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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE ENYART

Plaintiff,

v.

NATIONAL CONFERENCE OF BAR  
EXAMINERS, INC., ACT, INC., AND THE  
STATE BAR OF CALIFORNIA,

Defendants.

Case No.:

09-05191

COMPLAINT FOR DISCRIMINATION  
IN VIOLATION OF THE AMERICANS  
WITH DISABILITIES ACT, 42 U.S.C. §  
12101, *et seq.*, AND THE UNRUH CIVIL  
RIGHTS ACT, CAL. CIV. CODE § 51, *et  
seq.*,

Judge:

Action Filed: November 3, 2009

filing

ORIGINAL  
FILED  
NOV - 3 2009  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

ADR  
MEJ

## INTRODUCTION

1  
2 1. Plaintiff Stephanie Enyart (“Plaintiff”) brings this action against the National  
3 Conference of Bar Examiners (“NCBE”), which develops and offers the Multistate Bar  
4 Examination (“MBE”) and the Multistate Professional Responsibility Exam (“MPRE”),  
5 against ACT, Inc. (“ACT”), which administers the MPRE under contract with NCBE, and  
6 against the State Bar of California (“State Bar”), which administers the MBE to individuals  
7 who take that examination as a component of the California Bar Exam. Plaintiff brings this  
8 action for violations of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §  
9 12101, *et seq.*, and the Unruh Civil Rights Act, (“Unruh Act”), California Civil Code § 51 *et*  
10 *seq.*

11 2. The State Bar of California offers the California Bar Exam semiannually, in  
12 February and July. Two variants of the exam are offered for each sitting, the General Bar  
13 Exam that recent law school graduates must take, and the Attorneys’ Exam, which is only  
14 available to individuals who are licensed in another jurisdiction and have been practicing law  
15 for at least four years. All those taking the General Bar Exam must take the MBE, a multiple-  
16 choice exam developed and disseminated by NCBE.

17 3. NCBE contracts with ACT to administer the MPRE three times annually, as  
18 well as to evaluate requests for accommodations on the test. The State Bar of California and  
19 all but four other U.S. jurisdictions require that applicants successfully pass the MPRE to  
20 practice law.

21 4. Plaintiff seeks declaratory and injunctive relief to compel NCBE, ACT, and the  
22 State Bar to provide the reasonable accommodations she requires for the MBE and the MPRE  
23 examinations.

24 5. Plaintiff, who is legally blind, requires accommodations to access the MBE and  
25 MPRE because of her sensory disabilities. Plaintiff has requested to take the MPRE with  
26 reasonable accommodations on three occasions, beginning with the March 2009  
27 administration of the test. She requested the same set of accommodations for the August 2009  
28 and November 7, 2009 administrations of the MPRE. All three of Plaintiff’s requests have

1 asked for the ability to take the examination on a laptop computer equipped with screen  
2 reading (JAWS) and screen magnification (ZoomText) software. Plaintiff also applied to take  
3 the July 2009 administration of the California Bar Exam on a laptop computer equipped with  
4 JAWS and ZoomText, and she recently requested the identical accommodations on the  
5 February 2010 California Bar Exam. Plaintiff relied on this combination of assistive  
6 technology as an accommodation on her examinations throughout law school, and relies on it  
7 to complete her current work as a law clerk.

8 6. Defendants denied Plaintiff's request to take the MPRE on a laptop computer  
9 equipped with screen reading and screen magnification software for the March, August, and  
10 November 2009 MPRE test administrations, causing Plaintiff not to sit for any of those three  
11 test administrations. The State Bar granted Plaintiff's request to use a laptop with screen  
12 reading and screen magnification software on the California-specific portions of the July 2009  
13 California Bar Exam, but NCBE would not allow this accommodation with respect to the  
14 MBE, causing Plaintiff not to take the Bar Exam in July 2009.

15 7. The repeated denial of Plaintiff's needed accommodations threatens her with  
16 irreparable harm to her career and professional development. Without injunctive relief from  
17 the Court, Defendants' discriminatory actions are preventing Plaintiff from obtaining the  
18 license to practice law.

#### 19 JURISDICTION

20 8. This is an action for declaratory and injunctive relief brought pursuant to the  
21 Americans with Disabilities Act Title III, 42 U.S.C. §§ 12101, *et seq.* and California's Unruh  
22 Act, Cal. Civil Code §§ 51 *et seq.* This Court has subject matter jurisdiction over this action  
23 pursuant to 28 U.S.C. § 1331.

