

**AMERICAN BAR ASSOCIATION**

**COMMISSION ON LAWYER ASSISTANCE PROGRAMS  
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR  
COMMISSION ON MENTAL & PHYSICAL DISABILITY LAW  
NATIONAL CONFERENCE OF BAR EXAMINERS  
SECTION OF STATE AND LOCAL GOVERNMENT LAW  
CRIMINAL JUSTICE SECTION  
FORUM COMMITTEE ON AIR AND SPACE LAW  
SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW**

**RECOMMENDATION**

1 **RESOLVED**, That the American Bar Association adopts the Model Rule on Conditional  
2 Admission to Practice Law including the commentary, dated February 2008.

3

MODEL RULE  
ON CONDITIONAL ADMISSION TO PRACTICE LAW

AMERICAN BAR ASSOCIATION

FEBRUARY 2008

**PROPOSED MODEL RULE ON  
CONDITIONAL ADMISSION TO PRACTICE LAW**

**1. Conditional Admission.** An applicant who currently satisfies all essential eligibility requirements for admission to practice law, including fitness requirements, and who possesses the requisite good moral character required for admission, may be conditionally admitted to the practice of law if the applicant demonstrates recent rehabilitation from chemical dependency or successful treatment for mental or other illness, or from any other condition this Court deems appropriate, that has resulted in conduct or behavior that would otherwise have rendered the applicant currently unfit to practice law, and the conduct or behavior, if it should recur, would impair the applicant's current ability to practice law or pose a threat to the public. The [Admissions Authority] shall recommend relevant conditions that the applicant to the bar must comply with during the period of conditional admission.

**Commentary**

Conditional admission is not intended to apply to all applicants who have rehabilitated themselves from prior conduct or other matters of concern to bar admissions authorities, but only to those whose rehabilitation or treatment is sufficiently recent that protection of the public requires monitoring of the applicant for a specified period. The availability of conditional admission does not preclude unconditional admission in cases where rehabilitation or treatment has been successful for a sustained time period; nor does it preclude denial or deferral of admission in cases where rehabilitation or treatment has been of shorter duration.

Conditional admission is also not intended to apply where an applicant has engaged in conduct that is not subject to rehabilitation.

The Rule focuses on rehabilitation from conduct or behavior or effective treatment of a condition which was associated with a previous lack of fitness. In this context, unfitness means that an applicant does not meet functional requirements necessary to practice law. The existence of a condition of chemical dependency, mental or other illness does not indicate an applicant's lack of character or fitness solely for that reason. Such a rule is consistent with ABA Resolution 110 (1994), which directs that fitness determinations be made on the basis of specific, targeted questions about an applicant's behavior, conduct, or any current impairment of the applicant's ability to practice law and recommends admissions processes be tailored to protect privacy of bar applicants and avoid discouraging individuals from seeking mental health treatment. 18 MPDLR 5, 598 (Sept/Oct 1994). In addition to discouraging treatment and full disclosure, bar admission determinations made on the basis of diagnosis or treatment of chemical dependency, mental illness, or other medical conditions that do not impair functional ability may also run afoul of the Americans with Disabilities Act, which has been interpreted to prevent licensing authorities from placing additional burdens on qualified persons with a disability. See "Bar Application Mental Health Inquiries: Unwise and Unlawful. The Position of the American Bar Association," 24 Human Rights 1 (Winter 1997) [www.abanet.org/irr/hr/welobob2.html](http://www.abanet.org/irr/hr/welobob2.html); Clark v. Virginia Board of Bar Examiners, 880 F.Supp. 431 (E.D. Va. 1995)(striking down question requiring disclosure of treatment or counseling for any mental, emotional, or nervous disorders within the past five

years as impermissible under Title II); Medical Society of New Jersey v. Jacobs, 62 USLW 2238, 1993 WL 413016 (D.N.J. 1993)(prohibiting extra burdens on qualified individuals with disabilities seeking medical licensure when those burdens are unnecessary). But see, Applicants v. Texas State Board of Law Examiners, 1994 WL 93404 (W.D. Tex. 1994)(permitting narrowly drawn questions about treatment for particular disorders). The focus on current conduct and fitness may also avoid disclosure of more health treatment information than is necessary to the admissions inquiry, serving both privacy concerns and avoiding potentially unlawful burdens on qualified disabled persons.

