Why Law Matters

How ADA Has Facilitated “Liberty” in the Legal Profession

For Those with Mental Health Challenges

AALS Annual Meeting

Disability Law Section

January 5, 2016

© Laura Rothstein[[1]](#footnote-1)

1. Background of the issue – history of mental health history and substance abuse questions in the licensing process for legal profession
2. Case law between 1990 and about 2010
3. AALS and ABA activities – COLAP, AALS Report on Substance Abuse and AALS Report on Disability Issues
4. Recent developments
* Research on deterrent effects
* Activities at state levels (law school leadership, etc.)
* DOJ enforcement – Louisiana settlement
1. Impact on “law” of changed Presidential administration
* Statutes (ADA, ACA, IDEA – amendment, repeal?)
* Regulations
* Regulatory and agency guidance – opinion letters, FAQ, etc.
* Enforcement
1. Strategies going forward for those in legal education
2. Student Service Administrators

Develop Student Wellness Programs: Curriculum and Student Organizations; Mindfulness and Emotional Intelligence

Developing Specific Stress Relieving Events and Peer Counseling Programs

Making Students Aware of Issues During Orientation and Every Year Through Consistent Programming, Providing Resources for Students with Substance Abuse or Mental Health Issues

Have alcohol free events to set up model that everything does not have to include alcohol

Concerns about LAPs as counselors

1. What Can Law School Professors Do To Help/Issues Faced With Those Approaches

Identify students who may be facing these issues, provide them with places they can go for help and people they can talk to

Difficulty of getting faculty buy-in/training, and danger of unqualified professors providing too much counseling or guidance

Having regular and easy annual training for faculty AND staff and reference document – timing/time

Knowing signs of stress; knowing who is point person – administrator at law school; on campus counseling

1. Deans and Associate Deans and Others with Good Relationship With Bar Admissions Authorities

Work with state bars to provide evidence about statistics re: stress, evidence of deterrence from seeking treatment because of mental health history questions

Ask that research be done to demonstrate that these questions protect the public, without that, they should be impermissible

1. Researchers

Research debt issue relationship to stress

**Publications by Laura Rothstein relevant to the presentation**

Laura Rothstein, *Disabilities and the Law* Chapter 3 and Chapter 5 (Thomson West) and cumulative editions (most recent is Fall 2016) (with Julia Irzyk)

Laura Rothstein, “Forty Years of Diability Policy in Legal Education and the Legal Profession: What Has Changed and What are the New Issues?” 22 American University Journal of Gender, Social Policy and the Law 519-650 (2014) [http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2441240](https://exchange.louisville.edu/owa/redir.aspx?C=_HvIFQ-5_UOvrCFfOtjnLqmProxFStEIgJDCkM5_fapcbIBukfm3xTf0V4sskxQyMlj21TYHi-M.&URL=http%3a%2f%2fpapers.ssrn.com%2fsol3%2fpapers.cfm%3fabstract_id%3d2441240)

Laura Rothstein, “Higher Education and Disability Discrimination: A Fifty Year Retrospective,” 36 *Journal of College & University Law* 843 (2010)

Laura Rothstein, “Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual,” 69 *University of Pittsburgh Law Review* 531 (2008)

COMMENTARY

 There are many issues affecting legal education and the legal profession that fall within the topic of disability discrimination. One of the most significant is the issue of mental health and substance addiction. Bar admission authorities asking applicants about mental health and substance abuse treatment and diagnosis deter individuals from seeking treatment.

**Forty Years of Disability Policy in Legal Education and the Legal Profession: What Has Changed and What Are the New Issues? by Laura Rothstein** Published by American Journal of Gender Social Policy and the Law, Volume 22, Pages 519-650 (2014). Portion below reprinted with permission. The following excerpt is pages 590-594.[http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2441240](https://exchange.louisville.edu/owa/redir.aspx?C=_HvIFQ-5_UOvrCFfOtjnLqmProxFStEIgJDCkM5_fapcbIBukfm3xTf0V4sskxQyMlj21TYHi-M.&URL=http%3a%2f%2fpapers.ssrn.com%2fsol3%2fpapers.cfm%3fabstract_id%3d2441240)

