BEFORE THE COMMITTEE ON CHARACTER AND FITNESS

SUPREME COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FINDINGS AND CONCLUSIONS OF THE HEARING PANEL

IN RE:	Application of Thomas Joseph Skelton
HEARING PANEL:	Eileen L. Furey, Chair Jonathan B. Amarilio Mary Clare Spencer John R. Storino Vickie Voukidis
HEARING DATE:	July 15, 2019
COUNSEL FOR PETITIONER:	James A. Doppke, Jr.
COUNSEL RETAINED TO PRESENT ADVERSE MATTERS:	Stephen Fedo
RECOMMENDATION:	Not Recommended for Admission

BACKGROUND FACTS AND PROCEDURAL HISTORY

(Filed Oct. 19, 2019)

Thomas Joseph Skelton (the "Applicant" or "Mr. Skelton") applied for admission to the Illinois Bar, submitting a Character and Fitness Questionnaire ("CFQ") on March 19, 2017. He received his Juris

Doctor from The John Marshall Law School ("JMLS") on June 11, 2017. Tab 1, Illinois Board of Admissions to the Bar ("IBAB") Certificate of Dean of Law School dated June 28, 2017, p. 1. Mr. Skelton passed the July 2017 Illinois Bar Exam. Tab 2, IBAB Character and Fitness Final Report dated April 29, 2019, p. 1. He amended his CFQ on October 3, 2017.

As discussed below, an Inquiry Panel met with the Applicant on March 20, 2018, reporting thereafter a unanimous vote against recommendation of certification to practice law. Tab 3, Inquiry Panel Report dated March 26, 2018, pp. 1-4. The Applicant then sought review by a Hearing Panel. Tab 4, Letter from J. Doppke, Jr. to V. Williams dated November 8, 2018. He submitted a Character and Fitness Update on November 16, 2018.

Matters of Concern

Incidents at JMLS

Certification of the Applicant's law school graduation included documentation of four incidents which JMLS deemed adverse to the Applicant. Tab 1, *supra*, p. 1. The incidents included:

(i) April 16, 2015 – Student overheard Applicant in JMLS library being loud and vulgar. She asked him to quiet down but he did not. Applicant was then asked by security officer to leave the building until class began.

(ii) October 13, 2015 – Applicant was heard yelling at himself at various times throughout the day. When

security officer went to ask him to leave, Applicant was already preparing to do so and admitted he had been yelling.

(iii) February 18, 2016 – As Applicant was exiting through turnstile of the law school lobby, security officer observed him acknowledge the presence of an administrator in a nearby office and yell a curse at the administrator. Applicant then exited the building.

(iv) April 8, 2016 – Student heard another student yelling and swearing in the JMLS library and asked if he was all right. He ignored her and left the building. On reviewing camera footage, security officer noted that student causing the disturbance was Applicant.

Tab 1, *supra*, pp. 2-8.

In a letter dated May 26, 2016, JMLS Dean Powers noted a meeting on February 22, 2016 between himself and the Applicant in which the Dean asked the Applicant to cease the conduct noted in paragraphs (i) – (iii) above. Tab 1, *supra*, p. 10. The letter then referenced the incident noted in paragraph (iv) above and informed the Applicant that the letter constituted his final warning before initiation of disciplinary action. *Id.* The Dean stated further that in the event there were a medical explanation for the conduct, the law school would require documentation from a health care provider including suggestions on how the conduct could be controlled. *Id.* No disciplinary action was taken. Tab 2, *supra*, p. 2.

Nondisclosures to JMLS

On July 7, 2017, at IBAB's direction, the Applicant amended his JMLS application to include two previously undisclosed incidents of undergraduate discipline for possession of alcohol in a dormitory at St. Louis University. Tab 2, *supra*, p. 2. The law school accepted the amendments with no further action taken. Tab 1, *supra*, p. 11.

Emails During the Character and Fitness Process

During the five-month period approximately mid-October 2017 through mid-March 2018, the Applicant sent over 40 emails to recipients including Committee on Character and Fitness Member Ellen Mulaney ("Ms. Mulaney") and IBAB staff in Springfield. Tab 3, *supra*, p. 2. The Applicant variously attacked the integrity of JMLS, IBAB, the Inquiry Panel and the legal system, using charged language in much of his communication. *Id.* at 2-3.

Examples of the Applicant's language include:

> . . . Any juror, state court judge, or federal court judge could tell that the only reason John Marshall Law School disclosed these incidents in 2015 and 2016 was to use the legal system to harass me. What kind of attorney plays dumb while people abuse the legal system to harass him or his clients? What kind of attorney would let their client waive their privacy rights to respond to a request that is a complete abuse of the legal system? I do not want to play dumb while a bunch of white

nationalist sympathizers abuse the legal system to harass me. Tab 5, Email from Applicant to D. Schuster, N. Vincent and V. Williams dated November 30, 2017.

My concern is that the hearing is retaliation for my vocal criticism of organized corruption in the legal field and organized crime. Specifically, in my experience, the Bar acts like a protection racket when anyone has the courage to notice organized corruption within the Bar. When anyone notices organized corruption, the Bar looks for any little loophole to discredit that person. The Character and Fitness Committee's nebulous standards concerning fitness to practice law and the applicant's burden are the ideal environment for this protection racket to operate. I am concerned that no matter what I do, the Inquiry Panel will look for any reason to deny my application, then state it is my fault afterwards because the burden is on the applicant even if I could have met the Panel's concerns if they were communicated before the hearing. . . . Tab 6, Email from Applicant to V. Williams, E. Mulaney, D. Schuster and N. Vincent dated February 6, 2018, pp. 1-2.

. . . This Inquiry Panel is the result of John Marshall efforts to continue their ongoing scheme of fraud, including mail and wire fraud among other obvious RICO predicates. No number of anger management classes or therapy is going to change the Ideptocratic and corrupt nature of this Inquiry Panel hearing. Tab 7, Email from Applicant to V.

Williams, E. Mulaney, D. Schuster and N. Vincent dated February 8, 2018.

. . . I do not believe this Inquiry Panel will actually apply the law. I believe that you do not like me, and no matter what I do you will manipulate the rules to deny my application after the hearing because you personally do not like me. Tab 8, Email from Applicant to D. Schuster, V. Williams, N. Vincent and E. Mulaney dated February 16, 2018.

. . . This Inquiry Panel is nothing but punishing me because I can't sit silently and tolerate the insane illegal garbage JMLS does to benefit conservative bullies. Tab 9, Email from Applicant to V. Williams and E. Mulaney dated February 18, 2018.

And I want to schedule this hearing as soon as possible. I am sick of wasting more of my life playing corrupt games with the corrupt justice system in this state. . . . Tab 10, Email from Applicant to V. Williams and E. Mulaney dated February 21, 2018.

. . . Winston Churchill's "We shall fight on the beaches" speech is particularly relevant here. I am never going to surrender to these Nazis. Tab 11, Email from Applicant to V. Williams and E. Mulaney dated March 1, 2018.

As you can see, I asked the Stasi for my records in January 2017. They responded by sending me only my application. They kept secret records on me that they compiled over the years. These people have absolutely no right

> to compile secret records about me. Tab 12, Email from Applicant to V. Williams and E. Mulaney dated March 1, 2018.
>
> And I undertand why you people are trying to GitMo me. If you give me a law license, I will spend the rest of my life exposing your ongoing patterns of fraud. . . . Tab 13, Email from Applicant to V. Williams and E. Mulaney dated March 18, 2018.

Inquiry Panel

The Inquiry Panel met with the Applicant on March 20, 2018, subsequently voting unanimously against recommendation of certification based on the Applicant's failure to demonstrate present fitness for admission by clear and convincing evidence. Tab 3, *supra*, pp. 1, 4.

The Inquiry Panel recounted the history of the Applicant's interactions with the Committee on Character and Fitness as follows:

(a) Applicant first met with Ms. Mulaney on October 9, 2017. At that meeting, the Applicant acknowledged the four campus incidents described in paragraphs (i) – (iv) above and explained that he was suffering from stress and anxiety at that time, had subsequently received counseling at JMLS and was taking anti-anxiety medication prescribed by a psychiatrist. Asked by Ms. Mulaney to provide a letter from the counselor that the issues leading to the incidents had been resolved, the Applicant agreed. Supervising psychologist J. Burrell-Smith verified the Applicant's counseling sessions at

JMLS with a psychology graduate student but provided no professional opinion. Tab 14, Letter from J. Burrell-Smith to E. Mulaney dated October 18, 2017.

(b) In mid-October 2017, the Applicant began sending emails attacking their credibility to Ms. Mulaney and IBAB staff in Springfield.

(c) Later in October 2017, Ms. Mulaney requested that the Applicant obtain records from his prescribing psychiatrist Dr. Ann Sarpy ("Dr. Sarpy") including an opinion regarding remediation of his misconduct. Ms. Mulaney also requested a new evaluation from a psychiatrist including an opinion regarding remediation.

(d) The Applicant complied with both requests, providing documentation from Dr. Sarpy and an evaluation made by Dr. Joy Ryba ("Dr. Ryba"). Dr. Sarpy verified prescribing medication since 2012, stated her diagnoses and noted she did not provide psychotherapy. Tab 15, Letter from Dr. A. Sarpy to V. Williams dated November 27, 2017. Dr. Ryba noted that the Applicant had been undertreated, posited her diagnoses and recommended psychotherapy and reassessment of the Applicant's medication. Tab 16, Psychological Evaluation Report dated December 19, 2017, pp. 1-3.

(e) During the time that the Applicant was complying with these requests, he continued to send email to Ms. Mulaney and IBAB staff containing increasingly disturbing language. In February 2018, the Applicant's emails began to attack the integrity of the Inquiry Panel in particular. By mid-March 2018, the Applicant had sent over 40 messages, attacking JMLS, IBAB and

the legal system, including allegations against JMLS and IBAB of retaliatory persecution.

Tab 3, *supra*, pp. 1-3.

On meeting with the Applicant on March 20, 2018, the Inquiry Panel noted positively the Applicant's honesty and his work as a FOIA officer for the City of Chicago. *Id.* at 3. The Inquiry Panel also noted that the Applicant had recently met with new psychiatrist Dr. Yu, had just begun a new anti-psychotic medication and was seeking a psychotherapist. *Id.* The Inquiry Panel commended the Applicant for taking these steps. *Id.* at 4.

Although the Applicant acknowledged to the Inquiry Panel that the four incidents in law school had occurred, he stated that by reporting the incidents, the law school was persecuting and trying to destroy him. *Id.* at 3-4. When asked his thoughts on sending the numerous emails attacking JMLS, IBAB and the legal system, the Applicant said he knew he would not be admitted and might as well be honest. *Id.* at 4. The Inquiry Panel concluded that the Applicant had not clearly and convincingly demonstrated fitness for admission as the emails sent in recent months evidenced seriously impaired judgment. *Id*.

Notified of the Inquiry Panel's decision, the Applicant requested hearing before a Hearing Panel. Tab 4, *supra.* A Hearing Panel convened to meet with him on July 15, 2019.

EVIDENCE PRESENTED AT THE JULY 15, 2019 HEARING

Testimony of Charles Turk, M.D.

Charles Turk ("Dr. Turk") testified that he is a psychiatrist and psychoanalyst who has practiced in Illinois during the last 40 years with a focus on schizophrenic patients. Tr. 13-15, 28. In September 2018, Dr. Leslie Wolowitz ("Dr. Wolowitz") referred Mr. Skelton to Dr. Turk for independent evaluation in connection with this Hearing. Tr. 15-16, 34, 38. Dr. Turk saw Mr. Skelton twice in September 2018 and has seen him monthly thereafter. Tr. 15-17, 31-33, 39. Prior to September 2018 and up until approximately a month ago, Mr. Skelton was in treatment with psychiatrist Dr. Yu. Tr. 15-16, 33, 38. In the last month, Dr. Turk became and is now Mr. Skelton's treating and prescribing psychiatrist. Tr. 17, 21, 33.

Mr. Skelton chose to make Dr. Turk his treating and prescribing psychiatrist because Mr. Skelton felt that Dr. Turk was accessible and more supportive of a prognosis for a healthy life than Dr. Yu had been. Tr. 21, 59-60. The nature of Dr. Turk's monthly sessions with Mr. Skelton have not changed since Dr. Turk became the treating psychiatrist. Tr. 33. He monitors Mr. Skelton's progress and medication, while Dr. Wolowitz provides talk therapy. *Id.*

In September 2018, Mr. Skelton was on the medication Seroquel prescribed by Dr. Yu and gradually increased by him from 25 milligrams to the current daily dosage of 500 milligrams. Tr. 16-17, 39, 52. Dr. Turk

concurred with and has maintained both Dr. Yu's prescription of that medication and the 500-milligram dosage. Tr. 16-17, 24, 33.

Seroquel is an anti-psychotic which helps to organize the personality, ensure stability and suppress symptoms including the hearing of voices. Tr. 17, 23-24. Dr. Turk seeks to prescribe the lowest possible effective dose of Seroquel as it can have serious side effects including interference with metabolism, predisposing to diabetes, increasing cholesterol and causing movement disorders of the face or tongue. Tr. 24, 46, 56. Mr. Skelton has tolerated Seroquel well, experiencing only an increase in cholesterol which has since come down. Tr. 26. He has been taking Seroquel for about 10 months. Tr. 46. In some patients, the efficacy of the medication diminishes over time and alternatives can be tried. Tr. 57-58.

In connection with his own evaluation, Dr. Turk reviewed Dr. Ryba's evaluation. Tr. 16. Dr. Turk understood that Mr. Skelton had first received a diagnosis of a mental health condition while in college. Tr. 41.

Within a month of first seeing Mr. Skelton in September 2018, Dr. Turk diagnosed him with delusional disorder. Tr. 17-18, 29, 40. Delusional disorder involves an elaborate construction of thought departing from reality and accounting for disturbed feelings, fears and behaviors. Tr. 18. Paranoid thoughts are a part of delusional disorder and Dr. Turk has observed those in Mr. Skelton. *Id*

Mr. Skelton sought treatment after law school during which he had become outraged by a perceived conspiracy against others. Tr. 18-19. That had been a delusional perception of events which led Dr. Turk to consider the diagnosis delusional disorder. Tr. 19-20. A hallmark of delusional disorder, also exhibited by Mr. Skelton, is a sense of being personally selected as the target of a conspiracy. Tr. 21.

Delusional disorder and schizophrenia are both psychoses. Tr. 29. Dr. Turk was aware that Mr. Skelton had previously been diagnosed with schizoaffective disorder, which could have been accurate at the time of that diagnosis. Tr. 40. Dr. Turk does not find Mr. Skelton to be schizophrenic because he does not exhibit the inability to construct coherent thoughts or the shifts in mood from mania to depression seen in schizophrenia. Tr. 29, 40-41.

In delusional disorder, the patient has a sense of being persecuted for having a solution to a problem for humanity. Tr. 29-30. In Mr. Skelton, this sense of persecution generated outrage while at JMLS. Tr. 29. A schizophrenic patient believes he is selected to sacrifice himself, a belief which Mr. Skelton does not exhibit. *Id.* His desire to assist clients does not approach the grandiosity seen in schizophrenics. Tr. 30. Although associated with schizophrenia, the hearing of voices in Mr. Skelton's case is consistent with persecutory delusional disorder. Tr. 30-31.

Dr. Turk was also aware of Mr. Skelton's previous diagnosis of intermittent explosive disorder ("IED").

Tr. 41-42. That diagnosis could have been considered at the time it was given but Dr. Turk does not find Mr. Skelton to have IED. Tr. 42.

The emails sent by Mr. Skelton to IBAB were consistent with the delusional disorder diagnosis. Tr. 22-23. The emails expressed Mr. Skelton's feeling that IBAB had already determined to deny him admission and it would be futile to fight that. Tr. 22. Mr. Skelton has expressed to Dr. Turk that the emails were inappropriate and that he regrets having sent them. Tr. 37. At the time he sent the emails, Mr. Skelton was undertreated and not on Seroquel although he may have been on other medication. Tr. 44-45.

Delusional disorder could cause a patient to lash out maliciously toward others. Tr. 20, 42. If Mr. Skelton were involved in a personal exchange and consumed in delusional thinking, he could become angry and yell. Tr. 42. Although this could occur in Mr. Skelton's practice of law, it is unlikely because he has increasingly been able to distinguish between delusion and reality and to control his emotions. Tr. 32, 43. During the time Dr. Turk has known Mr. Skelton, he has not lashed out or been consumed in delusional thinking. Tr. 60-61.

A high-stress situation could exacerbate Mr. Skelton's condition. Tr. 56-57. Conceivably, confrontational situations could also do so. Tr. 57. Taking employment that is often high stress or confrontational would not be best for Mr. Skelton's mental health. *Id.*

Mr. Skelton is a cooperative patient. Tr. 21-22. He is fully compliant with the medication. Tr. 23, 35. He is

consistent with his visits. Tr. 23. He is forthright, has insight into his condition and is becoming able to reflect on incidents and see that they are not indicative of conspiracy against him. Tr. 23, 32. Mr. Skelton's hearing of voices or misinterpreting conversations is now almost nonexistent. Tr. 24.

During their sessions, Mr. Skelton has recounted events which provoked anxiety. Tr. 32. In October 2018, a delusional incident occurred at work when Mr. Skelton thought someone was yelling at him, but he was able to reconsider. Tr. 50. In that incident, Mr. Skelton's delusional thinking lasted about half an hour. *Id.*

In December 2018, during a class at work, Mr. Skelton thought something that was said had been meant for him, but then realized it had not been. Tr. 51. That delusional thinking passed within the hour and did not affect what he was doing. *Id.*

In February 2019, a delusional incident was triggered by someone in Mr. Skelton's family abusing or taking advantage of someone else. Tr. 49-50. This delusional thinking lasted no more than a day. Tr. 49.

In June 2019, as he was falling asleep Mr. Skelton had strange thoughts and grandiose ideas of how to cure the problem after reading about police misconduct. Tr. 47-48. This delusional thinking probably lasted less than an hour without residual effect. Tr. 48-49.

According to Dr. Turk, none of these incidents would indicate Mr. Skelton being consumed with

delusion or cause Dr. Turk to change the medication. Tr. 52, 61. He would consider increasing the dosage if Mr. Skelton were having thoughts disruptive of his work, causing anxiety or preventing sleep. Tr. 52-53. Dr. Turk did not know how long it takes Mr. Skelton to process a delusion and to conclude it is not reality. Tr. 43-44. Dr. Turk was aware not of the frequency but of the intensity of some incidents. Tr. 47.

Mr. Skelton may not need Seroquel for the rest of his life. Tr. 25-26. He could cease taking it if he were functioning and sleeping well, not beset by delusional thinking, able to distinguish between delusion and reality, and had a low level of anxiety. Tr. 25. Dr. Turk could continue treating Mr. Skelton if he were off the medication. Tr. 25-26. Mr. Skelton himself has not asked to stop taking Seroquel or cease psychiatric treatment. Tr. 53.

Asked whether a patient suffering from delusional disorder would need lifetime treatment, Dr. Turk stated that such a patient would have a fairly high probability of requiring treatment over an extended period. Tr. 34. In Mr. Skelton's case, Dr. Turk would think in terms of years of treatment, possibly five or ten years. Tr. 55. It is hard to prognosticate because it depends on what Mr. Skelton is able to resolve in the future. Tr. 55-56. He needs to work on a past trauma through psychotherapy. Tr. 58.

In Dr. Turk's opinion, the misconduct at JMLS and the emails sent to IBAB were caused by Mr. Skelton's delusional disorder. Tr. 26-27. Dr. Turk opined that

psychiatric treatment works to prevent such misconduct by helping Mr. Skelton discern between delusion and reality. Tr. 27. Dr. Turk further opined that with continued treatment including Seroquel or other medication, Mr. Skelton would be able to practice law. *Id.* Dr. Turk opined also that if Mr. Skelton remained in treatment over the course of a Conditional Admission period of two years he would remain appropriate to practice law. Tr. 28.

Testimony of Leslie Wolowitz, Ph.D.

Dr. Wolowitz testified that she is a psychodynamic psychotherapist in private practice who has been treating teenagers and adults for over 30 years. Tr. 62. While on faculty in a psychology graduate program, she reviewed graduate students when there were questions regarding their competence or mental health. Tr. 62, 124-125. Dr. Wolowitz has treated patients with schizophrenia, schizoaffective disorder and delusional disorder. Tr. 63. She views diagnoses as complex but did not disagree with Dr. Turk's diagnosis of delusional disorder. Tr. 67. She has been treating Mr. Skelton for 1 ½ years. Tr. 120.

Mr. Skelton first called Dr. Wolowitz in April 2018 after consulting his health insurance company's provider list and she has seen him weekly since then. Tr. 63-64, 67, 87, 136. When he started seeing Dr. Wolowitz, Mr. Skelton had been seeing psychiatrist Dr. Yu for three or four months. Tr. 72, 91, 136. Dr. Wolowitz twice spoke with Dr. Yu and came to believe that

treatment would be better coordinated with Dr. Turk, who had more experience. Tr. 72, 92, 127-129. Dr. Yu had not before treated anyone with delusional disorder. Tr. 72, 129-130. Dr. Yu is a biological psychologist, meaning he was trained to view psychotic symptoms as coming from a broken brain which can never be cured and that the symptoms can only be suppressed by medication. Tr. 130.

Mr. Skelton was on his current dosage of Seroquel when he began treatment with Dr. Wolowitz. Tr. 70, 128, 136-137. He told her the medication was helpful. Tr. 71. She questioned whether he would need antipsychotic medication over time because he has demonstrated insight and commitment to therapy. *Id.* She also expressed concern about the medication's possible serious side effects such as blunted affect and tardive dyskinesia. Tr. 71, 139-140.

When Dr. Wolowitz initially saw Mr. Skelton, he seemed skittish, anxious, articulate, kind, bright and authentic about seeking help. Tr. 64. He needed help with a problem that led to misconduct in law school and some issues before that. *Id.* Dr. Wolowitz concurred with Dr. Turk's testimony that Mr. Skelton needs to resolve his past which will help to cure him of the present disorder. Tr. 138. She and Mr. Skelton are working on that resolution in treatment. *Id.*

Mr. Skelton told Dr. Wolowitz that he had become very depressed in college. Tr. 89-90, 118-119. He was hospitalized for about a week. Tr. 119. Dr. Wolowitz was not aware of the cause of the depression. *Id.* She

thought he had taken an anti-depressant for awhile and received counseling in college for about six months. Tr. 119-120. Dr. Wolowitz understood that Mr. Skelton had never received counseling for more than 1 ½ years prior to treating with herself. Tr. 120. She was unaware of any time other than during college when he had suicidal ideation. *Id*

In law school, Mr. Skelton acted out inappropriately as a result of emotional reactivity with paranoid ideation, depression and anxiety. Tr. 64-65. Paranoid ideation is delusional thought that something is aimed at you which in reality is not. Tr. 65. With respect to those incidents in law school, Mr. Skelton told Dr. Wolowitz that he might have been hearing voices and was yelling in the library and another time near a security guard. *Id.* With respect to the emails to IBAB, he voiced his suspicions of JMLS and feelings of being misunderstood and persecuted. Tr. 66.

They have talked at length about the incidents at JMLS, Mr. Skelton's mental state at that time and what was then happening in reality. *Id.* He was under a lot of stress. Tr. 89. In the absence of treatment, the stress led to growing mental health issues that culminated during law school where Mr. Skelton perceived corruption and injustice. Tr. 90.

Shortly after their first meeting, Dr. Wolowitz learned about the Inquiry Panel's denial. Tr. 87. Mr. Skelton was frustrated and hoped that he would be able to prove that with therapy and medication he would be able to practice law. *Id.* At that time he knew

his conduct was inappropriate but was confused as to why his conduct had been alarming to the Inquiry Panel. Tr. 88.

Mr. Skelton has attended sessions with Dr. Wolowitz on a regular weekly basis. Tr. 67, 123-124. He is an extremely cooperative, communicative patient. Tr. 67-68. They discuss his family relationships, work issues, past history, thoughts, feelings and conduct. Tr. 68, 80. Mr. Skelton has described stress at work caused by onerous or boring assignments and she has encouraged him to communicate about that clearly. Tr. 81, 85.

Since being in treatment with Dr. Wolowitz, Mr. Skelton has not acted out. Tr. 69, 79-80, 96. He is now more comfortable in their sessions and seems less anxious and more self-aware. Tr. 69. He reality-checks with her spontaneously. Tr. 69-70. Dr. Wolowitz makes suggestions to help him gain self-awareness. Tr. 86.

