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September 10, 2007

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights - NYAV
Washington, D.C. 20530

Re: My previously submitted Title II ADA Complaint against the Kansas Supreme Court

To whom it may concern:

This letter supplements the complaint I filed against the Kansas Supreme Court a few weeks ago pursuant to Title II of the Americans with Disabilities Act, adding one document and specifying an additional violation date. The new document is the enclosed September 5, 2007, Order of the Kansas Supreme Court. The new violation date is September 5, 2007.

I specifically allege that, in denying me admission to the Kansas Bar examination, 1) the Kansas Supreme Court illegally discriminated against me because it regarded me as having a disability, where, in fact, I have Asperger's Disorder and a historical diagnosis of bipolar disorder, non-disabling impairments that the Court incorrectly perceived to be disabling; 2) the Kansas Supreme Court refused to recognize that I had already put in place, successfully and for many years, the accommodations needed to overcome their objections to my diagnosis, which they continued to perceive to be disabling in spite of those accommodations; and 3) the Kansas Supreme Court illegally refused to accommodate the continuing disability it perceived by modifying its rules, policies or practices so as to permit me probationary admission to the Bar, an accommodation which is often allowed to *attorneys* who are disciplined for very comparable offenses committed under the influence of a treatable mental disability or addiction.

The Court's September 5, 2007, Order violated Title II by accepting and adopting the majority report of the Kansas Board of Law Examiners (of which a copy is also enclosed). The Board, in its majority report, regarded me as too disabled to practice law by virtue of its 1993 finding that I suffer from bipolar disorder, medically controlled and in remission but still under maintenance treatment, and by virtue of its present finding that I also suffer from Asperger's Disorder, also controlled but still under maintenance treatment. The Board's 1993 finding of uncured bipolar disorder led to a long-term disqualification from the practice of law, which is a "class of jobs" for purposes of the ADA (see *Bartlett v. New York State Board of Law Examiners*, 226 F.3d 69 (2nd Cir.

2000)). In its 2007 majority report, the Board once again relied upon its 1993 finding, in part, to justify continuing my disqualification for another 3 years, at least (or until I can prove my conditions cured) (See, the Board's finding number 2 and Kansas Supreme Court Rule 704(k)). Thus, I have been formally disqualified from the practice of law, a "class of jobs," for at least 14 years, by the Board's and the Court's perception that my mental impairment leaves me too disabled to practice law, and I fall within the definition of an individual with a disability under 42 U.S.C. § 12102(2)(C).

Here, it should be noted that the Admissions Attorney, the Kansas Supreme Court's own prosecuting attorney in admissions cases, conceded in her brief before the Board of Law Examiners that the ADA applies to my case, as Board member Jack Focht stated in his minority dissenting report (which is also attached hereto):

Our own attorney's brief on the application of the Americans With Disabilities Act (ADA) to applicants who take bar examinations may be summarized to say that the ADA prohibits a public entity (Board of Law Examiners) from discriminating against a qualified person with a disability. A qualified person is a person who, "with or without reasonable modification to rules, policies or practices" can meet essential eligibility requirements. (*Admissions Attorney's Brief, pp. 23-24*).

Minority Dissenting Report of Jack Focht, p. 5.

It should also be noted that no question was ever raised concerning my academic qualifications to take the Bar examination, and that, again as Mr. Focht said "there was no dispute that applicant's evidence established his good moral character" (Minority Report, p. 1). Instead, the Court ultimately denied my application on the *sole* ground that, as a result of the psychiatric issues raised by my application, I had failed to show that I am "mentally and emotionally fit to engage in the active and continuous practice of law." (Court's Order). That is, neither the Board nor the Court had any question that I am fully qualified to sit for the Bar examination and be licensed as an attorney, were it not for my perceived mental disability. Thus, the Court should have applied ADA decision standards to the best available objective evidence in determining whether I am a "qualified" individual with a (perceived) disability. 29 C.F.R. § 35.104 and Appendix.