(IHELG Monograph, 14-04, 2014), [http://www.law.uh.edu/ihelg/monograph/14-04.pdf](https://exchange.louisville.edu/owa/redir.aspx?C=c47Lzub8VkeOujxhJ_iEqIP_G4RAadEIb8eXEdi3CLk5RoidW5dH3n8RDOtaMMg4D13G3qhqkIk.&URL=http%3a%2f%2fwww.law.uh.edu%2fihelg%2fmonograph%2f14-04.pdf)

C. Mental Health and Substance Use and Abuse Issues

 Impairments resulting from mental health conditions and substance abuse are a significant issue for attorneys as well as law students. A comprehensive discussion of all of these issues is found in a 2008 article, *Law Students and Lawyers With Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*.[[2]](#footnote-2) The following is a brief summary of the same article by this author and an update of developments since that date.

 The article provides an overview of the policies, practices, and procedures relevant to mental impairment and substance abuse, including statutory and regulatory guidance, how the courts have addressed these issues, how regulatory associations (the ABA and the Association of American Law Schools) have responded, the law school admission and enrollment process (including obligations to report mental health and substance abuse issues in the admission and bar certification process), the issue of treatment, issues of discipline, and issues of professional licensing (initial licensing and retention), and employment issues.

 The article concludes with a number of recommendations. These include collecting data on the prevalence of mental illness and substance abuse, as well as the impact of stress. The recommendations also include determining what research demonstrates about the benefits of education programs focused on mental health and substance abuse. Collecting data about the effectiveness of treatment programs for lawyers and law students, and on the benefits of education programs about mental health and substance abuse are also recommended. The article further suggests a review and evaluation about initial licensure, issues of license revocation, and other disciplinary measures relating to attorneys with mental health and substance abuse problems. It provides a much more detailed discussion than is possible in this Article, but the following provides more recent cases and developments, and details what has occurred with mental health and substance abuse issues since 2008.

1. Definition of Disability for Mental Health and Substance Abuse

 As noted previously,[[3]](#footnote-3) Section 504 and the ADA have essentially the same definition of a disability. For individuals with mental health impairments, the condition must substantially limit a major life activity. An important consideration is whether the cases determining if mental impairment is a disability were decided before or after the effective date of the ADA Amendments Act of 2008. The 2008 amendments intend that certain conditions, particularly mental health conditions, be more likely to be classified as disabilities.[[4]](#footnote-4)

2. Otherwise Qualified

 As noted previously, meeting the definition of disability is only the first step to finding that impermissible discrimination has occurred. The individual must also be otherwise qualified to carry out the essential requirements of the position or program, taking reasonable accommodations into account.[[5]](#footnote-5) An important change since 2008 is more likely to affect law schools than employers. In the context of determining whether an individual is otherwise qualified, entities can take into account whether the individual presents a direct threat.[[6]](#footnote-6) Since 2008, the issue of whether a threat to “self” can be considered has become the subject of debate.[[7]](#footnote-7)

 Consideration of threat to “self” is permissible in the employment context. But for law schools addressing mental health concerns such as depression, eating disorders, and other conditions related to their students, this is not as simple. While being otherwise qualified allows the law school to discipline or take other action where a student is disruptive or dangerous to others, when the potential harm is only to the individual students themselves, it is not clear what is allowed.

 The Title II regulations issued in 2010 provide that a “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.”[[8]](#footnote-8) The determination of direct threat is through an individualized assessment “based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices[,] or procedures or the provision of auxiliary aids or services will mitigate the risk.”[[9]](#footnote-9) The Title II regulatory interpretation probably applies to Title III entities as well. Title I regulations applicable to employment, however, allow direct threat as a defense when the individual poses a direct threat to the health or safety *of the individual* or others in the workplace.[[10]](#footnote-10)

 The statutory language of the ADA does not define direct threat. The EEOC regulation has been upheld by the Supreme Court as being valid in the employment context and within the scope of the statute.[[11]](#footnote-11) The Title II regulation, however, has not been subjected to judicial review. DOE unofficial guidance has indicated that the agency enforcement will interpret the requirement to mean that threat to self may not be considered and entities that act on that basis may be in violation of the ADA. Many in higher education have raised concerns about how the Title II regulation (not considering threat to “self”) will be applied to actions towards students who are suicidal or who have other self-destructive behaviors such as severe depression or eating disorders.[[12]](#footnote-12)

