IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ELLEN S., ANNABEL R., KATHERINE F. and SALLY M., Plaintiffs, v. THE FLORIDA BOARD OF BAR EXAMINERS JOHN MOORE, EXECUTIVE DIRECTOR OF THE FLORIDA BOARD OF BAR EXAMINERS, in his official capacity, and THE FLORIDA SUPREME COURT, in its capacity as a rule-making body for the Florida Bar, Defendants.	Case No. 94-0429-CIV-KING

MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE

KENDALL COFFEY
United States Attorney
for the Southern District
of Florida

VERONICA HARRELL-JAMES
Assistant United States
Attorney
U.S. Attorney's Office
Federal Justice Building
99 N.E. 4th Street
Miami, Florida
Tel: (305) 536-4109

DEVAL L. PATRICK
Assistant Attorney
General
Civil Rights Division

JOHN L. WODATCH
JOAN A. MAGAGNA
SHEILA M. FORAN
Attorneys
U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035-6738
Tel: (202) 307-0663

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

REGULATIONS:

LEGISLATIVE HISTORY

MISCELLANEOUS

Introduction

Plaintiffs -- three law students and a lawyer who wish to be admitted to the Florida Bar -- have brought this action alleging that the Florida Board of Bar Examiners' inquiries and investigations into applicants' histories of seeking mental health treatment discriminate on the basis of disability in violation of title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213 (Supp. II 1990). Defendants are the Florida Board of Bar Examiners, John Moore, its Executive Director, and the Florida Supreme Court, referred to collectively throughout as "defendants" or "the Board."

The challenged inquiries and investigations include:

(1) Question 29 on the application to the Florida bar, which asks whether an applicant has ever sought treatment for a nervous, mental or emotional condition, has ever been diagnosed as having such a condition, or has ever taken any psychotropic drugs;

(2) the consent form on the application requiring that applicants authorize release of any and all mental health records;

(3) the letter of inquiry by the Board of Bar Examiners to all past treatment professionals; and

(4) follow-up investigations and hearings.[1]

---

[1] See Florida bar application at Exhibit A to Plaintiffs' Complaint.

All plaintiffs seek to permanently enjoin the Board from continuing to require answers to Question 29 and to make the additional inquiries in the course of its fitness evaluations of bar applicants. Two of the plaintiffs, Ellen S. and Annabel R., also seek a preliminary injunction.[2]

The plaintiffs, Ellen S., Annabel R., Katherine F. and Sally M., are citizens of the United States and are residents of Florida. All four plaintiffs have received mental health services at some point in their lives.

Ellen S. is an attorney who is licensed to practice in the State of New York. She has been practicing disability law for the last six years, including serving as lead counsel in a class action and representing disabled clients in a variety of complex litigation. She has taken and passed the Florida bar examination, and has filled out an application for the Florida bar.

Plaintiff Annabel R. graduated in May 1994 from the University of Miami School of Law in Coral Gables, Florida, and has filled out the application for the Florida bar. She is past President of the School of Law's Forum for Women and the Law, past chairman of the most successful Public Interest Law Grant fundraising campaign to date, and one of the first students elected to serve as a student representative on the Law School's Disability Issues Committee.

Plaintiff Katherine F. is a second-year law student in good standing at the University of Miami School of Law. She has filled out the application for the Florida Bar, and expects to graduate in May 1995 and take the Florida bar examination in July 1995. She has not yet sent in the application for the Florida bar but intends to do so within the next several months.

Plaintiff Sally M. is a first-year law student in good standing at the University of Miami School of Law. She worked as a counselor for women who had been subject to violence and abuse prior to coming to law school.

[2] Ellen S. and Annabel R. seek a preliminary injunction prohibiting defendants from:

1) compelling plaintiffs to answer Question 29 as a condition of practicing law in the State of Florida;

Plaintiffs contend that these inquiries and investigations violate the ADA's prohibition of discrimination against individuals on the basis of mental disability, a history of mental disability, or perceived mental disability. The United States, as amicus curiae, supports plaintiffs' position that the inquiries and investigations used by the Florida Board of Bar Examiners in the bar admissions process violate the ADA.

This Court should deny the Board's motion to dismiss. The Board's central argument is that no discrimination can occur until an individual is denied admission to the bar for discriminatory reasons. However, as the United States establishes below, title II prohibits unnecessary inquiries into disability status as well as the placement of additional burdens on individuals with disabilities in the course of the admission process. Plaintiffs' challenge to these aspects of the admission process states a claim upon which relief may be granted.