Conditional admission is intended to act as a “safety net” to increase the likelihood of the conditional lawyer’s continuing fitness—not as a method of achieving fitness. The conditional admissions process is particularly useful when dealing with recent recovery from or treatment for chemical abuse, dependency, or mental illness since it recognizes the importance of rehabilitation from dependency or treatment of a condition that resulted in previous conduct or behavior that, if unaddressed, would have rendered an applicant unfit, avoids denial of admission because rehabilitation or treatment is recent, encourages applicants not to delay getting help they need, and provides continuing assurances of fitness. A jurisdiction may also provide for conditional admission in cases involving rehabilitation from other misconduct or unfitness that concerns admissions authorities that does not result from chemical abuse, addiction or mental or other illness, such as neglect of financial responsibilities.

The terms “Admissions Authority”, “Monitoring Authority” and “Disciplinary Authority” are used to describe the nature of the functions being performed rather than the particular agency performing them. This permits each jurisdiction to determine which entity in its jurisdiction is best suited to perform these functions.

**2. Conditions.** The [Admissions Authority] may recommend that an applicant’s admission be conditioned on the applicant’s complying with conditions that are designed to detect behavior that could render the applicant unfit to practice law and to protect the clients and the public, such as submitting to alcohol, drug, or mental health treatment; medical, psychological, or psychiatric care; participation in group therapy or support; random chemical screening; office practice or debt management counseling; and monitoring, supervision; mentoring or other conditions deemed appropriate by the Admissions Authority. The conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued abstinence, treatment, or other support. The conditions should be established on the basis of clinical or other appropriate evaluations, take into consideration the recommendations of qualified professionals, when appropriate, and protect the privacy interests of the conditionally admitted lawyer to professional treatment records to the extent possible. The terms shall be set forth in a confidential order (the “Conditional Admission Order”). The Conditional Admission Order shall be made a part of the conditionally admitted lawyer’s application file and shall remain confidential, except as provided in this and any other applicable rules of the [Admissions Authority] and the [Disciplinary Authority].

### Commentary

Consent agreements are used in some states as an alternative to an order. In such case, reference to a “Conditional Admissions Agreement” may replace “Conditional Admissions Order.”

**3. Notification to the [Disciplinary Authority].** Immediately upon issuance of a Conditional Admission Order, the [Admissions Authority] shall transmit a copy of the order to the [Disciplinary Authority]. If the [Disciplinary Authority] or any other jurisdiction’s disciplinary authority receives a complaint alleging unprofessional conduct by the conditionally admitted lawyer, or if the [Monitoring Authority] designated pursuant to Section 5 files a complaint against the lawyer based on violation of the Conditional Admission Order, the [Disciplinary Authority] shall request a copy of relevant portions of the lawyer’s bar application file, and the [Admissions Authority] shall promptly provide the requested materials to the [Disciplinary Authority].

### Commentary

This ensures that the [Disciplinary Authority] is aware of the conditional admission and can act promptly to revoke or extend the term of the conditional admission in addition to other disciplinary options it may have. The [Disciplinary Authority] may also act on a complaint of professional misconduct.

**4. Length of Conditional Admission.** The conditional admission period shall be set in the Conditional Admission Order, but shall not exceed sixty (60) months, unless a complaint for violation of the Conditional Admission Order has been filed by the [Monitoring Authority] with the [Disciplinary Authority] or a complaint of unprofessional conduct has been made against the conditionally admitted lawyer with any lawyer disciplinary authority.