3. Law School Admission and Enrollment

 Since 2008, there has been little change in law school admission policies and practices regarding mental health and substance abuse issues. Most law schools inquire only about discipline and behavior issues, not diagnosis and treatment. Law schools continue to use their student codes of conduct to address situations where student misconduct is at issue, even where it may be related to a mental health or substance abuse issue. The bar certification reporting processes have not changed substantially since 2008. While the lawyer assistance programs for law students have evolved,[[13]](#footnote-13) there has not been a comprehensive study on the effectiveness of these programs.

 Since the 2008 amendments to the ADA, the concerns about stress and its impact on law students have increased.[[14]](#footnote-14) More attention is being paid to what to do about the impact of stress during law school.[[15]](#footnote-15) One of the major concerns beyond recognition of the need to do more is the availability and affordability of mental health services and whether such treatment will remain confidential.

4. Professional Licensing

 Concerns about mental health, substance use, and abuse within the practicing bar have received substantial attention since 2008.[[16]](#footnote-16) The practice of asking questions about diagnosis and treatment for mental health and substance abuse during the licensing process continues to be challenged.[[17]](#footnote-17) As of 2008, the vast majority of courts were upholding these questions as permissible under the ADA.[[18]](#footnote-18) More recent cases have hinted that this may change.[[19]](#footnote-19)

 There have been a few judicial decisions since 2008 addressing attorney discipline and license retention relating to mental health[[20]](#footnote-20) and substance abuse issues.[[21]](#footnote-21) There have even been a few involving attorneys with ADD and ADHD and other types of conditions.[[22]](#footnote-22) The concept of conditional licensing or admission in light of these kinds of issues has been addressed and would benefit from additional review as to its efficacy.[[23]](#footnote-23)

{UPDATE SINCE PUBLICATION OF THE ARTICLE

**The Department of Justice in August 2014 settled a dispute regarding the character and fitness questions asked in Louisiana raising concerns about inquiries about whether mental health treatment and diagnosis violates the ADA.** [**http://www.ada.gov/louisiana-supreme-court\_sa.htm**](http://www.ada.gov/louisiana-supreme-court_sa.htm) **}**

**BIO SUMMARY**

**Laura Rothstein**

**Professor of Law and Distinguished University Scholar**

**University of Louisville, Louis D. Brandeis School of Law**

 Laura Rothstein joined the Louis D. Brandeis School of Law at the University of Louisville as Professor of Law and Dean in 2000 (serving as dean until 2005). During her four decades in legal education, she has written extensively on disability discrimination, covering a broad range of issues, with an emphasis on disability discrimination in higher education and special education and served in a number of service capacities on disability rights as it affects legal education. She chaired the AALS Special Committee on Disability Issues (1989-1991) and was the founding co-chair of the AALS Section of Disability Law in 2007. She uses her scholarship as an “advocate through education” and hopes to influence policy and practice by increasing awareness and understanding of disability rights issues. Her work to promote diversity and raise awareness on issues of disability, gender, and race have been recognized in numerous awards. She received her B.A. in Political Science from the University of Kansas and her J.D. from Georgetown University Law Center.

