



## Reasonable Accommodations under the ADA for the Virginia Bar Exam

Under the Americans with Disabilities Act (ADA), an individual with a disability has the right to request reasonable accommodations on professional examinations, including state bar exams. The U.S. Department of Justice has issued specific regulations under the ADA that cover high-stakes testing, such as the bar exam.

### ADA Coverage of the Bar Exam

The Virginia Supreme Court administers the bar exam, making it a program or activity of state government under Title II of the ADA. In most states, including Virginia, a portion of the bar exam is conducted by a private organization, the National Conference of Bar Examiners (NCBEX), which is covered by Title III of the ADA.

Title III of the ADA states: “Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals. (42 U.S.C. § 12189)

Additionally, 28 C.F.R. § 36.309 requires entities offering examinations to ensure that sufficient accommodations are provided so that the exam reflects the individual's ability, not their disability.

### Virginia Specific Disability Rights Laws

In addition to the ADA, Virginia has its own disability rights laws. The Virginia Disability Act (VDA) states: “No person with a disability who is otherwise qualified shall, on the basis of their disability, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving state financial assistance or conducted by or on behalf of any state agency.” (Va. Code § 51.5-40)

It is essential to consider these state-specific laws, as they might provide additional rights or remedies beyond those offered by federal law.

### The Role of NCBEX and State Courts

With many states using national exams from NCBEX, there is more uniformity across states in the bar examination process. However, the state ultimately controls the bar examination process and determines accommodations. In some cases, courts have found that both the state entity and NCBEX have joint responsibility for ensuring accommodations.

In **Bonner v. District of Columbia Court of Appeals, 796 F. Supp. 2d 164 (D.C. 2011)**, the court held that NCBEX was a necessary party in a case where NCBEX rules prevented the District of Columbia Court of Appeals from providing the requested accommodation.

It is also possible that an applicant to the bar in multiple states may have their requested accommodation granted in one state and rejected in another, In **Oliver v. Virginia Board of Bar Examiners, 312 F. Supp. 3d 515 (E.D. Va. 2018)**, the applicant received accommodations in Michigan that were denied in Virginia.

### **Legal Challenges and the Rooker-Feldman Doctrine**

Individuals seeking to challenge a denial of accommodations might encounter obstacles due to the Rooker-Feldman doctrine, which prohibits federal courts from reviewing state court decisions, may need to appeal within the state system rather than turning to federal court. A decision denying reasonable accommodations can be appealed to the Virginia Supreme Court.

### **Applying for Accommodations**

Applicants should take note of the following when applying for bar exam accommodations:

1. **Detail and Documentation:** Applicants must provide detailed information about their disability and the specific accommodations needed. It is advisable to submit alternative requests if the preferred accommodation is deemed unfeasible. Under the ADA, entities offering the bar exam may request reasonable information necessary to decide whether to grant an accommodation. Sufficient documentation must establish that the applicant qualifies as a person with a disability under the ADA and that the requested accommodations are necessary.
2. **Timely Application:** Applying early allows time to provide additional information if requested and the opportunity to pursue state-specific appeals if necessary.

Applicants should also be aware that Virginia requires separate forms for non-standard testing accommodations and medical accommodations, which can be found at:

- Non-Standard Testing Accommodations: [Virginia Board of Bar Examiners Guidelines](#)
- Medical Accommodation Requests: [Virginia Medical Accommodation Form](#).

In **Varad v. Barshak, 261 F. Supp. 47 (Mass. 2003)**: Found that failure to apply for bar examination accommodations using established procedures defeated an ADA claim.

### **Examples of Reasonable Modifications**

- A legally blind applicant allowed to use a screen reader for the Multistate Bar Exam.
- A legally blind law student allowed to use a screen reader for the Multistate Professional Responsibility Examination.
- Providing a screen reader and text magnification for a legally blind bar applicant was not a fundamental alteration.
- Applicant provided time and a half, a large print exam book, and a private room.