### Commentary

The Rule provides for a maximum conditional admission term of sixty months. Of the states that currently have a conditional admission rule that provides for a maximum term, a majority provide for a maximum term of twenty-four months. The conditional admission period may vary according to the nature of the dependency or illness requiring conditional admission, the applicant’s history of pre-admission treatment or recovery, and any professional opinions about probability of relapse. The facts of a particular case may require a longer or shorter term than twenty-four months, but in no event should the conditional admission exceed sixty months. This Rule provides limited discretion to extend or modify the terms if the Conditional Admission Order is violated (i.e., there is a relapse or recurrence of the conduct) and provides for the conditional admission to be continued until the [Disciplinary Authority] acts upon any complaint to modify, suspend or revoke the lawyer’s admission.

5. **Compliance with Conditional Admission Order.** During the conditional admission period, the [Monitoring Authority] shall take such action as is necessary to monitor compliance with the terms of the Conditional Admission Order, including, but not limited to, referral for monitoring by a Lawyer Assistance Program or other monitoring authority, requiring the conditionally admitted lawyer to submit written verification of compliance with conditions, requiring an appearance before the [Monitoring Authority], and requiring responses to requests for information by the [Monitoring Authority].

#### Commentary

Although monitoring may be performed by a Lawyer Assistance Program or by an Admissions Authority, a Disciplinary Authority may be a proper monitor as an extension of its existing authority in probation and reinstatement matters.

6. **Costs of Conditional Admission.** The applicant shall be responsible for any direct costs of investigation, testing and monitoring. Other costs shall be borne in accord with the Rules of the Admissions and Disciplinary Authorities.

7. **Failure to Fulfill the Terms of Conditional Admission.** Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Order may result in a modification of the Order that may include extension of the period of conditional admission, suspension or revocation of the admission, or such other action as may be appropriate under the Rules of the [Disciplinary Authority]. The filing of a complaint with the [Disciplinary Authority] shall automatically extend the conditional admission until disposition of the complaint by the [Disciplinary Authority] and any resulting appeals. Once a complaint is filed with the [Disciplinary Authority], the [Admissions Authority] shall have no further authority over the conditionally admitted lawyer.

#### Commentary

The purpose of this provision is to allow the period of conditional admission to be extended to prevent the conditional admission from expiring before the Disciplinary Authority can act on the alleged violation of the Conditional Admission Order. It is not intended to affect in any way a Disciplinary Authority's ability to seek to discipline a conditionally admitted lawyer.

8. **Violation of Conditional Admission Order.** If the [Monitoring Authority] determines that the terms of the Conditional Admission Order have been violated, the [Monitoring Authority] shall notify the [Disciplinary Authority] to initiate proceedings to determine whether the conditional admission should be revoked, extended or modified. Consideration and disposition of any such notice to the [Disciplinary Authority] by the [Monitoring Authority] shall be governed by the rules of the [Disciplinary Authority].

### Commentary

Violation of a Conditional Admission Order will not necessarily result in revocation. The Monitoring Authority should act on any violation by determining whether it merits notice to the Disciplinary Authority.

**9. Expiration of Conditional Admission Order.** Unless the conditional admission is revoked or extended as provided herein, upon completion of the period of conditional admission, the conditions imposed by the Conditional Admission Order shall expire. The [Monitoring Authority] shall notify the [Disciplinary Authority] of such expiration.

**10. Confidentiality.** Except as otherwise provided herein, and unless this Court orders otherwise, the fact that an individual is conditionally admitted and the terms of the Conditional Admission Order shall be confidential provided that applicant shall disclose the entry of any Conditional Admission Order to the admissions authority in any jurisdiction where the applicant applies for admission to practice law. In addition to ensuring that the relevant records of the [Admissions, Monitoring, and Disciplinary Authority] are confidential, the [Admissions Authority] shall structure the terms, conditions, and monitoring of conditional admission to ensure that the conditional admission does not pose a significant risk to confidentiality. These provisions for confidentiality shall not prohibit or restrict the ability of the applicant to disclose to third parties that the applicant has been conditionally admitted under this Rule, nor prohibit requiring third-party verification of compliance with terms by admission authorities in jurisdictions to which the conditionally admitted lawyer may subsequently apply.