24 9. Under the doctrine of pendent and supplemental jurisdiction, this Court has  
25 jurisdiction over Plaintiff's claims arising under California state law.

26 10. This Court has jurisdiction to issue injunctive relief and a declaratory judgment  
27 pursuant to 28 U.S.C. §§ 2201 and 2202.

#### 28 VENUE





1 reader pronounces each word. The reading mode available when running both software  
2 programs ensures that Plaintiff can get synchronized auditory and visual versions of the  
3 material while the blinking cursor methodically moves through the text, remaining in view on  
4 the magnified screen. This arrangement eliminates the need for her to visually scan the screen  
5 to find the text on which she wishes to focus, a task that would be physically exhausting to  
6 someone with her disability. This combination of assistive software is a common method of  
7 reading among people experiencing progressive vision loss, who use it to replicate, as much as  
8 possible, the way a sighted person would read text, and the way these individuals learned to  
9 read text themselves before they began to lose their vision.

10 18. Plaintiff has relied upon the combination of JAWS and ZoomText to complete  
11 reading tasks for four years at the University of California at Los Angeles (“UCLA”) School of  
12 Law and in three legal internships. Plaintiff took all of her law school exams on a computer  
13 equipped with JAWS and ZoomText, and she uses these two programs in her current  
14 employment as a legal fellow at Disability Rights Advocates assisting people with disabilities  
15 who are homeless.

16 19. Plaintiff applied to take the MPRE in March of 2009 and requested the  
17 reasonable accommodation of using JAWS and ZoomText to read the exam. Her request was  
18 denied in a letter from ACT, which stated that the MPRE “is not available in an electronic  
19 format.” A second letter from ACT sent in response to Plaintiff’s request for reconsideration  
20 reiterated the denial and cited security concerns as the reason for not providing the exam in  
21 such a format.

22 20. Instead of allowing Plaintiff to take the March 2009 MPRE with assistive  
23 software, ACT offered her the option of taking the exam with a human reader and also  
24 allowing her to magnify the text of the exam on a CCTV. This would not have been an  
25 effective accommodation for Plaintiff. A human reader cannot provide the same automatic  
26 synchronization of visual and auditory input as that which Plaintiff relies upon through use of  
27 the JAWS and ZoomText programs. Further, Plaintiff cannot use a traditional CCTV to read  
28 large amounts of text without experiencing extensive eye strain, fatigue and nausea. Plaintiff

1 explained these deficiencies of the alternative accommodation proposed by ACT and, when  
2 her request for reconsideration was denied, withdrew her application for the March MPRE  
3 because of the refusal of NCBE and ACT to provide her with an effective accommodation.

4 21. Plaintiff requested the same accommodations in her application for the August  
5 2009 MPRE. ACT again denied her request and she was instead granted the use of a human  
6 reader or a CCTV to complete the exam. This alternative was again not an effective  
7 accommodation for Plaintiff's disability. It would have provided only auditory or only visual  
8 input rather than the combination of visual and auditory input that Plaintiff needs to read  
9 lengthy text. Plaintiff thus again withdrew her application to take the August exam because of  
10 the refusal of NCBE and ACT to provide her with effective accommodations.

11 22. Plaintiff requested the same accommodations for a third time when applying to  
12 take the November 2009 administration of the MPRE. On this occasion Erica Moser of NCBE  
13 wrote a letter to Plaintiff's attorney, Scott LaBarre, outlining the accommodations that  
14 Plaintiff would and would not be granted. The content of this letter was later confirmed by  
15 ACT. In place of Plaintiff's requested accommodation of taking the exam with JAWS and  
16 ZoomText, she was offered the option of reading the exam in 72-point print while listening to  
17 the questions on a CD. This accommodation would not have been effective because it still  
18 lacked the automatic synchronization between auditory and visual input that is provided by the  
19 software programs Plaintiff relies upon to read lengthy text. It also would not provide the  
20 tracking feature – the blinking cursor -that Plaintiff uses in the ZoomText program to focus  
21 her limited vision on the words being read aloud. The alternative accommodations proposed  
22 by NCBE would cause the same problem of eye strain and fatigue from having to manually  
23 scan the printed page. An audio CD also would not provide Plaintiff with the ability to easily  
24 move back and forth through portions of each question and each of the multiple choice  
25 answers the way Plaintiff can do with JAWS and ZoomText – a process that non-disabled test-  
26 takers automatically use in answering such questions. As a result of the refusal of NCBE and  
27 ACT to provide the MPRE exam with Plaintiff's requested accommodations, Plaintiff was  
28 forced to once again defer taking this exam.