Instead, in reaching its recommendation against me, the Board majority ignored all of the psychological expert testimony provided by both my psychiatrist and its own commissioned independent psychological examiner to the effect that my condition is in long-term, stable remission and the likelihood of recurrence is low. It based its decision instead on the fact that I was still receiving maintenance treatment and on sheer speculation that a hypothetical future stress scenario might exacerbate my condition. It then constructed for me a qualification standard that very few "normal," unimpaired applicants could meet. Compare the Board's majority report, findings 9 and 10, with the discussion and quotations from the record in the minority dissenting report. Note particularly these passages from the dissenting report:

I further point out that the majority has created a standard which many successful applicants to take the Kansas bar would fail—*i.e.*, a prediction that stress would at some point disable an applicant from the "active and continuous practice of law." The majority has ignored the counsel of the "expert witnesses" and engaged in pure speculation as to the effect the stress of the "active and continuous practice of law" would have on this applicant...

Minority Dissenting Report, pp. 1-2.

This writer has searched the record to see if any witness testified that applicant is not emotionally fit to engage in the continuous full-time practice of law and can find none. The Majority Report seeks to make much of Dr. Hough's recommendation that the applicant continue therapy—apparently not realizing that he was only seeing Dr. Urdaneta three to four times a year...

This testimony, when seen in its complete light, indicates a reflection not solely on the applicant, but on any applicant who has a history of substance abuse, drug problems, or mental illness in general and has achieved management of that disability. Dr. Hough was speaking of continuing management of what has become a successful maintenance plan. No other applicant is subject to denial of the opportunity to take a bar examination who has achieved the level of maintenance of this applicant.

Minority Dissenting Report, p. 5.

It appears clear that all the evidence before the Board and indeed, the implication of the wording of paragraph 10 of the Board recommendations, is that this applicant has put in place accommodations such as to meet the essential eligibility requirements to allow him to engage in the continuous practice of law.

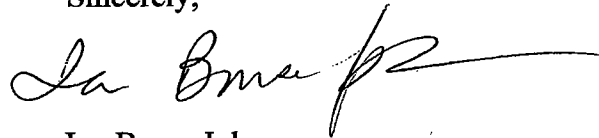
Minority Dissenting Report, pp. 5-6.

As Mr. Focht's minority report notes, the language of paragraph 10 of the Board's majority report does in fact imply that I am presently receiving successful maintenance therapy. But, in paragraph 11 of its report, the Board's majority goes on to recommend the denial of my application because "the Board is not authorized to grant a conditional license or to monitor an attorney's ongoing treatment." In other words, a license should be denied because the Court's rules do not authorize it to monitor me to be sure that I keep my accommodations (which I have maintained for more than 14 years) in place. That is, in the Board's opinion, the regulations and procedures under which the Board operates preempt both the ADA's statutory requirement of a "reasonable accommodation" and 28 C.F.R. 35.130(b)(6), (7) and (8). Attorneys subjected to discipline for recent offenses similar to the offenses I committed 22 years ago, and who suffer from still-active forms of mental disabilities similar to the conditions I have in remission, are sometimes permitted to continue to practice law on probation, with continued successful

treatment as a condition of that probation. See, e.g., *In re Ketter*, 268 Kan. 146, 992 P.2d 205 (1999); *In re Herman*, 254 Kan. 908, 869 P.2d 721 (1994). Thus, it cannot be said that permitting conditional licensure—a status which already exists in Kansas—would "fundamentally alter" the state's attorney licensure program. All that can be said is exactly what the Board's majority said, namely, that the Board is "not authorized" to grant conditional licensure by the rules under which it operates. That is, the negative implication of the absence of any clear authorization of an otherwise reasonable accommodation in a state court rule preempts the positive requirement of a Federal law!

The Supremacy Clause of Article VI of the United States Constitution of course disagrees with the Board's conclusion on this point. Valid Federal law preempts contrary state rules and regulations. The Justice Department should intervene to uphold the application of Federal law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ian Bruce Johnson", with a long horizontal flourish extending to the right.

Ian Bruce Johnson

Complainant