### Commentary

Confidentiality is the key to accomplishing the purposes of conditional admission. Public disclosure and the stigma that would accompany it in cases of chemical abuse or dependency, mental illness, or other medical condition would discourage the treatment, diagnosis, and disclosure this Rule promotes.

In recommending confidentiality, the Commission was aware of and discussed the inherent tension between the benefits of confidentiality discussed above and the public's (including potential clients) interest in access to all material information about the applicant's fitness to practice. It is assumed that, in the absence of a conditional admission rule and under current admission practices, many applicants who would qualify for conditional admission under this rule would be admitted in most jurisdictions unconditionally. Thus, observing confidentiality should result in no less information being provided to the public than is currently the case, but on the other hand confidentiality will promote early disclosure and treatment of impairments.

**11. Education.** The [Admissions Authority] shall make information about its conditional admission process publicly available. The applicable Lawyer Assistance Program (LAP), or other bar or legal organization that provides support to lawyers, should have the primary responsibility for educating law students, law school administrators and applicants for

bar admission regarding the nature and extent of chemical abuse, dependency, and mental health concerns that affect law students and lawyers; aiding them to recognize chemical abuse, dependency, and mental illness; identifying resources available to address such issues; and encouraging them to seek assistance. The Admissions Authority should reasonably cooperate with such organization in making accurate information about the conditional admission process available to interested persons.

### **Commentary**

Informing bar applicants that chemical dependency and mental illness are not necessarily indicative of a lack of character and fitness which preclude admission to practice law encouraging rehabilitation from misconduct or behavior or treatment for a condition that would otherwise render an applicant unfit, and utilizing a confidential conditional admission process in cases of recent rehabilitation or treatment, results in candor in the process and other benefits to the bar examiners and the public. The law schools and lawyer assistance programs can assist by addressing chemical abuse, dependency, and mental health concerns, but the message of how an Admissions Authority addresses these concerns and the availability of a conditional admission option may be most appropriately and effectively communicated by the Admissions Authority.



## REPORT

This proposed Model Rule is a compilation of the best practices from the nineteen (19) states and Puerto Rico that have a conditional admission rule. Conditional admission is not intended as a method to achieve fitness, but is intended to increase the likelihood of *continuing* fitness. Conditional admission provides a means of protecting the public when a bar applicant has had such recent treatment for substance abuse or mental health issues that the admissions authority is concerned about the applicant's ability to continue to competently practice law. Conditional admission provides the bar examiners an additional tool designed to protect the public in close cases, while encouraging law students to seek assistance in law school for substance abuse, depression and other mental health issues.

In 2002 the ABA Commission on Lawyer Assistance Programs (Commission) created a new Law School Outreach Committee. The impetus for the Committee was a 1993 report by the Association of American Law Schools' (AALS) Special Committee on Substance Abuse in the Law Schools. The report concluded that a significant number of law students were abusing substances in law school. The Special Committee made recommendations for law schools to address the issues of substance abuse as those issues affected law students. Another study has indicated that an alarming number of law students (40%) are depressed by the end of law school.

In recent years lawyer assistance programs (LAPs) have reported an increasing number of referrals involving lawyers whose ability to practice has been impaired by substance abuse, depression and other mental health issues. The LAP programs have also reported an alarming increase in lawyer suicides. The Commission decided that more should be done to reach and assist lawyers struggling with these issues as early as possible and concluded that law schools were an appropriate place to begin.

One of the Law School Outreach Committee's subcommittees, the Conditional Admission Subcommittee, focused on working with the Law Examiners and/or Licensing Agencies and others to find a means to encourage law students to seek early assistance for substance abuse, depression or other mental health issues. The Conditional Admission subcommittee consisted of members of the National Conference of Bar Examiners, the Section of Legal Education and Admissions to the Bar and CoLAP Commissioners and Advisory Commission members. This group has been working on the proposed Model Rule on Conditional Admission to Practice Law for approximately four years.

