



Disability Rights

WASHINGTON

Washington's protection and advocacy system

DRW launches "Questions of Discrimination"

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SEATTLE – Disability Rights Washington's video "Questions of Discrimination" criticizes the Washington State Bar Association (WSBA) exam questions that single out applicants with mental health disabilities and ask for treatment records.

In Washington, as in many other states, several bar application questions and rules call into question an individual's "character and fitness" to practice law if they have a mental health disability.

According to several law students and attorneys, applicants struggle in answering these questions because they feel forced to choose between their rights to privacy and freedom from discrimination, and their ability to practice their chosen profession.

"WSBA asks a question that's trying to identify whether or not a lawyer is going to be a problem from a character standpoint. They take kind of a wholesale question like, 'have you ever been treated for mental health', that has a built-in assumption that anybody who has ever seen a therapist has a character flaw that might be a problem with them being an attorney. And that's not borne out by science," says Andy Imparato, Executive Director of the national Association of University Centers on Disabilities.

According to attorneys in the video, individuals seek treatment for reasons that have nothing to do with their character or fitness to practice law. Some individuals may need assistance handling the stress of law school and the practice of law, or some may have anxiety or depression. Singling out these individuals and treating them differently simply based on their status as someone who has sought treatment is not how we should define character and fitness to practice law, advocates say.

Advocates want the application process to focus on an applicant's conduct and capabilities to practice law. They believe if the applicant has graduated law school, passed the WSBA exam,

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DRW is a member of the National Disability Rights Network. A substantial portion of the DRW budget is federally funded.

and past conduct provides no basis for concern, there is no legitimate reason to inquire into the applicant's mental health disability or treatment.

The Department of Justice (DOJ) reviewed similar questions in other states and found them to be discriminatory “because these questions are eligibility criteria that screen out or tend to screen out individuals with disabilities based on stereotypes and assumptions about their disabilities and are not necessary to assess the applicants’ fitness to practice law.” The DOJ is the federal agency that enforces the Americans with Disabilities Act or ADA.

Besides being discriminatory, these types of questions affect privacy rights by “imposing additional burdens on applicants with disabilities in the form of expansive and intrusive requests for medical records,” according to the DOJ.

The preamble to the bar application questions say that the bar won’t deny a license solely because an applicant seeks mental health treatment nor will they ask about “situational counseling.” Yet, as the DOJ referenced in their own letters, the questions themselves still suggest that having a mental illness calls an applicant’s character and fitness into question.

Related links:

[Background and video](#)

[DOJ letters](#)

[WSBA current application](#)

[Admission to Practice Rules \(APR\) 22](#) and [24.2](#)

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