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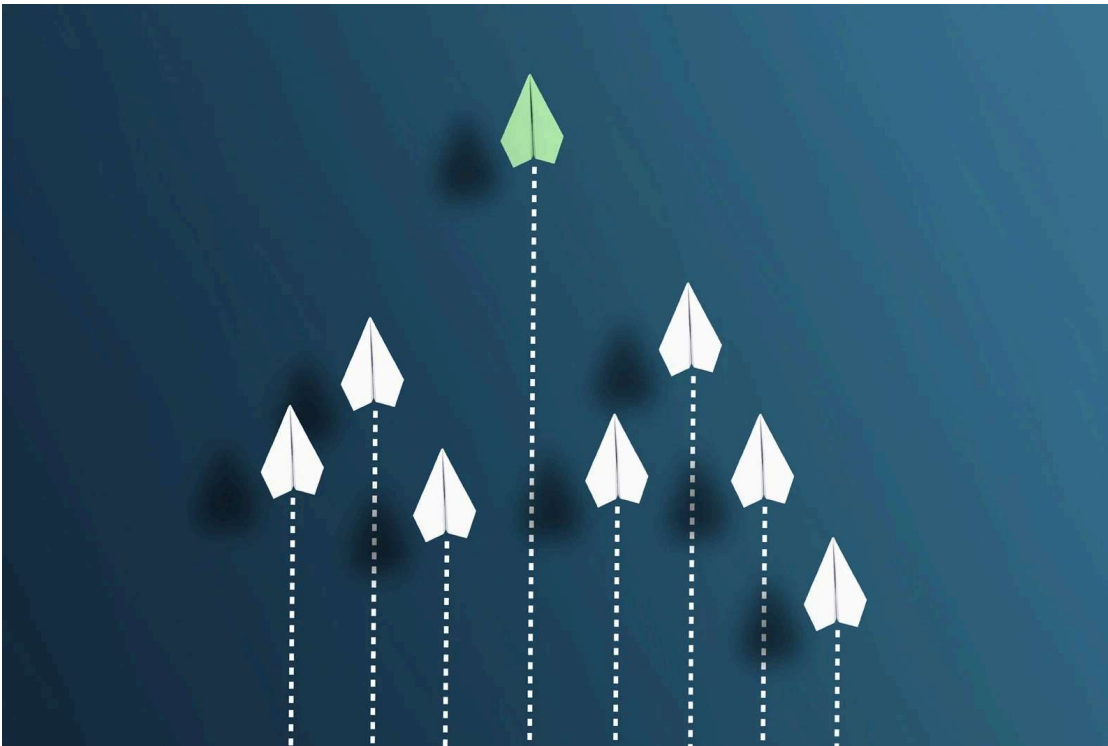
## Leading the Way: New ABA Model Rule on Conditional Admission to the Practice of Law Confirms Best Practices by TLAP

Posted by: J. E. "Buddy" Stockwell on Jul 1, 2025

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At its February 2025 Mid-Year Meeting, the American Bar Association (ABA) Board of Governors unanimously adopted Resolution 608, creating a brand new ABA Model Rule on Conditional Admission.<sup>1</sup> This new model rule supplants the prior rule from 2008, and it also represents 17 years of medical advances in diagnostics, treatment and monitoring to support fitness to practice law.



This ABA project spanned three years and was spearheaded by the ABA Commission on Lawyer Assistance Program's (CoLAP's) Law School Committee, of which retired Tennessee Judge Robert L. "Butch" Childers is a member (Judge Childers is also a past chair of the ABA CoLAP). To ensure accurate and uniform support, Resolution 608 was distributed to ABA Sections, Divisions and Forums, as well as their staff counsel/directors. It was also distributed to all ABA Committees, Commissions and Task Forces, and their staff directors/counsel.

Prior to enactment, Resolution 608 was reviewed by these ABA entities:

- Commission on Disability Rights
- Commission on Interest on Lawyers' Trust Accounts
- Standing Committee on Ethics and Professional Regulation
- Standing Committee on Lawyer Referral & Information Service
- Standing Committee on Lawyer's Professional Liability
- Standing Committee on Professional Regulation
- Standing Committee on Professionalism
- Standing Committee on Public Protection; Law Practice Division
- Section of Civil Rights and Social Justice
- Section of Legal Education and Admissions to the Bar
- Law Student Division
- Young Lawyers Division

Supporters and co-sponsors of Resolution 608 included the Disability Rights Commission, the Section of Legal Education and Admissions, the Standing Committee on Professional Regulation, the Section on Civil Rights and Social Justice, the New York City Bar, and the Young Lawyers Division.

