impairments and three years for learning disabilities.

5. The Office of the Secretary of the Board of Bar Examiners will notify each applicant who applies for Special Testing Accommodations that their application has been granted in full, granted in part, denied, or is incomplete. A written explanation will be included when an application is denied in full, denied in part, or is incomplete.

6. Accessible locations usually in central New Jersey will be used as test sites. Every effort will be made to ensure that these locations are hotels. Details such as testing accommodations, test locations, and travel directions will be sent out about three weeks prior to the test administration.

7. Applications for Special Testing Accommodations are subject to the same standard of candor as the Certified Statement of Candidate for the Committee on Character. The provision of false documentation or information on an application for Special Testing Accommodations will be referred to the Committee on Character. All information submitted by applicants, law schools, doctors, and treating professionals, is confidential under Rule 1:23-3 (see Admission to Bar booklet).
### SPECIAL TESTING ACCOMMODATIONS

Important: Must be complete; Please read instructions thoroughly!

<table>
<thead>
<tr>
<th>Name of Applicant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Address (street &amp; number)</td>
</tr>
<tr>
<td>City</td>
</tr>
<tr>
<td>Home Telephone</td>
</tr>
<tr>
<td>Date of Birth</td>
</tr>
</tbody>
</table>

**MUST BE FILED WITH SUPPORTING DOCUMENTS BY FRIDAY, JANUARY 10, 1997.**

**I. DISABILITY STATUS (check all that apply):**

A. PHYSICAL IMPAIRMENT(S)

- [ ] Orthopedic
- [ ] Visual
- [ ] Speech
- [ ] Hearing
- [ ] Neurological
- [ ] Other (specify): ________________________

Describe your disability below. In addition, please provide documentation of the attached corresponding form from your treating physician(s) or therapist(s) of your diagnosis and prognosis, date of onset, and current physical condition, based on an examination conducted within the past year.

__________________________________________

__________________________________________

__________________________________________

Candidate's Application 1 of 7
How long have you had your disability?

B. LEARNING DISABILITIES
- Perceptual Impairments
- Dyslexia
- Dysgraphia
- Other (please specify)

Describe your disability below. In addition, please provide documentation on the attached corresponding form from your treating physician(s) or therapist(s) of your diagnosis and prognosis, date of onset, and current condition, based on an examination conducted within the past three years.

NOTE: Test results and scores are required for learning disabilities.

C. In addition to the New Jersey Bar Examination, I will be taking another jurisdiction's examination; Yes_________ No__________.

If yes, I will be sitting in______________________.

I plan to take Multistate Bar Examination (MBE) in______________________ on Wednesday, February 26, 1997.
II. ACCOMMODATIONS REQUESTED (check all that apply):

A. Auxiliary Aids and Services
   - Wheelchair accessible testing room and restroom
   - Separate testing area
   - Reader as accommodation for visual impairment
   - Writer as accommodation for visual or motor impairment
   - Computer as accommodation for perceptual or physiological disability
   - Alternate version of the test (check all that apply):
     - Braille
     - Large Print
     - Tape
   - Other (specify):

B. Extra time: 25% 33% 50% other (please specify)

C. Other (specify):

Please provide documentation from your treating physician(s) or therapist(s) that the accommodations requested above are necessary to enable you to sit for the Bar Examination.

III. PAST ACCOMMODATIONS MADE FOR YOUR DISABILITY (check all that apply):

A. In high school: Year Graduated
   - Were you in a special school or program? Yes No
Did you get special accommodations for classroom examinations?  □ Yes □ No

If yes, what were the accommodations?

Did you generally get extra time for classroom examinations?  □ Yes □ No

If yes, how much extra time?

B. Did you have special accommodations for taking the SAT or ACT examinations for admission to college?  □ Yes □ No

If yes, what were the accommodations?

C. In college: Year Graduated

Did you use disabled student services?  □ Yes □ No

Did you get special accommodations for classroom examinations?  □ Yes □ No

If yes, what were the accommodations?

Did you generally get extra time for examinations?  □ Yes □ No

Candidate's Application 4 of 7
APPENDIX D (CONTINUED)

If yes, how much extra time?


D. Did you have special accommodations for the LSAT?

If yes, what accommodations? (Check all that apply)

Formats:
☐ Braille  ☐ Tape  ☐ Large Type

Help:
☐ Reader  ☐ Recorder  ☐ Extra Time
☐ Sign Language Interpreter  ☐ Extra Breaks


E. In law school: Year Graduated

Did you use disabled student services? ☐ Yes  ☐ No

Did you get special accommodations for classroom examinations? ☐ Yes  ☐ No

If yes, what were the accommodations?


Did you generally get extra time for examinations? ☐ Yes  ☐ No

If yes, how much extra time?


You must include documentation of any accommodations you received in law school (form attached).