In 2003 the ABA Law Student Division contacted the Subcommittee with law students' concerns that substance abuse is still an issue affecting law students. The law students expressed concerns about the lack of confidentiality of treatment records and law students' hesitancy to seek needed treatment for fear of having to disclose treatment or treatment information on the bar application. They also expressed the widespread perception that seeking treatment and the disclosure of such treatment would prevent them from being licensed to practice law.

The Model Rule focuses on effective treatment of and rehabilitation from conduct or behavior associated with a *previous* lack of fitness. Successfully treated chemical dependency,

mental or other illness does not indicate an applicant's lack of character or fitness *solely* for that reason. Such a rule is consistent with ABA Resolution 110 (1994), which directs that fitness determinations be made on the basis of specific, targeted questions about an applicant's behavior, conduct, or any current impairment of the applicant's ability to practice law and recommends admissions processes be tailored to protect privacy of bar applicants and avoid discouraging individuals from seeking mental health assistance. 18 MPDLR 5, 598 (Sept/Oct 1994).

In addition to discouraging treatment and full disclosure, bar admission determinations made on the basis of diagnosis and treatment of chemical dependency, mental illness, or other medical conditions *that do not impair functional ability* may also run afoul of the Americans with Disabilities Act, which has been interpreted to prevent licensing authorities from placing additional burdens on qualified persons with a disability.

The American Bar Association's Goal IX is "to promote the full and equal participation in the legal profession by minorities, women, *persons with disabilities*, and persons of differing sexual orientation and gender identity." President Neukom has stated that "lawyers with disabilities have greater difficulty getting a job after law school and have higher rates of unemployment than lawyers who do not have disabilities." President's Message, *ABA Journal*, November, 2007.

Confidentiality from public disclosure that a lawyer has been conditionally admitted is the key to accomplishing one of the purposes of conditional admission. Public disclosure and the stigma that accompanies it in cases of chemical abuse or dependency, mental illness, or other medical condition risks discouraging the treatment, diagnosis, and disclosure the proposed rule promotes. The proposed model rule does permit disclosure to the admissions authority, the disciplinary authority and the monitoring authority, to provide protection to the public in case a relapse should occur during the period of conditional admission.

The Commission was aware of and discussed the inherent tension between the benefits of confidentiality discussed above and the public's (including potential clients) interest in access to all material information about the applicant's fitness to practice. In the absence of conditional admission, and under current admission practices, many applicants who would qualify for conditional admission under this rule would be admitted unconditionally in many jurisdictions. Thus, observing confidentiality should result in no less information being provided to the public than is currently the case. Confidentiality will promote early disclosure and treatment of a impairment, which will be of benefit to the public. The public is protected by requiring the conditions for a period of time sufficient to ensure that the conditionally admitted lawyer will be able to continue to competently practice law.

Currently there are law students who need assistance, who do not seek it, or who seek assistance and do not disclose it on their bar applications, who become licensed. Without close monitoring under a conditional admissions regime, these lawyers are at greater risk of causing serious damage to clients if they relapse before they are detected and dealt with through the formal lawyer discipline structure.

Without confidentiality bar applicants will be less likely to seek early assistance and treatment, and/or less likely to be candid in answering questions, and bar admissions authorities will not have the information necessary to make an accurate assessment of the applicant's current ability to competently practice law.

Confidential conditional admission provides a "safety net" for the conditionally admitted lawyer that will enable the monitoring authority and/or disciplinary authority to intervene early when the conditionally admitted lawyer encounters difficulties with rehabilitation that puts the public at risk. The safety net consists of disclosure of the conditional admission to the admissions authority, the disciplinary authority and a trained monitor who monitors the lawyer to ensure that the conditionally admitted lawyer complies with the admission conditions.

Conditional admission is intended only for use in cases of bar applicants who have established a provable history of recent rehabilitation such that a period of monitoring will assure continuing rehabilitation. Conditional Admission is also not intended to apply where an applicant has engaged in conduct that is not subject to rehabilitation.

