

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

OMB No. 1190-0009

**Title II of the Americans with Disabilities Act
Section 504 of the Rehabilitation Act of 1973
Discrimination Complaint Form**

Government, or organization, or institution which you believe has discriminated:

1. Supreme Court of the State of Louisiana

Address: 400 Royal St.

New Orleans, LA 70130

Telephone: (504) 310-2588

2. Louisiana Committee on Bar Admissions

Address: 2800 Veterans Memorial Blvd., Suite 310

Metairie, LA 70002

Telephone: (504) 836-2420

3. Louisiana Office of Disciplinary Counsel

Address: 4000 S. Sherwood Forest Blvd., Suite 607

Baton Rouge, Louisiana 70816

Telephone: (225) 239-3900

When did the discrimination occur?

Date: Began in January 2009 and continues through the present

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on page 3 if necessary):

See attached narrative.

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization, or institution?


Yes _____ No

Has the complaint been filed with another bureau of the Department of Justice or any other Federal, State, or local civil rights agency or court?

Yes _____ No

Do you intend to file with another agency or court?

Yes _____ No

Signature: Ira A. Burnim, attorney for 

Date: 1/31/2011

Return to:

Narrative

Summary

██████████ is an attorney practicing law in Louisiana. In 2008, she received a J.D. from the University of ██████████ School of Law, an ABA-accredited institution. When she applied to become a member of the Louisiana Bar, she was admitted conditionally. She was denied and continues to be denied an unconditional license to practice law based on stereotypical assumptions about individuals with mental illnesses. Nothing she said in her application to be admitted to the Bar and nothing revealed by the Bar's investigation of her character or fitness provided any basis for concern about her fitness to practice law. She was denied an unconditional license to practice law solely because she revealed that she had a mental health diagnosis and had undergone mental health treatment.

She has now competently practiced law in New Orleans for over a year, including since June 2010 with a 50-lawyer law firm. It is time that she be unconditionally admitted to the Bar and that Louisiana end its practice of imposing onerous conditions on Bar admission and the practice of law based solely on applicants' mental health diagnosis or treatment.

The conditions imposed on ██████████ are unwarranted and intrusive. Moreover, they put her at a disadvantage in retaining her job or seeking another job, including a judicial clerkship.

Extraordinarily, Louisiana has opened to the public records of ██████████'s treatment and therapy sessions. The Department of Justice should insist that, pending further investigation of ██████████'s complaint, the medical records and summary of medical records that she provided the Bar immediately be placed under seal.

Chronology and Facts

██████████ applied for admission to the Louisiana Bar in January 2009. As required by Louisiana's version of the NCBE character and fitness questionnaire, she disclosed on her application that she had been diagnosed with Bipolar Disorder Type II.¹ She also truthfully stated that she did not believe her impairment, treated or untreated, would affect her ability to practice law. Her Bipolar Disorder has always been mild, and it had not interfered with her meeting academic expectations.

¹ Louisiana's version of the NCBE asked, "Within the past five years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?" ██████████ had been diagnosed with Bipolar Disorder Type II, which, unlike Type I Bipolar, does not include episodes of mania with psychotic features. See DSM-IV at 362 ("Bipolar II Disorder, Diagnostic Criteria"), 338 ("Criteria for Hypomanic Episode").

The above question appears on the standard NCBE. States have the option of adding or removing questions from the NCBE when they administer the questionnaire.

In mid-February of 2009, ██████████ received a letter from Monique Drake, counsel for the Louisiana Committee on Bar Admissions (the “Committee”), informing her that because she had disclosed a diagnosis of Bipolar Disorder, she was required to provide psychiatric records for the previous 5 years and that failure to do so would result in ineligibility to practice law in Louisiana.²

On March 3, 2009, ██████████’s treating psychiatrist, ██████████, sent the Committee a summary of his treatment of ██████████. Dr. ██████████ explained that he had treated ██████████ since June 2006, when she was first referred to him for “low mood.” He also reported that, since beginning treatment, ██████████ had taken her prescribed medication and had never required hospitalization. He reported that she “has been working in a stressful job with no episodes of depression or hypomania”

On April 22, 2009, Dr. ██████████ sent a follow-up letter to the Committee containing a detailed description of ██████████’s symptoms and course of treatment. Dr. ██████████ explained that, upon beginning treatment during law school, ██████████’s symptoms of depression were limited to crying, social withdrawal, and taking frequent naps; her symptoms of hypomania were limited to making “lots of plans” such as considering pursuing a dual degree program, gregariousness, buying drinks for friends, and “talking quickly and being very intense.” Overall, her bipolar disorder was “relatively mild” and well-managed. At no time had she ever posed a danger to herself or others. In addition, Dr. ██████████ forwarded to the Committee a copy of ██████████’s initial intake form dated June 27, 2006, describing her symptoms and medical, psychiatric, social, sexual, and academic history prior to beginning treatment. These summaries and records gave the Committee no reason to be concerned about ██████████’s fitness to practice law.³

For reasons that are uncertain, the Committee forwarded the information from Dr. ██████████ to a psychiatrist, Dr. ██████████, for review. On June 10, 2009, Dr. ██████████ wrote a letter to the Committee opining that ██████████’s symptoms of mental illness were “well managed and stable” and that there was “no need for further evaluation.” Dr. ██████████ agreed that ██████████’s mental illness consisted of only “intermittent mild depressive episodes and a relatively mild bipolar affective disorder,” with

² The Committee also sought medical records of any hospitalization for Bipolar Disorder within the past ten years. Because ██████████ has never required hospitalization for symptoms of mental illness, there were no records responsive to this request.