Mr. Skelton reports positive work relationships and occasionally feeling not part of the group. Tr. 82, 85-86. His work colleagues provide some degree of support. Tr. 82. Only his supervisor has some awareness of Mr. Skelton's mental and emotional issues. *Id.* Dr. Wolowitz is unaware of any adversarial situation at work where Mr. Skelton has been beset by delusional thinking or acted out. Tr. 85.

Mr. Skelton has a long-standing group of friends outside the workplace. Tr. 83. Dr. Wolowitz thought a few of those friends were aware of his mental health issues. *Id.*

On approximately 10 occasions Dr. Wolowitz and Mr. Skelton have discussed an instance involving delusional thoughts. Tr. 68, 92. These incidents did not give rise to the type of conduct exhibited at JMLS. Tr. 68-69. Except for two of the instances noted by Dr. Turk, Dr. Wolowitz was aware of the instances to which Dr. Turk testified. Tr. 120-122.

This summer, Mr. Skelton talked about a frightening incident on the "L." Tr. 92-93. He was on the train late at night and a man approached him asking for money. Tr. 93. Mr. Skelton responded to the man appropriately. Tr. 94-95. Dr. Wolowitz and Mr. Skelton talked about his sense of fright and powerlessness, and he checked his responses against what Dr. Wolowitz would have done. Tr. 93-95, 123. This incident was not a delusion but there may have been some delusional thinking during the incident that the conduct was aimed at Mr. Skelton in particular. Tr. 122-123.

In one reported incident, Mr. Skelton felt he had purposely been given an A-instead of an A in his graduate school program. Tr. 70, 95. He then realized the grade had probably been given because he had not completed a task. Tr. 70, 95.

If he has a disturbing thought, Mr. Skelton can sometimes talk about how he understands the distortion in his own thinking. Tr. 74. The frequency of disturbing thoughts has decreased and can continue to decrease with treatment. Tr. 74-75. He has never exhibited malicious behavior either physically or emotionally. Tr. 74-75.

Dr. Wolowitz and Mr. Skelton discuss stress management every week, including the importance of sleep, exercise, social support and reflective alternate thinking. Tr. 75-76. Risk factors would be lack of sleep, high-stress situations, disappointments and life crises. Tr. 133, 142. They have discussed the stress caused by this Hearing and uncertainty about his future career direction. Tr. 79, 84. Dr. Wolowitz raised the issue that the Hearing Panel might deny recommendation of admission. Tr. 130-131. A denial could cause Mr. Skelton to feel some depression and anger, but he has the potential to respond maturely and not in a way harmful to himself or others. Tr. 131.

Dr. Wolowitz and Mr. Skelton have also continued to discuss anger management but most important is the focus on distorted thinking. Tr. 134-135. Mr. Skelton is learning to identify the early signs of distorted thinking. Tr. 142-143. A support group for professionals dealing with mental health issues could be beneficial. Tr. 135.

Mr. Skelton is interested in policy and immigration law. Tr. 124. Asked if she agreed with Dr. Turk that it would not be best for Mr. Skelton to work in a high-stress job, Dr. Wolowitz said yes and no. Tr. 126. Mr. Skelton thrives on challenge and has a strong sense of justice usually well-placed, but certain stressful situations would not be good for him. Tr. 126-127. He has a growing capacity to modulate himself if he were practicing law and received an adverse ruling in a meritorious case. Tr. 133-134. He is able to handle the stress in his current job, although in that job he is not an

advocate. Tr. 134. Experience of stressful situations and handling disappointment helps. Tr. 137-138.

Dr. Wolowitz opined that Mr. Skelton has the capacity to work out of his delusional disorder. Tr. 71-72, 96. This would mean that he would become more self-aware, develop social support and coping mechanisms supporting his mental health, and trust in others such that he would not act out. Tr. 96. There is a fair chance that Mr. Skelton could many, which would be protective. Tr. 144-145.

The condition that led to his acting out in law school is not gone but is mitigating. Tr. 135-136. Mr. Skelton's coping mechanisms and insight are increasing. Tr. 136. His past created a vulnerability and the manifestation of the vulnerability can be controlled by increasing insight. Tr. 138-139.

In the future, Mr. Skelton might be able to use a different medication or do without medication entirely. Tr. 138-139. Three to five years of additional therapy will result in more progress in self-awareness with some vulnerability to distorted thinking but little likelihood of backsliding to instances of misconduct such as those under consideration here. Tr. 140-141.

Mr. Skelton feels fairly confidant that with enough support, therapy and medication if needed, he would be able to cope with the stresses associated with the practice of law. Tr. 84. Dr. Wolowitz opined that with continued treatment, his prognosis is good. Tr. 76. She opined further that with continued treatment Mr. Skelton would be competent to practice law although

he might not want to be in an adversarial practice. Tr. 76-77. Asked how long he would need treatment, Dr. Wolowitz opined that it would take a range of about five to ten years. Tr. 97, 141-42. Mr. Skelton would need three to five years of therapy for robust adaptation and up to five years thereafter to ensure that he remained well-adapted. Tr. 142.

Testimony of Amber Ritter

Amber Ritter ("Ms. Ritter") testified that she is an attorney, licensed in Illinois for 20 years. Tr. 99-100. She has been Chief Assistant Corporation Counsel at the City of Chicago for 4 'A years and has worked for the City for a total of sixteen years. Tr. 99.

Ms. Ritter is in charge of the City of Chicago law department group which handles Freedom of Information Act ("FOIA") requests and FOIA litigation for the City. *Id.*

For about two years, Mr. Skelton has been a FOIA officer for the City of Chicago's law department. Tr. 100, 108, 111. Ms. Ritter is now and has been his direct manager during that time. Tr. 100-101. A FOIA officer receives requests for information from the public and the media, and then compiles, redacts and produces documents responsive to the requests within five to ten business days. Tr. 100, 103, 114.

Initially Ms. Ritter interviewed Mr. Skelton. Tr. 109. She knew he had a law degree but did not ask if he was licensed because licensing is not required for

the job. *Id.* About a quarter of the 30 City of Chicago FOIA officers are licensed but no FOIA officer is practicing law for the City. *Id.*

Mr. Skelton works from a cubicle directly outside Ms. Ritter's office. Tr. 101. He checks with her on a regular basis about the decisions he makes as a FOIA officer. *Id.* Ms. Ritter works with FOIA officers from every City of Chicago department and Mr. Skelton is one of the best. *Id.* He is very intelligent. Tr. 102.

In his job, Mr. Skelton interacts with law department and other personnel including attorneys, paralegals and the City's prosecutor who is Ms. Ritter's supervisor. Tr. 111-112. In addition to obtaining responsive documents from attorneys across the departments, Mr. Skelton interacts with the staff attorneys in Ms. Ritter's FOIA group to draft FOIA response letters. Tr. 112-113.

Mr. Skelton understands the legal issues although it is not necessary to be an attorney to be a FOIA officer. Tr. 102, 105. The job is very stressful but Mr. Skelton has no problem handling it. Tr. 102. The first source of stress is the constant stream of FOIA requests which must be handled in a short timeframe. Tr. 102, 114. The second source of stress comes from the task of obtaining responsive documents from the 270 attorneys in the City law department who are busy with their own calendars. Tr. 103-104, 112. Also, FOIA requesters can be very critical. Tr. 104. Working hours are from 9:00 to 5:00 and Mr. Skelton generally does not work beyond

5:00 or 5:30. Tr. 116. The job requires organization and Mr. Skelton keeps a spreadsheet of his requests. *Id.*

Mr. Skelton always acts appropriately both with requesters and law department personnel. Tr. 104-105, 108. When he has a question, he calmly presents Ms. Ritter with options which many other FOIA officers are unable to do. Tr. 105. Members of the media can be repeat requesters and Mr. Skelton interacts well and has positive relationships with them. Tr. 106. Based on good relationships, repeat requesters may grant him extra time when they have requested voluminous material. Tr. 115. Mr. Skelton has never said he cannot handle the workload. *Id.* On occasion, he has come forward to say he has extra time and would like to help with legal research or redactions of records. *Id.* He has successfully completed those projects. Tr. 115-116. If called on to review Mr. Skelton, Ms. Ritter would give him a very good review. Tr. 117.

About six months ago, Mr. Skelton came into Ms. Ritter's office and asked if she would be willing to be a witness on his behalf in regard to his employment. Tr. 110. He eventually told her enough to make her comfortable doing that. *Id.* She was satisfied that he had not committed a crime or victimized someone, which was verified by counsel. Tr. 110-111. Ms. Ritter was aware of his outbursts in law school and emails to IBAB but was not aware at the time he asked her to be a witness. Tr. 107, 111. She was advised of those matters by counsel. Tr. 111.

A few times a year, Ms. Ritter's division goes out for dinner. Tr. 113. Other than that, she does not socialize with Mr. Skelton. *Id.* People in the office are all friendly but Ms. Ritter is unaware whether he socializes with others from the office. Tr. 114.

Ms. Ritter would be comfortable with Mr. Skelton's admission to the Bar of Illinois. Tr. 106-108. She has never seen him engage in misconduct. Tr. 104-105, 108. She would recommend Mr. Skelton for a job in the City's litigation division. Tr. 116.

Testimony of Thomas J. Skelton

Mr. Skelton testified that he is 31 years old and grew up in Oak Park, Illinois. Tr. 146. He went to St. Louis University where he majored in history and philosophy, graduating in 2010. *Id.*

Prior to college, Mr. Skelton had never sought or received mental health treatment. Tr. 194, 215. During college, Mr. Skelton experienced depression and was hospitalized in March 2009 for five days after expressing suicidal ideation to his roommate. Tr. 149, 193-194, 214. He went into the hospital voluntarily on the recommendation of his building manager and a college social worker. Tr. 149, 194-195. The treatment he received helped at the time but the feelings of depression did not end after the hospitalization. Tr. 150, 194. Until graduating, Mr. Skelton continued to meet with a social worker weekly and took anti-psychotic and antidepressant medications prescribed by a doctor. Tr. 150,

194, 215. He did not recall the names of the medications. Tr. 150.

Mr. Skelton graduated college in May 2010. Tr. 146, 215. For six months following college, he worked in construction. Tr. 147, 196. In October 2010, Mr. Skelton joined AmeriCorps VISTA where he worked in a Champaign legal aid office for about a year and a half. Tr. 147-148, 196, 215. His experience at the legal aid office led him to want a law degree which he could use to help people. Tr. 147. Mr. Skelton could not recall if he had counseling in the interval May 2010 to October 2010. Tr. 197, 215-216. He recalled still having issues of depression at that time. Tr. 197.

Prior to law school, Mr. Skelton returned to Oak Park. Tr. 151. He began seeing Dr. Sarpy, a psychiatrist at a clinic there. Tr. 150-151, 216. Mr. Skelton applied to six law schools and chose JMLS because he was offered financial assistance and also wanted to remain in the Chicago area near his family. Tr. 147-148.

On entering law school in the fall of 2014, Mr. Skelton found it stressful. Tr. 148, 216. Early in his tenure at JMLS, Mr. Skelton began experiencing faulty perceptions that he was being persecuted, was disliked and that information he had disclosed was getting out to others. Tr. 148-149, 197. The feelings of persecution seemed then to be a new experience not connected to his earlier depression. Tr. 198. Looking back on those feelings now, Mr. Skelton would acknowledge that they were a product of mental illness and a misperception on his part. Tr. 151-152, 154.

Mr. Skelton had friends at JMLS. Tr. 198. He did not feel comfortable talking to them about these matters as he and fellow students were all seeking to join the legal profession. *Id.*

When feelings of agitation beset him, Mr. Skelton would generally leave the law school building and go to the Harold Washington Library. Tr. 157, 201-202. On a few occasions, his feelings of persecution were propelling him toward vocalization and he was able to control himself by leaving the building, but on other occasions he could not do so. Tr. 202-203. Mr. Skelton's outbursts at JMLS were not spontaneous but would happen after building up. Tr. 206. There may have been incidents of uncontrolled behavior arising from misperceptions outside of the law school but they would not have been as intense as the incidents at JMLS. Tr. 203.

In 2015 during his second semester, Mr. Skelton was in the library at JMLS. Tr. 152-153, 198-199. He was having trouble studying and was hearing things. Tr. 152. He lost control of himself and began yelling to himself in the study room. Tr. 152-153, 199-200. During this incident, Mr. Skelton experienced adrenaline and tunnel vision. Tr. 199. This was the first time this had ever happened to him. *Id.* He did not know if he could have controlled himself, although in the moment he knew his conduct was uncontrolled. Tr. 200-201. That is why he left the premises without argument. Tr. 201.

Mr. Skelton had no idea who was around him at that time and had no intention of yelling at anyone in particular or disrupting the school environment. Tr. 152-153. He regretted having caused a disturbance or offense. Tr. 153. He also regretted not seeking counseling at JMLS immediately after that incident. Tr. 153, 219. At the time, he knew it was not his normal behavior. Tr. 220.

In 2016, Mr. Skelton was feeling very overwhelmed and agitated following a class. Tr. 157-158, 203-204. He experienced adrenaline and tunnel vision. Tr. 157, 206. He determined to leave the building. Tr. 203-204. On his way out of the law school, Mr. Skelton made inappropriate comments to an administrator. Tr. 157-158, 205-206. This was a mistake that Mr. Skelton regrets. Tr. 158.

In the spring semester of 2016, Mr. Skelton began weekly counseling at JMLS with Alexandra Cara and went for six to eight sessions. Tr. 153-154, 218-219, 221-222. On returning in fall 2016, he continued weekly counseling with Collin Shotts ("Mr. Shotts"). Tr. 154, 222. It was helpful to discuss the stresses of law school. Tr. 154.

Throughout law school, Mr. Skelton was seeing Dr. Sarpy but was not receiving psychotherapy. Tr. 217. Although not seeing Dr. Sarpy regularly and once during the course of treatment not seeing her for a period of six months, he took the medication Wellbutrin prescribed by her throughout law school. Tr. 150-151, 154-155, 180, 217-219. He did not speak with Dr. Sarpy

about the outburst at JMLS in 2015. Tr. 219. He continued treatment from time to time with Dr. Sarpy until November 2017. Tr. 217, 221, 223.

During law school, Mr. Skelton had various jobs. Tr. 177. He externed for Judge Jeffrey Cole. *Id.* He interned at the Environmental Law and Policy Center. *Id.* He interned at the Chicago Transit Authority ("CTA"). Tr. 177-178. The experiences were positive and he was told his work was good. Tr. 178. Mr. Skelton had a 711 license and did legal research for the CTA appellate department. Tr. 179. Under supervision, he wrote and argued a summary judgment motion for the CTA. Tr. 179-180.

After applying for admission to the Bar of Illinois, Mr. Skelton received an inquiry from IBAB pertaining to alcohol violations while he was in college. Tr. 156. He then disclosed those violations to JMLS, explaining that he had forgotten about them on application to law school. *Id.* The law school accepted the explanation with no further action. *Id.* In connection with those college violations, Mr. Skelton recalled taking a class and possibly a fine or community service, but no criminal charges. Tr. 156-157.

At JMLS, Mr. Skelton saw a posting for the job of FOIA officer at the City of Chicago. Tr. 181. He applied and went through two rounds of interviews. *Id.* Mr. Skelton was hired by the City of Chicago in September 2017. *Id.*

Mr. Skelton received an inquiry from IBAB regarding the incidents at JMLS. Tr. 158. In the fall of

2017, he met with Ms. Mulaney. Tr. 158, 223. Her summary of their meeting is accurate. Tr. 158. Mr. Skelton's paranoia grew over time but he already felt then that denial of certification was inevitable. Tr. 160.

Ms. Mulaney requested that he obtain a letter from Mr. Shotts with an assurance that Mr. Skelton's condition had mitigated. Tr. 159. Mr. Shotts had been a graduate student at the time of the counseling and was unable to provide a letter. *Id.* Julia Burrell-Smith of Sankofa Psychological Services provided a letter to Ms. Mulaney confirming Mr. Skelton's counseling at JMLS but not opining with respect to his condition. Tr. 160-161.

In 2017, Mr. Skelton began to email Ms. Mulaney and IBAB. Tr. 162. While he was a law student, someone had drawn Nazi graffiti at JMLS and Mr. Skelton had been questioned at the end of April by security about whether he had done it. Tr. 163, 165-166. He told them he had not and nothing further happened in that regard. Tr. 166. He initially emailed Ms. Mulaney because of concern that the law school had accused him of drawing the graffiti. Tr. 162.

Mr. Skelton's email communications during the period November 2017 to March 2018 became colored by the misperceptions that had been building during law school. Tr. 162, 227. He felt persecuted and he also felt that the law school did not want him to become a lawyer. Tr. 162. Those emails were inappropriate, grandiose and deranged. Tr. 163, 227. They were sent at different times of day and night, on weekdays and

weekends, and sometimes while he was at work. Tr. 227.

Acknowledging that his emails were not spontaneous outbursts and some had the shape of argument, Mr. Skelton explained he was not trying to argue a position. Tr. 206-208, 213-214. Over time he had come to believe that he had nothing to lose because of the overwhelming force against him, so he should at least express himself genuinely. Tr. 163, 208-209. Mr. Skelton acknowledged that he was unhinged during that period of time and the communications were not based in reality. Tr. 163, 166. At the time, he was too consumed in his own delusions to consider how the emails would impact the recipients. Tr. 208, 228. During most of the period that he was writing the emails, he was no longer being treated by Dr. Sarpy. Tr. 223-224. He took responsibility for his misperceptions and failure to take his delusional thoughts seriously. Tr. 224. Mr. Skelton acknowledged that he failed to consider the consequences of the emails during a five-month period. Tr. 228.

The Inquiry Panel requested an evaluation, and the Illinois Lawyers' Assistance Program ("LAP") referred Mr. Skelton to Dr. Ryba. Tr. 168. Dr. Ryba evaluated Mr. Skelton in December 2017 but did not have availability for treatment. Tr. 168-169.

Through a series of referrals, Mr. Skelton began treatment with Dr. Yu. Tr. 169. Their first meeting was a few days before the Inquiry. *Id.* At the first meeting Dr. Yu prescribed Seroquel which Mr. Skelton began

taking and has since taken regularly. Tr. 169-170. Dr. Yu provided psychiatry, not psychotherapy. Tr. 170. Dr. Yu has said he would take Mr. Skelton back as a patient if the need arose. Tr. 170-173, 189.

Once he met with the Inquiry Panel, Mr. Skelton realized that they were not trying to persecute him. Tr. 164. He had reread the emails recently and expressed his embarrassment and remorse. Tr. 164. Mr. Skelton understood the Inquiry Panel's decision. Tr. 166-167. He knew that his emails must have been frightening and offensive to the recipients. Tr. 167, 191. He would not write such emails today. Tr. 166. He apologized to both the Inquiry Panel and JMLS for his misconduct. Tr. 191-192. With treatment he would have handled those situations differently. Tr. 192. Today he is able to control his fears or delusions. *Id.*

Mr. Skelton searched for a psychotherapist in his insurance company's database and found Dr. Wolowitz. Tr. 170. He began psychotherapy with her. *Id.* Dr. Wolowitz is very supportive; Mr. Skelton can confide in her and she is a resource for him. Tr. 174. He does not think about suicide. Tr. 209. His focus in therapy is on delusional thinking which can be triggered when he experiences stress. Tr. 209-210. Mr. Skelton finds that with medication, having a negative commentary running through his mind has become the exception, not the standard. Tr. 210. He can control the exceptions. *Id.*

Dr. Wolowitz had professional connections with Dr. Turk and she referred Mr. Skelton to Dr. Turk for evaluation, while Dr. Yu continued as the prescribing

psychiatrist. Tr. 171-172. As a psychiatrist, Dr. Yu worked on a biological model which seemed limiting to Mr. Skelton. Tr. 171. Mr. Skelton came to value Dr. Turk's expertise and also saw him monthly. Tr. 171-172. Dr. Turk understands Mr. Skelton's perspective. Tr. 173.

Mr. Skelton described the incident in which he unjustly received an A- on a paper in his graduate school program, but he believed he deserved an A. Tr. 177. He raised this incident with Dr. Wolowitz to test his thinking. Tr. 176-177. He was able to laugh about it and realize that A- is a good grade. Tr. 177.

Mr. Skelton described the incident involving the man on the "L" who followed him into another car. Tr. 174-175. Mr. Skelton could see a knife in his pocket. Tr. 175. This was in reality a frightening incident. *Id.* Afterwards, for a few hours Mr. Skelton dealt with a feeling of being targeted because he had projected vulnerability. Tr. 175-176, 209. Dr. Wolowitz helped him work through his feelings about the incident. Tr. 176.

Mr. Skelton was asked what would be different today after 14 months of treatment with Drs. Yu, Turk and Wolowitz. Tr. 224-225. One difference is that now he is on a relatively strong dosage of anti-psychotic medication which controls agitation. Tr. 225-226. Mr. Skelton has accepted that he has a psychotic disorder. Tr. 226. His depression while in college may have been the result of the underlying disorder. *Id.* He has learned to monitor his thinking for delusions. *Id.* He

did not know how to do that during law school. Tr. 226-227. Unlike the five-month period when he was sending numerous disturbing emails without considering the consequences, today he knows those consequences. Tr. 228. He understood that if he were representing a client and emotionally committed to the matter, losing control would not help the client or himself. Tr. 229-230.

In his job at the City of Chicago, Mr. Skelton has done legal research and document production outside the FOIA group. Tr. 182-183. He enjoys the job as FOIA officer and likes the challenge of the other assignments. Tr. 183. As a FOIA officer, he has a good relationship with the press. *Id.* He can handle the stresses of the job which can be substantial. Tr. 183-184. Mr. Skelton likes his colleagues. Tr. 184. If a stressful situation is developing, he discusses it with Ms. Ritter or other attorneys in the group. Tr. 184-185. He has never lashed out at anyone at work. Tr. 185.

Mr. Skelton has applied for a position as asylum officer with the U.S. Citizenship and Immigration Service. Tr. 185-186. This job does not require a law license. Tr. 185. He has a job offer pending security clearance review. Tr. 185-186. He would be making asylum decisions in tandem with senior staff Tr. 186-187. It is a high-volume job with a large backlog. Tr. 187. The position would be in Chicago and Mr. Skelton would continue treating with his current doctors. *Id.* His current employer has been involved in the interview process for the asylum position and has also said

he can remain in his job at the City as long as he wishes. Tr. 231-232.

Mr. Skelton intends to continue treatment for as long as his doctors recommend. Tr. 188-189. He does not consider remaining in treatment a negative. Tr. 188. He will also continue taking medication as recommended. *Id.* He is tolerating it well after an elevated cholesterol. Tr. 210. He is eating well, exercising and sleeping Well. Tr. 210-211.

Today the people in Mr. Skelton's life are his parents, friends, colleagues and doctors. Tr. 211. He would feel comfortable seeking support from some of his friends whom he has known since middle school. Tr. 211-212. His friends do not know about his difficulty becoming licensed but none of them think he is licensed. Tr. 212, 231. They are all successful and he does not like appearing as the underachiever of the group. Tr. 212. Full disclosure of his diagnosis would not be smart professionally. Tr. 231. Mr. Skelton's parents are fully aware of the Character and Fitness process and of this Hearing today. Tr. 212-213. They have been supportive throughout. Tr. 213. Looking back, Mr. Skelton has realized that isolation had a negative impact and he would talk to his parents or Dr. Wolowitz if he needs help. Tr. 213. Dr. Wolowitz in particular is a life resource. Tr. 189. Mr. Skelton acknowledged that only his parents and doctors know everything. Tr. 231.

Asked why he wants to be a lawyer given the stresses of the profession, Mr. Skelton felt he could handle the stress. Tr. 234. He is able to manage his

condition. *Id.* He can help people and make a difference as a government or public interest lawyer. *Id.*

Mr. Skelton would cooperate with Conditional Admission if that were recommended. Tr. 189-190. If the Hearing Panel declined to recommend him for certification, Mr. Skelton would be disappointed. Tr. 190. In that event, he would focus on his University of Illinois graduate school program in public administration while continuing to work for the City of Chicago. Tr. 190-191. He would consider reapplying for admission in two years. Tr. 190-191. Over the past year, Mr. Skelton has felt very healthy and is committed to maintaining that level of well-being. Tr. 192.

Other Evidence Received at Hearing

At Hearing, the Applicant's Exhibits curriculum vitae of Dr. Turk and Dr. Wolowitz were offered and admitted into evidence. Tr. 13. Post-Hearing, the Applicant provided Affidavits of Dr. Turk and Dr. Wolowitz, also admitted into evidence.

QUESTION PRESENTED TO THE COMMITTEE

Has Thomas Joseph Skelton met his burden of demonstrating by clear and convincing evidence that he embodies the requisite character and fitness to be admitted to the Illinois Bar?