1. Professor of Law and Distinguished University Scholar, University of Louisville Brandeis School of Law. To request additional information, contact laura.rothstein@louisville.edu. [↑](#footnote-ref-1)
2. . *See generally* Jacobi, *supra* note 380, at 567; Michael L. Perlin, *“They Keep It All Hid”: The Ghettoization of Mental Disability Law and Its Implications for Legal Education*, 54 St. Louis U. L.J. 857, 860 (2010); Jennifer Jolly-Ryan, *The Last Taboo: Breaking Law Students with Mental Illnesses and Disabilities Out of the Stigma Straitjacket*, 79 UMKC L. Rev. 123, 125-26 (2010); Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 U. Louisville L. Rev. 95, 95 (2009) [hereinafter Jolly-Ryan, *Promoting Mental Health*]; Laura Rothstein, *Disability Law Issues for High Risk Students: Addressing Violence and Disruption*, 35 J.C. & U.L.691, 715-16 (2009); Michael L. Perlin, “*Baby, Look Inside Your Mirror”: The Legal Profession’s Willful and Sanist Blindness to Lawyers with Mental Disabilities*, 60 U. Pitt. L. Rev. 589, 589 (2008) [hereinafter Perlin, *Lawyers with Mental Disabilities*]; Laura Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. Pitt. L. Rev. 531, 531-32 (2008) [hereinafter Rothstein, *Substance Abuse Problems*]; Adam J. Shapiro, *Defining the Rights of Law Students with Mental Disabilities*, 48 U. Miami L. Rev. 923, 924-25 (2004). [↑](#footnote-ref-2)
3. . *See supra* PartII.A. [↑](#footnote-ref-3)
4. . *Compare* Marlon v. W. New Eng. Coll., No. Civ.A. 01-12199DPW, 2003 WL 22914304, at \*8 (D. Mass. Dec. 9, 2003), *aff’d*, 124 F. App’x 15 (1st Cir. 2005) (holding, in a pre-amendment decision, that a law school did not discriminate against a student with a learning disability, panic attacks, and depression, because there was insufficient evidence as to whether the student was regarded as disabled), *with* Ladwig v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll., 842 F. Supp. 2d 1003, 1007 (M.D. La. 2012) (holding that a doctoral student with a head injury and recurrent depression was not substantially limited in a major life activity), *and* Forbes v. St. Thomas Univ., 768 F. Supp. 2d 1222, 1230-34 (S.D. Fla. 2010) (finding issues of material fact regarding whether a law student’s post-traumatic stress disorder was a disability and, if so, whether the student had received reasonable accommodations, including requiring evidence that the denial of the requests was based on a rational belief that no further accommodation could be made without imposing a hardship on the program). [↑](#footnote-ref-4)
5. .  *See* *supra* Part II.A.2; *see also* Halpern v. Wake Forest Univ. Health Scis., 669 F.3d 454, 465 (4th Cir. 2012) (finding that a medical student with ADHD and an anxiety disorder did not request accommodations until several years after engaging in unprofessional acts, including abusive treatment of staff and multiple unexcused absences, and so the proposed accommodation—allowing psychiatric treatment, participating in program for distressed physicians, and continuing on strict probation—was not reasonable); *Ladwig*, 842 F. Supp. 2d at 1008 (holding that a doctoral student with depression and anxiety did not adequately request accommodations for a head injury to excuse her from attendance and allow additional time to turn in assignments, and that the university had provided accommodations by providing letters supporting absences and extra time). [↑](#footnote-ref-5)
6. . *See* Mershon v. St. Louis Univ., 442 F.3d 1069, 1073 (8th Cir. 2006) (regarding a student with a disability who was banned from campus because of a threat of violence against a professor). Several opinion letters from the Office for Civil Rights have also addressed this issue. *See* St. Thomas Univ. Sch. of Law, OCR Resolution Letter, No. 04-01-2098, 23 NDLR 160, 6-9 (Dep’t of Educ. 2001) (upholding dismissal after noting that a law student with bipolar disorder was dismissed because of threats to “blow up the legal writing department”); Dixie Coll., OCR Resolution Letter, No. 08-95-2111, 8 NDLR 31, 4-5 (Dep’t of Educ. 1995) (finding no ADA or Section 504 violation in expelling a student because of stalking and harassing a professor, as the expulsion was because the student posed a threat and not because of a perceived mental disability). [↑](#footnote-ref-6)
7. . *See* *supra* Part II.A.3. [↑](#footnote-ref-7)