Candidate’s Application 5 of 7
QUESTIONING THE QUESTIONNAIRES

APPENDIX D (CONTINUED)

I understand that the full and correct completion of this Application for Special Testing Accommodations is a pre-requisite for the Board of Bar Examiners consideration of my application for special testing accommodations. I hereby certify that all of my answers are true and complete. I am aware that if any answers are wilfully omitted or false, I may prejudice my examination results, admission to the Bar of the State of New Jersey, my subsequent goodstanding as a member of the Bar, and that I may be subjected to such penalties as provided by law. I further certify that I have read the foregoing Application and the facts stated therein are true and complete to the best of my knowledge and belief.

__________________________  ________________________
Date                     Signature

Please retain a copy of this statement for your records.

Candidate's Application 6 of 7
REQUEST FOR SPECIAL ACCOMMODATIONS APPLICATION
AUTHORIZATION AND RELEASE

I, ____________________________, in connection with my Request for Special Accommodations Application for taking the New Jersey Bar Examination authorize the New Jersey Board of Bar Examiners to provide, at the Board’s discretion, a copy of any and all documents which I submit in connection with this Application to such persons and/or consultants as the Board may deem necessary to adequately evaluate my application.

I hereby release, discharge and exonerate the New Jersey Board of Bar Examiners, its agents and representatives, and/or any person so furnishing information from any all liabilities of every nature and kind arising out of the furnishing, inspection or receipt of such documents, records and other information or the investigation made by or on behalf of the New Jersey Board of Bar Examiners.

(Signature)

(Date)

Candidate’s Application 7 of 7
REQUEST FOR SPECIAL TESTING ACCOMMODATIONS

In the Matter of the Application of

CERTIFICATE OF MEDICAL AUTHORITY

to Take the Bar Examination (PLEASE PRINT OR TYPE)

The New Jersey Board of Bar Examiners endeavors to provide special testing accommodations to candidates with disabilities to the extent that such accommodations are reasonable, consistent with the nature and purpose of the examination, and necessitated by the candidate’s disabilities. Please complete this form and return it to the candidate for submission to the New Jersey Board of Bar Examiners. It is an integral part of the evaluation process by the Board of Bar Examiners. Thank you in advance for your assistance in the timely completion of this form.

PLEASE PRINT OR TYPE

(Please use additional pages where necessary)

The undersigned hereby certifies as follows:

1. I examined the above-named applicant on the ________ day of __________
   19_______ (within the last year)

2. The nature and extent of the applicant's disability are described as follows.

3. Is this condition permanent? Yes Yes No No If no, when will it abate?

Medical Authority 1 of 3
4. I performed the following test(s) and/or procedure(s) to diagnose this applicant's disability:

5. (Under standard testing conditions, applicants are given three hours in the morning to answer 100 multiple choice questions and three hours in the afternoon for the same number of questions. On the next day, they are given three hours in the morning to answer three essay questions and three hours in the afternoon to answer the same number of questions.) The applicant's disability has the following effect on his/her ability to take the Bar Examination under standard testing conditions:

6. I recommend that the applicant be provided with the following special testing accommodations for the Bar Examination:

7. My credentials are as follows (you may attach your Curriculum Vitae):
I certify that the information contained herein is true and correct to the best of my knowledge and belief.

Executed on __________________________ at __________________________
by __________________________.

Name: __________________________________________________________
Position: _________________________________________________________
Address: _________________________________________________________
Telephone: _______________________________________________________

Medical Authority 3 of 3
REQUEST FOR SPECIAL TESTING ACCOMMODATIONS

In the Matter of
the Application of

CERTIFICATE OF PROFESSIONAL
AUTHORITY

to Take the Bar Examination (PLEASE PRINT OR TYPE)

The New Jersey Board of Bar Examiners endeavors to provide special testing accommodations to candidates with disabilities to the extent that such accommodations are reasonable, consistent with the nature and purpose of the examination, and necessitated by the candidate’s disabilities. Please complete this form and return it to the candidate for submission to the New Jersey Board of Bar Examiners. It is an integral part of the evaluation process by the Board of Bar Examiners. Thank you in advance for your assistance in the timely completion of this form.

PLEASE PRINT OR TYPE
(Please use additional sheets, if necessary)

The undersigned hereby certifies as follows:

1. I personally performed a psychoeducational assessment on the above-named applicant on the _______ day(s) of __________, 19_____. (Assessments must be no older than three years.)

2. In my professional opinion, the applicant demonstrates a learning disability or learning disabilities in the following area(s):

Professional Authority 1 of 4
3. The following sets forth the basis of my opinion. (Please include a description of the applicant's behavior in the test setting, the applicant's past learning problems, and the tests administered. Please also attach copies of reports or any additional documents you have relied upon in forming your opinion, especially any documents containing test scores.