Also pending before the Court is plaintiffs' motion for a preliminary injunction. To grant a preliminary injunction the

---

2) using the authorization forms signed by plaintiffs to make any inquiry of any of plaintiffs' treatment professionals as a condition of practicing law in the State of Florida;

3) conducting any investigation or screening arising solely from an applicant's seeking health treatment rather than any conduct reflecting unfitness or inability to practice law.

The Board of Bar Examiners has agreed not to terminate the application of Ellen S. pending resolution of this litigation. However, the Board has stated that it will not admit her to the Florida bar without answering this question unless ordered to do so by this Court.

Court must be satisfied that four criteria are met: (1) that plaintiffs are likely to succeed on the merits of their claim; (2) that plaintiffs will suffer irreparable harm if no injunction issues; (3) that such harm outweighs any harm to defendants caused by granting an injunction; and (4) that granting an injunction will serve the public interest. Haitian Refugee Center, Inc. v. Nelson, 872 F.2d 1555, 1561-62 (11th Cir. 1989) aff'd sub nom. McNary v. Haitian Refugee Center, 498 U.S. 479 (1991); Johnson v. Department of Agriculture, 734 F.2d 774, 781 (11th Cir. 1984). All four criteria are satisfied here and the preliminary injunction should be granted.

For the reasons stated herein, plaintiffs are likely to succeed on the merits of their claim that the procedures sought to be enjoined violate the ADA. The two plaintiffs seeking a preliminary injunction have asserted facts sufficient to establish irreparable harm. If no injunction issues, both must choose between losing important professional employment opportunities or subjecting themselves to the unlawful inquiries and investigation of the Board. As discussed, the Board's procedures inquire into very personal matters and additionally require plaintiffs to waive confidentiality of private medical and counseling records. Once such inquiries are conducted, it is not possible to remedy the harm caused by them.

The injunction plaintiffs seek will not harm defendants because, as the United States demonstrates below, the inquiries sought to be enjoined are not necessary to the Board's important

mission of determining whether applicants are fit to practice law. Finally, granting the injunction serves the public interest by upholding the important rights Congress sought to safeguard by enacting the ADA.

II. Argument: The Board's Use Of The Challenged Inquiries In Its Licensing Program Discriminates On The Basis Of Disability

A. The Board's Inquiries Are Contrary To The Purpose of The ADA

A core purpose of the ADA is the elimination of barriers caused by the use of stereotypic assumptions "that are not truly indicative of the individual ability of [persons with disabilities] to participate in, and contribute to, society." 42 U.S.C. §12101(a)(7).[3] The ADA does not permit unnecessary inquiries into the existence of disabilities, and prohibits policies that impose greater requirements or burdens on individuals with disabilities than those imposed on others.

While the ultimate goal of the Board -- to ensure that persons admitted to the Florida bar have the requisite moral character and fitness to practice law -- is certainly lawful, the means used by the Board to achieve that goal is not. By unnecessarily targeting for further investigation those individuals who have histories or diagnoses of disabilities and

---

[3] See H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. II at 30, 33, 40, 41 (1990) [hereinafter cited as Education and Labor Report]; H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. III at 25 (1990) [hereinafter cited as Judiciary Report]; S. Rep. No. 116, 101st Cong., 1st Sess. at 7, 9, and 15 (1989) [hereinafter cited as Senate Report].

imposing additional burdens of investigation upon them, the Board is not only ignoring its own statutory mandate -- which requires it to determine whether an applicant's record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them -- it is also engaging in precisely the kind of impermissible stereotyping that the ADA proscribes.

The only courts to address similar issues under the ADA have concluded that the types of questions and inquiries utilized by the Board here are unlawful. See Medical Society of New Jersey v. Jacobs, No. 93-3670, 1993 WL 413016 (D.N.J. Oct. 5, 1993) (mental health history inquiries and screening procedures in the context of medical licensing impose additional burdens on applicants with disabilities and constitute a violation of title II of the ADA); In re Applications of Anne Underwood and Judith Ann Plano, No. BAR 93-21, 1993 WL 649283 at *2 (Me. Dec. 8, 1993) ("The Board's requirement that applicants answer questions 29 and 30 [regarding diagnosis of and treatment for emotional, nervous or mental disorders], and that they sign a broad medical authorization violates the ADA because it discriminates on the basis of disability and imposes eligibility criteria that unnecessarily screen out individuals with disabilities.") See also In re Petition of Frickey, et al., No. C5-84-2139 (Minn. April 28, 1994), (while not decided on the basis of the ADA, finding that similar inquiries regarding mental health history on

Minnesota's bar admissions application were unnecessary and deterred students from obtaining necessary counseling.[4]

[4] In arguing that the challenged inquiries do not discriminate on the basis of disability, the Board relies heavily on Florida Board of Bar Examiners v. Applicant, 443 So.2d 71 (Fla. 1983), which rejected a challenge to similar mental health inquiries. The Board mistakenly asserts in its Motion to Dismiss at 6 that the case was decided under Section 504 of the Rehabilitation Act of 1973, which in fact was never raised in the case. The Florida Board of Bar Examiners case addressed state and federal constitutional claims, none of which are at issue here. Federal civil rights statutes may, of course, provide greater or different protection for individuals than do Federal and State constitutions. See e.g., Washington v. Davis, 426 U.S. 229 (1976). This is precisely what the ADA accomplishes with respect to persons with disabilities.