8. . 28 C.F.R. § 35.104 (2012) (emphasis added). [↑](#footnote-ref-8)
9. . *Id.* § 35.139(b); *see also* Marietta Coll., OCR Resolution Letter, No. 15-04-2060, 31 NDLR 23, 12-13 (Dep’t of Educ. 2005) (asserting dismissal of student threatening suicide violated Section 504 because decision was not sufficiently based on a high probability to substantial harm). [↑](#footnote-ref-9)
10. . 29 C.F.R. § 1630.15(b)(2) (2012). [↑](#footnote-ref-10)
11. . *See* Chevron U.S.A. Inc. v.Echazabal, 536 U.S. 73, 85-87 (2002). [↑](#footnote-ref-11)
12. *. See* Paul Lannon & Elizabeth Sanghavi, *New Title II Regulations Regarding Direct Threat: Do They Change How College and Universities Should Treat Students Who Are Threats to Themselves?*, Nacua Notes, Nov. 1, 2011, at 5-6 (discussing that there is a lack of clear guidance to universities on how to analyze self-harm). [↑](#footnote-ref-12)
13. . *See* Rothstein, *Substance Abuse Problems*, *supra* note 387, at 548 (discussing that students with substance use disorders may have to disclose counseling despite counseling being “confidential,” which might reduce the number of students accessing the service). [↑](#footnote-ref-13)
14. . *See, e.g.*, Hollee Schwartz Temple, *Speaking Up: Helping Law Students Break Through the Silence of Depression*,98 ABA J. 23, 23 (2012) (detailing the high prevalence of depression and suicide among recent graduates and professional lawyers). [↑](#footnote-ref-14)
15. . *See* Jolly-Ryan, *Promoting Mental Health*, *supra* note 387, at 96(exploring the possible causes of law student stress, questioning the teaching method itself, and offering ideas for coping). *See generally* Lawrence S. Krieger, The Hidden Sources of Law School Stress (2005) (discussing reasons that law school is stressful and providing advice to students on how to manage stress, in a booklet that is used at over one hundred law schools). [↑](#footnote-ref-15)
16. . *See* Michael J. Herkov, *Mental Illness and the Practice of Law*, B. Exam’r, Mar. 2013, at 47-51 (providing the perspective of a psychiatrist about what should be appropriate for a bar application review process, and raising concerns about the impact of mental illness on an attorney’s ability to meet essential requirements to practice law); Perlin, *Lawyers with Mental Disabilities*, *supra* note 387, at 606 (discussing the value of looking at the role of therapeutic justice in addressing harms done by lawyers with mental illness); *see also* Symposium, Assisting Law Students with Disabilities in the 21st Century: A New Horizon?, *Suffering in Silence: The Tension Between Self-Disclosure and a Law School’s Obligation to Report*,18 Am. U. J. Gender Soc. Pol’y & L. 121, 122 (2007) (debating amongst panelists on the difficulty on encouraging mental health treatment that carries possible bar application implications); Erica Moeser, *Standards, Change, Politics and the Millennium*, 28 Loy. U. Chi. L.J. 229, 235 (1996) (discussing ABA accreditation issues); Erica Moeser, *Yes: The Public Has the Right to Know About Instability*, 80 ABA J. 36, 36 (1994) (asserting that public interest should be balanced against the applicant’s interest and that the ADA does not bar all inquiries into mental health status). *See generally* James T.R. Jones, A Hidden Madness (2011) (providing the story of a law professor living with severe bipolar disorder); Elyn Saks, The Center Cannot Hold: My Journey Through Madness (2007) (detailing the experiences of a law professor with severe mental illness). [↑](#footnote-ref-16)
17. . *See, e.g.*, Taylor & Goldstein, *supra* note 285, at 16, 18-22 (discussing various cases challenging the bar admission process and calling for disclosure to be based on misconduct rather than status)*; see also* Peter Ash, *Predicting the Future Behavior of Bar Applicants*,B. Exam’r Dec. 2013, at 6-16 (“Given the complexities inherent in making accurate long-term predictions regarding an individual’s behavior, it seems unlikely that in the coming decade we will have a database that will significantly improve our ability to quantify the future risk of impairment.”). The article discusses the ability to predict future behavior based on past history of substance abuse or mental health problems. [↑](#footnote-ref-17)
