



WAYNE STATE
Law School

May 1, 2019

Office of the Administrative Counsel
925 W. Ottawa St.
Lansing, Michigan, 48915
VIA EMAIL ONLY AT: ADMcomment@courts.mi.gov

RE: ADM File No. 2016-46

To Whom It May Concern:

I am writing on behalf of Wayne State University Law School (“Wayne Law”) in response to the January 23, 2019, Order of the Michigan Supreme Court. This order advised that the Court is considering whether questions regarding mental health should be included on the personal affidavit that is part of the application for the Michigan Bar Examination and, if so, what form those questions should take. Wayne Law has a particular interest in this question as more than 80% of Wayne Law graduates sit for the Michigan Bar Examination within a year of graduation. We are encouraged that the Court is now taking on this issue and requesting public comment.

As noted in the Order of January 23, 2019, a number of states have eliminated questions about mental health from their state bar applications.¹ We encourage Michigan to do the same. Inquiring about the state of an applicant’s mental health is not an effective or appropriate way of assessing an applicant’s “good moral character” and “fitness and ability” to practice law. Rather, such questions likely discourage law students from seeking needed help for substance abuse and mental health issues, further exacerbating prevalent problems in the legal profession related to mental health and substance abuse.

Wayne Law takes student well-being seriously. Our Student Affairs Office (SAO) promotes mental health awareness and self-care through a variety of student-oriented programs. Those include weekly drop-in, informal and individual counseling available at the school through a collaboration with Wayne State University’s Counseling and Psychological Services Office (CAPS). Students are not required to fill out any paperwork or even register with CAPS before meeting with a counselor in an effort to encourage student participation. The SAO brings in trained therapy dogs at regular intervals, including during final exams, and schedules occasional mindfulness/meditation workshops and yoga sessions. We believe that a culture that encourages self-care and help-seeking benefits our students personally and academically during law school, and we hope that their law school experiences will lead them to maintain such positive behaviors and ensure their continued success when they become members of the bar.

¹ This includes Alaska, Arizona, California, Illinois, Maine, Massachusetts, New Mexico, Pennsylvania, and Tennessee.

In addition to the SAO's offerings, in many of our academic courses we strive to encourage healthy choices supported with the knowledge that these choices affect law practice. For example, every student is required to take either a clinic or externship as part of graduation requirements. Our clinics and the classroom components of our externship program incorporate well-being components into the educational experience. Over the past few years, clinics and externships have incorporated class sessions on secondary trauma, class instruction on mindfulness, and visiting lectures by Tish Browning, head of the State Bar Lawyers and Judges Assistance Program and a valued and prominent member of Wayne Law's Career Services Office.

In considering the questions raised in the Order of January 23, 2019, we focus on the serious risk that asking about mental health on the Michigan Bar Examination application actually dissuades students from seeking and obtaining appropriate intervention for common health-related situations such as stress, anxiety, and depression. Anecdotally, students have informed faculty that they decline to seek counseling services out of fear that such assistance will undermine their application for the Michigan Bar Examination. Empirically, we know from two recent studies that law students and lawyers are wary of seeking assistance due to fears of others finding out.

In 2016, the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs released a landmark study on the prevalence of substance use and other mental health concerns for attorneys.² The study found that 21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression, and 19 percent demonstrate symptoms of anxiety. The study also reported that the two most common barriers to seeking help were not wanting others to find out an individual needs help and concerns regarding privacy or confidentiality. Based on the data collected, the authors found that “[t]argeted interventions and strategies to simultaneously address both the alcohol use and mental health of newer attorneys warrant serious consideration and development if we hope to increase overall well being, longevity, and career satisfaction.”³

The Survey of Law Student Well-Being (SLWB), conducted in 2014, was the first multi-school study in more than 20 years to survey issues related to substance abuse and the first such study to look at mental health and help-seeking attitudes of law students.⁴ The SLWB focused on four research questions: (1) to what extent are law students drinking alcohol, using prescription and nonprescription drugs, and engaging in nonmedical use of prescription drugs (taking prescription drugs without a prescription); (2) to what extent do law students experience mental health issues; (3) to what extent are law students with substance use or mental health issues inclined to seek assistance or treatment for such issues; and (4) what factors discourage law students from seeking help for substance use and/or mental health concerns. Top concerns of law students in the SLWB that discourage students from seeking help were fear of jeopardizing their academic standing or admission to the practice of law, social stigma, financial reasons, and potential threat to bar admission. This is consistent with what we have experienced at Wayne Law.

By posing questions focused on mental health treatment, the State Bar of Michigan actually contributes to the stigmatization of mental health diagnoses and their treatment. Currently the Michigan Bar Examination application question 54 asks:

² P. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MEDICINE 46 (2016).

³ *Id.* at 51.

⁴ J.M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 141 (2016).

- (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? If yes, provide the names and addresses of all involved agencies, institutions, physicians or psychologists or other health care providers and describe the underlying circumstances or the diagnosis, treatment or hospitalization.
- (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?

These questions discourage a future bar applicant's seeking such treatment. Instead, the questions in effect perpetuate the myth that mental health treatment signals the possibility (or probability even) of one being an ineffective lawyer.

Eliminating these questions from the Michigan Bar Examination application would foster a legal environment that encourages law students and practitioners to engage in healthy practices by seeking help when needed. This is consistent with guidance from the ABA. In August 2017, the American Bar Association Task Force on Lawyer Well-Being released a report that recommends, among five core steps, ending the stigma surrounding help-seeking behaviors by ceasing actions that imply seeking help will lead to negative professional consequences.⁵ That report emphasizes that "lawyer well-being is part of a lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long term well-being."⁶

As legal educators, we at Wayne Law strive to create a culture that encourages future lawyers to make healthy choices both physically and mentally, which in turn can help ensure a fruitful legal career. Eliminating questions related to mental health as part of the Michigan Bar Examination application is not about eliminating the ability to determine who is fit to practice law, but rather about encouraging law professionals and hopeful lawyers to recognize that seeking assistance for substance abuse and mental health issues is a healthy choice. Thus, we support and encourage the elimination of questions related to applicants' mental health in the application for the Michigan Bar Examination.

Respectfully submitted,

/s/ Susan E. Cancelosi

Susan E. Cancelosi
Associate Dean
Associate Professor of Law

⁵ National Task Force on Lawyer Well-Being, American Bar Association, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change Report* (Aug. 24, 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>.

⁶ *Id.* at 9.