At least four more states have expressed interest in adopting a conditional admission rule and are awaiting the ABA's decision on this recommendation before adopting their own rule. If adopted, the policy will be circulated to the law schools, bar examiners, and discipline agencies through ABA Media Relations, Division for Bar Services, Law Student Division, Legal Education and Admissions to the Bar, National Organization of Bar Counsel, Center for Professional Responsibility and state and local bar associations.

### CONCLUSION

As a result of the work of the Conditional Admissions Subcommittee, the National Conference of Bar Examiners and the Section of Legal Education and Admissions to the Bar, and the Commission on Lawyers Assistance Programs have reached the following conclusions:

1. The interests of the public and bar applicants are best served by bar admission rules that promote early detection of substance abuse and dependency, and mental or other illness that may render an applicant unfit to practice law absent effective treatment or rehabilitation.
2. Utilizing a confidential conditional admission process can remove impediments to early diagnosis and treatment for chemical dependency or mental illness by encouraging law students to seek assistance and treatment early, rather than avoiding treatment for fear of being refused a license because of treatment.
3. The interests of the public and bar applicants are best served by encouraging early treatment and rehabilitation from conduct or behavior or a condition that would otherwise render an applicant unfit to practice law.

4. Utilizing a confidential conditional admission process can reduce the apprehension of full disclosure by bar applicants, and thereby increase an applicant's candor and provide for a more solid foundation on which to make an accurate assessment of character and fitness and create conditions that increase the likelihood of continued fitness.

5. Utilizing a confidential conditional admission process will enable bar admissions or disciplinary authorities to more quickly act to minimize or prevent harm to the public in cases of rehabilitation or effective treatment that are sufficiently recent to indicate a risk to the public if the conduct recurs or a relapse results in a lack of fitness.

6. A bar applicant who is otherwise qualified to practice law should not be denied access solely because she or he has been recently treated for substance abuse or a mental or other illness and has been rehabilitated.

Submitted by:  
Honorable Robert L. Childers, Chair  
Commission on Lawyer Assistance Programs  
February, 2008

**GENERAL INFORMATION FORM**

Submitting Entity: Commission on Lawyer Assistance Programs  
Section of Legal Education and Admissions to the Bar  
Commission on Mental and Physical Disability Law  
National Conference of Bar Examiners  
Section of State and Local Government Law  
Criminal Justice Section  
Forum Committee on Air and Space Law

1. Summary of Recommendation.

The recommendation proposes that the American Bar Association adopt the proposed Model Rule on Conditional Admission to Practice Law including the commentary.

2. Approval of Submitting Entities.

The Commission on Lawyer Assistance Programs approved the proposal at its August 11, 2007 business meeting in San Francisco, California.

The Board of Trustees of the National Conference of Bar Examiners unanimously agreed to co-sponsor the Model Rule at its meeting in July 2007.

The Section of Legal Education and Admissions to the Bar approved the proposed rule at its Council business meeting in December 2007 and agreed to co-sponsor the Model Rule.

The Commission on Mental and Physical Disability Law approved the proposed rule at its Commission meeting and agreed to co-sponsor the Model Rule in November 2007.

The Section of State and Local Government Law voted to co-sponsor the Model Rule in November 2007.

The Criminal Justice Section voted to co-sponsor the Model Rule in December 2007.

The Forum Committee on Air and Space Law voted to co-sponsor the Model Rule in December 2007.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes. The Model Rule on Conditional Admission to Practice Law was initially submitted to the House in August 2007, and was withdrawn to allow closer review by interested entities and an opportunity for additional support and co-sponsorship.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

In 1994, the ABA House of Delegates approved ABA Resolution 110, which was a joint drafting effort by representatives of the Commission on Mental and Physical Disability Law, the Section of Legal Education and Admissions to the Bar, the National Conference of Bar Examiners, and the Association of American Law Schools. It was supported by the Commission on Lawyer Assistance Programs. That resolution provided that “the American Bar Association recommends that when making character and fitness determinations for the purpose of bar admission, state and territorial bar examiners, in carrying out their responsibilities for the public to admit only qualified applicants worthy of the public trust, should consider the privacy concerns of bar admission applicants, tailor questions concerning mental health and treatment narrowly in order to elicit information about current fitness to practice law, *and take steps to ensure that their processes do not discourage those who would benefit from seeking professional assistance with personal problems and issues of mental health from doing so.*” (Emphasis added.)

