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SUPREME COURT OF ARKANSAS

No.

Opinion Delivered 11-11-10

IN RE JUDGES AND LAWYERS
ASSISTANCE PROGRAM

PER CURIAM

The Judges and Lawyers Assistance Program Committee (Committee) and the deans of the state’s two law schools have requested this court to modify provisions of the Judges and Lawyers Assistance Program (JLAP) and related rules of the court to include law students. In response to this request, this court is initiating a three-year “pilot program” under which students at the University of Arkansas at Fayetteville School of Law and the University of Arkansas at Little Rock Bowen School of Law will be covered by the JLAP program.

A history of the JLAP program is in order. On November 29, 1999, a petition was filed with this court by the Arkansas Bar Association and the Pulaski County Bar Association. The essence of the petition was to ask this court to create a program to “assist lawyers, law students, and judges” with matters arising from substance abuse, depression, and other similar problems. The words “law students” are repeated throughout that petition as part of the

population to be served by the program. The petition, however, does not explain why law students should be included. On December 7, 2000, this court adopted a per curiam order by and large implementing the proposal and establishing the Arkansas Lawyers Assistance Program (ALAP). In Rule I, “scope of program,” it is made clear that the assistance program shall “provide immediate and continuing help to *lawyers and judges* (hereafter members of the legal profession).” (Emphasis added.) We offered no comment as to why law students were not included within the program.

JLAP has just celebrated ten years of existence. Members and staff of the JLAP Committee, together with the deans of both law schools, have reported that JLAP has matured and is sufficiently stable in terms of procedures, resources, and finances to consider the addition of law students, on a three-year temporary basis, as parties who might take advantage of JLAP.

In May of 1993, the Executive Committee of the Association of American Law Schools published the *Report of the AALS Special Committee on Problems of Substance Abuse and the Law School* (Report). The fundamental conclusion in the Report is: “in the judgment of the Committee, it is extremely likely that virtually every law school in this country has some current students (and possibly some faculty members) who are impaired by the use of alcohol or other substances, or who more than occasionally abuse alcohol or drugs. It is also highly probable that virtually every law school has current students (and possibly faculty members) whose present behavior indicates the substantial risk that they will in the future suffer from

the effects of substance abuse. Thus the problem of substance abuse is one to which every law school should devote attention.” (Page 12 of the Report) Although this language was written seventeen years ago, there is no reason to believe that the conclusion reached at that time is no longer valid.

On page 53 of the Report, recommendation 10 appears as follows: “[T]he law schools should consider coordinating their internal substance abuse programs with relevant lawyer assistance programs.” (Emphasis added.) Dean Cynthia Nance with the UA Fayetteville School of Law, Dean John DiPippa of the UALR Bowen School of Law, and JLAP representatives have asked this court to do just that. At this writing, nineteen states include law students in their JLAP programs.

We grant the request of the law school deans and JLAP representatives and hereby authorize JLAP to take the appropriate steps immediately to initiate, administer, and monitor the pilot program for law students and report its observations to the court on an annual basis. This pilot program will conclude after three years from the date of this order unless the court, by subsequent order, extends it.

However, in order for this project to be undertaken, it is necessary to modify Rule 1 of the Rules of the Arkansas Lawyer Assistance Program and Reg. 8 of the Rules Governing Admission to the Bar.

First, there is the concern of “confidentiality” of law students who might want to approach JLAP for help, but are reluctant to do so. This reluctance is because the bar exam

application contains a question (question 9.d) that specifically asks whether the law student has been treated for “alcoholism, substance abuse, the use of controlled substances as defined by the Arkansas code or addiction to drugs of any form?” Correspondingly, when certifying graduates to sit for the bar exam, the dean of each law school is also asked to comment on whether the applicant has anything in his or her law school record that could reflect adversely on his or her character and fitness to practice law in the state of Arkansas. Hence, there is a tension between the need of the student to seek assistance and the fear of having to reveal the plea for help.

A solution lies in the modification of Regulation 8 – “Standards for Admission,” which appears in the appendix to the Rules Governing Admission to the Bar. Regulation 8 lists certain actions taken or behavior exhibited by the applicant as evidence of the “good moral character and mental and emotional stability” of the applicant, which is the fundamental standard of character and fitness for admission to the Bar of Arkansas.

The addition of language to that list will make clear that the act of seeking counseling or advice from JLAP shall not be viewed by the Board of Law Examiners as negative; furthermore, the student’s participation in a program of recovery sanctioned by JLAP and the successful completion of that program, appropriately documented by JLAP, should be considered favorably by the Board when evaluating the applicant’s character and fitness for admission to the Bar of Arkansas.

The JLAP Committee suggests an amendment to Regulation 8 by adding the

following subsection (d):

d. Seeking counsel from the Judges and Lawyers Assistance Program (JLAP) for physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age that might impair the applicant's ability to practice (impairments) shall not be considered adversely by the Board in its evaluation. Further, should the applicant choose to participate in a program designed for him or her by JLAP, and successfully complete that program by the time of graduation, the evidence of such rehabilitation and recovery shall be considered favorably by the Board when evaluating the applicant's character and fitness. The applicant's failure to complete a treatment program may be considered adversely by the Board.

We concur with the suggestion of the Committee and hereby amend Regulation 8 of the Rules Governing Admission to the Bar as set forth above.

In addition, it is necessary to amend the original JLAP (then ALAP) per curiam order which was entered on December 7, 2000, to add law school students to the group of individuals eligible for JLAP services. Therefore, we amend our per curiam order of December 7, 2000, and particularly Arkansas Lawyer Assistance Program R. 1(A) as follows:

Rule 1. – Scope of Program

(A) *Establishment.* There is hereby established a statewide lawyer assistance program to be known as Arkansas Lawyer Assistance Program (ALAP) which shall provide immediate and continuing help to lawyers and judges (hereinafter “members of the legal profession”) as well as students attending the University of Arkansas at Fayetteville School of Law and the UALR Bowen School of Law, who suffer from physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age and that might impair their ability to practice or serve.

The balance of Rule 1 is not affected by this order.