4. (Under standard testing conditions, applicants are given three hours in the morning to complete 100 multiple choice questions and three hours in the afternoon to complete the same number of questions. On the following day, applicants are given three hours in the morning to answer three essay questions and three hours in the afternoon to answer the same number of questions.) In my professional opinion, the applicant's learning disability may have the following impact on his or her ability to perform on the Bar Examination:
APPENDIX D (CONTINUED)

5. I recommend the following special testing modifications to accommodate the applicant's learning disability:

6. My credentials are as follows (you may attach your Curriculum Vitae):

I certify that the information contained herein is true and correct to the best of my knowledge and belief.

Executed on ___________________________ at ___________________________
by ___________________________

Name: ___________________________
Position: ___________________________
Address: ___________________________
Telephone: ___________________________

Professional Authority 3 of 4
INDICATE BELOW THE SPECIFIC TESTS AND SCORES USED TO IDENTIFY THE SPECIFIC LEARNING DISABILITIES:

**Cognitive Assessment:** (Date Cognitive Assessment Completed: ____________)

**WECHSLER ADULT INTELLIGENCE SCALE-REVISED (WAIS-R)**

<table>
<thead>
<tr>
<th>Mental</th>
<th>Performance</th>
<th>Full Scale</th>
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<tbody>
<tr>
<td>Scaled Scores:</td>
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<tr>
<td>Information</td>
<td>Picture Completion</td>
<td></td>
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<tr>
<td>Digit Span</td>
<td>Picture Arrangement</td>
<td></td>
</tr>
<tr>
<td>Vocabulary</td>
<td>Block Design</td>
<td></td>
</tr>
<tr>
<td>Arithmetic</td>
<td>Object Assembly</td>
<td></td>
</tr>
<tr>
<td>Comprehension</td>
<td>Digit Symbol</td>
<td></td>
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<tr>
<td>Similarities</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Mean (X) of scaled scores: ____________ **Performance**

**WOODCOCK-JOHNSON PSYCHO-EDUCATIONAL BATTERY-REVISED-PART 1: COGNITIVE STANDARD SCORES ONLY:**

<table>
<thead>
<tr>
<th>Test</th>
<th>Sub-Test</th>
<th>Standard/Scaled Scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Scale Broad Cognitive</td>
<td>Processing Speed</td>
<td></td>
</tr>
<tr>
<td>Reading Aptitude</td>
<td>Auditory Processing</td>
<td></td>
</tr>
<tr>
<td>Math Aptitude</td>
<td>Visual Processing</td>
<td></td>
</tr>
<tr>
<td>Written Language Aptitude</td>
<td>Short Term Memory</td>
<td></td>
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<tr>
<td>Other</td>
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**PROCESSING DEFICIT ASSESSMENT:**

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<tr>
<th>Test</th>
<th>Sub-Test</th>
<th>Standard/Scaled Scores</th>
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<tbody>
<tr>
<td>WAIS-R</td>
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</tr>
</tbody>
</table>

**WOODCOCK JOHNSON-R**

**OTHER**

**ACHIEVEMENT ASSESSMENT** (Date Achievement Assessment Completed: ____________)

Test scores documenting 1.5 Standard Deviations below aptitude

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<thead>
<tr>
<th>Test</th>
<th>Sub-Test</th>
<th>Standard Scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>WOODCOCK JOHNSON-R</td>
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</tbody>
</table>

**WRAT**

**NELSON-DENNY**

**OTHER**

Professional Authority 4 of 4
REQUEST FOR SPECIAL TESTING ACCOMMODATIONS

In the Matter of the Application of

CERTIFICATE OF LAW SCHOOL OFFICIAL

to Take the Bar Examination (PLEASE PRINT OR TYPE)

(Please use additional pages, if necessary)

The New Jersey Board of Bar Examiners endeavors to provide special testing accommodations to candidates with disabilities to the extent that such accommodations are reasonable, consistent with the nature and purpose of the examination, and necessitated by the candidate's disabilities. Please complete this form and return it to the candidate for submission to the New Jersey Board of Bar Examiners. It is an integral part of the evaluation process by the Board of Bar Examiners. Thank you in advance for your assistance in the timely completion of this form.

1. While attending law school, the above-named applicant was considered to have the following disability:

2. While attending this law school, the above-named applicant (check all that apply):

- [ ] did not request special testing accommodations;
- [ ] requested special testing accommodations;
- [ ] was not given special testing accommodations;
- [ ] was given special testing accommodations as described on the next page.
  (Please be specific. Include a description of the types of accommodations granted, classes for which special testing accommodations were given, and types of exams for which special testing accommodations were given.)

Law School Certification 1 of 2

3. List specific accommodations given.

I certify that the information contained herein is true and correct to the best of my knowledge and belief.

Executed on __________________________ at __________________________

by __________________________________ (signature)

Name: __________________________________________________________

Position: _________________________________________________________

Address: __________________________________________________________________

Telephone: __________________________________________________________________

Law School Certification 2 of 2