1           23.     Plaintiff applied to the State Bar to take the July 2009 California Bar Exam and  
2 requested to use JAWS and ZoomText as part of her reasonable test accommodations. State  
3 Bar representatives informed her that all of her accommodations would be granted on the  
4 California-specific portions of the exam, specifically the California Essay Exam and the  
5 California Performance Test. However, the State Bar was unable to tell her whether the MBE  
6 could also be provided in an electronic format to be read on a computer because this decision  
7 had to be made by NCBE.

8           24.     In late June a representative of the State Bar called Plaintiff to tell her that she  
9 might be eligible to participate in a “pilot program” that NCBE was offering to test takers who  
10 wished to read the MBE with assistive technology. Under this program, NCBE would provide  
11 test takers with laptop computers on which the JAWS screen reading program and a copy of  
12 the MBE questions had been pre-loaded.

13           25.     Plaintiff inquired further and learned that the NCBE laptop would only be  
14 equipped with JAWS and that NCBE would not permit her to also install ZoomText on the  
15 computer. She concluded that the pilot program would not be a viable solution for her because  
16 it would not offer simultaneous auditory and visual input and would not provide the assistance  
17 with visual tracking that she needs in order to read lengthy text. Plaintiff decided not to take  
18 the California Bar Exam in July 2009, despite her accommodation request being granted in  
19 full for the state-specific portions of the exam, because of NCBE’s refusal to provide an  
20 effective accommodation for the MBE portion of the bar exam.

21           26.     Plaintiff recently applied to take the February 2010 California Bar Exam. In  
22 conjunction with her application, she requested the identical accommodations that she  
23 requested for the July 2009 California Bar Exam, including the ability to read all sections of  
24 the exam on a computer equipped with both JAWS and ZoomText.

25           27.     The combination of screen reading (JAWS) and screen magnification  
26 (ZoomText) software is the only way that Plaintiff can effectively read and process the  
27 information contained in the MBE and MPRE questions because it is the only method that  
28 precisely synchronizes the auditory and visual presentation of the material while minimizing

1 Plaintiff's eye strain with the cursor tracking feature, thus enabling her to use her remaining  
2 vision to read the entire exam.

3 28. Because none of the alternative accommodations offered by Defendants would  
4 provide the simultaneous auditory and visual feedback, as well as the assistance with visual  
5 tracking, that Plaintiff used throughout law school and her legal work, these alternative  
6 accommodations would not measure her mastery of the material tested by the exams but  
7 would instead test the effects of her visual disability.

8 29. Plaintiff is without a plain, speedy or adequate remedy at law, thereby  
9 rendering injunctive relief appropriate in that:

- 10 a. Damages cannot adequately compensate Plaintiff for the injuries suffered; and  
11 b. Damages for the harm inflicted upon Plaintiff are difficult to ascertain.

12 **FIRST CAUSE OF ACTION**

13 **TITLE III OF THE ADA**

14 30. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of  
15 the complaint.

16 31. Title III of the ADA prohibits discrimination by entities such as the NCBE,  
17 ACT and the State Bar on the basis of disability. Such entities engage in discrimination when  
18 they fail to make "reasonable accommodations to known physical or mental limitations" of  
19 test-takers such as Plaintiff. 42 U.S.C. § 12112(b)(5)(A).

20 32. The term "disability" includes, with respect to an individual, a physical or  
21 mental impairment that substantially limits one or more of the major life activities of such  
22 individual. 42 U.S.C. § 12102(2)(A). Plaintiff is a qualified individual with disabilities within  
23 the meaning of 42 U.S.C. § 12102(2), and 28 C.F.R. §36.104.

24 33. The ADA requires private entities that administer standardized examinations  
25 "related to . . . applications, licensing, certification, or credentialing for . . . postsecondary  
26 education [or] professional . . . purposes" to do so in a "place and manner accessible to  
27 persons with disabilities or offer alternative accessible arrangements for such individuals." 42  
28 U.S.C. §12189.

1           34.     The regulations implemented in accordance with the ADA provide that when  
2     an examination is administered “to an individual with a disability that impairs sensory,  
3     manual, or speaking skills, the examination results accurately reflect the individual’s aptitude  
4     or achievement level or whatever other factor the examination purports to measure, rather than  
5     reflecting the individual’s impaired sensory, manual or speaking skills....” 28 C.F.R.  
6     §36.309(b)(1)(i).