STANDARDS TO BE APPLIED

As an applicant for admission to the Illinois Bar, Mr. Skelton has the burden to prove by clear and convincing evidence that he has the requisite character and fitness for admission to the practice of law. The Illinois Board of Admissions to the Bar and the Committees on Character and Fitness of the Supreme Court of Illinois Rules of Procedure (the "Committee Rules") Rule 6.1; *In re Glenville*, 139 Ill. 2d 242, 252, 565 N.E.2d 623, 627 (1990); *In re Childress*, 138 Ill. 2d 87, 100, 561 N.E.2d 614, 619-20 (1990); *In re Loss*, 119 Ill. 2d 186, 195-96, 518 N.E.2d 981, 985 (1987).

The essential eligibility requirements for the practice of law include: (1) the ability to learn, to recall what has been learned, to reason, and to analyze; (2) the ability to communicate clearly and logically with clients, attorneys, courts, and others; (3) the ability to exercise good judgment in conducting one's professional business; (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations; (5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct; (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others; (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others; (8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; (9) the ability to comply with deadlines and time

constraints; and (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession. Supreme Court of Illinois Rules on Admission and Discipline of Attorneys, Rule 708(c); Committee Rule 6.3.

Essential eligibility requirements (3), (4), (6) and (10) above are at issue with respect to Mr. Skelton's application to the Bar.

In assigning weight and significance to the Applicant's prior misconduct, the Committee considers: (a) age at the time of the conduct; (b) recency of the conduct; (c) reliability of the information concerning the conduct; (d) seriousness of the conduct; (e) factors underlying the conduct; (f) cumulative effect of the conduct; (g) ability and willingness to accept responsibility for the conduct; (h) candor in the admissions process; (i) materiality of any omissions or misrepresentations; (j) evidence of rehabilitation; and (k) positive social contribution since the conduct. Committee Rule 6.5.

The Hearing Panel weighed the foregoing mitigating or aggravating factors, noting that factors (b), (d), (e), (g) and (j) above are of particular relevance here.

DECISION OF THE HEARING PANEL

Upon consideration of all the testimony, and based upon the entire record, the Hearing Panel finds by vote of 3 to 2 that Thomas Joseph Skelton failed to demonstrate by clear and convincing evidence that he satisfies all of the eligibility requirements and presently

possesses the character and fitness to be admitted to the practice of law in Illinois. The Hearing Panel carefully reviewed the record including documentation from JMLS, email communications from Mr. Skelton to IBAB staff and Ms. Mulaney, the testimony of Mr. Skelton's supervisor and two doctors, and the lengthy testimony of Mr. Skelton himself. Having failed to demonstrate his present fitness for admission, Mr. Skelton is not a candidate for Conditional Admission under Committee Rule 7.

On application to IBAB and to JMLS, Mr. Skelton's failure to disclose two undergraduate alcohol violations bore on his ability to conduct himself with honesty. Then while a student at JMLS, on four occasions Mr. Skelton was observed by students or security personnel creating a disturbance and on one of those occasions cursing at a school administrator. These incidents cast doubt on Mr. Skelton's abilities to conduct himself properly and with good judgment, and additionally with respect to the outbursts, on his ability to avoid acts exhibiting disregard for the welfare of others.

At the direction of IBAB, Mr. Skelton petitioned JMLS to amend his application with respect to the omitted undergraduate violations, and the law school accepted the amendment without further action. After Mr. Skelton's fourth outburst, the law school sent him a letter of admonition, instituting no discipline and taking no further action. The Hearing Panel is satisfied that these matters even cumulatively are not so serious as to preclude a recommendation of admission.

It is the Applicant's recent conduct *during and in connection with the Character and Fitness process* on which this Hearing Panel must focus. During a five-month period approximately mid-October 2017 through mid-March 2018, Mr. Skelton wrote and sent numerous emails variously to IBAB's Deputy Director, Counsel and Director as well as to Committee Member Mulaney. These multiple acts occurred during daytime and evening hours, on weekdays and weekends, and some were written and sent while Mr. Skelton was at his job as FOIA officer for the law department of the City of Chicago.

Mr. Skelton's emails frequently took the form of argument and used charged and ugly language, examples of which are set forth above. Mr. Skelton assaulted the integrity of JMLS, IBAB, the Committee on Character and Fitness and the legal system by alleging organized corruption within the Bar and an Inquiry which would fail to apply the law and instead deny him based on dislike. He referred to JMLS using terms such as Nazis and Stasi, and accused IBAB and the Committee of trying to "GitMo" him. The misconduct was comprised of multiple individual acts transacted at various times over a term of months and occurring one and a half to two years after his outbursts at JMLS when the stress of law school had presumably eased. At any point during that five-month period Mr. Skelton could have reconsidered this conduct and changed course, but he failed to do so. On denial by the Inquiry Panel, Mr. Skelton acknowledged his inappropriate

conduct, but still could not understand why that conduct was alarming to the Inquiry Panel.

The misconduct contravened Mr. Skelton's abilities to exercise good judgment, to avoid acts exhibiting disregard for the welfare of others, and to conduct himself properly and in a manner engendering respect for the legal profession. As an applicant for admission to the Bar of Illinois, Mr. Skelton bears the burden to demonstrate by clear and convincing evidence his rehabilitation from the singular lack of good judgment evidenced by his communications with IBAB staff and the Committee on Character and Fitness.

Witness Amber Ritter testified that Mr. Skelton is an excellent FOIA officer who has been under her direct supervision for two years. Until just before Hearing, however, she was unaware of the incidents at JMLS and Mr. Skelton's emails. While Ms. Ritter testified that she had never seen Mr. Skelton engage in misconduct, he had actually written and sent some of those emails while on the job. Thus, while positively describing Mr. Skelton's work as a FOIA officer, Ms. Ritter's testimony could not clearly and convincingly corroborate his abilities either to take responsibility for his misconduct or to use good judgment in a professional setting.

Mr. Skelton presented witness evidence to the Hearing Panel from two doctors currently treating him who linked his misconduct to a medical condition. Pursuant to Committee Rule 6.5(e), the Hearing Panel considered the doctors' testimony as it pertained here

to underlying factors. While both doctors attested to Mr. Skelton's progress, each noted recent instances of delusional thought during non-stressful circumstances and both recommended long-term treatment. Dr. Wolowitz testified that certain stressful situations would not be good for him but noted that experiences would help Mr. Skelton continue to improve his ability to respond to stress appropriately and testified that a support group could be beneficial. Both doctors provided affidavits opining as to Mr. Skelton's appropriate mental competency and capacity to practice law; neither doctor, however, provided clear and convincing evidence of the present character and fitness requisite for admission.

To be clear, the Hearing Panel would not and is not here denying Mr. Skelton's application for admission on the basis of status, diagnosis or treatment. Mr. Skelton is not approved for admission at this time due to his recent misconduct during the Character and Fitness process with an insufficient passage of time clearly and convincingly corroborative of his acceptance of responsibility and demonstrative of rehabilitation from that misconduct. The Hearing Panel encourages Mr. Skelton to continue treatment for his well-being as recommended by his doctors and being in treatment in and of itself could not constitute a bar to admission in the future.

Mr. Skelton testified that, other than his doctors, only his parents are fully aware of his situation. Neither parent testified in person, by telephone or affidavit which might have provided corroboration of family

support. In fact, evidence failed to demonstrate a robust support network in addition to therapists, such as friends, colleagues, or a group such as might be found at LAP. The Hearing Panel understands that Mr. Skelton does not wish to publicize his situation, and while his doctors opined that disclosure of his situation in social settings would not be beneficial they also noted the importance of social relationships. Mr. Skelton's apparent social isolation, unrebutted by corroborating evidence of strong social relationships with family, friends or colleagues, remains a serious concern.

The Hearing Panel notes that Mr. Skelton credibly demonstrated progress in taking responsibility for his actions. The Hearing Panel trusts that going forward Mr. Skelton will conduct himself as set forth in the essential eligibility requirements noted above and demonstrate rehabilitation from misconduct.

DISSENT

Mr. Skelton provided evidence convincing to the Dissent of the requisite character and fitness for admission to the Bar of Illinois.

Extremely candid in his testimony to the Hearing Panel, Mr. Skelton credibly demonstrated to the Dissent full acceptance of responsibility and sincere remorse for disturbing or offending the recipients of his email correspondence.

Mr. Skelton's supervisor, Amber Ritter, is the Chief Assistant Corporation Counsel for the City of Chicago. Ms. Ritter testified that if Mr. Skelton were certified to practice law in Illinois and sought a position as a litigator with the City, she "certainly would" recommend him. She testified that Mr. Skelton conducts himself properly and in fact exemplarily in employment as the FOIA officer for the City of Chicago law department. Ms. Ritter described the job as a stressful position both because of the unending flow of FOIA requests with a short turn-around period and also because of the next frequently difficult step of obtaining responsive material from City attorneys engaged on other matters. Her evidence was persuasive to the Dissent that Mr. Skelton has conducted himself properly and respectfully of others in the context of his two-year employment and that he would be able to do so in a stressful environment as a practicing attorney.

The evidence reflected the accuracy of Dr. Ryba's prognosis that "proper medicinal and psychotherapeutic intervention" would bring a major change in Mr. Skelton's functioning. By September 2018, Mr. Skelton had secured the services of a qualified and compassionate psychotherapist, and his medication had been increased significantly from 25 miligrams daily to the current dosage of 500 miligrams. With the psychotherapy provided by Dr. Wolowitz and the increased medication, Mr. Skelton's delusional incidents declined dramatically and, in the opinion of the Dissent, to a level that does not adversely affect his ability to practice law, provided he continue to receive counseling

and medication. Evidence reflected Mr. Skelton's conscientious and regular participation in on-going treatment and compliance as to prescribed medication. To the Dissent, both doctors provided credible evidence that Mr. Skelton has gained insight and the ability to discern between delusion and reality and to respond to stressful situations appropriately.

Proper conduct following his denial by the Inquiry Panel demonstrated Mr. Skelton's rehabilitation from misconduct during the Character and Fitness process. The Dissent was further persuaded by Mr. Skelton's credible testimony that he has accepted his disorder, has learned to monitor his thinking and considers the consequences of his conduct.

For these reasons, the Dissent posits that Mr. Skelton demonstrated the essential eligibility requirements necessary for admission to the Bar of Illinois. Noting the applicability to Mr. Skelton's circumstances of Committee Rule 7.3, Limited Circumstances under which Conditional Admission may be Considered, the Dissent would have recommended Mr. Skelton's Conditional Admission to the Bar of Illinois. Further, the Dissent would have recommended to the Supreme Court of Illinois that the conditions of admission be extended beyond the regular two-year period, in keeping with the medical evidence presented.

CONCLUSION

The Hearing Panel has carefully considered the entire record. For the reasons stated above, the Hearing Panel finds by vote of 3 to 2 that Thomas Joseph Skelton has not met his burden of proof by clear and convincing evidence demonstrating that he presently possesses the requisite character and fitness to practice law in the State of Illinois.

Dated: October 9, 2019

/s/ Vickie Voukidis
Vickie Voukidis
Senior Member of the Majority

[SEAL]

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Filed January 07, 2020

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In re: In re: Thomas J. Skelton, M.R.030118

Today the following order was entered in the captioned case:

Petition by petitioner, Thomas J. Skelton, pursuant to Supreme Court Rule 708(h). Denied.

Order entered by the Court.

Burke, C.J., took no part.

Very truly yours,

/s/ Carolyn Taft Grosboll

Clerk of the Supreme Court

CC: Illinois Board of Admissions to the Bar

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

Following is the current text of the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA was originally enacted in public law format and later rearranged and published in the United States Code. The United States Code is divided into titles and chapters that classify laws according to their subject matter. Titles I, II, Ill, and V of the original law are codified in Title 42, chapter 126, of the United States Code beginning at section 12101. Title IV of the original law is codified in Title 47, chapter 5, of the United States Code. Since this codification resulted in changes in the numbering system, the Table of Contents provides the section numbers of the ADA as originally enacted in brackets after the codified section numbers and headings.

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TITLE 42 – THE PUBLIC HEALTH AND WELFARE

CHAPTER 126 – EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

Sec. 12101. Findings and purpose

(a) Findings. The Congress finds that

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with

disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are

severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose. It is the purpose of this chapter

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Sec. 12101 note: Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, {S}2, Sept. 25, 2008, 122 Stat. 3553, provided that:

(a) Findings. Congress finds that

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act

of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

(b) Purposes. The purposes of this Act are

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of

disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives";

(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for "substantially limits", and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act,

including the amendments made by this Act.

Sec. 12102. Definition of disability

As used in this chapter:

(1) Disability. The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major Life Activities

(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions

of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment. For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability. The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum

extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

Sec. 12103. Additional definitions. As used in this chapter

(1) Auxiliary aids and services. The term "auxiliary aids and services" includes

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SUBCHAPTER I – EMPLOYMENT Sec. 12111. Definitions

As used in this subchapter:

(1) Commission. The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity. The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee. The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general. The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions. The term "employer" does not include

(i) the United States, a corporation wholly owned by the government of

the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general. The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs. The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc. The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual. The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this

subchapter, consideration shall be given to the employers judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation. The term "reasonable accommodation" may include

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general. The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Sec. 12112. Discrimination

(a) General rule. No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation,

job training, and other terms, conditions, and privileges of employment.

(b) Construction. As used in subsection (a) of this section, the term "discriminate against a qualified individual on the basis of disability" includes

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration

(A) that have the effect of discrimination on the basis of disability;

(B) that perpetuates the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question

and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general. It shall not be unlawful under this section for a covered entity to take any action that constitute discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption. If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is

engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception. This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination. For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general. The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry. Except as provided in paragraph (3), a covered entity shall not

conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination. A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement. Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

Sec. 12113. Defenses

(a) In general. It may be a defense to a charge of discrimination under this chapter

that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards. The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision. Notwithstanding section 12102(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities

(1) In general. This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association,

educational institution, or society of its activities.

(2) Religious tenets requirement. Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases

(1) In general. The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) Applications. In any case in which an individual has an infectious or communicable disease that is transmitted to

others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction. Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

Sec. 12114. Illegal use of drugs and alcohol

(a) Qualified individual with a disability. For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity. A covered entity

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements

established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including

complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general. For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction. Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making

employment decisions based on such test results.

(e) Transportation employees. Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

Sec. 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

Sec. 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible

format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

Sec. 12117. Enforcement

(a) Powers, remedies, and procedures. The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination. The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part

1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

SUBCHAPTER II – PUBLIC SERVICES

Part A – Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 12131. Definitions

As used in this subchapter:

(1) Public entity. The term "public entity" means

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets

the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Sec. 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

Sec. 12134. Regulations

(a) In general. Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28,

Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards. Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

Part B – Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart I – Public Transportation Other than by Aircraft or Certain Rail Operations

Sec. 12141. Definitions

As used in this subpart:

(1) Demand responsive system. The term "demand responsive system" means any system of providing designated public

transportation which is not a fixed route system.

(2) Designated public transportation. The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system. The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates. The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation. The term "public school transportation" means transportation by school bus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary. The term "Secretary" means the Secretary of Transportation.

Sec. 12142. Public entities operating fixed route systems

(a) Purchase and lease of new vehicles. It shall be considered discrimination for purposes of section which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles. Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule. Except as provided in paragraph (2), it shall be considered

discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule. If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic

character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with)those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations. For purposes of this paragraph and section 12148(a) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

Sec. 12143. Paratransit as a complement to fixed route service

(a) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs that are sufficient to provide to such individuals a level of service

(1) which is comparable to the level of designated public transportation services

provided to individuals without disabilities using such system; or

(2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations. Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service. The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section

(A) (i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (a), accompanying the individual with a disability provided that space for these additional individuals are available on the paratransit

vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area. The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) Service criteria. Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation. The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial

burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services. The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation. The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans. The regulations issued under this section shall require that each public entity which operates a fixed route system

> (A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which

meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others. The regulations issued under this section shall

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions. The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule. The Secretary shall review a plan submitted under this section for the purpose of determining

whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval. If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan. Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined. As used in subsection (a) of this section, the term "discrimination" includes

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of

this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction. Nothing in this section shall be construed as preventing a public entity

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

Sec. 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a

solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

Sec. 12145. Temporary relief where lifts are unavailable

(a) Granting. With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such

buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress. Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application. If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

Sec. 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Sec. 12147. Alterations of existing facilities

(a) General rule. With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule. For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility. Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation] in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes. The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which

stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones. The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

Sec. 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general. With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity

to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception. Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(a) of this title (relating to key stations).

(3) Utilization. Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule. Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals

who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains. In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

Sec. 12149. Regulations

(a) In general. Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards. The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the

Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

Sec. 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

Subpart II – Public Transportation by Intercity and Commuter Rail

Sec. 12161. Definitions

As used in this subpart:

(1) Commuter authority. The term "commuter authority" has the meaning given such term in section 24102(4) of title 49.

(2) Commuter rail transportation. The term "commuter rail transportation" has the meaning given the term "commuter rail passenger transportation" in section 24102(5) of title 49.

(3) Intercity rail transportation. The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car. The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single- level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person. The term "responsible person" means

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private

party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station. The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

Sec. 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule. It shall be considered discrimination for purposes of

section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule. Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use

wheelchairs. Single-level passenger coaches shall be required to

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passengers wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs. Single-level dining cars shall not be required to

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs. Bi-level dining cars shall not be required to

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passengers wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches

(i) a number of spaces

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(ii) a number of spaces

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location. Spaces required by subparagraph (A) shall be located in

single-level rail passenger coaches or food service cars.

(C) Limitation. Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features. Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (a) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars. On any train in which a single-level dining car is used to provide food service

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. Unless not practicable, a person providing intercity rail

transportation shall place an accessible car adjacent to the end of a dining car described in clause (I) through which an individual who uses a wheelchair may enter.

(B) Bi-level dining cars. On any train in which a bi-level dining car is used to provide food service

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have

at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility. For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars. It shall be considered discrimination for purposes of section 1132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to

and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to

make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail. All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail. Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later

than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations. Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones. The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals

with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule. It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area. It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29,

with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (a) or (b) to fail to provide reasonable cooperation to a responsible person with

respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

Sec. 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this title.

Sec. 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

Sec. 12165. Interim accessibility requirements

(a) Stations. If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one

year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars. If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this

subpart and are in effect at the time such design is substantially completed.

SUBCHAPTER III – PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 12181. Definitions

As used in this subchapter:

(1) Commerce. The term "commerce" means travel, trade, traffic, commerce, transportation, or communications

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities. The term "commercial facilities" means facilities

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities

that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system. The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system. The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus. The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity. The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation. The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five

rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad. The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102[1] of title 49.

(9) Readily achievable. The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the

impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation. The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle. The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

Sec. 12182. Prohibition of discrimination by public accommodations

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such

individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the

covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association. It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination. For purposes of subsection (a) of this section, discrimination includes

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages,

or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of

vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility. It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service. If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system. For purposes of subsection (a) of this section, discrimination includes

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including

individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability. Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements. For purposes of subsection (a) of this section, discrimination includes

(I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and

(II) any other failure of such entity to comply with such regulations.

(3) Specific construction. Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

Sec. 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term. Except as provided in subsection (b) of this section, as applied to public accommodations and commercial

facilities, discrimination for purposes of section 12182(a) of this title includes

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals

with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator. Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

Sec. 12184. Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction. For purposes of subsection (a) of this section, discrimination includes

(1) the imposition or application by an entity described in subsection (a) of

eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over- the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals

who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4) (A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such

individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception. To the extent that compliance with subsection (a)(2)© or (a)(7)of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of

1970, such compliance shall not be required.

(2) Definition. As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

Sec. 12185. Study

(a) Purposes. The Office of Technology Assessment shall undertake a study to determine

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents. The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 12184(a)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee. In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline. The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for

legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review. In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

Sec. 12186. Regulations

(a) Transportation provisions

(1) General rule. Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections12182 (b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (a)(4)).

(2) Special rules for providing access to over-the-road buses

(A) Interim requirements

(i) Issuance. Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period. The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (a).

(B) Final requirement

(i) Review of study and interim requirements. The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance. Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period. Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect

(I) with respect to small providers of transportation

(as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms. The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards. The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b) (2) and 12184 of this title.

(b) Other provisions. Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines. Standards included in regulations issued

under subsections (a) and (b) of this section shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards

(1) Facilities. If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and

usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars. If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

Sec. 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

Sec. 12188. Enforcement

(a) In general

(1) Availability of remedies and procedures. The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief. In the case of violations of sections 12182(b)(2)(A)(iv) and Section 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general. The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification. On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State

law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation. If the Attorney General has reasonable cause to believe that

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court. In a civil action under paragraph (1) (B), the court

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation. For purposes of paragraph (2) (C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages. For purposes of subsection (b) (2) (B) of this section, the term "monetary damages" and "such other relief' does not include punitive damages.

(5) Judicial consideration. In a civil action under paragraph (1)(B), the court, when considering what amount of civil

penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

Sec. 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SUBCHAPTER IV – MISCELLANEOUS PROVISIONS

Sec. 12201. Construction

(a) In general. Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws. Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures

of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance. Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter I and III of this chapter.

(d) Accommodations and services. Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws. Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration. Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability. Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) Reasonable accommodations and modifications. A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) solely under subparagraph (C) of such section.

Sec. 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

Sec. 12203. Prohibition against retaliation and coercion

(a) Retaliation. No person shall discriminate against any individual because such

individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures. The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

Sec. 12204. Regulations by Architectural and Transportation Barriers Compliance Board

(a) Issuance of guidelines. Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters ll and III of this chapter.

(b) Contents of guidelines. The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general. The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register. With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites. With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1)

shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

Sec. 12205. Attorneys fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Sec. 12205a. Rule of Construction Regarding Regulatory Authority

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 (including rules of construction) and the definitions in section 12103, consistent with the ADA Amendments Act of 2008.

Sec. 12206. Technical assistance

(a) Plan for assistance

(1) In general. Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation,

the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan. The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance. The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation

(1) Rendering assistance. Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters

(A) Subchapter I. The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter.

(B) Subchapter II

(i) Part A. The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B. The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III. The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV. The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals. Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts

(1) In general. Each Federal agency that has responsibility under subsection (2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) Dissemination of information. Such grants and contracts, among other uses,

may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance. An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

Sec. 12207. Federal wilderness areas

(a) Study. The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report. Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access

(1) In general. Congress reaffirms that nothing in the Wilderness Act (16 U.S.C.

1131 et seq.) is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined. For purposes of paragraph (1), the term "wheelchair means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

Sec. 12208. Transvestites

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

Sec. 12209. Instrumentalities of Congress

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) In general. The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities. The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress. The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities. For purposes of this section, the term "instrumentality of the Congress" means the following: the General Accounting Office, the Government Printing Office, and the Library of Congress.

(5) Enforcement of employment rights. The remedies and procedures set forth in section 2000e-16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations. The remedies and procedures set forth in section 2000e -16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction. Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

Sec. 12210. Illegal use of drugs

(a) In general. For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services. Notwithstanding subsection (a) of this section and section 12211(b)(3) of this subchapter, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) "Illegal use of drugs" defined

(1) In general. The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs. The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Sec. 12211. Definitions

(a) Homosexuality and bisexuality. For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions. Under this chapter, the term "disability" shall not include

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs. Sec. 12212. Alternative means of dispute resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

Sec. 12213. Severability

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

TITLE 47 – TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5 – WIRE OR RADIO COMMUNICATION

SUBCHAPTER ll – COMMON CARRIERS

Part I – Common Carrier Regulation

Sec. 225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions. As used in this section

(1) Common carrier or carrier. The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as

defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(a) and 221(a) of this title.

(2) TDD. The term "TDD" means a Telecommunications Device for the Deaf which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services. The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) Availability of telecommunications relay services

(1) In general. In order to carry out the purposes established under section 151 of

this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies. For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

(c) Provision of services. Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the

regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) of this section for such State.

(d) Regulations

(1) In general. The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology. The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs

(A) In general. Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs. Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a

method consistent with the requirements of this section.

(e) Enforcement

(1) In general. Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

(2) Complaint. The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) Certification

(1) State documentation. Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) Requirements for certification. After review of such documentation, the Commission shall certify the State program if the Commission determines that

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common

carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding. Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification. The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint. If a complaint to the Commission alleges a violation of this section with respect to intrastate

telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of Commission. After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if

(A) final action under such State program has not been taken on such complaint by such State

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section.