The result is a cutting-edge model rule that is fully compliant with the Americans with Disabilities Act (ADA) in that it focuses on identifying and addressing problematic conduct and behavior that may require conditional admission or denial, as opposed to disability or diagnoses.

## Justice Holder's Foreshadowing

Tennessee and many other jurisdictions already complied with the ADA long ago by eliminating all mental health questions during the bar application process. In fact, Resolution 608 specifically credits the leadership of Tennessee and retired Tennessee Supreme Court Justice Janice Holder with foreshadowing the level of ADA protection now confirmed by the new model rule:

In 2011, Justice Janice Holder, a former member of CoLAP, authored a law review article discussing her concerns with the rule including its possible infringement on the ADA. The purpose of the ADA is to prevent discrimination in employment and other endeavors based on a disability. Justice Holder surveyed the approaches in various states. Her findings led her to advocate for the Conditional Admission Rule adopted in Tennessee. In Tennessee, they successfully created a system of discipline that focused on “previous conduct or behavior” of the applicant and provided “the conditions shall be tailored to detect and deter conduct, conditions or behavior.”<sup>2</sup>

Law students and bar applicants have benefited from Tennessee's long-standing ADA-compliant system that does not impinge whatsoever upon their totally confidential space to seek immediate intervention for a current mental health situation or discreetly maintain care for a managed mental health issue. Early intervention and effective mental health care are key to fostering a healthier legal profession. The vast majority of TLAP's cases are totally confidential pursuant to *Tenn. Code Ann.* § 23-4-105 and Supreme Court Rule 33.

However, when a history of conduct (arrests, discipline, lack of candor, etc.) calls into question a bar applicant's mental health fitness to practice law, the Tennessee Board of Law Examiners (BLE) may, at its sole discretion, officially refer the applicant to TLAP (the

court's designated monitoring authority) for an independent evaluation.

## An Individualized Process

If TLAP accepts the BLE's referral, and if the person cooperates with TLAP, the mission shifts from the legal framework of the BLE to the clinical and medical framework of TLAP and its facilitation of specialized clinical support for licensed professionals.

On a case-by-case basis, TLAP facilitates reliable clinical steps to either rule out, or identify and address, any current clinical situation impacting fitness to practice.

When active alcoholism or drug addiction is involved, the question then becomes what level of diagnostics, treatment and monitoring must be applied to both protect the public and objectively support and confirm long-term recovery by the conditionally admitted lawyer.

As a resource, the new model rule references modern clinical guidelines developed for licensed professionals, including lawyers, by the American Society of Addiction Medicine (ASAM):

Terms of the Conditional Admission Agreement should be based upon best practices for supporting the fitness of the attorney to practice law. A resource for Admissions Authorities relating to such best practices is the American Society of Addiction Medicine Treatment Criteria for Addictive, Substance-Related and Co-occurring Conditions, Fourth Edition (ASAM Criteria).

The report supporting the new rule opines further about ASAM's clinical guidelines:

The American Society of Addiction Medicine's Treatment Criteria for Addictive, Substance-Related and Co-Occurring Conditions, Fourth Edition (ASAM Criteria) was published (December 2023) . . . [many] issues are resolved in Chapter 23 of that publication through acknowledging the medical framework for best practices in the monitoring and treatment for legal professionals including lawyers and judges.

The ABA's acknowledgement of ASAM's Chapter 23 helps illuminate the complex clinical framework of best medical practices available to lawyers and other licensed professionals medically deemed "safety sensitive workers." The ASAM Criteria can help

uninformed members of the bar, legal scholars and legal pundits acquire an accurate medical understanding of the best practices provided by TLAP's programming and monitoring.<sup>3</sup>

There is no “cookie cutter” or “one-size-fits-all” clinical response at TLAP. One bar applicant may have active, multiple, severe substance use disorders and need immediate detoxification and residential treatment at a facility skilled in supporting licensed professionals, followed by TLAP monitoring. Another bar applicant, despite a serious history of conduct, may not meet any diagnostic criteria such that TLAP makes no clinical recommendations. TLAP's response is always based upon individualized and narrowly tailored recommendations to medically address each person's precise clinical situation.

## **The ‘Gold Standard’**

Of course, the cost of TLAP compliance and adhering to the ASAM Criteria level of care can be expensive. Diagnostic outcomes and appropriately treating the severity of clinical issues drive the treatment response in any given case. Insurance often helps to cover treatment costs. In cases where the bar applicant is under financial hardship to afford treatment, the new TLAP Foundation (a stand-alone 501(c)(3) that is independent of TLAP) can offer low interest loans.

