

VIRGINIA LAWYERS WEEKLY

Panel adjusts mental questions for bar applicants

By: Peter Vieth May 5, 2016

Responding quickly to an inquiry from a Virginia lawyer, the Virginia Board of Bar Examiners has revised questions asked of bar applicants about mental health treatment and past conditions.

The adjustments came just before the May 10 deadline for applications for the next Virginia Bar Examination.

Alexandria civil rights lawyer Victor M. Glasberg — in an April 26 letter — said some of the questions on the VBBE application appeared to violate the Americans With Disabilities Act.

The application sought a “full explanation” of any treatment for a “mental, emotional, or nervous disorder or condition” that could affect one’s ability as a lawyer. The application also called for information on mental conditions within the past five years.

Requiring details of treatment “constitutes gratuitous and intrusive state action reflecting discredited and discriminatory attitudes towards persons with mental health issues,” Glasberg said in his letter to the VBBE.

Inquiries into past disabling conditions also could violate the ADA under recent U.S. Justice Department guidance, Glasberg said.

VBBE secretary-treasurer Catherine C. Hill told Glasberg on April 29 that changes would be made to address the concerns, Glasberg said.

In a May 2 email, Hill explained that revisions regarding mental health inquiries were revised last year, but not all of the changes had been reflected on the VBBE website.

Additional changes were made April 27.

According to Hill’s email, provided by Glasberg, the questions now read:

18.1 Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

(A) Please provide full explanation.

(B) Within the past five (5) years, have you sought or been directed to seek treatment for your conduct or behavior?

ATTACH Character & Fitness Healthcare Form completed by your treating healthcare professional.

18.2 Do you currently have any condition or impairment, including, but not limited to, (1) any related to substance or alcohol abuse, or (2) a mental, emotional, or nervous disorder or condition, which in any way affects your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner? “Currently” means recently enough so that the condition could reasonably have an impact on your ability to function as a practicing lawyer.

(A) Please provide full explanation.

ATTACH Character & Fitness Healthcare Form completed by your treating healthcare professional.

Please provide all treating healthcare professionals or facilities related to your YES answer to Health Matters Conduct and Current Conditions.

Glasberg said the VBBE was to be commended for its "prompt and thorough attention" to his inquiry.

The Justice Department has said that states may examine applicants' prior behavior, but not their mental health status, in considering their admission to practice. The department also said many recommendations on applicants' fitness were based on outdated stereotypes of individuals with mental disabilities.

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