The Model Rule Recommendation would reinforce the 1994 Policy, through further compliance with the Americans with Disabilities Act and the bar applicants’ right to privacy. It would also encourage, rather than discourage, the admission to practice of those who would benefit from seeking professional assistance with personal problems and issues of mental health on terms consistent with protecting the public.

5. What urgency exists that requires action at this meeting of the House?

The number of law students who abuse or are addicted to alcohol or drugs is significant. The number of disciplinary complaints against impaired lawyers continues to increase. It is urgent that the ABA encourage early rehabilitation from conduct or behavior through treatment of conditions that, if left untreated, becomes harmful to the public and future clients.

This resolution would aid the ABA in its accomplishing Area II Strategy D of its June 2006 Strategic Plan, which states: “The ABA must increase the numbers of lawyers of all diverse groups to ensure that it is truly representative of American society and the legal profession and that all legal professionals regardless of factors such as race, ethnic origin, gender, age, *disability*, . . . feel they have a home at the ABA.”

This resolution would also aid the ABA in accomplishing Goal IX “to promote the full and equal participation in the legal profession by minorities, women, *persons with disabilities*, and persons of differing sexual orientation and gender identity.”

6. Status of legislation.

Not applicable.

7. Cost to the Association.

None.

8. Disclosure of interest (if applicable)

Not applicable.

9. Referrals.

Referrals have been made to all other ABA Sections, Divisions, Forums, Committees and Commissions. November, 2007 and December 13, 2007.

10. Contact Persons (prior to the meeting)

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Commission on Lawyer Assistance Programs  
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11. Contact Persons (who will present the report to the House)

Same as noted in #10.

## EXECUTIVE SUMMARY

a. Summary of the Recommendation.

The recommendation proposes that the American Bar Association adopt the proposed Model Rule on Conditional Admission to Practice Law including the commentary.

b. Summary of the issues which the recommendation addresses.

1) The use of confidential conditional admission is intended to encourage law students and bar applicants to seek early assistance or treatment for substance abuse, addiction or other mental health disorders and disclose such information as is necessary to establish that the applicant has the requisite fitness to practice law.

2) The use of confidential conditional admission is intended to encourage bar applicant's candor and provide a more solid foundation on which to make an accurate assessment of character and fitness to practice law.

3) The use of a confidential conditional admission is intended to protect the public by requiring conditions and a period of monitoring compliance with those conditions in cases of rehabilitation that are sufficiently recent to indicate a risk to the public if a relapse occurs that results in an impaired ability to practice law.

c. An explanation of how the proposed policy position will address the issues.

The approval of a Model Rule on Conditional Admission to Practice Law will provide a model to those states seeking to establish such a rule. Encouraging all states to implement conditional admission rules that do not discriminate against an eligible candidate for the bar because of the candidate's past treatment for addiction or mental health will encourage law students and bar applicants to seek early treatment and will encourage greater candor and provide a more solid foundation on which to make an accurate assessment of character and fitness to practice law. The use of a conditional admission rule will also provide the means to act more quickly to minimize or prevent harm to the public if the conduct recurs or a relapse results in a lack of fitness.

- d. A summary of any minority views or opposition that has been identified.

The National Organization of Bar Counsel and Standing Committee on Lawyer Discipline expressed a concern about the confidentiality provision of the Model Rule, and felt that conditionally admitted applicants should be required to disclose their admission status to clients, employers and professional liability insurance underwriters.