By every measure, TLAP is a full-service “gold standard” monitoring program and already fully attuned to the new ABA Model Rule. In the last three years while utilizing ASAM best practices, TLAP's monitoring program generated no-relapse rates of 85%, 88% and 89%. As such, “TLAP compliance” objectively establishes clear and convincing evidence of fitness to practice at levels that protect the public and support conditional admission.<sup>4</sup>

Before TLAP was created in 1999, a history of past conduct entangled with substance use disorders or other mental health issues could preclude any hope of obtaining a law license. Tennessee jurisprudence states that a “license to practice law in this state is not a right, but a privilege.”<sup>5</sup> The court must “protect the public from the misconduct or unfitness of members of the legal profession and preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.”<sup>6</sup> It would disserve the public and the legal profession — and applicants themselves — to provide law licenses in disregard of potentially disqualifying conduct on the ground that obtaining help for a related substance use disorder may be too “burdensome.”

Against the backdrop of all the above, it is important to maintain sharp focus. State supreme courts are not required to offer conditional admission at all. TLAP monitoring to support fitness to practice provides an *opportunity* supplied by the Tennessee Supreme Court to those who have histories of conduct and could otherwise be simply denied admission to the practice of law.

Under the leadership and informed directives of the Tennessee Supreme Court and the TLAP Commission, and in full alignment with the new ABA Model Rule on Conditional Admission, TLAP remains committed to excellence, integrity and objective reliability in providing the very best clinical support to bar applicants who are referred to TLAP due to past or current conduct, have a current clinical situation and seek conditional admission with TLAP's monitoring support.

TLAP is a comprehensive clinical program that supports the entire profession. If you are a bar applicant, lawyer or judge and have any type of mental health or substance use concerns, TLAP can help! Please give us confidential call at (615) 741 3238, email us at [tlap@tncourts.gov](mailto:tlap@tncourts.gov) or visit us on the web at [www.tlap.org](http://www.tlap.org). |||



**BUDDY STOCKWELL** was appointed by the Tennessee Supreme Court in July 2020 as executive director of the Tennessee Lawyers Assistance Program (TLAP). He comes from south Louisiana where he has been a volunteer and program monitor for the state's Committee on Alcohol

and Drug Abuse and the executive director of Louisiana's comprehensive Judges and Lawyers Assistance Program (JLAP) peer professionals' program. He is a certified clinical interventionist through "Love First" training at the Betty Ford Center and has personally been in recovery from alcoholism for over 38 years. Stockwell earned his law degree from LSU Law School in 1993. He practiced in both large and small firm settings, including a solo practice in Baton Rouge where he focused heavily on domestic litigation. Read more about him at [tba.org/Stockwell](http://tba.org/Stockwell).

## NOTES

1. The new Model Rule and its supporting Resolution are available at [www.americanbar.org/news/reporter\\_resources/midyear-meeting-2025/house-of-delegates-resolutions/608/](http://www.americanbar.org/news/reporter_resources/midyear-meeting-2025/house-of-delegates-resolutions/608/).

2. See: Janice M. Holder, "Completing the Puzzle: Lawyer Assistance and Conditional Admission," 49 *Duq. L. Rev.* 439 (2011).

3. My prior TBA article on ASAM's clinical recommendations for lawyers can be accessed at [tlap.org/wp-content/uploads/2024/03/The-New-ASAM-Criteria-4th-Edition-Todays-Blueprint-for-Addiction-Treatment.pdf](https://tlap.org/wp-content/uploads/2024/03/The-New-ASAM-Criteria-4th-Edition-Todays-Blueprint-for-Addiction-Treatment.pdf).
4. For more information about TLAP's statistics and operations, visit [www.tlap.org](http://www.tlap.org) to see the published Annual Reports. Also, visit the FAQ page to view extensive information about TLAP's clinical programming.
5. *Bd. of Prof. Resp. of Sup. Ct. of Tenn. v. Barry*, 545 S.W.3d 408, 426 (Tenn. 2018).
6. *Id.*

## THIS MONTH

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Issue Homepage

Dig a Little Deeper: Metadata in Discovery

Why Did a Cheatham County Middle School Need a New Mascot?: A Familiar Trademark Story

Snake Pit or Windfall?: A Brief Study of Tennessee's Construction Payment Retainage Law

Finding 'My People': Looking Ahead to the Next Bar Year

Leading the Way: New ABA Model Rule on Conditional Admission to the Practice of Law Confirms Best Practices by TLAP

How Long?: Consecutive Sentencing and Findings of Fact in the Trial Court

Ballyhoo in Dayton: The 100th Anniversary of the Scopes Trial

Closing Statements

The Legal Life

Licensure & Discipline

Passages

Book Review: 'Valley So Low: One Lawyer's Fight for Justice in the Wake of America's Great Coal Catastrophe'

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