18. . *See, e.g.*, Clark v. Va. Bd. of Bar Exam’rs, 880 F. Supp. 430, 431, 438-40, 444 (E.D. Va. 1995) (striking down a question asking whether an applicant has been treated or counseled for any mental, emotional, or nervous disorders within the past five years as being impermissible under Title II). The*Clark* opinion provides a detailed discussion of the other decisions on this issue and the practices of bar admission authorities in various states. The court left open the possibility that the Texas inquiries might withstand challenge. *Id.*; *see also* Campbell v. Greisberger, 80 F.3d 703, 705 (2d Cir. 1996) (indicating that New York had changed its mental health status question); Stoddard v. Fla. Bd. of Bar Exam’rs, 509 F. Supp. 2d 1117, 1124-25 (N.D. Fla. 2006), *aff’d*, 229 F. App’x. 911 (11th Cir. 2007) (finding no violation of the ADA when reviewing mental health and financial history or unprofessional conduct, especially since the applicant had many issues that raised concerns); Doe v. Judicial Nominating Comm’n for the Fifteenth Judicial Circuit of Fla., 906 F. Supp. 1534, 1537, 1544-45 (S.D. Fla. 1995) (concluding that questions asked of judicial appointment applicants were overly broad when they concerned any physical impairment, hospitalization, treatment of mental illness, or addiction to drugs or alcohol regardless of whether they would affect applicant’s job performance capabilities);Applicants v. Tex. State Bd. of Law Exam’rs, No. A 93 CA 740 SS, 1994 WL 923404, at \*2, 5 (W.D. Tex. Oct. 11, 1994) (permitting narrowly drawn questions asking about treatment for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorders within the past ten years or since age eighteen, whichever time period was shorter); Med. Soc. of N.J. v. Jacobs, No. 93-3607, 1993 WL 413016, at \*1 (D.N.J. Oct. 5, 1993) (denying a preliminary injunction to prohibit a state medical board from asking about alcohol or drug abuse and mental or psychiatric illness); *In re* Frickey, 515 N.W.2d 741, 741 (Minn. 1994) (ordering the board of bar admissions to remove certain mental health treatment questions from Minnesota’s Bar Application because these types of questions would deter law students from seeking appropriate counseling); Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. Rev. 93, 94 (2001) (asserting that the bar admissions process is ill-suited to handle disability issues); Stanley Herr, *Questioning the Questionnaires: Bar Admissions and Candidates with Disabilities*, 42 Vill. L. Rev. 635, 637 (1997) (discussing the wide variety of state questionnaires despite increasing number of bar applicants with disabilities); Letter to Karen Richards, Executive Director of Vermont Human Rights Commission, from U.S. Department of Justice Civil Rights Division, Jan. 21, 2014 (responding to inquiries about the use of mental health questions in Vermont, and stating the position that the ADA prohibits discriminatory inquiries, investigations and additional burdens imposed on health disabilities). *But see* In Re Henry, 841 N.W. 2d 471 (S.D. 2013 ) (holding that Board of Bar Examiner’s inquiry into mental health including prior diagnosis of bipolar disorder was not an ADA violation; facts of case included past conduct that had included arrests for reckless driving). [↑](#footnote-ref-18)
19. . *See, e.g.*, Roe v. Ogden, 253 F.3d 1225, 1225 (10th Cir. 2010) (allowing an individual and a student chapter of the ACLU to challenge bar questions on drug use and mental health); ACLU of Ind. v. Individual Members of the Ind. State Bd. of Bar Exam’rs, No. 1:09-cv-842-TWP-MJD, 2011 WL 4387470, at \*9 (S.D. Ind. Sept. 20, 2011) (holding that open-ended questions about mental health diagnosis or treatment for any mental, emotional, or nervous disorder were impermissible, and that permissible questions are those asking whether an applicant had been diagnosed with psychotic disorders and whether the applicant had an impairment involving current substance abuse or current mental health conditions); *see also* *Stoddard*, 509 F. Supp. 2d at 1123-24 (declaring that immunity does not shield a board from an ADA claim); Caroline M. Mew & Robert A. Burgoyne, *ADA Update: The Status of Eleventh Amendment Immunity and* Rooker-Feldman *Doctrine as Defenses to Claims Asserted Against Bar Examiners Under the ADA*, B. Exam’r, Aug. 2007, at 17 (concluding that the doctrine would be a defense for bar examiners in fewer cases). [↑](#footnote-ref-19)