7           35.     The modifications required under the ADA to examinations such as the MBE  
8     and MPRE include “changes in the length of time permitted for completion of the examination  
9     and adaptation of the manner in which the examination is given.” 29 C.F.R. §36.309(b)(2)-(3).  
10    In addition, the entity offering the examination must “provide appropriate auxiliary aids”  
11    unless the entity “can demonstrate offering a particular auxiliary aid would fundamentally  
12    alter the measurement of the skills or knowledge the examination is intended to test or would  
13    result in an undue burden.” 29 C.F.R. §36.309(b)(3).

14           36.     Plaintiff requires the accommodations she has requested on the California Bar  
15    Exam and the MPRE as an alternative accessible arrangement. Without these  
16    accommodations, the results will not accurately reflect what the examinations purport to  
17    measure, but will instead reflect Plaintiff’s impaired sensory skills.

18           37.     Defendants’ conduct constitutes an ongoing and continuous violation of Title  
19    III of the ADA and its supporting regulations. Unless restrained from doing so, Defendants  
20    will continue to violate the ADA. Unless enjoined, Defendants’ conduct will continue to  
21    inflict injuries for which Plaintiff has no adequate remedy at law.

22           38.     Unless the requested relief is granted, Plaintiff will suffer irreparable harm in  
23    that she will continue to be discriminated against and denied access to the California Bar  
24    Exam and MPRE, and to the legal profession, causing delay to her legal career with difficult to  
25    measure consequences.

26           39.     The ADA authorizes injunctive relief as appropriate to remedy acts of  
27    discrimination against persons with disabilities. See 42 U.S.C. §12188(a)(1).  
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1 40. Plaintiff is entitled to injunctive relief, as well as reasonable attorneys' fees and  
2 costs.

3 SECOND CAUSE OF ACTION

4 CALIFORNIA CIVIL CODE § 51

5 41. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of  
6 the complaint.

7 42. California's Unruh Act provides that all persons within California, "no matter  
8 what their sex, race, color, religion, ancestry, national origin, disability, or medical condition  
9 are entitled to the full and equal accommodations, advantages, facilities, privileges, or services  
10 in all business establishments of every kind whatsoever." Cal. Civ. Code § 51(b).

11 43. A violation of the right of any individual under the ADA also constitutes a  
12 violation of the Unruh Act. Cal. Civ. Code § 51(f). Defendants have violated the Unruh Act  
13 through their violation of the ADA. See *supra* ¶¶ 31 through 40.

14 44. Defendants NCBE, ACT and the State Bar are business establishments as that  
15 term is used in Cal. Civ. Code section 51(b), and the administration of both the California Bar  
16 Exam and the MPRE is an accommodation, advantage, facility, privilege and service of  
17 Defendants.

18 45. Defendants' conduct alleged herein violates the Unruh Act, including Cal. Civ.  
19 Code § 51(b), by denying Plaintiff the full and equal accommodations, advantages, facilities,  
20 privileges or services of the California Bar Exam and the MPRE.

21 46. Defendants violated the Unruh Act intentionally and/or with deliberate  
22 indifference to the likelihood that they were violating the rights of blind people and/or  
23 Defendants' violations were so intuitive or obvious that noncompliance could not be other  
24 than intentional.

25 47. As a result of Defendants' violation of the Unruh Act, Plaintiff is entitled to  
26 injunctive relief and to attorneys' fees and costs. Cal. Civ. Code § 52(a).

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THIRD CAUSE OF ACTION

DECLARATORY RELIEF

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48. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of the complaint. Plaintiff contends that Plaintiff is entitled to reasonable accommodations on the MBE and MPRE that include the ability to use a laptop computer equipped with screen reading and screen magnification software, in order to demonstrate what the examination purports to measure, and to obtain full and equal access to the MBE and MPRE. Plaintiff further contends that Defendants are administering the MBE and MPRE in a manner that discriminates against Plaintiff as a person with disabilities by denying these accommodations.

49. Defendants disagree with Plaintiff's contentions.

50. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

WHEREFORE, Plaintiff requests relief as set forth below.

RELIEF REQUESTED

Plaintiff prays for judgment as follows:

1. A declaration that Plaintiff is entitled to reasonable accommodations on the MBE and MPRE that include the ability to use a laptop computer equipped with screen reading and screen magnification software and that Defendants are administering the MBE and MPRE in a manner that discriminates against Plaintiff as a person with disabilities by denying these accommodations;
2. An order enjoining Defendants from violating federal and state disability discrimination laws in their administration of the MBE and MPRE by failing to provide her the accommodations that she has requested and to which she is entitled;
3. An award of Plaintiffs' reasonable attorneys' fees and costs; and
4. Such other and further relief as the Court deems just and proper.