TITLE 47 – TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS CHAPTER 5 – WIRE OR RADIO COMMUNICATION

SUBCHAPTER VI – MISCELLANEOUS PROVISIONS

Sec. 611. Closed-captioning of public service announcements

Any television public service announcement that is produced or funded in whole or in part by any

agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee

> (1) shall not be required to supply closed captioning for any such announcement that fails to include it; and
>
> (2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

Rule 708. Committee on Character and Fitness

(a) At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the judicial districts of this state, comprised of Illinois lawyers. In the First Judicial District the committee shall consist of no fewer than 30 members of the bar, and in the Second, Third, Fourth and Fifth Judicial Districts, each committee shall consist of no fewer than 15 members of the bar. Unless the Court specifies a shorter term, all members shall be appointed for staggered three-year terms and shall serve until their successors are duly appointed and qualified. No member may be appointed to more than three full consecutive terms. Vacancies for any cause shall be filled by appointment of the Court for the unexpired term. The Court shall appoint a chairperson and a vice-chairperson for each committee. The chairperson may serve only one three-year term. The members of the Board of Admissions to the Bar shall be *ex-officio* members of the committees and are authorized to serve as members of hearing panels of any committee.

(b) Pursuant to the Rules of Procedure for the Board of Admissions to the Bar and the Committees on Character and Fitness, the ~~e~~Committee shall determine whether each ~~law student registrant and~~ applicant presently possesses good moral character and general fitness for admission to the practice of law. An ~~registrant or~~ applicant may be so recommended if the committee determines that his or her record of conduct demonstrates that he or she meets the essential eligibility requirements for the practice of law and justifies

the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a failure to meet the essential eligibility requirements, including a deficiency in the honesty, trustworthiness, diligence, or reliability of an ~~registrant or~~ applicant, may constitute a basis for denial of admission.

(c) The essential eligibility requirements for the practice of law include the following: (1) the ability to learn, to recall what has been learned, to reason, and to analyze; (2) the ability to communicate clearly and logically with clients, attorneys, courts, and others; (3) the ability to exercise good judgment in conducting one's professional business; (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations; (5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct; (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others; (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others; (8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; (9) the ability to comply with deadlines and time constraints; and (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession.

(d) If required by the Committee or its Rules of Procedure, each ~~law student registrant and~~ applicant

shall appear before the committee of his or her district or some member thereof and shall furnish the committee such evidence of his or her good moral character and general fitness to practice law as in the opinion of the committee would justify his or her admission to the bar.

(e) At all times prior to his or her admission to the bar of this state, each ~~law student registrant and~~ applicant is under a continuing duty to supplement and continue to report fully and completely to the Board of Admissions to the Bar and to the Committee on Character and Fitness all information required to be disclosed pursuant to any and all application documents and such further inquiries prescribed by the Board and the Committee.

(f) If the ~~e~~Committee is of the opinion that the ~~law student registrant or~~ applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Admissions to the Bar, and the Board shall transmit such certification to the Court together with any additional information or recommendation the Board deems appropriate when all other admission requirements have been met. If the eCommittee is not of that opinion, it shall file with the Board of Admissions to the Bar a statement that it cannot so certify, together with a report of its findings and conclusions.

(g) Character and Fitness certification is valid for nine months from the date of certification. An applicant who has been so certified and who has not been

admitted to practice within nine months must be recertified after filing the requisite character and fitness registration and paying the fee therefor in accordance with Rule 706.

~~(g)~~**(h)** An ~~law student registrant or~~ applicant who has availed himself or herself of his or her full hearing rights before the Committee on Character and Fitness and who deems himself or herself aggrieved by the determination of the committee may, on notice to the committee by service upon the Director of Administration for the Board of Admissions in Springfield, petition the Supreme Court for review within 35 days after service of the Committee's decision upon the ~~law student registrant or~~ applicant, and, unless extended for good cause shown, the Committee shall have 28 days to respond. The director shall file the record of the hearing with the Supreme Court at the time that the response of the Committee is filed.

Amended effective November 15, 1971, and October 2, 1972; amended April 10, 1987, effective August 1, 1987; amended June 12, 1992, effective July 1, 1992; amended April 4, 1995, effective immediately; amended November 22, 2000, effective December 1, 2000; amended December 6, 2001, effective immediately; amended October 2, 2006, effective July 1, 2007; amended Nov. 26, 2013, effective Jan. 1, 2014.

BEFORE THE CHARACTER AND FITNESS
COMMITTEE OF THE ILLINOIS BOARD
OF ADMISSIONS TO THE BAR
FOR THE FIFTH DISTRICT

In the Matter of:
THOMAS J. SKELTON,
Applicant.

AFFIDAVIT OF LESLIE WOLOWITZ, Ph.D.

(Filed Aug. 30, 2019)

Leslie Wolowitz, Ph.D, hereby states, under penalty of perjury:

1. Affiant is a clinical psychologist who has been treating Applicant since April 2018. A true and correct copy of Affiant's *curriculum vitae* was submitted to the Hearing Panel in this matter on July 15, 2019.

2. Affiant is aware that the Hearing Panel has inquired whether it is critical to Applicant's ongoing treatment that he disclose his mental health status or history to others. Specifically, Affiant is aware that the Hearing Panel has inquired whether such disclosures would be helpful or essential to the process of Applicant engaging in "socialization," *i.e.*, seeking and maintaining appropriate personal and professional relationships.

3. Affiant has not reviewed a transcript of her testimony at the July 15, 2019 hearing in this matter. She believes, however, that she testified that

"socialization" would be a positive part of Applicant's recovery, in that it would assist him in avoiding isolation. Affiant believes that she testified that isolation can be problematic for patients like Applicant, because it can encourage the development of paranoid thinking.

4. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that the "socialization" she referred to in her testimony does not include, or should not include, a requirement or suggestion that Applicant inform others of his mental status or mental health history.

5. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that Applicant would not derive a benefit from disclosing his mental status or mental health history to anyone in his social networks or circles, or to anyone else in his personal or professional lives.

6. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that the "socialization" that would benefit Applicant would involve simply having social relationships of different kinds, with individuals or with groups. Those individuals or groups would not need to have any knowledge of Applicant's mental status or mental health history in order to be of benefit to Applicant Forming and maintaining still more of those relationships than Applicant already has would assist him in observing and relating to others, in avoiding isolation, and in realistically gauging his own actions and reactions. Positive relationships built on mutual affection, admiration,

and respect would also simply and naturally elevate Applicant's mood, which would also have therapeutic value to Applicant.

7. Affiant is further of the opinion, to a reasonable degree of clinical and psychological certainty, that while Affiant maintains and grows his social support and relationships, his ongoing relationships with his trusted therapist and psychiatrist are likely the most important source of mitigating social isolation, and they form further secure bases to grow intimate relationships.

8. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that for Applicant to undertake to disclose his mental status or mental health history to others in his social networks or circles could be actively harmful to his progress in treatment, and to his prognosis overall. Disclosures of that kind could produce negative reactions in others, including the expression of harmful stereotypes or other forms of stigma toward or about those who suffer from mental health conditions. Social or professional contacts could harbor a bias against those who suffer from mental health conditions, which could be deleterious to Applicant whether or not that bias is actively or verbally expressed. For Applicant to encounter such negative reactions – either immediately or over time – could produce setbacks in his treatment, in that his perception of them could lead to the feelings and conditions that can produce delusional thinking, including suspicion, paranoia, fear, and vulnerability.

9. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that Applicant specifically would be at risk of experiencing setbacks in his treatment if he were to disclose his mental status or mental health history to others in his personal or professional circles.

10. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that Applicant currently has the appropriate mental competency and capacity to practice law, and that he is presently actively engaged in a course of treatment that enhances his ability to maintain that competency and capacity.

11. Affiant is of the opinion, to a reasonable degree of clinical and psychological certainty, that Applicant's competency and capacity to practice law would not be enhanced by any requirement or suggestion that he inform others in his social or professional circles of his mental status or his mental health history.

12. Affiant has not reviewed or observed any fact or matter in the course of her treatment of Applicant, or in the course of her preparation for and participation in the hearing in this matter, that would cause her to alter the opinions and statements expressed in the instant Affidavit.

FURTHER AFFIANT SAYETH NOUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure,

the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Leslie Wolowitz, Ph.D.
BY: Leslie Wolowitz, Ph.D.
Affiant

Date: 8/30/19

BEFORE THE CHARACTER AND FITNESS
COMMITTEE OF THE ILLINOIS BOARD
OF ADMISSIONS TO THE BAR
FOR THE FIRST DISTRICT

In the Matter of:
THOMAS J. SKELTON,
Applicant.

AFFIDAVIT OF DR. CHARLES TURK

(Filed Aug. 5, 2019)

Charles Turk, M.D, hereby states, under penalty of perjury:

1. Affiant is a psychiatrist who has been seeing Applicant since September 2018. A true and correct copy of Affiant's *curriculum vitae* was submitted to the Hearing Panel in this matter on July 15, 2019.

2. Affiant is aware that the Hearing Panel has inquired whether it is critical to Applicant's ongoing treatment that he disclose his mental health status or history to others. Specifically, Affiant is aware that the Hearing Panel has inquired whether such disclosures would be helpful or essential to the process of Applicant engaging in "socialization," *i.e.*, seeking and maintaining appropriate personal and professional relationships.

3. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that any "socialization" in which Applicant engages does not and

should not include a requirement or suggestion that Applicant inform others of his mental status or mental health history.

4. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that Applicant would not derive a benefit from disclosing his mental status or mental health history to anyone in his social networks or circles, or to anyone else in his personal or professional lives.

5. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that the "socialization" that would benefit Applicant would involve simply having social relationships of different kinds, with individuals or with groups. Those individuals or groups would not need or be expected to have any knowledge of Applicant's mental status or mental health history in order to be of benefit to Applicant

6. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that for Applicant to undertake to disclose his mental status or mental health history to others in his social networks or circles might result in his encountering negative reactions in others, including the expression of harmful stereotypes or other forms of stigma toward or about those who suffer from mental health conditions. That, in turn, could cause Applicant to feel stress or fear, which could trigger symptoms of delusional disorder. Any expressions of stigma toward Applicant could also make him feel more isolated, undermining or negating the main benefit that socializing can provide.

7. Affiant is further of the opinion, to a reasonable degree of medical and psychiatric certainty, that Applicant's ability to avoid telling others about his mental status, mental health history, or delusions he has experienced is itself evidence of Affiant's good judgment and his positive response to treatment. Some patients who suffer from delusional disorder or other similar disorders have difficulty restraining themselves from telling others, even strangers, about their mental status or their delusional episodes. Affiant is not aware of incidents in which Applicant has done so, and Affiant regards that as a positive sign.

8. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that Applicant specifically would be at risk of experiencing setbacks in his treatment if he were to disclose his mental status or mental health history to others in his personal or professional circles. Affiant is further of the opinion, to a reasonable degree of medical and psychiatric certainty, that situations may arise in which Affiant feels it would be appropriate to disclose some or all of his mental health history to another person, *e.g.*, to an intimate partner. However, Affiant believes that such disclosures should be at Applicant's discretion, and should not be deemed to be required or to be a critical part of Applicant's treatment.

9. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that Applicant currently has the appropriate mental competency and capacity to practice law, and that he is presently actively engaged in a course of treatment that

enhances his ability to maintain that competency and capacity.

10. Affiant is of the opinion, to a reasonable degree of medical and psychiatric certainty, that Applicant's competency and capacity to practice law would not be enhanced by any requirement or suggestion that he inform others in his social or professional circles of his mental status or his mental health history.

11. Affiant has not reviewed or observed any fact or matter in the course of his treatment of Applicant, or in the course of his preparation for and participation in the hearing in this matter, that would cause him to alter the opinions and statements expressed in the instant Affidavit.

FURTHER AFFIANT SAYETH NOUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Charles Turk, M.D.
BY: Charles Turk, M.D.
Affiant

Date: August 5, 2019

IN THE

SUPREME COURT OF ILLINOIS

In re the Application for Admission to the Bar of Illinois of	
THOMAS JOSEPH SKELTON, Applicant.	Supreme Court M.R. No. 30118

PETITION PURSUANT TO SUPREME COURT RULE 708(h)

(Filed Nov. 19, 2019)

James A. Doppke, Jr.
Robinson, Stewart, Montgomery & Doppke
321 S. Plymouth Court, 14th Floor
Chicago, IL 60604
Counsel for Mr. Skelton

ORAL ARGUMENT REQUESTED

E-FILED
11/19/2019 11:41 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE

SUPREME COURT OF ILLINOIS

In re the Application for Admission to the Bar of Illinois of	
THOMAS JOSEPH SKELTON, Applicant.	Supreme Court M.R. No. 30118

PETITION PURSUANT TO SUPREME COURT RULE 708(h)

Thomas Joseph Skelton, Applicant to the Bar of the State of Illinois, by his attorney, James A. Doppke, Jr., pursuant to Illinois Supreme Court Rule 708(h), hereby respectfully requests that this Court provide him relief from the determination of the Committee on Character and Fitness not to certify him for admission to the Bar and direct that Mr. Skelton be certified for admission.

INTRODUCTION

1. A Hearing Panel of the Committee on Character and Fitness conducted a hearing on Mr. Skelton's application for admission to the Illinois Bar on July 15, 2019. On October 10, 2019, the Hearing Panel rendered its Findings and Conclusions. (Appendix 1) A majority of the Panel declined to recommend that Mr. Skelton be certified for admission, with two members filing a dissent.

SUMMARY OF REASONS FOR RELIEF

2. Mr. Skelton is a young man who, during and after law school, struggled with delusional disorder. He attempted to seek treatment, but he was not able to find an effective course of treatment until 2018. While untreated and undertreated, Mr. Skelton experienced symptoms including paranoid thoughts, hearing voices, and anxiety. Because of those symptoms, he acted in ways he should not have. On four occasions in 2015 and 2016, he behaved inappropriately while on his law school campus, never harming anyone but causing disturbances by yelling at himself and, in one brief instance, at a school employee.

3. After he applied to the Bar, Mr. Skelton sent lengthy emails to Board of Admissions staff and to Inquiry Panel members. In those emails, Mr. Skelton regrettably allowed his paranoid delusions to come to the fore. He impugned the integrity of the Board and the Inquiry Panel, and he argued that he was being singled out for prejudicial treatment. He used charged terminology comparing himself to political dissidents, and he suggested that the Board was using repressive tactics against him. Mr. Skelton would not have written or sent those emails but for his delusional disorder, which was not being treated properly. At hearing, Mr. Skelton apologized clearly, thoroughly, and sincerely for his conduct, and he demonstrated his recognition that it was both delusional and wrong.

4. The Inquiry Panel assigned to Mr. Skelton's case declined to certify him for admission, although it

commended him for his candor and for his then-recent efforts to obtain comprehensive and effective treatment. That treatment involved, for the first time, the prescription of anti-psychotic medication. The uncontested evidence in this matter displays the many ways in which treatment has helped Mr. Skelton, and in which it has prevented any recurrence of the conduct that brought him to the attention of the Committee.

5. The Majority's decision erroneously and arbitrarily disregards the powerful and unrebutted evidence of Mr. Skelton's present fitness to practice law. It relies on mischaracterizations and misreadings of the testimony at hearing in this matter, and it ignores large amounts of unimpeached evidence in order to reach conclusions adverse to Mr. Skelton. In doing so, it contravenes Mr. Skelton's rights under this Court's precedent, the Americans with Disabilities Act, and the United States Constitution.

6. Mr. Skelton respectfully requests that this Court decline to accept the majority's recommendation, and instead adopt the recommendation of the dissent and direct that he be certified for admission.

FINDINGS AND CONCLUSIONS OF THE HEARING PANEL

I. STATEMENT OF FACTS

A. Procedural Posture

7. This matter comes before this Court on Mr. Skelton's 2017 application for admission to the bar.

That application, along with Mr. Skelton's later supplement, is contained in the Character & Fitness file (hereinafter "CF"), and was admitted into evidence at the hearing in this matter. Also admitted in evidence were the *curriculum vitae* of Dr. Charles Turk and Leslie Wolowitz, Mr. Skelton's mental health treatment providers. Further, pursuant to a post-hearing request for information from the Hearing Panel, Mr. Skelton submitted the further affidavits of Drs. Turk and Wolowitz. Those affidavits were entered into evidence as well.

8. A copy of the Findings and Conclusions of the Hearing Panel is attached hereto as Appendix 1. A copy of the transcript of the July 15, 2019 hearing is attached as Appendix 2, and referred to hereinafter as "Tr."

B. Mr. Skelton's Background

9. Mr. Skelton graduated from St. Louis University in 2010 with a degree in history and philosophy. After working for AmeriCorps and in construction for a few years, he attended John Marshall Law School ("JMLS"). Tr. 148. He graduated from JMLS in June 2017. Appendix 1, at 1. He passed the July 2017 bar examination. *Id.*

C. Conduct at JMLS

10. On four occasions while attending JMLS, Mr. Skelton engaged in behavior that caused a

disturbance at JMLS. Appendix 1, at 2. The incidents included:

a. April 16, 2015 – Student overheard Mr. Skelton in JMLS library being loud and vulgar. She asked him to quiet down but he did not. Applicant was then asked by security officer to leave the building until class began.

b. October 13, 2015 – Mr. Skelton was heard yelling at himself at various times throughout the day. When security officer went to ask him to leave, Applicant was already preparing to do so and admitted he had been yelling.

c. February 18, 2016 – As Mr. Skelton was exiting through turnstile of the law school lobby, security officer observed him acknowledge the presence of an administrator in a nearby office and yell a curse at the administrator. Mr. Skelton then exited the building.

d. April 8, 2016 – Student heard another student yelling and swearing in the JMLS library and asked if he was all right. He ignored her and left the building. On reviewing camera footage, security officer noted that student causing the disturbance was Mr. Skelton.

Appendix 1, at 2.

11. In a letter dated May 26, 2016, JMLS Dean Powers noted a meeting on February 22, 2016 between himself and Mr. Skelton in which the Dean asked Mr. Skelton to cease the conduct described in paragraphs (i)-(iii) above. Appendix 1, at 2. The letter then referenced the incident described in paragraph (iv) above, any further such incidents would trigger disciplinary action. *Id.* The Dean further requested documentation to support any claim that the conduct described above had a medical explanation. *Id.*

12. JMLS did not take any disciplinary action against Mr. Skelton. Appendix 1, at 3. He did not engage in any similar behavior during his third year in law school between August 2016 and May 2017 *Id.*

2. Nondisclosures to JMLS

13. On July 7, 2017, after conferring with Board of Admissions staff, Mr. Skelton amended his JMLS application to include disclosures of two previously undisclosed incidents of undergraduate discipline for possession of alcohol in a dormitory at St. Louis University. Appendix 1, at 3. Mr. Skelton explained that he had not remembered the incidents as matters that were required to be disclosed when he completed his initial application to JMLS in the fall of 2013. Tr. 156. JMLS accepted the amendments with no further action taken. *Id.*

3. Emails During the Character and Fitness Process

14. Between approximately mid-October 2017 and mid-March 2018, Mr. Skelton sent approximately 40 emails to recipients including Committee on Character and Fitness Member Ellen Mulaney ("Ms. Mulaney") and IBAB staff in Springfield. Appendix 1, at 3. In the emails, Mr. Skelton suggested that JMLS, IBAB, the Inquiry Panel, and the legal system were biased against him, and lacked integrity. He used charged language, including political rhetoric and themes of persecution, in some of the emails. *Id.* Excerpts of some of the emails are set forth at Appendix 1, pp. 3-4.

15. On March 20, 2018, Mr. Skelton met with Ms. Mulaney and the other members of the Inquiry Panel. Appendix 1, at 5. In its subsequent report, the Inquiry Panel commended Mr. Skelton for his honesty, and for demonstrating responsibility in his work as a FOIA officer for the City of Chicago. Appendix 1, at 6. The Inquiry Panel also noted that Mr. Skelton had recently met with a new psychiatrist, that he had just begun taking a new anti-psychotic medication, and that he was seeking a psychotherapist. *Id.* However, the Inquiry Panel also noted that Mr. Skelton had not clearly or convincingly demonstrated present fitness to practice law. *Id.*

D. Psychiatric and Psychological Testimony

1. Dr. Charles Turk

16. Charles Turk is a psychiatrist and psychoanalyst who has practiced for 40 years, focusing on schizophrenic patients. Tr. 13-15, 28. In September 2018, Dr. Leslie Wolowitz referred Mr. Skelton to Dr. Turk in connection with Mr. Skelton's pending proceedings before the Committee. Tr. 15-16, 34, 38. Thereafter, Dr. Turk saw Mr. Skelton regularly while Mr. Skelton also remained in treatment with psychiatrist Dr. Eric Yu. Tr. 1516, 33, 38. Prior to the hearing Dr. Turk became Mr. Skelton's treating and prescribing psychiatrist Tr. 17, 21, 33. Mr. Skelton chose to switch from Dr. Yu to Dr. Turk because he felt that Dr. Turk was more supportive of Mr. Skelton's efforts to live a good, healthy life despite his diagnosis. Tr. 21, 59-60.

17. Dr. Yu had originally prescribed Seroquel to Mr. Skelton. Tr. 16-17, 39, 52. Dr. Turk has maintained that prescription. Tr. 16-17, 24, 33. Seroquel is an antipsychotic which helps to organize the personality, ensure stability, and suppress symptoms including the hearing of voices. Tr. 17, 23-24.

18. Shortly after he began seeing Mr. Skelton, Dr. Turk diagnosed him with delusional disorder. Tr. 17-18, 29, 40. Delusional disorder involves an elaborate construction of thought departing from reality and that accounts for disturbed feelings, fears, and behaviors. Tr. 18. The disorder also involves a patient having paranoid thoughts. *Id.* Dr. Turk has observed paranoid

thoughts in Mr. Skelton, as well as a sense of being personally selected as the target of a conspiracy. Tr. 18, 21.

19. In Dr. Turk's opinion, Mr. Skelton's conduct in sending emails to the Board of Admissions and the Inquiry Panel during the Character and Fitness process was consistent with delusional disorder. Tr. 22-23. Mr. Skelton's feeling that the Board had already decided against him, as expressed in the emails, was also consistent with the disorder. Tr. 22. In Dr. Turk's opinion, both Mr. Skelton's conduct at JMLS and the emails he sent to the Board of Admissions were caused by Mr. Skelton's delusional disorder. Tr. 26-27.

20. Mr. Skelton has told Dr. Turk that the emails were inappropriate and that he regrets having sent them. Tr. 37. In Dr. Turk's opinion, Mr. Skelton was "undertreated" at the time he sent the emails. Tr. 44-45.

21. According to Dr. Turk, delusional behavior is unlikely to occur during Mr. Skelton's practice of law, because he has increasingly been able to distinguish between delusion and reality and to control his emotions. Tr. 32, 43. His treatment helps him make the distinction between delusional thinking and realistic thinking. Tr. 27. Mr. Skelton has not lashed out or been consumed in delusional thinking during the course of his consultations with Dr. Turk. Tr. 60-61. Mr. Skelton has been fully cooperative and compliant throughout those consultations. Tr. 21-22, 23, 35. He is forthright, and he has insight into his condition. Tr. 23, 32. He can reflect on incidents that happen to him, and perceive

that there are no conspiracies against him. *Id.* His hearing of voices, and misinterpretations of conversations, is now almost nonexistent. Tr. 24.

22. Upon questioning by the Panel, Dr. Turk testified concerning events thatoccurred to Mr. Skelton in 2018 and 2019 that caused Mr. Skelton some anxiety:

a. In October 2018, while at work, Mr. Skelton thought someone was yelling at him, but he was able to reconsider. Tr. 50. In that incident, Mr. Skelton's delusional thinking lasted about half an hour. *Id.*

b. In December 2018, during a class at work, Mr. Skelton thought something that was said had been meant for him, but then realized it had not been. Tr. 51. Mr. Skelton's thoughts about the matter passed within the hour and did not affect what he was doing. *Id.*

c. In February 2019, Mr. Skelton was concerned by a family situation. Tr. 49-50. There was a concern that one family member may have been abusing or taking advantage of someone else. Tr. 49-50. Mr. Skelton's thoughts about the matter were transient, and they did not last more than a day. Tr. 49.

d. In June 2019, as he was falling asleep, Mr. Skelton had strange thoughts. His thoughts were prompted by reading materials in which a character had grandiose ideas of how to cure the problem of police misconduct. Tr. 47-48. His thoughts

> during that episode lasted less than an hour, and they had no physical, emotional, or mental effects. Tr. 48-49.

23. Dr. Turk testified that Mr. Skelton was not "consumed with delusion" during those incidents, and they would not cause him to change Mr. Skelton's medication. Tr. 52, 61. Where Mr. Skelton might previously have experienced a misunderstanding of the circumstances, he now is able to avoid that, and to recognize reality. Tr. 23.