20. . *See, e.g.*, Iowa Sup. Ct. Bd. of Prof’l Ethics & Conduct v. Erbes, 604 N.W.2d 656, 657 (Iowa 2000) (deciding that public reprimand was the appropriate sanction for the misconduct of an attorney who took “refreshingly proactive” steps to deal with his depression); *In re* Burch, 975 N.E.2d 1001, 1003 (Ohio 2012) (requiring an applicant to appear before a review panel for a character and fitness process to answer questions about diagnoses of depression and ADD, and how those conditions related to her law school failures and behavior issues, including failure to take responsibility for actions); *In re* Zimmerman, 981 N.E.2d 854, 856-57 (Ohio 2012) (upholding the board of bar examiners’ findings and recommendations regarding the denial of character and fitness, but allowing the applicant to resubmit, subject to providing a mental health evaluation by a licensed professional to show compliance with treatment); Cincinnati Bar Ass’n. v. Stidham, 721 N.E.2d 977, 983 (Ohio 2000) (finding depression to be a mitigating factor when determining sanction for mishandling client funds); *see also* Fla. Bar v. Clement, 662 So. 2d 690, 692, 700 (Fla. 1995) (concluding that disbarment was not precluded under the ADA despite an attorney’s bipolar disorder, and that no reasonable accommodations could be made to prevent the attorney’s egregious conduct from recurring); *In re* Blackwell, 880 N.E.2d 886, 886-88 (Ohio 2007) (upholding a determination of psychological unfitness, but allowing a right to apply to take the next bar exam, subject to proof of treatment and reevaluation at his own expense); Leigh Jones, *Reciprocity Denied to Lawyer Treated for Depression*,Nat’l L.J. (Jan. 7, 2013), *available at* http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202583364054 (reporting on case involving an Idaho attorney, designated by the Social Security Administration as disabled by depression, whose practice was interrupted by bouts of depression and who lost a bid for admission by reciprocity to the Utah State Bar). [↑](#footnote-ref-20)
21. . *See, e.g.*, *In re* Marshall, 762 A.2d 530, 535 (D.C. 2000) (finding that an attorney with a cocaine addiction was not a “q&ldquo;””””ualified&rdquo;” individual protected from disbarment); Fla. Bd. of Bar Exam’rs *ex rel. v.* Barnett, 959 So. 2d 234, 234-36 (Fla. 2007) (granting conditional admission for three years due to evidence of several years of rehabilitation, after a resignation from the bar in lieu of disciplinary proceedings and a petition for readmission caused by five character and fitness incidents, including charges of misappropriation of client funds, heroin use, possession of cocaine, and resisting arrest); *In re* Edwards, 958 So. 2d 1173, 1173 (La. 2007) (denying conditional admission to individual with alcohol-related arrests and citations); *In re* Lynch, 877 N.E.2d 656, 656 (Ohio 2007) (granting qualified admission that required the bar applicant to undergo a Twelve-Step program to address professional responsibility issues and the applicant’s use of alcohol, with the panel’s decision focused on behavior and conduct issues). [↑](#footnote-ref-21)
22. . *See* Doe v. Attorney Discipline Bd., No. 95-1259, 1996 WL 78312, at \*1, 3 (6th Cir. Feb. 22, 1996) (finding that an attorney with ADD who was suspended for misconduct was not qualified under the ADA); *In re* Sheridan’s Case, 781 A.2d 7, 10-11 (N.H. 2001) (giving public censure to attorney who violated filing deadline requirements when failures occurred while attorney was recovering from serious eye and hip injuries); *In re* Acton, 902 N.E.2d 966, 967-68 (Ohio 2009) (regarding a character and fitness denial based on eight speeding violations and other misdemeanor charges, where the applicant claimed to have ADD and that it make him forgetful, but the court found that ADD did not affect ability to abide by law but instead caused him to be slow to learn his lessons); State *ex rel.* Okla. Bar Ass’n v. Busch, 919 P.2d 1114, 1117 (Okla. 1996) (holding that disability should be a mitigating factor in an attorney discipline case). [↑](#footnote-ref-22)
23. . *In re* Beckley, 926 N.E.2d 485, 485 (Ind. 2010) (addressing requirements for conditional admission related to use of alcohol, after the revocation of conditional admission due to noncompliance, including DWI arrest and marijuana use); Stephanie Lyerly, Note, *Conditional Admission: A Step in the Right Direction*, 22 Geo. J. Legal Ethics 299, 300 (2009). [↑](#footnote-ref-23)