

U.S. Justice Dept. Finds States Violate ADA If Inquire into Mental Health Condition or Treatment When Assessing Fitness to Practice Law

Washington – February 10, 2014 – The U.S. Department of Justice has informed Louisiana officials that they are subjecting law graduates who seek admission to the bar to unlawful inquiries concerning their mental health condition and treatment.

“The Americans with Disabilities Act prohibits the state bar from inquiring into an applicant’s mental health condition when the applicant’s past conduct and performance demonstrate fitness to practice law,” stated Ira Burnim, legal director at the Judge David L. Bazelon Center for Mental Health Law.

The Department of Justice issued the letter in response to complaints filed by the Bazelon Center on behalf of two Louisiana attorneys on whom onerous conditions were imposed when they were admitted to the bar on a “conditional” basis due to their mental health diagnosis and treatment. Like many other states, Louisiana requires law graduates applying for a license to practice law to disclose whether they have been diagnosed with or treated for a mental illness within the last five years.

According to the Department’s letter, Louisiana’s bar admissions process violates Title II of the Americans with Disabilities Act by needlessly screening out applicants with disabilities. The letter states that questions about an applicant’s mental health diagnosis or treatment, unlike questions about conduct and performance, do not accurately gauge fitness to practice law. Moreover, the letter finds the conditions the bar imposed were not tailored to perceived risks.

The letter informs Louisiana that it must refrain from using questions about diagnosis or treatment unless the applicant raises his or her mental health conditions to explain past concerning conduct. In addition, the letter states, Louisiana must evaluate all pending applications without considering the applicant’s responses to mental health questions. Furthermore, it asks the state to identify individuals subject to unlawful conditional admissions and admit them unconditionally to the bar.

“People with disabilities, including mental health diagnoses, must be assessed based on their abilities, not their medical conditions,” stated Samuel Bagenstos, a University of Michigan law professor and disability law expert. “That is the law, plain and simple. As the gatekeepers to the legal profession, the bar should know and follow the law.”