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FILE NO. C5-84-2139
STATE OF MINNESOTA
IN THE SUPREME COURT

OFFICE OF
APPELLATE COURTS

In re Petition for Order of this
Court directing the State Board
of Law Examiners to Delete
Questions 4.22, 4.23, and 4.24
from the Application for
Admission to Bar of Minnesota

APR 11 1994

FILED

REPLY AND SUPPLEMENTAL STATEMENT OF PETITIONERS
TO RESPONSE OF MINNESOTA BOARD OF LAW EXAMINERS

1. In its Response to the Petition, the Minnesota Board of Law Examiners asserts that the challenged bar application questions are lawful, opposes the granting of immediate relief, but does not oppose a public hearing so long as the inquiry is expanded to include the lawfulness of other application questions that the Board considers legally indistinguishable from the challenged questions. Petitioners welcome the Board's cooperation in a public discussion about application questions, but ask the Court to proceed in a manner somewhat different from that suggested by the Board.

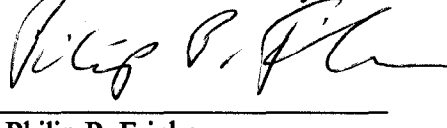
2. The Board admits that it is subject to the Americans with Disabilities Act. The Board's brief argument contending that the challenged questions are lawful under the ADA, which cites no support, is flatly inconsistent with the relevant case law and administrative interpretation. For the moment, we leave the details of the contrary argument to the opinions in the relevant cases and the federal government's amicus brief, all attached to the Petition. For current purposes, it suffices to point out that the Board's position—which we understand to be that, consistent with this Court's directives, it has a free hand to establish the essential qualifications for admission to the bar and to inquire into all matters that might have some bearing on these essential qualifications—squarely conflicts with one of the fundamental purposes of the ADA. As demonstrated in the federal amicus brief, one of the basic goals of the ADA is to prevent discrimination against persons who are perceived to be disabled because of stereotypes or misconceptions about their condition or status. As explained in the brief, the ADA, as well as § 504 of the Rehabilitation Act, upon which the ADA was modeled, requires entities such as licensing boards to tailor narrowly their "essential requirements," and commands that courts exercising review of such administrative licensing schemes probe beneath the surface of an agency's requirements to determine whether they are, in fact, narrowly tailored and empirically sound. In light of the ADA, the Board simply cannot stand on its supposed unfettered power to gather any information that might be useful in implementing the "essential requirements" for admission to the Minnesota bar. Furthermore, the Board has provided no factual support for its inquiries beyond a bare assertion that the questions "often provide[] the Board with valuable information" (Response, p. 4)—a conclusion unsupported by any data or other reliable information that petitioners have been able to locate and, in fact, unsupported by the Board's

own study (see Petition, p. 5 n.6).

3. The purpose of the Petition is to provide the Court with a non-adversarial alternative for prompt resolution of a pending problem of great significance. Petitioners respectfully request that their prayer for immediate relief be granted regardless of whether any broader inquiry concerning application questions is undertaken. At the least, petitioners have presented a *prima facie* case that the questions challenged in the Petition are illegal *and* produce hardship clearly outweighing any benefits that might be derived from them *and* are gender-biased. Applicants for admission should not be subject to these questions while the Court considers its ultimate resolution of broader issues. The questions should be withdrawn and answers to them ignored for pending applicants until such time as the legality and prudence of these questions is established to the satisfaction of this Court. As explained in the Petition, this approach was essentially the one taken in Utah, even though the officials there had no benefit of the later case law and administrative construction identified in the Petition. With the benefit of that information, this Court should do the same.

4. With regard to the Board's request to expand the scope of the proceeding, petitioners respectfully suggest that, in addition to any public-hearing process, the Court appoint a task force reporting to this Court to examine the legality and appropriateness of the broad range of character and fitness inquiries on the application for admission. The task force could consist of representatives from the Court, the Board, the bar, the law schools, and the public, as well as neutral and respected representatives of the medical and counseling communities and of the Attorney General's office (which could serve as counsel to the task force). In any event, however, as explained above, the Court should provide immediate relief within the confines of the Petition pending the ultimate resolution of the controversy.

5. In supplementation of the Petition: Petitioners have been informed that, over the past three years, 61% of the clients of the counseling service of William Mitchell College of Law have been women—a gender differential almost identical to that demonstrated in the Petition for Hamline University Law School and all the more striking because women constitute less than half the students at either school. Petitioners cannot obtain similar information about University of Minnesota law students because the University's Boynton Health Service cannot conveniently organize data according to the unit of enrollment of the client. A Service official has told us, however, that a similar gender difference seems to exist for University law students as well.



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DATE: April 11, 1994

CERTIFICATE OF SERVICE

Maury S. Landsman, Attorney at Law, hereby certifies that on this 11th day of April, 1994, I caused to be served a copy of this Reply by first-class mail upon Margaret Fuller Corneille, Esquire, Director, Minnesota Board of Law Examiners, One West Water Street, Suite 250, St. Paul, MN 55107, and upon John Tunheim, Esquire, Chief Deputy Attorney General of the State of Minnesota, 102 State Capitol Building, St. Paul, MN 55155.