24. In Dr. Turk's opinion, Mr. Skelton may not need Seroquel for the rest of his life. Tr. 25-26. A patient who is functioning and sleeping well, is not beset by delusional thinking, a and experiencing a low level of anxiety could stop taking the medication. Tr. 25. Dr. Turk would continue to treat Mr. Skelton even if he were off the medication. Tr. 25-26. Mr. Skelton has not asked to stop taking Seroquel or to end his psychiatric treatment. Tr. 53. He has been consistent in his visits with Dr. Turk. Tr. 23.

25. Dr. Turk stated that it would be difficult to determine exactly how long Mr. Skelton may need treatment, but that it may need to last for five or ten years. Tr. 55. Dr. Turk further opined that with continued treatment including Seroquel or other medication, Mr. Skelton would be able to practice law. Tr. 27. Dr. Turk further opined if Mr. Skelton were granted conditional admission, and if he remained in treatment during that time, he would remain appropriate to practice law. Tr. 28.

2. Dr. Leslie Wolowitz

26. Dr. Wolowitz is a psychodynamic psychotherapist who has been treating teenagers and adults for over 30 years. Tr. 62. At the time of the hearing, she had been treating Mr. Skelton for one and one-half years. Tr. 120. She has previously treated patients with schizophrenia, schizoaffective disorder and delusional disorder. Tr. 63. She has participated in reviews and evaluations of graduate students whose mental health or competence has been called into question. Tr. 62. Dr. Wolowitz' training and experience leads her to view diagnoses as complex, particularly as regards schizoaffective disorders. Tr. 67. She does not disagree at all with Dr. Turk's diagnosis of Mr. Skelton as having delusional disorder. *Id.*

27. When Mr. Skelton began seeing Dr. Wolowitz, he was taking Seroquel. Tr. 70. He reported to Dr. Wolowitz that his use of Seroquel has been helpful to him. Tr. 71. Based on that, Dr. Wolowitz believes it is a good medication for him. *Id.*

28. Upon first meeting with Mr. Skelton, Dr. Wolowitz' impression was that he was "somewhat introverted, a little bit skittish which probably had to do with anxiety, highly articulate . . . quite kind, very bright, and very interested in – seemed very authentic about getting help and treatment." Tr. 64.

29. Dr. Wolowitz' described Mr. Skelton's conduct at JMLS as acting out inappropriately, and "behind that acting out was a high sensitivity and emotional reactivity with some paranoid ideation, and . . .

perhaps a history of some depression and anxiety as well." Tr. 64-65. Paranoid ideation is a delusional reference involving thinking that something is aimed at you which in reality is not. Tr. 65. Mr. Skelton told Dr. Wolowitz that he might have been hearing voices during the JMLS incidents, and that he was yelling in various parts of the school. *Id.* Dr. Wolowitz has encountered a number of patients who have exhibited behavior like Mr. Skelton's in the past Tr. 66.

30. Dr. Wolowitz also discussed with Mr. Skelton his emails to Board of Admissions staff and the Inquiry Panel. Tr. 65-66. Mr. Skelton told her that the emails were motivated by feelings of not being understood and of persecution, and that he inappropriately spoke his thoughts in the emails. Tr. 66.

31. Shortly after their first meeting Dr. Wolowitz learned about the Inquiry Panel's denial. Tr. 87. Mr. Skelton hoped that he would be able to prove that with therapy and medication he would be able to practice law. *Id.* During his early consultations with Dr. Wolowitz, Mr. Skelton expressed some confusion about some aspects of the Inquiry Panel process, and he occasionally expressed a question about what made sense to him. Tr. 88. But in general, he was able to understand why his behavior had been a concern and alarm. *Id.*

32. Mr. Skelton has attended sessions with Dr. Wolowitz on a regular weekly basis. Tr. 67, 123-124. He is an extremely cooperative, communicative patient, and he is one of the most consistent people she has ever met. Tr. 67-68. They discuss issues at home, work, past

history, present thoughts, feelings, behavior, and interactions Tr. 68. Prior to receiving appropriate treatment, when depression and anxiety go untreated in someone, exacerbated by external stress, the symptoms of those conditions can worsen over time if left untreated. Tr. 90. Dr. Wolowitz believes that that is what happened to Mr. Skelton. *Id.* Since beginning treatment with Dr. Wolowitz, Mr. Skelton has not acted out, as he did at JMLS or in the emails Tr.69, 79-80, 96. He has never exhibited any kind of malicious behavior, or behavior in which he intends to hurt someone else physically, verbally, or emotionally. Tr. 74-75. He demonstrates insight and self-reflection. Tr. 69. He engages in "reality testing," in which one checks one's own subjective reality with someone else or something else, to see if it is consensual and real. Tr. 69-70. Mr. Skelton now does that spontaneously. Tr. 70.

33. Mr. Skelton has told Dr. Wolowitz that his work relationships are positive, although there are times when he feels not as much a part of the group as he would like to be. Tr. 82, 85-86. Dr. Wolowitz is unaware of any situation at work in which Mr. Skelton has acted out while at work. Tr. 85. Mr. Skelton has a longstanding group of friends outside the workplace – some from high school, some from previous jobs, some from college, and some from law school. Tr. 83.

34. On a number of occasions, Dr. Wolowitz and Mr. Skelton have discussed "minor contemporaneous thoughts" he has had. Tr. 92. These incidents did not give rise to the type of conduct exhibited at JMLS. Tr. 68-69.

35. For example, in the summer of 2019, Mr. Skelton talked about an incident in which, while on the "L" train in a car with only a few other people, he was approached by a man asking for money. Tr. 92-93. The man began yelling at Mr. Skelton. Tr. 93. Mr. Skelton responded to the man appropriately. Tr. 94-95. Mr. Skelton told Dr. Wolowitz that he had felt afraid and powerless, and they discussed what his choices had been in handling the situation. Tr. 93-94. He "reality-tested" with regard to the experience, checking what the best responses were or could have been in order to avoid harm or the risk of harm. Tr. 94-95. Dr. Wolowitz wanted to check whether there was some delusional material in Mr. Skelton's mind concerning the incident. Tr. 122. Specifically, she discussed with him feelings to the effect that the man on the train "had it out for him in particular." Tr. 123. Mr. Skelton concluded that "the most likely scenario" was that the man had no vendetta. *Id.*

36. In another incident, Mr. Skelton told Dr. Wolowitz that he felt as though a teacher had purposely been given an A minus instead of an A. Tr. 70, 95. He then realized that the grade likely had a rational basis, such as something task-oriented that Mr. Skelton had not done. Tr. 70. He realized that he had simply been frustrated about the grade, and that there was probably nothing behind it other than that. Tr. 95. Mr. Skelton was able to laugh at himself a bit concerning that incident. Tr. 70.

37. Mr. Skelton can recognize disturbing thoughts, and he can understand distortions in his

thinking. Tr. 74, 142-143. He and Dr. Wolowitz discuss managing stress, and the importance of social support, in that process. Tr. 75. Dr. Wolowitz has told Mr. Skelton that it is important that he not "become socially isolated." *Id.* Mr. Skelton has had increased social support over the time that Dr. Wolowitz has seen him. Tr. 76. Continued treatment will help Mr. Skelton avoid, and further decrease, instances of disturbing thoughts. Tr. 74-75. Mr. Skelton's "growing capacity" for self-reflection and awareness makes it less likely that he would do anything out of bounds or inappropriate even if he were to face professional disappointment. Tr. 133-134.

38. Dr. Wolowitz has seen "a lot of progress" in Mr. Skelton. Tr. 141. While his vulnerability to distorted thinking in the future would be hard to predict, his continued participation in a stable treatment regime will render it unlikely that he would backslide. Tr. 141. With continued treatment, his prognosis is good, and he would be competent to practice law. Tr. 76-77.

D. Other Testimony: Amber Ritter

39. Amber Ritter has been licensed to practice law in Illinois for 20 years. Tr. 99-100. She has served as an Assistant Corporation Counsel for the City of Chicago for 16 years, including 41/2 years as Chief Assistant Corporation Counsel. Tr. 99. Ms. Ritter is in charge of the City of Chicago law department group known as "FOIA Requests and Litigation." *Id.* For

about two years, Ms. Ritter has been Mr. Skelton's direct manager in his work as the FOIA officer for her department. Tr. 100. As a FOIA officer, Mr. Skelton receives and reviews requests for information from the public or the media. *Id.* He then has five business days, with one potential five-day extension, to compile relevant records in response. *Id.* He may also redact the records where appropriate. *Id.*

40. Mr. Skelton works from a cubicle directly outside Ms. Ritter's office. Tr. 101. He checks in with her on a regular basis about the decisions he is making. Id. She observes his work, and she knows him to be one of the very best FOIA officers working for the City. Id. He is very intelligent, he understands the legal issues underlying FOIA work and relevant privileges, and he "very much gets it very quickly." Tr. 102. The main part of the job is receiving and processing FOIA requests, which can be very stressful. *Id.* The stress comes from the short turnaround time on requests, the demanding nature of the requests from media or other members of the public, and the difficulties associated with gathering records from City attorneys. Tr. 102-103. Ms. Ritter has never seen Mr. Skelton have any problem with the stress of the job, and he seems like has very good control. Tr. 102. When he has a question for Ms. Ritter, he "comes to her with options as opposed to coming to me with freaking out." Tr. 105. He presents situations to her calmly. *Id.*

41. Ms. Ritter observes Mr. Skelton's relationships with FOIA requesters who are members of the media. Tr. 105-106. She can sometimes overhear phone

calls he has with them, and she has seen email exchanges in which media requesters have profusely thanked Mr. Skelton for his hard work. Tr. 106. He has positive relationships with media requesters, and he treats them with respect. *Id.*

42. Ms. Ritter has never been aware of any incident in which Mr. Skelton has acted inappropriately toward anyone in the course of his work. Tr. 104-105. He interacts with lawyers and other staff of the City law department, including Ms. Ritter and her supervisor, daily. Tr. 111-112. He also regularly comes into contact with some 270 City attorneys who may have access to documents he needs to fulfill FOIA requests. Tr. 112. He works collaboratively with others in assembling responses to requests. *Id.*

43. Mr. Skelton has created organizational structures to assist him in performing his duties. Tr. 116-117. He keeps a spreadsheet to keep track of FOIA requests. Tr. 117. He makes it look effortless, whereas other FOIA officers can become overwhelmed by the demands of the job. *Id.*

44. Mr. Skelton occasionally advises Ms. Ritter that he has extra time, and he volunteers to work on legal research or other projects. Tr. 115-116. Ms. Ritter has involved Mr. Skelton in such projects, and he has successfully completed them. *Id.*

45. About six months prior to the hearing, Mr. Skelton came into Ms. Ritter's office and asked if she would be willing to be a witness on his behalf in connection with his Character and Fitness proceedings.

Tr. 110. He discussed the matters of concern in these proceedings with her, such that she was comfortable with being a witness. Tr. 110-11. She specifically asked him if he had committed a crime or victimized anyone, and he said that he had not. *Id.* Mr. Skelton's counsel later verified that. Tr. 111. Mr. Skelton's counsel also made her aware of the specific nature of the JMLS incidents as well as the emails to the Board of Admissions and the Inquiry Panel. *Id.*

46. Ms. Ritter described the City work environment in which she supervises Mr. Skelton as "friendly." Tr. 114. Ms. Ritter would "absolutely" be comfortable with Mr. Skelton's admission to the Bar of Illinois. Tr. 106-107. She would "certainly" recommend Mr. Skelton for a job in the City's litigation division. Tr. 116.

E. Applicant's Testimony

47. Mr. Skelton was 31 years old at the time of the hearing. Tr. 146. He grew up in Oak Park, Illinois. *Id.* He went to St. Louis University for college, majoring in history and philosophy. Id. He graduated in 2010, after which he was employed in construction. Tr. 147, 196. In October 2010, Mr. Skelton joined AmeriCorps, and he worked in that organization for a year and a half. Tr. 150, 194, 215. His work there included working in a legal aid office in Champaign, which sparked his interest in the practice of law. Tr. 147-148, 196, 215.

48. While he was in college, Mr. Skelton experienced depression, requiring 5 days of inpatient

treatment in 2009. Tr. 149, 193-194, 214. He sought that treatment voluntarily. Tr. 149, 194-195. The treatment was helpful, but it did not end his feelings of depression. Tr. 150, 194. Mr. Skelton met with a social worker for counseling regularly during the remainder of his college career, and he took anti-psychotic and anti-depressant medications as prescribed by a doctor, although he remembers the anti-psychotic was at a low dosage. Tr. 150, 194, 215.

49. Returning to Oak Park before law school, Mr. Skelton began seeing a psychiatrist. Tr. 150-151, 216. She prescribed him Wellbutrin, which he took. Tr. 150-151, 154-155, 180, 217-219.

50. Mr. Skelton began attending JMLS in 2014, and he found the experience of law school to be stressful. Tr. 148, 216. He began to perceive that he was being persecuted, and that others were inappropriately accessing information related to him. Tr. 148-149, 197. Mr. Skelton believes that those feelings and perceptions were incorrect, and that they were a product of mental illness. Tr. 151-152, 154.

51. Despite his difficulties, Mr. Skelton had friends at JMLS. Tr. 198. However, he did not feel comfortable confiding in them concerning his mental health struggles. *Id.* Generally, when dealing with his feelings, he would leave the JMLS campus, and that would help him avoid having an outburst. Tr. 157, 201-202. On some occasions, he was unable to control his behavior, leading to the four incidents involving yelling at himself or others. Tr. 202-203.

52. In the first such incident, in 2015, Mr. Skelton was in the JMLS library. Tr.152-153, 198-199. Tr. 152. He began yelling to himself in a study room after having trouble studying and hearing things. Tr. 152-153, 199-200. He experienced adrenaline and tunnel vision. Tr. 199. He did not, and did not mean to, yell at any particular person, and he did not intend to cause a disruption. Tr. 152-153. He regretted having done so. Tr. 153. This incident was the first time he had ever had an episode like that. *Id.* When confronted, he left the premises without argument. Tr. 201.

53. In 2016 a similar experience occurred when Mr. Skelton felt overwhelmed and agitated following a class. Tr. 157-158, 203-204. Again, he experienced adrenaline and tunnel vision. Tr. 157, 206. He determined to leave the building, but before he left, he made inappropriate comments to a school administrative official whose office he passed on his way out. Tr. 157-158, 203-206. Mr. Skelton regrets having made that mistake. Tr. 158.

54. In the spring semester of 2016, Mr. Skelton went to six or eight weekly counseling sessions at JMLS. Tr. 153-154, 218-219, 221-222. He continued those sessions when he returned to the school in the fall of 2016. Tr. 154, 222. He found the counseling helpful in dealing with stress. Tr. 154.

55. During law school, Mr. Skelton worked as an extern for the Hon. Jeffrey Cole. Tr. 177. He interned at the Environmental Law and Policy Center, and at the Chicago Transit Authority ("CTA"). Tr. 177-178.

While at the latter, he obtained a license pursuant to Supreme Court Rule 711, and, under appropriate supervision, he did legal research and wrote and argued a summary judgment motion. In all, Mr. Skelton's work experiences during law school were positive. Tr. 178.

56. Mr. Skelton graduated from JMLS in 2017, and he then took the bar exam right away. Tr. 155. During the Board of Admission's review of his application, the Board alerted him to his omission to report certain college-era alcohol violations to JMLS. Tr. 156. Mr. Skelton had forgotten about those violations when he applied to JMLS. Id. He disclosed the incidents to JMLS in 2017, and the school took no action. Id.

57. Mr. Skelton applied for, and obtained, the position of FOIA Officer at the City of Chicago in September 2017. Tr. 181.

58. In the fall of 2017, he met with Ms. Mulaney concerning the Board's inquiry into the JMLS incidents. Tr. 158, 223. He experienced paranoid thoughts regarding the inquiry, and he felt that he would be denied admission as a result of it. Tr. 160. His paranoia flowed partly from an incident during his JMLS career in which Nazi graffiti was found drawn on various parts of the school's campus; Mr. Skelton was interviewed by campus security concerning the incident. Tr. 163, 165-166. Mr. Skelton had not drawn the graffiti, and after he said so during his interview, he was not questioned about the matter again. Tr. 166. During the Board of Admissions inquiry, though, he became concerned that someone from JMLS had accused him of

drawing the graffiti. Tr. 162. That prompted his emails to Ms. Mulaney. *Id.* He then embarked on a course of writing emails in which he expressed his feelings of persecution. *Id.*

59. Mr. Skelton admitted that those emails were inappropriate, grandiose and deranged. Tr. 163, 227. He also acknowledged that they were not spontaneous, and that they resembled arguments. Tr. 216-208, 213-214. However, he also explained that he was feeling unhinged during that time, and that his fears as expressed in the emails were not based in reality. Tr. 163, 166.

60. As he composed the emails, he did not think about how the recipients would react, but he now understands why they would have reacted negatively. Tr. 208, 228. He took responsibility for his misperceptions and failure to take his delusional thoughts seriously. Tr. 224. His meeting with the Inquiry Panel helped him to realize that he was not being persecuted. Tr. 164. He understands the Inquiry Panel's declination to certify him for admission, and he understands that the emails must have struck them as frightening and offensive. *Id.* He is embarrassed and remorseful about having written and sent the emails. Id. He apologized to the Inquiry Panel and to JMLS for his conduct. Tr. 191-192. He would not engage in that conduct today. Tr. 166.

61. Mr. Skelton cooperated in an evaluation through the Illinois Lawyers' Assistance Program ("LAP"). Tr. 168. The evaluation was performed by Dr.

Joy Ryba. *Id.* Dr. Ryba was not available to provide treatment to him, and he soon thereafter began treatment with Dr. Yu. Tr. 169. Dr. Yu prescribed Seroquel, which Mr. Skelton has taken regularly ever since. Tr.169-170.

62. Mr. Skelton finds Dr. Wolowitz to be very supportive, and he confides in her. He also values Dr. Turk's expertise, and he feels that Dr. Turk understands his perspectives. Tr. 173. During his treatment, psychotic symptoms such as hearing a negative commentary in his mind have become the exception, not the standard. Tr. 210. Mr. Skelton has accepted that he has a psychotic disorder, and he has learned to monitor his thinking for delusions. Tr. 225-226. He understands and considers the consequences of his actions. Tr. 228.

63. Mr. Skelton enjoys his work as a FOIA officer. Tr. 183. He can handle the stress of the job, and when stressful situations develop, he discusses them with Ms. Ritter or other attorneys. Tr. 184-185. He has never lost control at work. Tr. 185. He has also applied for a non-attorney position as an asylum officer with the U.S. Citizenship and Immigration Service. pending security clearance review. Tr. 185-186. The position would be located in Chicago, allowing Mr. Skelton to continue treating with Drs. Turk and Wolowitz. *Id.* He intends to continue that treatment for as long as his doctors recommend that he do so. Tr. 188-189. He does not consider remaining in treatment a negative. Tr. 188.

64. The people in Mr. Skelton's life include his parents, friends, colleagues and doctors. Tr. 211. He would feel comfortable seeking support from some of his friends whom he has known since middle school. Tr. 211-212. Mr. Skelton's parents are fully aware of the Character and Fitness process, and they have been supportive of him. Tr. 212-213.

F. The Hearing Panel's Recommendation

65. The Hearing Panel Majority declined to find that Mr. Skelton had proved, clearly or convincingly, his present character and fitness to practice law. It found that Mr. Skelton's five-month course of conduct in sending the emails to the Board of Admissions and the Inquiry Panel constituted multiple individual acts of misconduct, and that although he could have reconsidered and changed course, he did not. Appendix 1, at 32. The Majority further found that "[o]n denial by the Inquiry Panel, Mr. Skelton acknowledged his inappropriate conduct, but still could not understand why that conduct was alarming to the Inquiry Panel." *Id.*

66. The Majority further found that while Ms. Ritter provided positive testimony concerning Mr. Skelton's job performance, her testimony was diminished by the fact that "just before Hearing . . . she was unaware of the incidents at JMLS and Mr. Skelton's emails." Appendix 1, at 32. The Majority also found that for Mr. Skelton to have sent some of the emails during work hours undermined Ms. Ritter's ability to "clearly and convincingly corroborate his abilities

either to take responsibility for his misconduct or use good judgment in a professional setting." Appendix 1, at 32-33.

67. While it considered Mr. Skelton's doctor's testimony "link[ing] his misconduct to a medical condition," the Majority focused on "recent instances of delusional thought during non-stressful circumstances" and their "recommendation of long-term treatment." Appendix 1, at 33. It found that there had been an "insufficient passage of time clearly and convincingly corroborative of his acceptance of responsibility and demonstrative of rehabilitation." Id. It further faulted Mr. Skelton for not having produced the testimony of his parents to corroborate his testimony that they have been supportive of him. Appendix 1, at 34. The Majority found that "evidence failed to demonstrate a robust support network" for Mr. Skelton in general, which "remain[ed] a serious concern." *Id.* In concluding its findings, the Majority stated its expectation that "going forward Mr. Skelton will conduct himself as set forth in the essential eligibility requirements . . . and demonstrate rehabilitation from misconduct." Appendix 1, at 34.

68. The two dissenting members of the Hearing Panel, by contrast, found that Mr. Skelton had been "extremely candid" and had "demonstrated full acceptance of responsibility and sincere remorse for disturbing or offending the recipients of his email correspondence." Appendix 1, at 34. The Dissent credited Ms. Ritter's testimony as "persuasive . . . that Mr. Skelton has conducted himself properly and

respectfully of others in the context of his two-year employment and that he would be able to do so in a stressful environment as a practicing attorney." Appendix 1, at 34-35. The Dissent also gave proper weight to the testimony of Mr. Skelton's treatment providers, and noted the effectiveness of the treatment they provided. Appendix 1, at 35-36.

69. The Dissent found that Mr. Skelton had demonstrated the essential eligibility requirements necessary for admission to the Bar of Illinois, and it would have recommended that he be conditionally admitted, with a monitoring period extending beyond the normal two-year period. Appendix 1, at 36.

ARGUMENT

A. Standard of Review

70. This Court is vested with the inherent power to regulate admission to the bar. *In re Application of Day*, 181 Ill. 73 (1899). This power carries with it the concomitant duty to protect the public from dishonesty and incompetency on the part of members of the bar. *People ex rel. Chicago Bar Association v. Goodman*, 366 Ill. 346, 349-50 (1937). The exercise of the power and the discharge of the duty require that the final judgment concerning admission of an applicant rest with this Court. The determination by the committee concerning the character and fitness of Mr. Skelton is advisory, and it neither binds this Court nor limits its authority to take action. *In re Mitan*, 75 Ill.2d 118 (1979); *In re Loss*, 119 Ill.2d 186 (1987). When a

hearing panel concludes that an applicant does not possess the good moral character and general fitness necessary for the practice of law, the Court will not reverse unless the recommendation is arbitrary. *In re Krule*, 194 Ill.2d 109, 111 (2000).

71. The determination of the majority in this case was arbitrary and should be rejected by this Court. Mr. Skelton fully and appropriately apologized for his conduct at hearing, and he does so again now. Although he presented extensive unrebutted evidence that clearly demonstrated that his prior conduct was the product of a psychiatric disorder, he nevertheless expressed his recognition of, and remorse for, the wrongfulness of his past conduct. The Majority, however, found the opposite: that Mr. Skelton had not expressed remorse or recognition of his misconduct. That erroneous finding was based on a misconstruction of the testimony of one of Mr. Skelton's treatment providers, and it should be reversed.

72. Similarly, the Majority concluded that Mr. Skelton was "socially isolated, and found that to be a "serious concern." Appendix 1, at 34. While Mr. Skelton's treatment providers did testify that social isolation can be a risk factor for people with delusional disorders, they did not state that Mr. Skelton himself was socially isolated or otherwise at risk. Rather, they and other witnesses provided significant unrebutted evidence that Mr. Skelton has a social support network, and that he benefits from it. The Majority wrongly ignored that evidence to come to the opposite conclusion; and they further erred in determining that

"social isolation," even if present, could constitute a reason to deny an applicant a law license.

73. The Majority erroneously disregarded Ms. Ritter's testimony. Ms. Ritter, a capable and experienced attorney, provided overwhelmingly positive testimony concerning Mr. Skelton and his work. Her testimony, which was not impeached in any way, portrayed Mr. Skelton as a skilled and responsible employee who had never had any untoward reactions toward any of his colleagues or anyone he dealt with while on the job. The Majority chose to disregard Ms. Ritter's testimony for arbitrary reasons, as set forth more fully below.

74. The Majority reviewed candid and thorough testimony from Mr. Skelton's treatment providers and drew from it incorrect and derogatory inferences. Both doctors testified about Mr. Skelton's recent therapeutic sessions, describing times when he had small and fleeting thoughts that were not realistic. The Majority termed these incidents additional "delusional episodes" and – while not explicitly saying so – found that they somehow detract from Mr. Skelton's character. That was error.