³ The Committee initially requested ██████████’s entire record of treatment, but ultimately accepted the more summary information that Dr. ██████████ provided.

some past history of disordered eating. He indicated that past alcohol use⁴ was “under control.” Dr. ██████ expressed no concerns regarding ██████’s ability to practice law.

In July 2009, ██████ passed the Louisiana Bar Examination. In July or August 2009, the Committee sent ██████ a letter informing her that she was eligible for “conditional admission” to the Bar only. In order to attain conditional admission, ██████ would be required to sign a five-year “consent agreement” and to file a joint petition with the Committee requesting a conditional admission and agreeing to numerous burdensome conditions. ██████ asked if she could challenge the Committee’s decision to offer conditional admission only and was told that her doing so could compromise her chance of admission. Afraid that challenging the Committee’s decision would jeopardize her chance of admission to the Bar, ██████ filed the joint petition for conditional admission that the Committee had required. The language of the joint petition stated that ██████ had “fulfilled the requirements of admission to the Louisiana bar, except, to the extent that, during the character and fitness screening process, her diagnosis of Bipolar Disorder was revealed.” The joint petition further stated that Dr. ██████ and Dr. ██████ had both opined that her condition was well managed and stable. The joint petition did not identify any reason to question her ability to competently and responsibly practice law.

According to the terms of the consent agreement incorporated into the joint petition, ██████: (1) would be monitored by a practice monitor assigned by the Louisiana Attorney Disciplinary Board Office of Disciplinary Counsel and would be required to execute a probation monitoring agreement setting the scope of such practice monitoring; (2) was required to consult with her treating health care provider every three months for the duration of the agreement; (3) agreed that her treating health care provider would report on her “progress” every three months for the duration of the agreement; (4) was required to notify the Office of Disciplinary Counsel of any changes to her prescribed medication or if she changed treating professionals; and (5) was required, if the Office of Disciplinary Counsel determined it necessary, to appear at her expense before a psychiatrist designated by the Office of Disciplinary Counsel to allow an assessment of her “progress” and compliance with the terms of the agreement. Moreover, the agreement gave the Office of Disciplinary Counsel have unfettered access to her psychiatric and other health records pertaining to mental health diagnosis, treatment, and recovery. According to the terms of the agreement, any violation could result in loss of or further restrictions on ██████’s license to practice law.

On October 20, 2009, the Louisiana Supreme Court ordered that ██████ be conditionally admitted to the Bar. The order directed that her five-year probationary period begin when the Probation Agreement was signed. ██████ was sworn in on October 22,

⁴ According to Dr. ██████ records, ██████ drank in college and while abroad in ██████ during high school.

2009. [REDACTED]
[REDACTED]. [REDACTED].

The final execution of [REDACTED]'s Probation Agreement was delayed until June 2010. The terms of the Probation Agreement, drafted by the Office of Disciplinary Counsel, include substantial burdens not mentioned in the consent agreement or the petition filed in the Louisiana Supreme Court in connection with her admission to the Bar, including that the probation monitor and Office of Disciplinary Counsel may "contact her employer or supervising attorney to determine and/or discuss her professional activities and performance."⁵ As later became clear, the Office of Disciplinary Counsel also expected the probation monitor to observe [REDACTED] in the workplace.

The Office has also directed [REDACTED] to disclose to any new employer that she is conditionally admitted to the Bar. This directive has effectively compelled her to disclose her mental illness to employers. Besides mental illness, the common reasons for conditional admission are a history of crime, drug or alcohol abuse, serious misconduct, or severe financial mismanagement. [REDACTED] discloses her mental illness to employers to avoid the impression that her conditional admission was based on misconduct. [REDACTED] has observed that some supervisors have treated her differently after she disclosed her conditional admission to them.

The activities of [REDACTED]'s probation monitor are, by nature, stigmatizing and intrusive.⁶ For this reason and others, [REDACTED] has requested that one of the partners in her firm be permitted to serve as her probation monitor. Although her firm had expressed an interest in such an arrangement, the Office of Disciplinary Counsel told her that her probation monitor could not be changed.

Pattern and Practice

Upon information and belief, the Louisiana Supreme Court, the Louisiana Supreme Court Committee on Bar Admissions, and the Office of Disciplinary Counsel have routinely imposed conditional admissions on applicants to the Louisiana Bar based solely on a history of mental health treatment. In particular, the Louisiana Supreme Court Committee on Bar Admissions and the Louisiana Supreme Court routinely impose conditional admission on applicants to the Bar without any individualized finding that their condition could interfere with their practice of law.

Conclusion

⁵ The probation agreement also requires [REDACTED] to meet in person with her probation monitor every three months, as well as submit bi-yearly reports of her professional activities to the probation monitor and the Office of Disciplinary Counsel.

⁶ When the monitor insisted in September 2010 on reviewing privileged information in client files on which [REDACTED] had worked, [REDACTED] protested, knowing her employer was likely to object to such a review. The Office of Disciplinary Counsel prevented the file review.

At the time of her application and since, [REDACTED] has met the essential eligibility requirements for admission to the Louisiana Bar. However, Louisiana insisted that, as a condition of her admission, she be subject to onerous conditions. The sole reason was her diagnosis of Bipolar Disorder. [REDACTED]'s conditional admission was imposed in the absence of any evidence or founded medical opinion that [REDACTED]'s condition was likely to interfere with her practice of law.

[REDACTED] asks the U.S. Department of Justice to:

- 1) Secure [REDACTED];
 - 2) Secure [REDACTED] a regular license to practice law, unfettered by the stigmatizing and intrusive conditions that attend conditional admission; and
 - 3) Secure an end to Louisiana's pattern and practice of subjecting individuals with mental illness to conditional admissions based solely on a diagnosis of mental illness.
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