

CONFERENCE OF CHIEF JUSTICES

Resolution 5

In Regard to the Determination of Fitness to Practice Law

WHEREAS, the courts of last resort in the respective states and territories exercise responsibility over the process for the admission of the attorneys to the practice of law; and

WHEREAS, as part of the admissions process, state bar admission authorities evaluate the character and fitness of applicants for admission to practice law; and

WHEREAS, in addition to conduct and behavior-related questions, some states inquire about applicants' mental health diagnoses and treatment unrelated to conduct and behavior; and

WHEREAS, the U.S. Department of Justice has made findings in an Americans with Disabilities Act (ADA) investigation of bar licensure that questions about medical conditions as part of a fitness inquiry inappropriately focus on an applicant's status as a person with a disability, rather than on the applicant's conduct; and

WHEREAS, questions about mental health history, diagnoses, or treatment are unduly intrusive, may tend to screen out individuals with disabilities, may violate the Americans with Disabilities Act, and are likely to deter individuals from seeking mental health counseling and treatment; and

WHEREAS, applicants with disabilities should be assessed, like all other applicants, solely based on their current fitness to practice law; and

WHEREAS, the Department of Justice also has made findings in an ADA investigation of bar licensure that to comply with the ADA, "attorney licensing entities must base their admissions decisions on an applicant's record of conduct, not the applicant's mental health history," and

WHEREAS, public entities cannot impose or apply eligibility criteria that tend to screen out an individual with a disability from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges its members and state and territorial bar admission authorities to eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus solely on conduct or behavior that

impairs an applicant's current ability to practice law in a competent, ethical, and professional manner;

BE IT FURTHER RESOLVED that reasonable inquiries concerning an applicant's mental health history are only appropriate if the applicant has engaged in conduct or behavior and a mental health condition has been offered or shown to be an explanation for such conduct or behavior.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the Conference of Chief Justices 2019 Midyear Meeting on February 13, 2019.