

Dear RI Lawyers Weekly Editor:

We write regarding the Rhode Island Board of Bar Examiners' (the "Board") policies and practices concerning non-standard testing accommodations for candidates who are breastfeeding at the time they are scheduled to take the Bar exam. In response to inquiries from women who had sought and been denied accommodations related to breastfeeding and pumping during the examination in several other states, the ACLU and Law Students for Reproductive Justice conducted a survey to examine the policies and practices in place across the country. Unfortunately, the investigation of publicly available information in Rhode Island indicated that, unlike many other states, eligibility for accommodations is limited to those with ADA-eligible disabilities.

We are concerned that the limited existing procedures for obtaining accommodations place individuals who are breastfeeding at a serious disadvantage during the test. We therefore have written to the Board and urged it adopt a policy that explicitly extends eligibility for accommodations to those who are breastfeeding, and to modify its procedures accordingly. Adoption of such changes would give meaning to the weight of medical authority supporting breastfeeding and better fulfill the Board's obligation to administer the test in a non-discriminatory manner. In addition, it would help ensure that Rhode Island keeps pace with its sister states in New England, and elsewhere, which do provide these accommodations.

Candidates who need accommodations related to breastfeeding should not be forced to choose between taking the test under conditions that may place their health at risk and postponing their test date until they are no longer breastfeeding. Placing women in this position would fly in the face of public policy, pose a barrier to women who wish to enter the legal profession, and send the message that being a mother is incompatible with entering a career in the law. We trust that this is not a message the Board wishes to endorse.

The Board should adopt a policy explicitly extending eligibility for accommodations to those who are breastfeeding for the following reasons:

First, there is a strong medical consensus that breastfeeding is associated with numerous benefits to mothers and infants. Accordingly, there is a strong public policy at both the state and federal level in favor of breastfeeding promotion. Rhode Island state law specifically protects the rights of women who are breastfeeding to do so anywhere they are authorized to be. Providing accommodations related to breastfeeding would therefore comport with this body of law and help give full effect to the important public health policy on which it is grounded. Appropriate policy changes would also be in keeping with our state's legal protections against sex discrimination in public accommodations.

Next, access to non-standard testing accommodations will be necessary for many women who are breastfeeding because the default conditions for administering the test generally do not meet their needs. For example, rules restrict what test takers may bring into the test site, and the existing breaks during the exam may, depending on the woman's circumstances, be insufficient for the necessary expression of breast milk. Accommodations are therefore required in order to ensure that women do not suffer medical consequences. Although the specific accommodations will differ for each individual based on their circumstances, there are several typical examples of

accommodations that would be appropriate in many circumstances, such as permission to bring to and store at the testing site necessary medical equipment and supplies, and additional “stop the clock” break time to express breast milk on a periodic basis depending on individual need.

Lastly, implementation of any policy extending eligibility for testing accommodations to candidates who are breastfeeding will require modification of the procedures currently used to handle such requests in Rhode Island. As discussed above, at the present time only ADA-qualified applicants are eligible to seek accommodations. Because breastfeeding does not constitute a disability, the existing application process fails to accommodate breastfeeding.

We therefore have respectfully requested that the Board institute the following reforms:

1. Adopt a policy that explicitly extends eligibility for non-standard test accommodations, such as those noted above, to those who are breastfeeding.
2. Modify existing resources related to testing accommodations (i.e. forms, instructions, website and other materials) to clarify that breastfeeding women are eligible to seek such accommodations.
3. Provide training to all staff responsible for rendering determinations on such requests to ensure that consistent and correct information is given to those who inquire as to eligibility.

After sending a number of letters to the Board over the course of four months, we were recently apprised that the issue is now being reviewed by the Supreme Court. We hope that a new policy will be articulated expeditiously. Even if there is only a slim possibility that an applicant needing breastfeeding accommodations will be applying for the next Bar exam in February, we believe it is critical that this issue be addressed before another exam period goes by.

We look forward to the adoption of reforms that will bring Rhode Island in line with other states that have recognized the importance of these accommodations.

Sincerely,

Board Members, Rhode Island Women’s Bar Association; Jane W. Koster, President, League of Women Voters of Rhode Island; Susan Yolen, Vice President for Policy and Advocacy, Planned Parenthood of Southern New England; Jenn Steinfeld, Executive Director, Women’s Fund of Rhode Island; Shandi Hanna, President, Rhode Island NOW; and Steven Brown, Executive Director, American Civil Liberties Union of Rhode Island.