PRESIDENT'S PAGE

by Erica Moeser

The speed with which each NCBE year slips by seems to accelerate, and here we are at another close and another beginning. It has been a pleasure to work with Don Funk, our 2007–2008 Chair. Of course, the major achievement of the year was the completion and occupancy of our new headquarters building. Don was present on the day the first spade of dirt was turned and presided over the dedication of the building as part of our Annual Meeting held in Madison this August.

It is the prerogative of the Chair to select the sites for the quarterly meetings of our Board of Trustees. For his first meeting last October, Don chose his hometown of Springfield, Illinois. We had a remarkable opportunity to visit a number of Lincoln sites while we were there and to access a wealth of information about the Man from Springfield. Don has been a steady force in bar admissions for the Illinois Board for many years, and he brought the same steady leadership to NCBE—he is our own Man from Springfield, and we thank him for a good year.

Don's successor as NCBE Chair is Fred Yu, a lawyer from Denver, Colorado, who brings experience as a Colorado bar examiner to his new assignment.

Two substantive matters may be of interest to the bar admissions community. First, there is currently an effort in Congress to amend the Americans with Disabilities Act. NCBE has joined with a number of other organizations to inform both House and Senate leaders about the adverse consequences to testing programs that can be anticipated if the proposed language changes sail through. NCBE's co-signatories include ACT, the Association of American Medical Colleges, the Federation of State Medical Boards, the Graduate Management Admission Council, the Law School Admission Council, the National Board of Medical Examiners, and the National Council of Examiners for Engineering and Surveying.

It seems evident that the authors and proponents of the proposed changes to the ADA have employment as their primary focus; however, the effect of the changes on testing for licensure could be significant, and I believe the changes are unwise. For testing organizations, fairness remains an objective, as it most surely should. Law schools will also feel the effects of this legislation if it is enacted as currently written, as the demand for expanded non-standard accommodation services will undoubtedly increase.

Rather than parse the current version of the proposal, which may well change before this column appears, I strongly recommend that members of the bar admission community find and follow this legislation and, if it passes as is, anticipate its impact. Having said that, I should point out that one especially intriguing aspect of the current proposal adds "thinking" and "concentrating" to the major life activities that are listed in the ADA. This raises all sorts of questions about evaluating candidates who document that they are substantially limited in

their ability to think or concentrate. Perhaps more importantly, such a change could—or should—lead licensing agencies to separate, quite appropriately, the accommodation of disabilities for testing purposes (where virtually all issues lie today) from the consideration of disabilities as they may relate to qualification for actual licensing; that is, a candidate with a substantial limitation in the ability to think or concentrate may be entitled to test under accommodated conditions, but professions such as law and medicine may decide to set criteria for licensure that include specified levels of ability to think or concentrate. The idea of essential requirements for obtaining a license is not a new one, but the adoption of the proposed revisions to the ADA may stimulate renewed consideration of what is fundamental and essential in view of the consumer protection function of licensing. "Thinking" and "concentrating" at a fairly high level would no doubt appear on most lists were people to identify what should be required of their own doctor or lawyer.

The other interesting development concerns the adoption by the American Bar Association last February of a Model Rule on Conditional Admission. I appeared on a panel at the National Conference on Professional Responsibility in late May at which a number of professionals in the field of lawyer discipline who were in the audience participated in a vigorous—and often skeptical—discussion. Having polled bar admissions agencies in advance of this event and having listened to the audience while there, I found several sticking points:

- the decision about which agency will be assigned the responsibility of administering the plan after the conditional admission is granted, and if a lawyer disciplinary agency will have jurisdiction, whether it will apply different standards and more forgiving criteria in judging violations relating to the conduct that merited conditional admission than did the agency that imposed the conditional admission initially;
- the selection of the array of circumstances for which conditional admission will be permitted (addiction and financial irresponsibility are the leaders, but there are a number of local variations);
- the sanctions, and in some cases, the procedural "exit strategy," when conditionally admitted lawyers fail to adhere, in major and minor ways, to the conditions to which they agreed, as well as the procedures and policies for extending conditional admission;
- the intersection of conditional admission and other misconduct that arises after the conditionally admitted lawyer begins practicing;
- the time and personnel resources that will be consumed in administering each individual conditional admission; and
- the interplay of confidentiality and disclosure.

There are enough conditional admission programs in existence today (17 at last count) with sufficient variation for jurisdictions that are contemplating conditional admission to make judgments about what works and what doesn't. Whether the ABA's adoption of a model rule on this subject will prompt other jurisdictions to offer conditional admission remains to be seen.

There is a lot going on in bar admissions and NCBE has had a productive year. Speaking of productive, did I mention that between January and July our 63 employees produced ten (10!) babies? We welcomed eight girls and two boys, named—in order of their arrival—Madeleine, Julia, Leah, Gwendolen, Taylor Rose, Blake, Clementine, Kaitlyn, Eire, and Thomas. It's been quite a year, and we are delighted with this particular bumper crop here in the Midwest!