

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO THE
MAINE BAR ADMISSION RULES

2011 Me. Rules 02

Effective: February 1, 2011

All of the Justices concurring therein, the following amendment to the Maine Bar Admission Rules is hereby adopted to be effective on the date indicated above. The specific rules amendment is stated below. To aid in understanding of the amendment, an Advisory Committee Note appears after the text of the amendment. The Advisory Committee Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Rule 9A of the Maine Bar Admission Rules is adopted to read as follows:

RULE 9A. CONDITIONAL ADMISSION

(a) Conditional Admission. Following a determination that an applicant has not produced satisfactory evidence of good moral character, pursuant to Rule 9 and upon findings that:

(1) the conditions that led to the determination that the applicant has not produced satisfactory evidence of good moral character are in the past and are not likely to recur;

(2) the applicant has made and is making a good faith effort to cure or avoid the conditions that led to the determination; and

(3) the applicant has in place a support system, including an identified responsible individual, to monitor and assist the applicant in maintaining good and ethical conduct and to regularly report on the applicant's progress and any problems to the Board of Overseers of the Bar.

The Board, with the written consent of the applicant, may recommend to the Court that the applicant be admitted on a conditional basis. Provided, however, that a lawyer who has been disbarred or suspended from the practice of law or has resigned from the practice of law in another jurisdiction, and has not been

reinstated to the practice of law in that other jurisdiction shall be ineligible for conditional admission pursuant to these Rules.

(b) Circumstances Warranting Conditional Admission. The Board, having made the findings stated in subdivision (a), may allow an applicant whose record shows (1) a history of acts or omissions constituting a lack of good moral character, and (2) evidence of rehabilitation from the conditions that caused the acts or omissions to current good and trustworthy conduct, to be conditionally admitted to the practice of law, subject to certain terms and conditions set forth in a written conditional admission consent agreement. Only an applicant whose record of conduct at the time of the Rule 9 determination evidences a commitment to continued rehabilitation and an ability to meet the essential eligibility requirements for admission to the practice of law under these Rules may be considered for a Board recommendation of conditional admission.

(c) Consent Agreement. The written consent agreement shall (1) state the terms and conditions of conditional admission; (2) be signed by the Chair of the Board of Bar Examiners or his or her designee, by the applicant, and by a designated representative of each individual, agency, or entity agreeing to supervise the conditionally-admitted lawyer during the conditional admission period; and (3) be placed in the conditionally-admitted lawyer's permanent application file.

(d) Disclosure and Confidentiality.

(1) Except as otherwise provided herein with respect to disclosure to the Board of Overseers of the Bar, and subject to the provisions of the Bar Rules, the Rules of Professional Conduct, and Rule 7 of these Bar Admission Rules, or as may be ordered by the Supreme Judicial Court, the fact that an individual is conditionally admitted and the terms of a conditional admission consent agreement shall be confidential; provided, however, that (i) an applicant shall disclose the fact and terms of any conditional admission consent agreement to the bar admission authority in any jurisdiction where the applicant is admitted or applies for admission to practice law; and (ii) the Board of Bar Examiners is authorized to disclose the fact and terms of any conditional admission consent agreement and the fact and terms of any modification or revocation to the bar admission authority in any jurisdiction where the applicant practices or applies for admission to practice law and to the National Conference of Bar Examiners and its designated agents, investigators, administrators, and representatives.

(2) In addition to maintaining the confidentiality of the fact that an individual is conditionally admitted and the terms of a conditional admission consent agreement in the records maintained by the Board of Bar Examiners pursuant to this Rule, the Board shall structure the terms, conditions, and monitoring or supervision of conditional admission such that they do not pose a significant risk to the maintenance of confidentiality. Nothing in this Rule shall require that records or documents that are public records in Maine or any other jurisdiction shall be confidential if those records or documents become part of the Board of Bar Examiners file.

(3) This subdivision shall not prohibit or restrict the applicant from disclosing to third parties that the applicant has been conditionally admitted under this Rule.

(4) This subdivision shall not prohibit or restrict the authority or ability of the Board of Bar Examiners or the Board of Overseers of the Bar to disclose an applicant's record of compliance or noncompliance with a conditional admission consent agreement to bar admission authorities in other jurisdictions where the conditionally-admitted lawyer practices or applies for admission to practice law and to the National Conference of Bar Examiners and their designated agents, investigators, administrators, and representatives.

(e) Transmittal of Consent Agreement to the Board of Overseers of the Bar and to Conditional Admission Supervisors. A copy of each executed consent agreement conditionally admitting an individual to the Maine Bar shall be transmitted, upon its execution, to the applicant, to the Board of Overseers of the Bar, and to a designated representative of each individual, agency, or entity agreeing to supervise the conditionally-admitted lawyer during the conditional admission period. In the event a complaint of professional misconduct or a violation of the consent agreement is filed with the Board of Overseers of the Bar against a conditionally-admitted lawyer during the conditional admission period, a copy of the lawyer's Board of Bar Examiners bar admission application file shall be transmitted to the Board of Overseers of the Bar upon the request of that office.