75. The Majority claimed not to base its decision on a prejudicial view of Mr. Skelton's disability, but in fact it did just that. It impermissibly disregarded clear and uncontested evidence of Mr. Skelton's treatment, rehabilitation, and present mental fitness. It made findings clearly contrary to the evidentiary record. It set an impossible burden of proof for Mr. Skelton that

would not and could not be imposed on anyone without his disability. In addition to being prejudicial and arbitrary, that is inconsistent with Mr. Skelton's rights under the Americans with Disabilities Act and the United States Constitution.

76. Therefore, the majority's determination is arbitrary and should be reversed.

B. The Majority disregarded the medical evidence concerning Mr. Skelton's present mental fitness and rehabilitation.

77. The Majority discounted the expert opinions of Dr. Turk and Dr. Wolowitz because "each noted instances of delusional thought during non-stress circumstances" and "both recommended long-term treatment." These reasons are arbitrary and in no way call into question Mr. Skelton's present fitness to practice law.

78. The occurrences that the Majority termed "instances of delusional thought" are referred to in paragraphs 22, 35, and 36, supra. Those occurrences, individually and taken together, are trivial. No one testified that Mr. Skelton engaged in any problematic conduct during any of them. It is hyperbolic, and unfair, to refer to them as "delusional" episodes when they are nothing more than passing thoughts. Anyone could misinterpret what a colleague said at work, question whether a family member is being taken advantage of, think about police misconduct, question a grade in a course, or have an unnerving interaction with someone

behaving erratically on the train. The instances do not call into question Mr. Skelton's present mental fitness or impeach Dr. Wolowitz's or Dr. Turk's testimony. The instances are nothing more than daily minutiae, and the Majority erred in finding that their existence somehow impeached the medical expert's testimony or Mr. Skelton's present mental fitness.

79. Before he sought and received appropriate treatment, Mr. Skelton regrettably experienced real delusions that, as explained thoroughly by Drs. Turk and Wolowitz, caused him to write inappropriate and tonally aggressive emails to and about his law school and Ms. Mulaney. The later instances cited by the majority bear no resemblance to Mr. Skelton's real prior symptoms, their effects, or the conduct to which they contributed. Mr. Skelton wrote no emails of any kind relating to his benign transitory thoughts. He let any momentary misapprehensions pass, and he went back to living his life. This is another reason why the "instances of delusional thought" cited by the Majority are unnoteworthy and trivial.

80. Absent Mr. Skelton's mental health history, these occurrences would never form any part of a basis to deny anyone certification for admission. They have no bearing on Mr. Skelton's present fitness to practice law, and no concrete effect on his work or anything else. They do not relate in any way to any of the essential eligibility requirements to practice law in Rule 6.3. The majority's finding that they somehow called Drs. Turk and Wolowitz' opinions into question, or that they

affected Mr. Skelton's present fitness to practice, was arbitrary, unreasonable, and erroneous.

81. In addition, the Majority's opinion inappropriately casts the doctors' testimony in a negative and prejudicial light. Both doctors emphasized the importance of Mr. Skelton discussing with them any possible misapprehension in the course of his treatment. Dr. Wolowitz referred to it as "reality testing," and cited it as a skill that Mr. Skelton now has. Tr. 69-70. That is what he did, and that is what he should have done: he used his doctor and therapist to reality test his perception of events in his life. Instead of acknowledging Mr. Skelton's conscientious engagement in treatment, the Majority inappropriately and arbitrarily used it as evidence that Mr. Skelton is not presently fit to practice law. That, in turn, creates an impossible burden of proof for Mr. Skelton, as the actions that lead to Mr. Skelton's present mental fitness become reasons for the Majority to conclude that Mr. Skelton is not mentally fit to practice law.

82. The Majority also discounted Dr. Turk's and Dr. Wolowitz's testimony because each noted that Mr. Skelton needed long term treatment. Two sentences later in its opinion, the Majority stated that it was not denying Mr. Skelton's application for admission on the basis of treatment. It is arbitrary for the Majority to both discount Dr. Turk's and Dr. Wolowitz's testimony because they note that Mr. Skelton needs long term treatment while also stating treatment is not the reason the Majority denied Mr. Skelton's application for admission.

83. The Majority's finding undermines this Court's efforts to destigmatize mental health treatment in the legal profession. Long-term treatment of mental health conditions is not uncommon, and it is not a reason to deny an applicant admission to the bar. This Court has rightly encouraged and promoted the Lawyer's Assistance Program as a means of obtaining treatment for mental-health-related conditions of many kinds. There is no time limit on the help that lawyers can seek, or that LAP can provide; and there should be no stigma associated with seeking long-term help. The Court has correctly provided that treatment through LAP is confidential in order to encourage those that need long term treatment to seek it out (*see*, *e.g.* Rule 1.6(d) of the Illinois Rules of Professional Conduct). The Majority's decision could have the effect of re-stigmatizing mental illness in the legal profession, and it undermines this Court's efforts to encourage people who need treatment to seek it. People with mental illness may think twice about seeking treatment because they will correctly fear being subject to decisions like the Majority's that punish people for seeking psychological treatment.

84. Overall, it is arbitrary to discount the doctors' opinion about Mr. Skelton's current mental fitness because of the "need for long term treatment" where the Majority itself says that treatment is not a basis to deny an applicant's present mental fitness, and where the Supreme Court itself encourages those who need long term treatment to seek it out.

C. The Majority failed to accord the medical testimony proper weight in that it clearly and convincingly proved Mr. Skelton's present mental fitness.

85. The Majority opinion states that "both doctors provided affidavits opining as to Mr. Skelton's appropriate mental competency and capacity to practice law; neither doctor, however, provided clear and convincing evidence of the present character and fitness requisite for admission." Dr. Turk and Dr. Wolowitz not only provided affidavits detailing their opinion regarding Mr. Skelton's present fitness to practice law, but they both testified throughout the hearing about their shared belief that Mr. Skelton is fit to practice law, and will remain so given compliance with treatment. Tr. 27-28; Tr. 76-77. The Majority's opinion contravenes clear case law from this Court that a psychiatrist's or psychologist's opinion as to present mental fitness is clear and convincing evidence that someone is presently fit to practice law.

86. *In re Hessberger*, 96 Ill. 2d 423 (1983) involved an attorney who had been found not guilty of murder by reason of insanity, and who had been ordered to be transferred to disability inactive status petitioned for restoration to active status. At hearing, Mr. Hessberger submitted evidence from three psychiatrists that his bipolar disorder was presently under control, would not interfere with the practice of law, and was unlikely to reoccur. The court ordered that Mr. Hessberger be transferred to active status after he completed a one-year period as a paralegal to re-tool

his legal skills. In reasoning central to the decision, and especially relevant to Mr. Skelton's circumstances here, the Court held:

> The medical witnesses who examined the attorney were unanimously of the opinion that he is mentally capable of resuming the practice of law. This question is, in important part, a questions within a discipline other than ours, and the uncontradicted testimony on the question of well-qualified witnesses in the field of psychiatry must be given great respect.

Id. At 430.

87. Here, Mr. Skelton presented unanimous opinions from highly qualified mental health professionals that he is currently fit to practice law. Dr. Turk specifically denied that the "instances of delusional thought" referenced in the Majority's opinion required any adjustment to his treatment, or that they caused Mr. Skelton to become "consumed with delusion." Tr. 52, 61. Dr. Wolowitz referred to the incidents as "minor." Tr. 92. Both doctors believed that Mr. Skelton has responded well to his current course of treatment and has gained insight into his condition – further evidence of his present fitness to practice law. Tr. 23, 69. Dr. Turk testified that the current course of treatment prevents reoccurrence of behavior Mr. Skelton exhibited towards the Board and Inquiry Panel. Tr. 23. The reasoning of *Hessberger* applies to Mr. Skelton's case, and the Hearing Panel should have given great respect the doctors' uncontradicted testimony. Their decision was

both inconsistent with the reasoning of *Hessberger* and arbitrary in its own right, and this Court should decline to uphold it.

D. The Majority disregarded Ms. Ritter's testimony concerning Mr. Skelton's good judgment and ability to take responsibility for his poor conduct for arbitrary reasons that are not supported by the evidence.

88. The Majority disregarded Ms. Ritter's testimony at the hearing because "just before the hearing, she was unaware of the incidents at JMLS and Mr. Skelton's emails" and because "Mr. Skelton had written and sent some of those emails [to the Board and Inquiry Panel] on the job." Appendix 1, at 32. Both reasons are arbitrary, and they do not contravene Ms. Ritter's clear and obvious testimony in support of Mr. Skelton's good judgment and character.

89. Nothing in the record supports the conclusion that Ms. Ritter found out about the incidents at JMLS and Mr. Skelton's emails "just before" the hearing. Mr. Skelton discussed the Character and Fitness proceedings with Ms. Ritter himself, and afterward she felt "comfortable" with what he had disclosed. Tr. 110. Then, through his counsel, he provided Ms. Ritter more details concerning the incidents at JMLS and before the Inquiry Panel, as was appropriate. Tr. 110-111.

90. Additionally, the timing of Mr. Skelton's and his counsel's discussions with Ms. Ritter is a red herring. Ms. Ritter evinced no concern about the manner

in which the relevant factual matters were disclosed to her. Her concern was whether someone could claim that Mr. Skelton victimized them or committed a crime that victimized someone. Tr. 110-111. Mr. Skelton and his counsel both confirmed that this was not the case. IdThe timing of those conversations did not matter either to Ms. Ritter personally or in any objective sense. It was arbitrary for the Majority to disregard Ms. Ritter's testimony for these reasons.

91. Further, Mr. Skelton's case inexorably involved intimate personal details regarding his mental health. Given the complexity and sensitivity of the case, it was natural for Mr. Skelton to be careful in the way that he discussed information relating to the case with his supervisor. There was thus nothing improper about both Mr. Skelton and his counsel discussing the case with Ms. Ritter. It was erroneous for the majority to find impropriety or disregard Ms. Ritter's testimony because of these conversations.

92. The method of the conversations with Ms. Ritter also have no bearing on whether Mr. Skelton appropriately took responsibility for his actions, as the majority erroneously found. Mr. Skelton spoke with Ms. Ritter himself; and then his counsel spoke with Ms. Ritter as his agent, and with his specific authority. Nothing about that implicates Mr. Skelton's candor or ability to recognize and account for his conduct. He has been candid, as even the Inquiry Panel found as it voted to deny certification. He fully apologized for, and acknowledged his responsibility for, his conduct at hearing. Tr. 151-152, 154, 158, 164-165, 186,

191-192, 201, 224, 228. He also did so previously in conversations with his doctors. Tr. 37, 88. The majority's suggestion to the contrary is without basis. Again, it was arbitrary for the Majority to discount Ms. Ritter's testimony for these reasons.

93. The majority next erroneously and arbitrarily discounted Ms. Ritter's testimony to the effect that Mr. Skelton exercised good judgment in his work. The majority reasoned that because Mr. Skelton sent some of the emails to the Board and Inquiry Panel during work hours, Ms. Ritter's testimony must have been untrue or not creditable. The inference the majority drew does not comport with the evidence or with common sense.

94. Mr. Skelton candidly admitted having sent some of the emails – all of which were sent between November 2017 and March 2018 – during work hours. Tr. 227. He accepted responsibility for sending the emails, and he expressed his sincere regret for having done so. Tr. 164-165. Some of the emails were innocuous and brief discussions with the Board staff about the Inquiry Panel's document and evaluation requests. Others were longer and offensive in ways Mr. Skelton recognizes and regrets, but there is no evidence that they impacted his job performance in a manner that would undermine Ms. Ritter's testimony. The import of her testimony is that Mr. Skelton did nothing that impaired or limited his ability to perform his work conscientiously and at a high level between November 2017 and March 2018, or at any other time. It was arbitrary for the Majority to disregard Ms. Ritter's

testimony based on Mr. Skelton's submission of some emails to the Board and Inquiry Panel during work hours.

95. The majority's analysis treats Mr. Skelton's conduct in a vacuum. It ignores the wealth of evidence demonstrating that between November 2017 and March 2018, Mr. Skelton was struggling with his mental illness, and that while he had sought some treatment, it was not appropriate to address Mr. Skelton's symptoms and condition. That condition – which produces paranoid delusions and other misapprehensions of reality – caused the emails and the inappropriate conduct at JMLS. Tr. 26-27. The logical inference from the unrebutted evidence is that Mr. Skelton's condition also caused him to send the emails during work hours. The majority incorrectly ascribes a special, and prejudicial, significance to Mr. Skelton's having sent some of the emails between 9:00 and 5:00 on weekdays. Mr. Skelton was a young man struggling with a mental health condition with which he needed significant help, and still performing functions of his job at a high level and in a manner impressive to his employer.

96. Ms. Ritter testified at length about Mr. Skelton's good judgment, his considerable skill, and his ability to handle stressful situations calmly. Tr. 102-104. She demonstrated, clearly and convincingly, that Mr. Skelton met and meets of the essential eligibility requirements set forth in Rule 6.3 (1), (2), (3), (4), (9), and (10). For the majority to draw adverse inferences from her testimony was arbitrary, and its findings in that regard should be reversed.

E. The Majority concluded that Mr. Skelton is "socially isolated" despite overwhelming evidence in the record that Mr. Skelton has a robust social network of family, friends, and colleagues.

97. The Majority further finds that Mr. Skelton "failed to demonstrate a robust support network in addition to therapists, such as friends, colleagues or a group that might be found at LAP" and that Mr. Skelton's "apparent social isolation, unrebutted by corroborating evidence of strong social relationship with family, friends or colleagues, remains a serious concern." There is no evidence in the record to support the conclusion that Mr. Skelton is "socially isolated" and lacks "family, friends or colleagues." There is a wealth of evidence that directly and strongly supports the opposite conclusion.

98. On direct questioning by the Panel, Mr. Skelton said that the "people in his life" were "my parents, my friends, my job, the people I work with . . . Dr. Wolowitz and Dr. Turk." Tr. 211. No evidence impeached that testimony or tended to show that he did not, in fact, have those people in his life. He testified that he would be comfortable talking to some of his older friends about his mental health difficulties. *Id.* He described "very strong friendships" with "longtime friends" dating back to middle school. Tr. 212. Mr. Skelton's testimony is consistent with his initial application to the Illinois Bar, which included several affidavits attesting to Mr. Skelton's good character. CF, at 708-715. One affiant, Franklin Guenthner, described

himself as a friend of Mr. Skelton's since junior high school, and stated that he visits with Mr. Skelton whenever he is in the area. CF at 708. Another, Daniel Diamond, has been Mr. Skelton's friend since 2003. CF at 709. Sanita Saengvilay was a college friend of Mr. Skelton's. CF at 710. Each and every affiant, including two JMLS law professors, stated a belief in Mr. Skelton's integrity, and described him as being worthy of the highest trust and confidence.

99. Dr. Wolowitz testified that Mr. Skelton talks with her about "issues at work, future career goals, plans, any issues with his family members, friendships . . . ". Tr. 78. She testified that his support network consists of his friends and family. Tr. 83. She has discussed his friendships with him, and she understands his friends to be "a group of long-standing friends, some from high school, I think some from previous jobs, college, and law school." Id. He has told her that his social network is a largely positive environment for him. Tr. 84.

100. Ms. Ritter's testimony established that Mr. Skelton can and does communicate appropriately and professionally with coworkers, FOIA requesters, reporters, support staff, and any number of the approximately 270 City attorneys (including herself). Tr. 104-106. She has never seen Mr. Skelton "be anything but extremely cool," even under pressure. Tr. 108. That testimony establishes that Mr. Skelton functions well within a network of colleagues and professionals. Ms. Ritter also testified that Mr. Skelton, on his own initiative, volunteers to perform legal research projects for

the four attorneys in the FOIA group, herself, and the City Prosecutor. Tr. 115-116. Ms. Ritter's testimony establishes that she has a strong professional relationship with Mr. Skelton. Ms. Ritter also testified that the FOIA group socializes outside of work a few times a year, and that the office environment is friendly. Tr. 114. This is normal for professional colleagues. It was arbitrary for the Majority to conclude that Mr. Skelton lacks colleagues and troubling that the Majority could make such a conclusion given the wealth of evidence to the contrary.

101. The Majority simply, and wrongly, ignored all of this evidence in order to reach the conclusion that Mr. Skelton lacks a social network. Even as it ignored his character affidavits, the Majority also faulted Mr. Skelton for not providing affidavits from his parents and family that say that they support Mr. Skelton. Such a requirement raises the burden of proof well beyond what is reasonable, requiring sworn affidavits or testimony of Mr. Skelton's simple and unrebutted testimony that his parents are supportive of him. There is no logical reason to require that level of evidence, and to fault Mr. Skelton for its absence imposes an unreasonable and demeaning burden on him. It is demeaning for the Majority to suggest, without support, that Mr. Skelton's family is not supportive and loving. The Majority links this unreasonable burden to Mr. Skelton's mental health status as well. As set forth in sections (G) and (H), *infra*, it can safely be said that other applicants to the Illinois bar are not required to provide affidavits that they have parental or familial

support. To require that of Mr. Skelton, where his testimony stands uncontradicted, is arbitrary, unreasonable, and demeaning.

102. Further, Mr. Skelton's doctors clearly testified, in their in post-hearing affidavits, that broad disclosures of Mr. Skelton's condition to others outside his family were unnecessary and likely to lead to prejudice and stigma. Their testimony was not rebutted or questioned, and it comports with common sense. Certain questioning by the Panel at hearing appeared to fault Mr. Skelton for not broadly disclosing his mental health history to people other than his parents and treaters. Tr. 230-231. Instead of accepting the doctors' commonsense testimony that Mr. Skelton does not need to, and indeed likely should not, broadly disclose his mental health history, the Majority found that to fail to do so constituted "social isolation" that somehow negatively impacts his character.

103. Despite the clear import of the unrebutted testimony of Mr. Skelton's doctors, the majority adopted an approach to the "social isolation" issue that is simply wrong. Dr. Wolowitz mentioned the concept as a way of noting that strong social groups and interactions help patients like Mr. Skelton, and she testified that she Mr. Skelton's social networks have been "important for him" and "increasing." Tr. 76. At no point during her lengthy testimony did she testify that Mr. Skelton was socially isolated. The Majority, however, incorrectly and impermissibly read Dr. Wolowitz' testimony as somehow affirming that Mr. Skelton does not have social networks on which he can rely. Neither

Dr. Turk nor Dr. Wolowitz, nor any other witness, testified that Mr. Skelton is socially isolated; only that social isolation can be a risk factor for people struggling with delusional disorders. The evidence clearly shows that Mr. Skelton does have a social network, and he should not be faulted for failing to rebut an inference that should not exist in the first place.

104. Even if it were present here, "social isolation" is not a factor in Rule 6.3 or Rule 6.5 of the Board's Rules of Procedure, and there does not appear to be any authority suggesting that social isolation is a reason to find someone unfit to practice law. The Majority's finding, lacking any grounding in the unrebutted evidence offered by Mr. Skelton's treatment providers, thus seems to function only as an impermissible, and incorrect, judgment about Mr. Skelton's personal life. That is not a proper basis for a determination of character and fitness, and this Court should disregard it.

F. The Majority concluded that Mr. Skelton failed to accept responsibility for his poor conduct during the Inquiry Panel even though the evidence overwhelming showed Mr. Skelton accepted responsibility for this poor conduct and expressed sincere remorse for his behavior.

105. The Majority opinion states that "on denial by the Inquiry Panel, Mr. Skelton acknowledged his inappropriate conduct, but still could not understand why that conduct was alarming to the Inquiry Panel"

and that Mr. Skelton failed to present evidence "corroborative of his acceptance of responsibility" for his misconduct. These conclusions are not based in the evidence, and they ignore the overwhelming evidence that Mr. Skelton accepted responsibility for his poor conduct and expressed sincere remorse for his behavior.

106. The Majority's conclusion that Mr. Skelton "could not understand why that conduct was alarming to the Inquiry Panel" appears to be based on its misreading of Dr. Wolowitz's testimony. She testified that upon learning of the Inquiry Panel's adverse determination, Mr. Skelton hoped that he would be able to prove that with therapy and medication he would be able to practice law. Tr. 87. During his early consultations with Dr. Wolowitz, Mr. Skelton expressed some confusion about some aspects of the Inquiry Panel process, and he occasionally expressed a question about what made sense to him. Tr. 88. However, he was able to understand why his behavior had been a concern and alarm. *Id.*

107. There is absolutely nothing wrong with Mr. Skelton discussing with his therapist the incidents involving the Inquiry Panel, or expressing some confusion about the Inquiry Panel process. This exchange – the very reporting of which demonstrates Mr. Skelton's complete candor – shows that Mr. Skelton could and did understand why the conduct was alarming to the Inquiry Panel. That is what Dr. Wolowitz said. It also clearly shows Mr. Skelton thought his conduct was inappropriate, as he was seeking therapy to understand

and reflect on it. This conversation supports Mr. Skelton's full acceptance of responsibility for his misconduct, and it was arbitrary and simply wrong for the Majority to find otherwise.

108. Additionally, even if the conversation had somehow reflected poorly on Mr. Skelton, it happened in April 2018 – 15 months before the hearing in this matter. What Mr. Skelton expressed at the outset of his therapeutic relationship with Dr. Wolowitz did not prevent him from accepting total responsibility for his conduct and expressing sincere remorse for it, as he did at hearing. Mr. Skelton engaged in a private conversation with his therapist shortly after he began therapy with her, and shortly after he ceased his offensive conduct. He should be allowed, in that context and in that situation, to have questions or confusions about anything without fear of having his private therapeutic conversations used against him. Further, the conversation he had with Dr. Wolowitz does not evince a lack of responsibility or acknowledgment of wrongdoing on Mr. Skelton's part. He was simply discussing his situation and trying to understand it. It was arbitrary for the Majority to find that Mr. Skelton did not accept responsibility for his conduct.

109. As importantly, Mr. Skelton's actions since March 2018 show his complete acceptance of responsibility for his prior misconduct. As the Dissent properly highlighted, Mr. Skelton has been a conscientious and regular participant in his ongoing course of treatment. He complies with his prescribed medication. As his doctors clearly testified, this course of treatment

effectively prevents any reoccurrence of conduct like his prior misconduct. That, of course, is the ultimate point of treatment: psychological health and preventing recurrence of troubling behavior. Mr. Skelton has done everything he possibly could do to avoid any recurrence of previous misconduct. The question of who Mr. Skelton told about his misconduct matters far less than the actions he took to prevent that misconduct from recurring. It is Mr. Skelton's enthusiastic engagement in psychological treatment that shows, more than anything else, his acceptance of responsibility for his misconduct. The Majority opinion does not recognize this simple truth, instead incorrectly faulting Mr. Skelton for matters that do not and should not reflect poorly on him.

G. The Majority's Decision is Inconsistent with the Americans with Disabilities Act

110. The Americans with Disabilities Act (ADA) prohibits public entities from discriminating against individuals with disabilities. The Act provides that "no qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Public entities include "any department, agency, special purpose district or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(B). Pursuant to Congressional directive at 42 U.S.C. § 12134(a), the Department of Justice has issued

several regulations relevant here. One such regulation provides that a public entity may not "directly or through contractual or other arrangements, utilize criteria or methods of discrimination on the basis of a disability." 28 C.R.F. § 35.130(b)(3)(i). A public entity may not "administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of a disability." Id. § 35.130(b)(6). Additionally, a public entity may not impose or apply "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities 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. Id. § 35.130(b)(8). A public entity may not "unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others" are also prohibited. 28 C.F.R. pt. 35, app. B at 673. The Illinois Board of Admissions to the Bar is a public entity under the ADA because it is a public licensing scheme. *Hanson v. Medical Bd. of California*, 279 F. 3d. 1167, 1172 (9th Cir. 2002).

111. In order to establish that the Majority's decision contravened the ADA, Mr. Skelton must prove that he is a qualified individual with a disability. The ADA defines a disability as "(A) a physical or mental impairment that substantially limits one or more major life activities of an individual; (B) record of such an impairment: or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(1). The evidence in

this matter establishes that Mr. Skelton's delusional disorder isa disability under the Act; it substantially limited his ability to participate in one or more major life activities. Next, Mr. Skelton must prove that he is a qualified individual and that the Board has discriminated against him because of a disability.

1. Mr. Skelton is a qualified individual because he meets the essential eligibility requirements for admission to the Bar.

112. The evidence in this matter establishes that Mr. Skelton meets the essential eligibility requirements for admission to the Bar. As set forth in Rule 6.3, those elements are:

> (1) the ability to learn, to recall what has been learned, to reason, and to analyze; (2) the ability to communicate clearly and logically with clients, attorneys, courts, and others; (3) the ability to exercise good judgment in conducting one's professional business; (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations; (5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct; (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others; (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others; (8) the ability to

> use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; (9) the ability to comply with deadlines and time constraints; and (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession.

