

Blind grads v. bar exam

Would-be lawyers seek right to use adaptive technology to take test

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Three blind law school graduates filed suit against the National Conference of Bar Examiners Wednesday after it denied their requests to use screen-access software to take the Multistate Bar Examination in July.

The **Maryland State Board of Law Examiners** granted the plaintiffs' requests to use the software for the state-law sections of the test but deferred to the Wisconsin-based national governing body on the 200-item, six-hour multiple choice MBE.

The NCBE rejected the request two weeks ago, according to the lawsuit filed under the Americans with Disabilities Act in **U.S. District Court** in Baltimore.

The plaintiffs, each of whom graduated this spring, were once sighted but are now legally blind due to degenerative disease and are not proficient at Braille. They claim that banning their preferred computer programs, which they used throughout law school, is discrimination that will put them at a competitive disadvantage during the July 27-28 bar exam and threaten their career prospects.

Daniel F. Goldstein, one of their lawyers, said the accommodations the NCBE has offered, which range from a human reader to audio CDs, are "wildly inferior" to using the JAWS program plaintiffs Timothy Elder and Anne Blackfield use and the ZoomText program used by Michael Witver, who still has some sight.

The alternative accommodations are "either ones my clients can't use or are inherently inferior to what they want to use," Goldstein said Tuesday, "and any time that you

don't get to use your ordinary reading method, the one that you've become proficient at ... you're going to have to focus on the act of reading rather than the content."

"What we're asking for puts our clients on an equal basis with sighted readers," said **Goldstein, whose law firm, Brown, Goldstein & Levy LLP**, will employ Elder as a fellow this fall. The firm is representing the students with the backing of the Baltimore-based **National Federation of the Blind** and in conjunction with two other firms, Disability Rights Advocates of Berkley, Calif., and LaBarre Law Offices of Denver.

Robert A. Burgoyne, who represents the NCBE, hadn't yet read the lawsuit but said the NCBE believes "the Maryland board has offered to administer the exam in an accessible format."

"It's a paper-and-pencil examination that we do not administer in a computer-based form, and there are cost, security and administrative issues that would arise from those requested accommodations," said Burgoyne, a partner in the Washington, D.C. office of Fulbright & Jaworski LLP.

Two of many problems with such a stance, Goldstein says, are the outdated beliefs that paper is inherently more secure than electronic copies and that Braille is still the primary mode of reading for blind people. Whereas half of blind people read Braille in the 1940s, only 15 percent do now, Goldstein said.

JAWS, short for Job Access with Speech, reads text aloud while providing audio cues that allow a blind person to navigate and comprehend a document at the same speed as a sighted person. Goldstein has JAWS

installed on computers at his firm and said the speed at which blind clients listen to the text is incomprehensible to most seeing people.

"I am not able to take in the information they're getting orally any more than they can take in the information that I'm looking at," he said.

ZoomText magnifies letters and images on the screen and has a text-to-speech function.

Blackfield, a graduate of the **University of Maryland School of Law**; Elder, a graduate of the University of California Hastings College of Law; and Witver, a graduate of the Catholic University of America Columbus School of Law, filed requests for accommodations on April 28, according to the suit. Barbara Gavin, director of character and fitness at the state board, wrote to each of them on May 6, giving them the partial good news about the screen access programs, but the NCBE denial came on May 18.

Goldstein won a preliminary injunction against the NCBE earlier this year that allowed a blind client to take the California bar in February. (The client failed, however, so Goldstein will fly to the West Coast make his case again at a hearing on Friday.)

If blind law students are not successful in such challenges, Goldstein said, "well, they have a choice."

"They can try to take it with a reader. And sometimes they get lucky and they pass," he said, pausing. "And sometimes they don't pass ... and they don't become members of the bar."