(f) Length of Conditional Admission Period. The initial duration of a conditional admission period shall be established in the conditional admission consent agreement but shall not exceed sixty (60) months unless, prior to completion of the conditional admission period, a complaint of violation of the

consent agreement or a complaint of professional misconduct or violation of the Bar Rules or the Rules of Professional Conduct is filed with the Board of Overseers of the Bar. The filing of any such complaint shall automatically extend the conditional admission period until final disposition of the complaint and any resulting appeals.

(g) Monitoring and Violations.

(1) During any conditional admission period, the conditionally-admitted lawyer's compliance with the terms of the consent agreement shall be enforced by the Board of Overseers of the Bar or one of its Commissions, which is authorized to conduct such investigations and take such action as necessary to monitor and determine compliance with the terms of the consent agreement, including but not limited to requiring the conditionally-admitted lawyer to (i) submit written verification of compliance with all conditions of admission; (ii) appear before the Board of Overseers of the Bar or one of its Commissions; and (iii) respond to any request for evidence concerning compliance.

(2) Any determination by the Board of Overseers of the Bar or one of its Commissions of a violation of a conditional admission consent agreement shall state in writing the basis for finding that a condition or conditions of admission established pursuant to the consent agreement have been violated. Written notice of a determination of a violation of a conditional admission consent agreement and the basis for such finding shall be provided by the Board of Overseers of the Bar to the conditionally-admitted lawyer, Bar Counsel, the Board of Bar Examiners and the designated representative of each individual, agency, or entity agreeing to supervise the conditionally-admitted lawyer during the conditional admission period.

(3) Violation of a conditional admission consent agreement may result in modification of the conditional admission consent agreement. Such modification may include, but shall not be limited to, extension of the period of conditional admission for an additional specified period of time.

(4) Upon the determination by the Board of Overseers of the Bar that the conditions of a conditional admission consent agreement have been violated, the Board may petition the Supreme Judicial Court for an order suspending the conditionally-admitted lawyer from the practice of law, in which case the conditionally-admitted lawyer shall have twenty-one (21) calendar days from the

date of the filing with the Court to file a written response with the Court. If no timely response is filed, the lawyer's conditional admission license to practice law in the State of Maine shall be suspended upon expiration of the period allowed for response. If the lawyer files a timely response, the matter shall be addressed as the Court directs, including but not limited to an order of suspension.

(5) Unless terminated earlier by the Court, a suspension for a violation of a conditional admission consent agreement shall remain in effect until final disposition of all discipline and/or grievance procedures, including review of a finding of a violation of conditions of admission, commenced against the conditionally-admitted lawyer. A final disposition may include, but shall not be limited to, revocation of the lawyer's conditional admission license.

(6) Nothing in this Rule shall prohibit or restrict in any way the investigation and discipline under the Maine Bar Rules or the Maine Rules of Professional Conduct of a conditionally-admitted lawyer by Bar Counsel and the Board of Overseers of the Bar for conduct violating the Bar Rules or the Rules of Professional Conduct.

(h) Reapplication After Revocation of Conditional Admission. A lawyer whose conditional admission license has been revoked is prohibited from applying for reinstatement pursuant to Maine Bar Rule 7.3(j), for five (5) years after the date of the revocation.

(i) Costs of Conditional Admission. The applicant shall be responsible for all conditional admission costs, including but not limited to application fees and expenses of investigation, testing, monitoring, enforcement, and prosecution incurred by the Board of Bar Examiners, the Board of Overseers of the Bar, or by any individual, agency, or entity agreeing to supervise or supervising such applicant during the conditional admission period and any extension thereof.

(j) Expiration of Condition. Unless the conditional admission is modified, revoked, or extended as provided herein, including any extension for the period required to resolve a complaint of a violation of the consent agreement, the Maine Bar Rules, or the Maine Rules of Professional Conduct, upon completion of a period of conditional admission the conditions imposed by a conditional admission consent agreement shall expire. A conditionally-admitted lawyer whose conditions of admission have expired shall be timely notified by the Board of Overseers of the Bar.

(k) Ultimate Authority. Nothing herein shall diminish the authority of the Supreme Judicial Court with respect to any applicant's admission to the practice of law in Maine. Nothing herein shall diminish in any way the ability or authority of the Board of Overseers of the Bar, Bar Counsel, or any court in the State of Maine to discipline or seek discipline of a conditionally-admitted lawyer for violation of the Bar Rules or the Rules of Professional Conduct.

**Advisory Committee Note
February 2011**

Rule 9A addresses bar admission applicants who have commenced but not completed rehabilitation from past conduct or behavior that indicated insufficient good moral character to qualify for admission to the bar pursuant to Rule 9 of the Maine Bar Admission Rules. It is designed to protect the public and the integrity of the profession in close cases for admission, while encouraging persons having a record of concerning conduct to seek professional assistance and rehabilitation.

For purposes of this Rule "rehabilitation" means restoration to a condition of good physical and mental health and competence and the ability to operate and manage work, finances, business and personal relationships, and health without further risk to self or others from prior conduct indicative of a lack of good moral character.