113. The testimony of all of the witnesses in this matter together establishes that Mr. Skelton meets the above criteria. Ms. Ritter's detailed, specific, and unimpeached testimony concerning Mr. Skelton's conscientious and skillful performance of his duties as a FOIA officer establishes elements (1), (2), (3), (4), (7), (9), and (10). Dr. Turk three times described Mr. Skelton as "forthright," which establishes element (4), as does Mr. Skelton's own truthful and open conduct and testimony throughout the Character and Fitness process. Even the Inquiry Panel, toward which he had behaved improperly as a result of his disorder, noted Mr. Skelton's honesty, and commended him for it. No evidence was presented that Mr. Skelton does not meet elements (5), (6), or (8), and no facts appear from any materials compiled by the Board that would indicate that those elements are somehow not satisfied.

2. The Majority's Decision Discriminates Against Mr. Skelton Based on a Disability.

114. For the many reasons set forth in greater detail *supra*, the Majority's decision discriminates against Mr. Skelton based on a disability, in a manner inconsistent with the ADA. The Seventh Circuit has

held that discrimination under Title II of the ADA "may be established by evidence that (1) the defendant intentionally acted on the basis of the disability, (2) the defendant refused to provide a reasonable modification, or (3) the defendant's rule disproportionally impacts disabled people." *Washington v. Indiana High Sch. Athletic Assoc.*, 181 F. 3d 840, 847 (7th Cir. 1999). The Majority's decision intentionally discriminates against Mr. Skelton based on his disability, and its approach to the issues raised by Mr. Skelton's disability disproportionally impacts disabled people.

a. The Majority's Decision Intentionally Discriminates Against Mr. Skelton based on a Disability.

115. In its decision, the Majority made findings adverse to Mr. Skelton that would not have been made concerning an applicant not presenting a similar mental health history. For example, the Majority made reference to testimony elicited from Mr. Skelton's treatment providers not concerning his past conduct, but in reference to wholly unrelated incidents that Mr. Skelton had discussed with them over the course of his treatment. The Majority characterized those incidents as involving "delusional thoughts," and gave them the same adverse weight as the other, more serious incidents that gave rise to the proceedings before the Inquiry and Hearing Panels. But that was a mischaracterization. The doctors themselves did not describe the incidents as serious, instead noting that the incidents only involved passing thoughts that Mr.

Skelton had had, and that he had then reported to them. They resulted in no conduct of any kind, much less conduct that harmed anyone. In one case, the thoughts in question involved Mr. Skelton's quibble – contained entirely within his own mind – with a grade in a graduate school class. No applicant without Mr. Skelton's mental health history would find such an incident the subject of a finding in a character and fitness decision. That it arose in this case is evidence both of discrimination against Mr. Skelton based on his disability, and of the disparate impact the Majority's reasoning has on people with disabilities.

116. The Majority's suggestion that Mr. Skelton needed to have proved the existence of his support network also contravenes the ADA. In point of fact, affidavits from various members of Mr. Skelton's network of friends and colleagues were in evidence, as part of the Character and Fitness file; but the Majority ignored them. Instead, it suggested that the absence of other affidavits from Mr. Skelton's family corroborating his testimony tended to indicate that Mr. Skelton was socially isolated, which it termed a matter of "serious concern." It would not be a matter of "serious concern" in any case not involving the mental health issues presented here. The majority uses a flatly incorrect reading of the evidence to justify a finding that Mr. Skelton is socially isolated, when it would never have found that absent the evidence presented concerning Mr. Skelton's mental health status. The disability forms the entire basis for the "serious concern." Under the ADA, that places a burden on Mr. Skelton that other

applicants would not have, in a manner inconsistent with 28 C.F.R. pt 35, app. B at 673.

b. The Majority's Decision Disproportionately Impacts Disabled People.

117. The Majority's decision disparately impacts not just Mr. Skelton himself, but disabled people generally. Mr. Skelton candidly provided evidence and responsive information to the Hearing Panel at every turn, even discussing and allowing his treatment providers to discuss the most intimate details of his counseling sessions. That evidence was then misinterpreted and mischaracterized, in a manner that suggests the very stigma against which disabled people must struggle. To encounter that stigma in this kind of proceeding is discouraging to those who would seek to obtain professional help in an effort to demonstrate competency and fitness.

118. The American Bar Association National Task Force on Lawyer Well-Being recently published a report addressing lawyer well-being, mental illness, and addiction in the legal profession. The report repeatedly emphasized that that lawyers and law students often avoid seeking assistance for mental health or addiction issues because of fear that seeking help will impact their licensure. Lawyers and law students avoid seeking help to the point that their illness impacts their daily function in addition to their ability to practice law competently. The Majority's decision contributes to the stigma that results in lawyers and law

students avoiding mental health treatment by grounding its finding of unfitness in Mr. Skelton's mental health status. Disabled people are concerned with the impact of that stigma upon them in a direct way that non-disabled people are not; thus, the Majority's decision has a disproportionate impact on disabled people.

H. The Majority's Decision Violates the Fourteenth Amendment of the United State Constitution and the Illinois Constitution Because it is Wholly Arbitrary.

119. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment" *Schware v. Board of Bar Exam. of State of N.M.*, 353 U.S. 232, 248 (1957). In *Schware*, the New Mexico bar denied admission to an applicant after it found – absent a full hearing – that he had used aliases, had been arrested (but never charged or convicted), and had been a member of the Communist Party. At a later hearing, Schware presented extensive witness testimony establishing his good character and reputation. The bar presented no evidence. Nevertheless, the bar still denied him admission, for the same reasons as before. The Court, overturning the New Mexico bar's decision, held that "a State can require high standards of character and fitness before it admits an applicant to the bar, but those requirements must have a rational connection with the Mr. Skelton's fitness or capacity to practice law." *Id.* At 239 (citing *Douglas v. Noble* 261

U.S. 165 (1923), *Cummings v. State of Missouri*, 71 U.S. 277 (1987), and *Nebbia v. New York*, 291 U.S. 502 (1934). The Court found that rational connection lacking in *Schware.* The Court further held that "a state cannot exclude an applicant from the practice of law when there is no basis for finding that the applicant fails to meet the standards of qualification or when the state action is invidiously discriminatory."[1] *Id.* That is, under *Schware*, a state can have and enforce requirements and qualifications for admission to its bar, but those qualifications must bear a rational relationship to fitness to practice; and determinations of whether those qualifications are met must not be made in arbitrary or discriminatory ways.

120. Here, Mr. Skelton provided extensive testimony from his treating psychiatrist and psychologist concerning his present mental fitness. The Board of Admissions offered no evidence that contradicted or undermined that testimony; in fact, like the New Mexico bar in *Schware*, it offered no evidence at all. While the Board can require that Applicants are fit to practice law, it cannot find Mr. Skelton failed to prove his present mental fitness under these circumstances. To do so would be to exclude him arbitrarily and without a factual basis, despite the Court's holding in *Schware*, the requirements of the Fourteenth Amendment, and the Due Process Clause.

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[1] It is likely that the Due Process Clause of the Illinois Constitution contains the same protections as the Fourteenth Amendment as explained in *Schware.*

121. Further, the Majority here applied standards that have no rational connection with Mr. Skelton's fitness or capacity to practice law. The Majority found that Mr. Skelton was unfit because of "recent incidents of delusional thoughts," but the events the Majority referenced in no way called into question Mr. Skelton's present mental fitness or ability to practice law. Had Mr. Skelton's mental health status not been in issue, the Majority would never have held that such events disqualify someone from the practice of law. These events – momentary, passing, minor thoughts well controlled by Mr. Skelton under his current treatment regime – had no rational connection to Mr. Skelton's capacity to practice law, and the majority should not have relied on them in assessing Mr. Skelton's character and fitness.

122. Additionally, the Majority's finding that Mr. Skelton was unfit to practice law because he is "socially isolated" lacked an evidentiary basis, and so lacked a rational relationship to Mr. Skelton's fitness. Further, social isolation is not a factor in rule 6.3 or 6.5 of the Board's Rules, and it has no rational connection to an applicant's ability to practice law. As such, the Majority's findings were again inconsistent with the Constitutional principles set forth in *Schware*.

CONCLUSION

Mr. Skelton respectfully requests, pursuant to Supreme Court Rule 708(h), that this Court provide relief from the Findings and Conclusions of the

majority of the Hearing Panel; adopt the findings of the dissent; find that he has demonstrated, clearly and convincingly, that he is of good character and is fit to practice law in Illinois; find that he is able to meet the standards of the profession; and grant him a license to practice law in Illinois.

Respectfully submitted,
Thomas Joseph Skelton, Applicant

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RULES OF PROCEDURE

BOARD OF ADMISSIONS TO THE BAR
AND
THE COMMITTEES ON CHARACTER AND FITNESS
OF
THE ILLINOIS SUPREME COURT

As amended and approved by Order dated
6/8/2018

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GLOSSARY OF TERMS

Applicant(s) or applicant(s): Persons applying for full or limited admission to the Illinois bar under Supreme Court Rules 704, 705, 712, 713, 715, 716, 717, or 719.

ARDC: The Illinois Attorney Registration and Disciplinary Commission.

Administrator: The Administrator of the Illinois Attorney Registration and Disciplinary Commission.

Board: The Illinois Board of Admissions to the Bar.

Committee or Committees: One or more of the five Committees on Character and Fitness for the five Appellate Court Districts of the Illinois Supreme Court.

Court: The Illinois Supreme Court.

Director: The Director of Administration of the Illinois Board of Admissions to the Bar.

District: The geographical boundary of one of the five Appellate Court Districts of the Illinois Supreme Court.

MBE: Multistate Bar Examination

MEE: Multistate Essay Examination

MPRE: Multistate Professional Responsibility Examination MPT: Multistate Performance Test

NCBE: The National Conference of Bar Examiners. Rule(s): The Rules of Procedure herein.

UBE: Uniform Bar Examination

RULE 1. CHARACTER AND FITNESS COMMITTEES

1.1. Appointment and term. The appointment and terms of the members of the Committees on Character and Fitness for the five Judicial Districts shall be as provided by Supreme Court Rule 708(a). Any member whose term has expired and who has an uncompleted assignment as a member of an Inquiry Panel or a Hearing Panel may, at the discretion of the Committee Chairperson, continue to serve until conclusion of the assignment.

1.2. Mandatory annual meeting. No less than once each calendar year, the members of each Committee shall meet in person to consider and review the

Committee's pending matters, objectives, and work for the ensuing year. The meeting shall be scheduled in advance by the Chairperson of the Committee with assistance from the Board's staff in Springfield.

1.3. Expenses of the Committees. Subject to the prior approval of the Board, all reasonable costs and expenses of the Committees shall be reimbursed by the Board.

RULE 2. DIRECTOR OF ADMINISTRATION

2.1. Director of Administration. The Board shall appoint a Director of Administration, who, subject to the Board's supervision, shall oversee the administration of all aspects of bar admissions, including the character and fitness process. The Director shall receive such compensation as the Board authorizes.

2.2. Duties of Director. Subject to the Board's direction, the Director shall: (1) conduct examinations on academic qualification and professional responsibility in accordance with Supreme Court Rule 704; (2) receive, process, investigate, and review all materials, documentation, and information submitted by and concerning all applicants for admission, including limited admission, to the bar; (3) maintain the records of the Character and Fitness Committees and assist each Committee in its investigation and evaluation of applicants; (4) employ, at such compensation as may be authorized by the Board, such administrative, clerical, investigative, and legal personnel as may be necessary for the efficient conduct of the office; (5) discharge any

such personnel whose performance is unsatisfactory; and (6) maintain such records, make such reports, and perform such other duties as may be required by the Board.

RULE 3. CHARACTER & FITNESS REGISTRATION

3.1. Registration. At the time of making application to the bar on any basis permitted by the Supreme Court Rules, an applicant shall submit to the Board at its office in Springfield a character and fitness registration in the form prescribed by the Board.

3.2. Character & Fitness Questionnaire. Every applicant shall register his or her character and fitness by submitting a completed Character & Fitness Questionnaire together with such additional proofs and documentation as the Board may require; such registration shall be accompanied by the filing fee provided by Supreme Court Rule 706(a).

3.3. Character & Fitness Update. Every applicant shall submit a completed Character & Fitness Update as a supplement to the Character & Fitness Questionnaire he or she most recently filed upon the request of the Board or the Committee as well as under the following circumstances:

(a) 9 or more months have elapsed between the date an applicant was recommended for certification by the Committee and the date the applicant is otherwise eligible for admission to the bar;

(b) 9 or more months have elapsed between the date an applicant filed his or her most recent Character & Fitness Questionnaire and the date the applicant submits a written request for reactivation of his or her application pursuant to Rule 10.2;

(c) an applicant requests a hearing pursuant to Rule 8.3c.;

(d) an applicant is notified that his or her petition for new hearing has been granted pursuant to Rule 13.5; and

(e) an applicant who previously registered for an Illinois bar examination makes application for a subsequent bar examination; *provided, however*, that if three or more years have elapsed since the applicant last filed a Character & Fitness Questionnaire, such applicant shall again file the Character & Fitness Questionnaire rather than a Character & Fitness Update.

3.4. Continuing obligation to report. Every applicant has a continuing obligation to report promptly to the Board any change or addition to the information provided in his or her Character & Fitness Questionnaire and Character & Fitness Update, including without limitation changes in address, email address, phone number(s), and employment, as well as criminal charges, disciplinary proceedings, traffic violations, parking violations not paid on receipt, and any other occurrence or event that could bear in any way upon character and fitness or the ability of the Board to

communicate with the applicant, or any person or entity named in his or her application.

RULE 4. APPLICATION TO TAKE THE BAR EXAM

4.1 Applications. Every applicant for the Illinois bar examination shall file with the Board at its office in Springfield an application to take the bar examination in the form prescribed by the Board. Applications shall be filed, and fees paid, as provided in Supreme Court Rule 706.

4.2 Grading and Scoring.

4.2a. The Board may adopt grading policies as it deems appropriate provided the policies are not inconsistent with the policies applicable to grading of the UBE as coordinated by the NCBE.

4.2b. The Illinois Bar Examination shall be the UBE produced by the NCBE. Raw scores on MEE and the MPT shall be combined and converted to the MBE scale to calculate written scaled scores according to the method used by the NCBE. The MBE scaled scores shall be combined with the MEE and MPT scaled scores to determine the total scaled score, with the MEE weighted thirty percent (30%), the MPT weighted twenty percent (20%), and the MBE weighted fifty percent (50%). An applicant must attain a scaled score of two hundred sixty-six (266)

or greater to be deemed to have passed the exam.

4.3 MBE score transfer. In lieu of taking the MBE portion of the first Illinois bar examination taken by the applicant, the Board may, if requested by the applicant, accept any MBE score achieved in another jurisdiction in a prior examination conducted within the immediately preceding thirteen months of the current examination, provided the applicant successfully passed the entire bar examination in the other jurisdiction in one sitting and achieved a minimum scaled score of one hundred forty-one (141) on the MBE. Applicants transferring a MBE score to Illinois will not receive a UBE score. In the event the applicant fails the bar examination in the other jurisdiction, the MBE score may not be used in Illinois in the current or any succeeding examination. If the applicant fails the Illinois Bar Examination, the MBE score so transferred may not be used in any succeeding Illinois Bar Examination. Applicants shall use the procedures prescribed by the Board in transferring a MBE score.

4.4. Minimum MPRE Score. The Board shall test applicants on professional responsibility and legal ethics by separate examination, and shall use the MPRE. Applicants must receive a minimum scaled score of eighty (80) on the MPRE to be eligible for admission.

Rule 4A. Application for Admission by Transferred UBE Score

4A.1. Applications. Every applicant for admission by transferred UBE score shall file with the Board at its office in Springfield an application in the form prescribed by the Board. Applications shall be filed, and fees paid, as provided in Supreme Court Rule 706.

4A.2. Minimum UBE score. A total score of two hundred sixty-six (266) shall be the minimum accepted score.

4A.3. Minimum MPRE score. A minimum scaled score of eighty (80) on the MPRE is required for admission by transferred UBE score.

RULE 5. PROCESSING OF CHARACTER AND FITNESS REGISTRATIONS

With regard to each Character & Fitness Questionnaire and Character & Fitness Update received, the Director shall cause a character investigation and report to be prepared by the transmittal of requests for pertinent information to appropriate persons and entities, including but not limited to employers, former employers, colleges and universities, law schools, other bar admitting authorities, courts, law enforcement agencies, regulatory agencies, creditors, credit reporting agencies, former spouses, and character references.

RULE 6. CHARACTER AND FITNESS REQUIREMENTS

6.1. Committee recommendation and burden of proof. A Committee shall determine whether to recommend to the Board that an applicant presently possesses the requisite character and fitness for admission to the practice of law. If a Committee deems it necessary or appropriate under the circumstances, it shall conduct further investigation of an applicant before ascertaining his or her character and fitness. An applicant has the burden to prove by clear and convincing evidence that he or she has the requisite character and fitness for admission to the practice of law.

6.2. Basis for recommendation. An applicant may be recommended for certification to the Board if a Committee determines that his or her record of conduct demonstrates that he or she meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a failure to meet the essential eligibility requirements, including, inter alia, a deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission.

6.3. Essential eligibility requirements. The essential eligibility requirements for the practice of law include the following: (1) the ability to learn, to recall what has been learned, to reason, and to analyze; (2) the ability to communicate clearly and logically with

clients, attorneys, courts, and others; (3) the ability to exercise good judgment in conducting one's professional business; (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations; (5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct; (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others; (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others; (8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; (9) the ability to comply with deadlines and time constraints; and (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession.

6.4. Misconduct. The revelation or discovery of any of the following should be treated as cause for further detailed inquiry before a Committee decides whether the applicant possesses the requisite character and fitness to practice law: (a) unlawful conduct; (b) academic misconduct; (c) making false statements, including omissions; (d) misconduct in employment; (e) acts involving dishonesty, fraud, deceit or misrepresentation; (f) abuse of legal process; (g) neglect of financial responsibilities; (h) neglect of professional obligations; (i) violation of an order of a court; (j) evidence of conduct indicating instability or impaired judgment; (k) denial of admission to the bar in another jurisdiction on

character and fitness grounds; (l) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; (m) acts constituting the unauthorized practice of law; and (n) failure to comply with the continuing duty of full disclosure to the Board and the Committees subsequent to the date of application.

6.5. Factors in weighing prior misconduct. In determining whether to recommend to the Board that the present character and fitness of an applicant qualifies him or her for admission to the practice of law, a Committee shall consider the following factors in assigning weight and significance to prior misconduct: (a) age at the time of the conduct; (b) recency of the conduct; (c) reliability of the information concerning the conduct; (d) seriousness of the conduct; (e) factors underlying the conduct; (f) cumulative effect of the conduct; (g) ability and willingness to accept responsibility for the conduct; (h) candor in the admissions process; (i) materiality of any omissions or misrepresentations; (j) evidence of rehabilitation; and (k) positive social contribution since the conduct.

6.6. Transmittal of certification to the Court. Provided that all other conditions for admission have been met, upon receipt from a Committee of a recommendation for certification pursuant to these Rules, the Board shall transmit such certification to the Supreme Court together with any additional information or recommendation the Board may deem appropriate. A copy of the Board's recommendation, if any, shall be mailed

to the applicant, his or her counsel, if any, and to the Committee Chairperson.

RULE 7. CONDITIONAL ADMISSION

7.1. Conditional Admission. In its sole discretion, a Committee may recommend to the Board that an applicant be admitted to the bar on a conditional basis in accordance with these Rules. The terms and conditions of a recommendation for conditional admission shall be set forth in a written Consent Agreement signed by the Committee, the applicant, and the Director. An applicant may be considered or recommended for conditional admission at the discretion of the Committee.

7.2. Limited purpose of conditional admission. As provided by Rule 7.3, conditional admission may be employed to permit an applicant who currently satisfies character and fitness requirements to practice law while his or her continued participation in an ongoing course of treatment or remediation for previous misconduct or unfitness is monitored to protect the public. Conditional admission is neither to be used as a method of achieving fitness nor as a method of monitoring the behavior of all applicants who have rehabilitated themselves from misconduct or unfitness. Conditional admission may be employed only when an applicant has been engaged in a sustained and effective course of treatment or remediation for a period of time sufficient to demonstrate his or her commitment and progress but not yet sufficient to render unlikely a recurrence of the misconduct or unfitness.

7.3. Limited circumstances under which conditional admission may be considered. A Committee may recommend that an applicant be admitted to the bar conditioned on the applicant's compliance with relevant conditions prescribed by that Committee if the applicant currently satisfies all requirements for admission to the bar and possesses the requisite good moral character and fitness for admission, *except that* he or she is engaged in a sustained and effective course of treatment for or remediation of

(a) substance abuse or dependence;

(b) a diagnosed mental or physical impairment that, should it reoccur, would likely impair the applicant's ability to practice law or pose a threat to the public; or

(c) neglect of financial affairs

that previously rendered him or her unfit for admission to the bar, *and* the applicant has been engaged in such course of treatment or remediation for no fewer than 6 continuous months, if the subject of treatment is substance abuse or dependence or mental or physical impairment, and no fewer than 3 continuous months if the subject of remediation is neglect of financial affairs. Absent recent lapses, recent failures, or evidence that a lapse or failure is presently likely to occur, an applicant who has engaged in such sustained and effective course of treatment or remediation for at least 24 continuous months may not be conditionally admitted.

7.4. Recommendation of Inquiry Panel or Hearing Panel.

7.4a. A recommendation that an applicant be admitted to the bar on a conditional basis can be made only after that applicant has personally met with all members of an Inquiry Panel appointed in accordance with these Rules. A majority of the Inquiry Panel shall constitute a quorum, and the concurrence of a majority shall be necessary to a recommendation.

7.4b. A recommendation for conditional admission may also be made by the members of a Hearing Panel; provided, however, that the applicant did not decline to consider or consent to conditional admission at the Inquiry Panel level. Four members of the Hearing Panel shall constitute a quorum, and the concurrence of a majority of the panel as a whole shall be necessary to a recommendation.

7.5. Report of recommendation of Inquiry Panel to full Committee. In the event a majority of the members of an Inquiry Panel votes to recommend the conditional admission of an applicant, the Inquiry Panel shall report to the full Committee the vote, the matters of concern, the nature, substance, and duration of the course of treatment or remediation in which the applicant is engaged, complete and detailed information regarding the applicant's progress in connection therewith including any lapses or failures, the panel's general recommendation regarding the terms and conditions of admission, any additional facts relevant to the recommendation, and confirmation of the

applicant's consent to admission on a conditional basis. The full Committee shall then determine whether the recommendation of the Inquiry Panel should be affirmed or denied.

7.6. Review of recommendation of Inquiry Panel by full Committee and preparation of written report.

7.6a. If the report to the full Committee is made and discussed at a meeting of the full Committee, members of the Inquiry Panel may participate in the discussion of the matter, but shall not be entitled to vote. Twelve members of the Committee who were not members of the Inquiry Panel shall constitute a quorum, and the concurrence of a majority of the members who are present and entitled to vote shall be necessary to a decision. If the recommendation of the Inquiry Panel is affirmed, within 21 days after such affirmation the Chairperson of the Inquiry Panel shall prepare and submit to the Director a written report containing all of the information required by Rule 7.5. In the event the vote is split and the Chairperson of the Inquiry Panel is not in the majority, then the senior member of the majority shall prepare and submit the written report.

7.6b. If the report to the full Committee is *not* made and discussed at a meeting of the full Committee, within 21 days after the vote of the Inquiry Panel, the Chairperson of the Inquiry Panel shall prepare and submit to the Director a written report containing all of the information required by Rule 7.5. In the event the vote is split and the Chairperson of the Inquiry Panel is not in the

majority, then the senior member of the majority shall prepare and submit the written report. The Director shall then forward the report to all remaining members of the Committee, along with a request for the vote of each member as to whether the recommendation of the panel should be affirmed or denied. The concurrence of a majority of the remaining members of the Committee shall be necessary to a decision.

7.6c. If the recommendation of the Inquiry Panel is denied by the full Committee, within 21 days of such denial, the Chairperson or Vice-Chairperson of the full Committee shall prepare and submit to the Director a brief written report containing the reason for the denial. Thereafter, the applicant shall be notified in writing of the Committee's declination to certify in accordance with Rule 8.3c., and the application may thereafter be further considered in accordance with Rules 9.1. *et seq*.

7.7. Preparation and execution of Consent Agreement. Upon receipt of the written report and recommendation of an Inquiry Panel for conditional admission and its affirmation by the full Committee as hereinabove provided, or upon receipt of the written report and recommendation for conditional admission of a Hearing Panel, the Director shall prepare and submit to the Chairperson of the panel that recommended conditional admission the Consent Agreement setting forth the terms and conditions of admission. The original Consent Agreement shall be signed by applicant, the panel member who signed the report of the Inquiry

Panel or Hearing Panel recommending conditional admission, and the Director.

