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## Confidentiality issue arises in petition for conditional bar access

by **Jack Zemlicka**

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Click on any attorney name on Wisbar.org and graduation date, practice status and whether or not the lawyer is active or retired is available for consumer review.

But should an attorney's "conditional" admission also be common knowledge?

Not according to the Wisconsin Lawyers Assistance Program Committee (WisLAP) and some members of the State Bar of Wisconsin's Board of Governors, who discussed the issue on June 27.

On May 1, the Wisconsin Board of Bar Examiners (BBE) filed a petition with the Supreme Court seeking a new rule to allow for conditional admission to the bar. Currently, applicants are either granted or denied admission by the BBE.

While the proposed rule would provide a third option for those individuals with past drug and alcohol addictions or mental health issues applying for admission, the final draft excludes a provision mandating that conditional admission be strictly confidential.

"We cannot look forward and support this rule unless there is a specific amendment that provides for and safeguards the confidentiality of the individual," said Timothy D. Edwards, chair of the WisLAP Committee. "We believe removal of confidentiality from the plain language of the rule eviscerates its very purpose."

### Some Disclosure

BBE Director John E. Kosobucki indicated that the organization opted for a more limited level of confidentiality after discussions with officials from other states who have similar rules and no problems with the policy.

Rather than keep conditional admission a secret, Kosobucki said there may be a notation on the State Bar Web site next to the name of the attorney. However, details of a lawyer's affiliation would remain confidential.

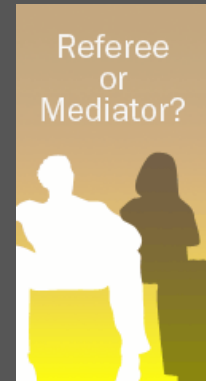
"When the board discussed it, their idea of confidentiality was not plastering a scarlet 'A' on the attorney or publicizing the information in a newspaper," said Kosobucki, who added that BBE board members found most consumers do not shop for lawyers online.

But Gov. Amy E. Wochos said members of the Young Lawyers Division expressed concern that any indication of conditional admission could damage the reputation of an attorney just starting his or her practice.




As stated in the petition, a conditional license could be granted to attorneys who are close calls in the eyes of the BBE. Wochos questioned whether those aspiring attorneys who are close calls and may have otherwise been granted normal admission will now be admitted conditionally.

"My concern is this will be used as protection for the BBE for close calls that otherwise would have been admitted," said Wochos. "Without the idea of confidentiality, the ability of young lawyers to build their practice could be burdensome."

Kosobucki said that during his two-year tenure as director, only one or two cases have arisen which would have been subject to review under a new rule.



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Gov. James E. Collis, who is a member of the WisLAP Committee, said that even though there have been few close calls in the past, a third option will encourage more people to seek treatment if they can still get admitted.

"This is not a person coming into the BBE with a brown bag and a bottle," said Collis. "It's a person who has sought treatment or been in treatment, and wondering if they should tell the BBE about it."

Edwards said that as a part-time teacher at UW-Law School, students have asked him whether or not they should disclose their mental health history on their application and if they don't, what that could mean for admission.

Kosobucki said the rule would encourage people to disclose past addictions or problems with the knowledge that they may still gain admission, provided they are fit to practice.

But Edwards noted that status of admission, as well as terms of conditions need to be fully confidential to provide the most incentive for a person to disclose everything.

"Without [confidentiality], I think it undercuts the incentive to stay on the straight and narrow," said Gov. Margaret Wrenn Hickey.

If the BBE denies licensure, currently the only avenue to seek admission is by filing a petition with the Supreme Court.

Chairman of the BBE Review Committee, Robert J. Asti, said admissions hearings, while few in number, allow for an attorney's record to be publicly reviewed.

"Those cases are not pretty and often those people have to bare their souls," said Asti.

Asti said while his committee prefers full confidentiality, it is not taking an "all or nothing" approach like WisLAP.

"It would be like an asterisk in baseball," said Asti of a public notation that an attorney is conditionally admitted to practice law.

The Board of Governors is expected to take action on whether or not to support the petition at a future meeting. The Supreme Court has not set a date to review the petition.