Conditional admission is not intended to apply to all applicants who have rehabilitated themselves from prior conduct of concern to the Maine Board of Bar Examiners, but only to those whose rehabilitation is sufficiently incomplete that protection of the public requires monitoring for a specified period. The availability of conditional admission does not preclude unconditional admission in cases when rehabilitation has been successful for a sustained time period; neither does it preclude denial of admission in cases when evidence of rehabilitation is established but other factors do not support admission.

Conditional admission is not available to lawyers who are disbarred, suspended from practice, or resigned from practice in other jurisdictions. Such lawyers must be restored to good standing to practice in the other jurisdictions before they can be considered for admission in Maine.

Execution of the conditional admission consent agreement, addressed in subdivisions (b) and (c), by those monitoring a conditionally-admitted lawyer is intended to assure that they will have the opportunity to participate in establishing the conditions of admission. Their participation provides for fully informed establishment of applicable admission conditions. Such execution also assures that those monitoring a conditionally-admitted lawyer are aware of the conditional admission and can act promptly to report or seek resolution of any problems and to initiate disciplinary action, if necessary.

Confidentiality, addressed in subdivision (d), is key to the success of conditional admission. Public disclosure and the stigma that could accompany it may discourage the treatment, diagnosis, and disclosure that the Rule seeks to promote for conduct of concern. Utilizing a confidential conditional admission process in cases of recent or incomplete rehabilitation or treatment results in candor in the process and benefits the public, the applicant, and the courts.

The Maine Board of Bar Examiners, the Maine Board of Overseers of the Bar, and Bar Counsel in drafting this Rule are aware of and have discussed at length the inherent tension between the benefits of confidentiality and the public's, including potential client's, interest in access to all material information about the applicant's good moral character. Without this Rule, under current admission practices, some applicants who would qualify for conditional admission under this Rule might be admitted unconditionally. Observing confidentiality will result in no less information being provided to the public and potential clients than is currently the case when such applicants are admitted unconditionally. It will, however, promote early disclosure and treatment of conduct or behavior of concern. The public's and potential client's interest in access to material information is protected by the requirement that records or documents that are public records in Maine or any other jurisdiction shall remain public records when they become part of the Board's file. Thus, civil and criminal court records and decisions, records and decisions of professional disciplinary regulatory agencies, and other public records relating to an applicant are exempt from the confidentiality requirement.

Pursuant to subdivision (e), the Rule does permit disclosure to the admission authority, the disciplinary authority, and the monitoring authority, to provide protection to the public in case a relapse should occur during a period of conditional admission.

Subdivision (f) provides for an initial maximum conditional admission time period of sixty (60) months, but many conditional admission periods may be considerably less than sixty (60) months. Of the states that currently have a conditional admission rule that provides for a maximum time limit, the majority provide for a maximum of twenty-four (24) months, although the ABA model rule provides for a maximum of sixty (60) months. The initial conditional admission period may vary according to the nature of the conduct or behavior requiring conditional admission, the applicant's history, and any professional opinion regarding probability of relapse. Subdivision (f) also allows the period of conditional admission to be automatically extended upon filing of a complaint to prevent the conditional admission period from expiring of its own terms before the Board can act on an alleged violation of the conditional admission consent agreement, the Maine Bar Rules, or the Maine Rules of Professional Conduct.

Subdivision (g) allows the initial period of conditional admission to be extended as a matter of discretion to address a relapse in prior conduct or behavior of concern. Subdivision (g) also provides limited discretion to modify the terms and time period of the consent agreement, including extending the duration of conditional admission beyond the initial period, if the applicant is determined to have violated the consent agreement by a relapse or recurrence of the conduct of concern. The Rule also provides that the period of conditional admission shall be continued until actions upon any complaint of violation and all available appeals are resolved.

The monitoring and supervision of a conditionally-admitted lawyer may be performed by a lawyer assistance program, an individual member of the Maine Bar, or another agency or entity. The monitoring authority should act on any problem conduct by determining whether it merits notice to the Board of Overseers of the Bar, which is the proper authority to enforce compliance with the terms of a conditional admission consent agreement and to determine violations. A violation of a conditional admission consent agreement will not necessarily result in revocation of admission.

When asserted conduct by a conditionally-admitted lawyer may constitute a violation of a conditional admission consent agreement, a violation of the Maine Bar Rules, or a violation of the Maine Rules of Professional Conduct, such conduct shall be investigated and a determination of violation, if any, reached pursuant to the procedures specified in the Maine Bar Rules.

The Rule is not intended to limit in any way the ability or authority of the Maine Supreme Judicial Court with respect to the admission of any applicant to the Maine Bar nor to affect in any way the ability or authority of the Maine Board of Overseers of the Bar or Bar Counsel to discipline a conditionally-admitted lawyer for violation of the Maine Bar Rules or the Maine Rules of Professional Conduct.

Subdivisions (h), (i), (j), and (k) are self-explanatory provisions addressing reapplication after revocation of conditional admission, responsibility for costs, expiration of conditional admission, and the ultimate authority of the Court to regulate attorneys that is not diminished by this Rule amendment.

2. This amendment shall take effect on February 1, 2011.

Dated: February 1, 2011

FOR THE COURT¹

/S/

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.