7.8. Authorized conditions of admissio*n*. An applicant's admission may be conditioned on the applicant's submitting to specified alcohol, drug, or mental health treatment; medical, psychological, or psychiatric care; participation in group therapy or support; debt management counseling; random chemical screening; and supervision, monitoring, mentoring, or other conditions deemed appropriate by a Committee. The conditions shall be tailored to deter and detect conduct or conditions that pose a risk to clients or the public, to ensure continued abstinence, payment, treatment, counseling, and other support and shall, when appropriate, take into consideration the recommendations of qualified professionals regarding treatment and remediation.

7.9. Length of conditional period. The period of conditional admission shall not exceed 24 months, unless the Court orders otherwise. The filing of a petition to extend the period or a petition to revoke admission shall extend the period of conditional admission until the Court enters a final order on the petition.

7.10. Submission of recommendation, report and Consent Agreement to the Court. The Director shall submit to the Court copies of the recommendation and report of the Committee, the executed Consent Agreement, the Board's certification that the applicant is otherwise qualified for admission to the bar, relevant information from the applicant's

character and fitness file, and any additional information or recommendation the Board deems appropriate. A copy of the executed Consent Agreement and the Board's recommendation, if any, shall be mailed to the applicant.

7.11. Court review of recommendation, report and Consent Agreement.

7.11a. If the Court determines that the applicant qualifies for admission on the terms and conditions set forth in the Consent Agreement, it shall enter an Order requiring the applicant to comply with such terms and conditions for the period specified immediately following the date of his or her admission to the bar. In this event, copies of the Order, the executed Consent Agreement, and the recommendation and report of the Committee shall be mailed to ARDC.

7.11b. If the Court denies the recommendation for conditional admission, six months after the date of the denial the applicant may file with the Board a supplement to his or her previous Character & Fitness Questionnaire along with his or her personal affidavit describing the extent, if any, to which he or she has in the interim engaged in a course of treatment for, or remediation of, the misconduct or unfitness that was the basis of the recommendation. Following investigation and report of the supplemental materials, the application shall be considered further in accordance with these Rules by the Inquiry Panel or Hearing Panel that previously recommended conditional admission.

7.12. Monitoring compliance with Consent Agreement. If the applicant is conditionally admitted to the bar, the Administrator of ARDC shall monitor his or her compliance with the terms and conditions of the Consent Agreement throughout the period of conditional admission. The Administrator may take such action as is necessary to monitor compliance with the terms of the Consent Agreement, including without limitation referral for monitoring by a lawyer assistance program or other monitoring authority, requiring the conditionally admitted lawyer to make periodic appearances before a monitoring agent or entity, requiring the lawyer to submit physical or written evidence or other verification of compliance with the Consent Agreement, and requiring the lawyer to submit to an assessment by a medical professional.

7.13. Reporting changed circumstances or noncompliance with Consent Agreement.

7.13a. When the Administrator or the conditionally admitted lawyer identifies a change in circumstances that impacts the efficacy of the terms and conditions of the Consent Agreement, either party may report the change to the Court and petition the Court to modify the terms or conditions affected by the changed circumstances.

7.13b. When a conditionally admitted lawyer fails to comply with the Consent Agreement, the Administrator shall, where warranted, file with the Court a report of the noncompliance and a petition for revocation, modification, or extension of conditional admission. The petition shall be served

upon the lawyer, who shall file a response within 21 days following service of the petition. If the Court determines there is a material dispute of fact, the Court shall refer the case to a panel of the ARDC Hearing Board, which shall set the matter for hearing on a date within 90 days of the Order referring the case to the panel. The Administrator must prove the violation(s) of the Consent Agreement by a preponderance of the evidence. The Hearing Board panel shall resolve all disputes of fact and file its findings with the Court within 45 days of the date the hearing concludes. Upon consideration of the pleadings and, where applicable, the findings of the Hearing Board panel, the Court shall determine whether to continue or revoke the lawyer's conditional admission license and, if not revoked, whether to modify conditions or extend the period of conditional admission.

7.14. Reapplication following revocation of conditional admission license. An applicant whose conditional admission license has been revoked may reapply for admission to the bar, but not within two years of the Order revoking the conditional admission license, unless the Court orders otherwise. The applicant shall file a Character & Fitness Questionnaire together with such additional proofs and documentation as the Board may require and his or her personal affidavit describing the extent, if any, to which he or she has in the interim engaged in a course of treatment for, or remediation of, the misconduct or unfitness that was the basis of revocation of the conditional admission license. Following preparation of a character and fitness investigation and report in accordance with these

Rules, the reapplication and materials shall be assigned for character and fitness review directly to an Inquiry Panel, if the original recommendation for conditional admission was made at the Inquiry Panel level, or to a Hearing Panel, if the original recommendation for conditional admission was made by a Hearing Panel. To the extent possible, the original Inquiry Panel or Hearing Panel shall be reconstituted; any unavailable member of the original panel shall be replaced by another member of the Committee.

7.15. Costs of conditional admission. The applicant shall promptly pay directly or reimburse the Board for costs incurred for evaluation and testing in connection with Committee consideration of substance abuse or dependency, diagnosed mental impairment, or diagnosed medical disorder prior to the submission of a recommendation for conditional admission to the Court. The Board may agree to postpone reimbursement for such costs on the basis of compelling evidence of inability to pay; provided, however, in that event the repayment of such costs shall be incorporated into the Consent Agreement as a condition of compliance. Costs incurred after the applicant is conditionally admitted to the bar shall be defined and paid in accordance with Supreme Court Rule 773.

7.16. Confidentiality. All information related to the conditional admission of an applicant, including without limitation the fact of conditional admission and the existence and terms of the written Consent Agreement, shall be confidential. An Order of the Court

revoking a conditional admission license, however, shall be a matter of public record.

RULE 8. CONSIDERATION OF CHARACTER AND FITNESS REGISTRATIONS BY DIRECTOR, COMMITTEE MEMBER, AND INQUIRY PANEL

8.1. Review by Director. At the direction of the Board, the Director with the assistance of Board staff shall conduct an initial review of all character and fitness registrations.

> **8.1a. Recommendation for certification.** If the character and fitness registration, investigation, and report of an applicant for admission or limited admission to the bar raise no character and fitness concerns, as determined by the Director after review of said materials, the Director may recommend to the Board the certification of the applicant; in this event, upon the request of any Committee, the Director shall provide monthly notice to the Committee of all such recommendations.
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> **8.1b. Referral to Committee.** If the character and fitness registration, investigation, and report of an applicant for admission or limited admission to the bar raise character and fitness concerns, as determined by the Director after review of said materials, the Director shall refer the applicant's file for evaluation in accordance with Supreme Court Rules 708 and 709 to a member of the Committee in the District in which the applicant receives mail or as otherwise determined by the

Board; *provided, however*, that a character and fitness registration falling within the purview of Supreme Court Rule 704(b) or otherwise containing matters of significant character and fitness concern shall instead be referred directly to an Inquiry Panel, the members and Chairperson of which may be appointed by the Committee Chairperson of that District or by the Director, for evaluation and review as provided in Rule 8.3. *et seq*. Character and fitness registrations that have been assigned to a member of the Committee or to an Inquiry Panel in one District shall not be reassigned to another District.

8.2. Review by Committee member. Each applicant file assigned to a Committee member shall be reviewed by the member, and the applicant shall be required to appear in person before the member to discuss the character and fitness matter(s) of concern raised by the materials submitted and/or gathered in connection with the applicant's character and fitness registration. The applicant shall provide to the member any further information or documentation requested and shall cooperate with any further investigation undertaken by the member.

8.2a. Recommendation for certification. The Committee member who has reviewed the character and fitness registration of an applicant may recommend to the Board the certification of the applicant. The applicant may thereafter be recommended by the Board for admission or limited admission to the bar if all other requirements for admission have been met.

8.2b. Referral to Inquiry Panel. If a Committee member is not prepared to recommend the certification of an applicant, the Chairperson of the Committee shall assign the applicant's file to an Inquiry Panel for further review and examination.

8.3. Review by Inquiry Panel. Each member of the Inquiry Panel shall review the applicant file, and the applicant shall be required to appear in person before all members of the panel to discuss the character and fitness matters of concern raised by the materials submitted and gathered in connection with the applicant's character and fitness registration. The applicant shall provide to the panel any further information or documentation requested and shall cooperate with any further investigation undertaken by the panel. The Inquiry Panel shall consist of the member to whom the matter was originally assigned, as panel Chairperson, and two additional Committee members appointed by the Committee Chairperson. A majority of the Inquiry Panel shall constitute a quorum, and the concurrence of a majority shall be necessary to a decision.

8.3a. Declination to certify. In the event a majority of the members of an Inquiry Panel votes to withhold the certification of an applicant, within 21 days after such vote, the Chairperson of the Inquiry Panel shall prepare and submit to the Director a written report advising of the Inquiry Panel vote, the matters of concern, and the basis for the declination to certify. In the event the vote is split and the Chairperson of the Inquiry Panel is not in the majority, then the senior member of the majority shall prepare and submit the written report.

8.3b. Recommendation for certification to full Committee and preparation of written report. In the event a majority of the Inquiry Panel votes to recommend certification of an applicant to the Board, the panel shall report the vote, the matters of concern, and the basis for the recommendation for certification to the full Committee. The full Committee shall then determine whether the recommendation of the Inquiry Panel should be affirmed or denied.

8.3b.i. Vote of full Committee at meeting. If the report is made and discussed at a meeting of the full Committee, members of the Inquiry Panel may participate in the discussion of the matter, but shall not be entitled to vote. Twelve members of the Committee who were not members of the Inquiry Panel shall constitute a quorum, and the concurrence of a majority of the members who are present and entitled to vote shall be necessary to a decision. If the recommendation of the Inquiry Panel is affirmed, within 21 days after such affirmation, the Chairperson of the Inquiry Panel shall prepare and submit to the Director a written report advising of the matters of concern, the basis for the recommendation for certification, and the full Committee's affirmation of the recommendation of the panel. In the event the vote is split and the Chairperson of the Inquiry Panel is not in the majority, then the senior member of the Inquiry Panel shall prepare and submit the written report.

8.3b.ii. Vote of full Committee without meeting. If the report is not made and discussed at a meeting of the full Committee, within 21 days after the vote of the Inquiry Panel, the Chairperson of the Inquiry Panel shall prepare and submit to the Director a written report advising of the Inquiry Panel vote, the matters of concern, and the basis for the recommendation for certification. In the event the vote is split and the Chairperson of the Inquiry Panel is not in the majority, then the senior member of the Inquiry Panel shall prepare and submit the written report. The Director shall then forward the written report to all remaining members of the Committee, along with a request for the vote of each member as to whether the recommendation of the Panel should be affirmed or denied. The concurrence of a majority of the remaining members of the Committee shall be necessary to a decision.

8.3b.iii. Affirmation of full Committee to recommend certification. If the recommendation of an Inquiry Panel is affirmed by the full Committee, upon receipt by the Director of the written Inquiry Panel report recommending certification and its affirmation by the full Committee as herein provided, the applicant may thereafter be recommended by the Board for admission to the bar if all other admission requirements have been met.

8.3b.iv. Declination of full Committee to recommend certification. If the recommendation of the Inquiry Panel is denied by the

full Committee, within 21 days after such denial, the Chairperson or Vice-Chairperson of the Committee shall prepare and submit to the Director a written report advising of the matters of concern and the basis for the declination to certify.

8.3c. Notice to applicant of declination to certify after Inquiry Panel and of right to a hearing. Upon receipt by the Director of a written report advising of an Inquiry Panel's vote to withhold certification or a written report advising of a vote of the full Committee to deny an Inquiry Panel's recommendation for certification, the applicant shall thereafter be notified in writing of the Committee's declination to certify and provided with a copy of the report of the Inquiry Panel or of the Committee. The notice shall also advise of the right of the applicant to submit a written request for hearing within 21 days of the date of the mailing of the notice and include instructions for doing so. If the applicant fails properly to request a hearing within 21 days of the date of the mailing of the notice, his or her application shall be placed on inactive status and made subject to the requirements of Rule 10.2.

RULE 9. CONSIDERATION OF CHARACTER AND FITNESS REGISTRATIONS BY HEARING PANEL

9.1 De novo hearing. In the event an applicant properly requests a hearing pursuant to Rule 8.3c., he or she will be allowed de novo review of his or her character and fitness registration before a Hearing Panel.

9.2. Character & Fitness Update and supplemental investigation. An applicant who has properly requested a hearing pursuant to Rule 8.3c. shall promptly complete and file a Character & Fitness Update pursuant to Rule 3.3c. Upon receipt of the properly completed and filed Character & Fitness Update, the Director shall cause a supplemental character investigation and report to be prepared pursuant to Rule 5. The Director shall then notify the Chairperson of the Committee of the request for hearing and request the appointment of a Hearing Panel.

9.3. Appointment of Hearing Panel. The Chairperson of the Committee shall appoint a Hearing Panel from the remaining members of the Committee, none of whom have been members of the Inquiry Panel. A hearing will thereafter be scheduled on a date certain no fewer than 75 days after receipt of the properly completed and filed Character & Fitness Update. The Chairperson of the Committee shall chair the Hearing Panel. If unable to attend the hearing, the Chairperson shall designate the Vice-Chairperson of the Committee to serve as Chairperson in his or her stead. The Hearing Panel shall consist of five members of the Committee, and four members of the panel shall constitute a quorum.

9.4. Notice of hearing. No fewer than 21 days prior to the hearing, the Hearing Panel shall cause a Notice to be sent to the applicant by mail containing:

1. the date, time, and place of such hearing;
2. the disclosure of matters adverse to the applicant;
3. if such matters were based in full or in part upon statements from other persons, the names of such persons;
4. confirmation of the right of the applicant to be represented by counsel, at his or her own expense, to examine and cross-examine witnesses, to adduce evidence bearing upon the aforesaid adverse matters and upon his or her character and fitness, and for such purposes to make reasonable use of the Committee's subpoena powers under Rule 9.7;
5. confirmation of the right of the applicant or of his or her counsel, if any, to inspect prior to the hearing his or her character and fitness file; and
6. a copy of these Rules.

9.5. Right to public hearing. The hearing shall be private unless the applicant requests that it be public.

9.6. Counsel to present matters adverse. Subject to the approval of the Board, the Director shall appoint counsel from among the members of the bar to prepare and present the matters adverse to the applicant.

9.7. Discovery. At the reasonable discretion of the Chairperson of the Hearing Panel, the Committee shall, upon request of any member of the Hearing Panel or of the applicant, apply to the Clerk of the

Supreme Court for the issuance of subpoenas or writs for the taking of testimony at the hearing or upon evidence depositions and shall, upon like request, report to said Court the failure or refusal of any person to attend and testify in response to any such subpoena or writ. The taking of depositions shall be limited to evidence depositions where permitted by the Committee under the criteria set forth in Supreme Court Rule 212(b).

9.8. Pre-hearing conference and motion practice. The Chairperson of the Hearing Panel shall have reasonable discretion to hold a pre-hearing conference. Any such pre-hearing conference shall be held no fewer than seven days before the hearing. The Chairperson shall conduct pre-hearing and post-hearing motion practice. Motions by the applicant must be served on the Chairperson, on Rule 9.6 Counsel, and on the Board. Motions to quash must be served on the Chairperson, on the Board, on the person or entity whose testimony the motion seeks to quash, on the applicant, if the motion is not filed by the applicant, and on Rule 9.6 Counsel, if the motion is not filed by Rule 9.6 Counsel. The Chairperson shall have reasonable discretion in serving as the adjudicator.

9.9. Evidence. A Hearing Panel shall not be bound by the formal rules of evidence. It may in its discretion take evidence in other than testimonial form, having the right to rely upon records and other materials furnished in response to its requests for assistance in its inquiries pursuant to these Rules and Supreme Court Rule 709. It may further in its discretion determine

whether any evidence to be taken in testimonial form shall be taken in person at the hearing or upon deposition, but all testimonial evidence shall, in either event, be taken under oath. The matters to be considered by a Hearing Panel need not be limited to the matters of concern set forth in the notice to the applicant of the matters adverse to the applicant. A complete stenographic record of the hearing shall be kept, and a transcript may be ordered by the applicant at his or her expense.

9.10. Post-hearing deliberations. Hearing Panel members shall confer and deliberate among themselves at the conclusion of a hearing and subsequent thereto as necessary. The panel may vote at the conclusion of a hearing or may defer the vote to a later date not more than 45 days after conclusion of the hearing or 45 days after the record of the hearing is closed, whichever shall later occur, at which time a vote of the Hearing Panel shall be taken. The members may vote by mail, email, fax, or telephone. The applicant shall be recommended for certification to the Board only upon receiving at least three affirmative votes.

9.11. Preparation of Findings and Conclusions. Within 45 days of the vote of a Hearing Panel, or, in the event of special circumstances, within such additional period of time as may be approved by the full Committee, the Chairperson of the Hearing Panel shall cause to be prepared and submitted to the Director the Findings and Conclusions of the Committee together with a recommendation for or against the certification of the applicant. The Findings and Conclusions shall contain

a synopsis of the contents of the application, a full and fair explication of each of the matters of concern, and, with regard to each such matter, the basis for the recommendation of certification or declination of certification. If the vote of the panel is less than unanimous, the Findings and Conclusions shall include a clear and concise statement of the concern(s) and conclusion(s) of the minority.

9.11a. Non-unanimous recommendation. In the event the vote of a Hearing Panel is less than unanimous and the Chairperson of that Hearing Panel is not in the majority, then the senior member of the majority shall oversee the preparation of, and sign, the Findings and Conclusions of the Committee.

9.11b. Preparation of minority opinion. Members of a Hearing Panel who wish to write and sign a separate concurring or minority opinion may do so, and the opinion will be attached to the Findings and Conclusions of the Committee submitted therewith.

9.12. Recommendation for certification to the Court. If a Hearing Panel shall vote to recommend the certification of an applicant, the Director shall thereafter transmit the prepared Findings and Conclusions of the Committee to the Court together with any recommendation and information the Board may deem appropriate to submit. A copy of the Findings and Conclusions of the Committee and the Board's recommendation, if any, shall be mailed to that applicant and

to his or her counsel, if any; a copy of any Board recommendation shall also be submitted to the Committee.

9.13. Declination to recommend certification. If the Hearing Panel shall vote not to recommend the certification of an applicant, the Findings and Conclusions of the Committee shall thereafter be served on that applicant by mail to the last address he or she designated for receipt of notices, and the date of service shall be the date of mailing; a copy of the Findings and Conclusions of the Committee shall also be mailed to counsel for the applicant, if any.

9.14. Confidentiality. Prior to the mailing of the written Findings and Conclusions of the Committee to an applicant, the deliberation and decision of the Hearing Panel shall remain confidential.

RULE 10. STATUS OF CERTAIN CHARACTER AND FITNESS REGISTRATIONS

10.1. Failure of applicant to pass examination. Each recommendation for the certification of an applicant for admission on examination prior to the announcement of the results of such examination shall be a tentative recommendation. At the discretion of a Committee, in the event an applicant for admission upon examination has failed to pass the examination, no further action as to such applicant need be taken thereafter by that Committee or any Panel thereof until such time as the Committee shall be advised that the applicant has passed a subsequent examination.

10.2. Inactivity of applicant. The character and fitness registration of an applicant who without reasonable explanation has failed to provide requested information or documentation for a period of more than 90 days shall be placed on inactive status. Such registration may be returned to active status only upon the written request of the applicant, which request shall attach all previously requested information and documentation and satisfactorily address all previously outstanding matters of character and fitness concern. If nine or more months have passed since the date an applicant filed his or her most recent Character & Fitness Questionnaire, then that applicant must also properly complete and file a Character & Fitness Update pursuant to Rule 3.3(b).

RULE 11. CONFIDENTIALITY

All information received by the Board or a Committee, or any agent of the Board or Committee, pertaining to an applicant is subject to a quasi-judicial privilege. Such information shall be held in confidence and shall not be disclosed except as follows: (a) information, such as name, date of birth, and Social Security number of an applicant and the date of his or her application, may be made available for placement in a national data bank operated by or on behalf of NCBE; (b) information released in response to a subpoena from ARDC in connection with disciplinary proceedings, reinstatement proceedings, or investigations regarding the unauthorized practice of law; (c) information in reports filed with the Court; (d) information released in response to

a written request from NCBE or other bar admitting authorities when accompanied by an authorization for the release of such information duly executed by the person about whom such information is sought; (e) information concerning an applicant released in response to a subpoena issued in connection with the criminal investigation or prosecution of such applicant; (f) information in the form of the applicant's character and fitness file disclosed to the applicant and his or her counsel, if any, pursuant to Rule 9.4 prior to a hearing, which documents shall thereafter become a part of the record before the Court in the event the applicant files a petition for review pursuant to Supreme Court Rule 708(h).

RULE 12. APPEALS

Any applicant who has received an unfavorable recommendation from a Committee may petition the Court for review within 35 days after service of that Committee's decision upon the applicant in accordance with the provisions in Supreme Court Rule 708(h).

RULE 13. NEW HEARINGS

13.1. New hearing. Any applicant who has been denied certification as hereinabove provided may petition the Committee issuing the denial for a new hearing.

13.2. Timing of the petition. A petition for a new hearing may not be filed within two years of the date a Committee mailed its Findings and Conclusions to an applicant, unless a shorter time is allowed by the decision of that Committee. If an applicant petitions the Court for relief pursuant to Rule 12, and the Court denies the petition, the foregoing two year period commences on the date of the Order of the Court, unless a shorter time is allowed by the Court. If a Committee recommends the certification of an applicant who is subsequently denied admission by the Court, the applicant may petition said Committee that conducted the original hearing for a new hearing but not within two years of the date of the Order of denial, unless a shorter time is allowed by the Court.

13.3. Requirements for consideration. A petition for a new hearing shall not be considered unless it: (1) addresses the grounds for denial of certification in the Findings and Conclusions of the applicant's most recent Hearing Panel or, if applicable, in the most recent opinion or order of the Court; (2) includes a showing of the activities and conduct of the applicant since the last action of the Committee or of the Court; and (3) provides an overarching context of how the showing in (2) informs the discourse in (1).

13.4. Consideration of Committee. A Committee may deny a petition for new hearing without hearing testimony of witnesses if the petition does not meet the foregoing requirements of this Rule nor sets forth substantial new matter that would *prima facie* overcome the reasons for the previous denial and establish that the applicant now has the good moral character and general fitness to practice law that would justify certification. If a Committee determines that the petition complies with this Rule and sets forth such substantial new matter, the petition shall be granted. Such determination shall be made by majority vote of a full Committee at a meeting conducted in person or by telephone conference at which a quorum is present within 45 days after service of the petition for new hearing upon that Committee. The members present at the meeting may also vote by mail, email, fax, or telephone.

13.5. Notification, Character & Fitness Update, and supplemental investigation. In the event a petition for new hearing is granted, the applicant shall be so notified by mail, and he or she shall promptly complete and file a Character & Fitness Update pursuant to Rule 3.3(d). Upon receipt of the properly completed and filed Character & Fitness Update, the Director shall cause a supplemental character investigation and report to be prepared pursuant to Rule 5.

13.6. Appointment of new Hearing Panel. The Chairperson of the Committee shall appoint a new Hearing Panel; provided, however, that to the extent possible, the original Hearing Panel shall be

reconvened for the purpose of the new hearing. Any unavailable member of the original panel shall be replaced by another member of the Committee. A new hearing shall thereafter be scheduled and held pursuant to the requirements of Rules 9.3 *et seq*.

13.7. Limitation. An applicant shall have 90 days from the date a Committee grants his or her petition for a new hearing to complete and file a Character & Fitness Update, along with all other required documents, unless an extension of not more than an additional 90 days is granted by the Director. A request for an extension of time must be made in writing, setting forth the reasons for the request, and sent to the Director in Springfield. If an applicant fails to file a Character & Fitness Update within the prescribed time period, the grant of his or her petition for a new hearing will be deemed null and void, and the applicant must file a new petition for new hearing at that time. In all events, if a new hearing fails to take place within one year from the date a Committee grants the petition for a new hearing, then the grant of that petition will be deemed null and void.

RULE 14. SERVICE

All notices, reports, and other documents and items, including the Findings and Conclusions of the Committee, required to be mailed or delivered under these Rules, may be sent by United States mail, postage prepaid, or by any private courier or delivery service approved by the Board, costs prepaid by the sender, to the

last address provided by the intended recipient. The date of service is the date of depositing such items in the United States mails or tendering to the courier or delivery service as appropriate.