

APPENDIX C

POLICY ON APPLICANTS WITH A DISABILITY

I. **POLICY.** It is the policy of the Nebraska State Bar Commission to administer the bar examination in a manner that does not discriminate, on the basis of disability, against a qualified applicant with a disability. An applicant who is otherwise eligible to take the Nebraska bar examination may file a request for special testing accommodations.

II. **DEFINITIONS.** For the purpose of this policy, the following definitions shall apply:

A. "Disability" means any of the following:

1. A physical or mental impairment that substantially limits one or more of the major life activities of the applicant and that substantially limits the ability of the applicant to demonstrate, under standard testing conditions, that the applicant possesses the essential skills, level of achievement, and aptitudes that the Nebraska Supreme Court and the commission require for admission to the practice of law in Nebraska;

2. A record of having such an impairment;

3. Being regarded as having such an impairment.

B. "Qualified applicant with a disability" means an applicant with a disability who, with or without reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for admission to the practice of law in Nebraska.

C. "Reasonable accommodation" means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability without doing any of the following:

1. Fundamentally altering the nature of the examination or the commission's ability to determine through the bar examination whether the applicant possesses the essential skills, level of achievement, and aptitudes that are among the essential eligibility requirements set forth in rule 3, that the Nebraska Supreme Court and the commission have determined are required for admission to the practice of law in Nebraska;

2. Imposing an undue burden on the commission;

3. Compromising the security of the examination;

4. Compromising the integrity, the reliability, or the validity of the examination.

III. REQUESTS FOR SPECIAL TESTING ACCOMMODATIONS

A. Requests

1. A request for special testing accommodations will be on forms prescribed by the commission and consist of all of the following:

(a) a statement from the applicant, including a description of the applicant's disability and the special accommodations requested;

(b) a statement from the applicant's appropriate health care professional(s) certifying the applicant's disability;

(c) a statement from any educational institution or employer that provided special accommodations to the applicant while the applicant attended the educational institution or was employed by the employer, certifying the accommodation provided;

(d) an authorization for release of records from the applicant's physician(s) and/or other appropriate health care professional(s) for the purpose of assessing the disability, and accommodations which may be required.

The applicant may file any additional documentation in support of the request.

2. A request for special testing accommodations for an examination must be filed with the applicant's Application to take the Bar Examination and by the deadline in § 3-102 for filing that application. A request for special testing accommodations for re-examination must be filed with the Application for Re-examination and by the deadline in § 3-102 for filing that application.

B. Availability of Request Forms

All forms necessary to complete a request for special testing accommodations will be available at no charge from the Nebraska State Bar Commission Admissions Office.

IV. COMMISSION DECISIONS

A. Procedures for Review of Requests

1. The commission will review all requests for special testing accommodations that are properly filed in accordance with this policy.

(a) Requests that are not timely filed, that are incomplete, or that otherwise do not comply with the requirements of this policy may be rejected for consideration by the commission.

(b) The commission may ask an applicant to submit additional information to support the applicant's request.

(c) The commission may seek the assistance of a medical, psychological, or other authority of the commission's choosing in reviewing a request.

(d) The commission may ask the applicant to submit to an independent evaluation conducted by an appropriate health care professional selected by the commission.

(e) The cost of the independent evaluation shall be paid by the commission.

2. In reviewing a request, the commission will follow these procedures.

(a) The commission will make a determination, and the director of the commission will send notification of the determination to the applicant, no fewer than 25 days before the examination.

(b) The commission's denial of a request will be in writing and sent to the applicant by certified mail to the address provided by the applicant on the request. The commission's denial will include a statement of the commission's reasons for denial. The commission will also provide the applicant with a copy of the written report of any expert it consulted in reviewing the request.

(c) The applicant may appeal the denial of a request to the Supreme Court in accordance with §§ 3-110 and 3-115.

3. The commission may delegate to a committee of bar examiners its authority to review and rule upon requests pursuant to this policy.

B. Standards for Decision on the Merits

1. The commission will grant a request and provide special testing accommodations to an applicant if it finds all of the following:

(a) the applicant has a disability and is otherwise eligible to take the bar examination;

(b) the special testing accommodations are necessary to ameliorate the impact of the applicant's disability;

(c) the special testing accommodations are reasonable accommodations.

2. The commission will have sole discretion to determine what special testing accommodations are reasonable accommodations. The commission may provide accommodations different from those requested by the applicant if the commission determines that the accommodations provided will effectively ameliorate the impact of the applicant's disability.

3. No special testing accommodation granted pursuant to this policy will alter in any manner the limitation otherwise imposed on the length of an applicant's answers.

4. If an applicant is permitted to dictate answers to the essay portion of the examination, those answers will be transcribed by personnel selected solely by the commission for that purpose.

V. CONFIDENTIALITY

All requests for special testing accommodations, supporting documentation, and information developed by the commission with respect to the requests will remain confidential; however, the commission may reveal the contents of applications to its experts in assessing and commenting on the matters contained in the applications.