Although defendants are correct in stating that the courts in Underwood and Plano, Jacobs, and Frickey are not the only ones to examine the issue of mental health inquiries on license applications, these are the only cases to be decided under the ADA. None of the cases cited in defendants' Motion to Dismiss at 6-7 raise or address the ADA or the Rehabilitation Act of 1973, the statutes that prohibit discrimination on the basis of disability. For example, Florida Board of Bar Examiners v. G.W.L., 364 So.2d 454 (Fla. 1978), concerned an applicant to the bar who sought to avoid repaying his student loans by filing for bankruptcy protection. He had not attempted to find a job, nor did he contact his creditors to try to reschedule his payments. The court held that the Board could consider his (albeit legal) activities as evidence of "bad moral character." In Konigsberg v. State Bar of California, 366 U.S. 36 (1961), the applicant refused to answer a question on his Bar application about whether or not he had ever been a member of the Communist Party. The Court addressed this as a 14th Amendment issue and held that the question must have a "substantial relevance to his qualifications [for the Bar]." The Court held that this question was not arbitrary or discriminatory and was substantially related to the qualifications needed. See also Martin-Trigona v. Underwood, 529 F.2d 33 (7th Cir. 1975), In Re Applicant Mort, 560 N.E.2d 204 (Ohio 1990), cert. denied 498 U.S. 1072 (1991), Matter of Ronwin, 680 P.2d 107 (Az. 1983), cert. denied 464 U.S. 977 (1983), (none of which raise or address the ADA or Rehabilitation Act of 1973.)

B. The Board Is Subject To The Nondiscrimination Provisions Of Title II

Title II contains a sweeping prohibition of practices by public entities that discriminate against persons with disabilities. Section 202 of the Act, 42 U.S.C. § 12132, provides:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.[5]

A "public entity" is defined in title II to include "any department, agency ... or other instrumentality of a State ... or local government." 42 U.S.C. § 12131(1)(B). The Board falls within this definition as it is the State governmental agency responsible for licensing attorneys in the State of Florida.[6]

---

[5] Prior to the passage of the ADA in 1990, similar protections had been provided by section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, but only in programs or activities receiving federal financial assistance (including assisted programs of State and local governments). In language that is substantively similar to that of section 504, title II expanded this prohibition to all programs, services, and activities of State and local governments, not just to those aided by federal funds. See Education and Labor Report at 84.

[6] The Board is an administrative body of the Florida judiciary. The legislature has declared admissions of attorneys to be a judicial function governed by the Supreme Court of Florida. The Board is charged with conducting a basic character and fitness investigation of each applicant. See Fla. Stat. § 454.021 (1991).

C. Title II Is Constitutional In Its Application To State's Licensing Of Attorneys

In enacting the ADA, Congress explicitly invoked its broad powers under the Fourteenth Amendment. See 42 U.S.C. § 12102(b)(4) (purpose of the ADA "to invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment . . . in order to address major areas of discrimination faced day-to-day by people with disabilities").[7] The Board concedes that the ADA is "most likely a valid exercise" of Congress' power under the Fourteenth Amendment.[8] However, it challenges the applicability of title II to the State's conduct in licensing and regulating attorneys, claiming this to be a sovereign function outside the scope of federal regulation absent clear congressional intent to reach such conduct.

Even if the Board's constitutional theory is sound, no issue arises here because Congress' intent to cover all activities of states could not be clearer.[9] Title II proscribes discrimination

---

[7] The Board apparently overlooked this statutory language, for it erroneously states that the ADA contains no explicit mention of the Fourteenth Amendment. Supplemental Motion to Dismiss or in the Alternative for Summary Judgement at 5. Thus the Board's reliance on Pennhurst State Sch. & Hospital v. Halderman, 451 U.S. 1 (1981), is inapposite.

[8] Supplemental Motion at 5-6.

[9] Whether licensing of attorneys is a "sovereign function" of the states, and, if so, whether this is of any constitutional significance, need not be decided by this court because all state activities are covered by title II, regardless of how they are characterized. We note, however, that the ADA expressly abrogates state sovereign immunity. See 42 U.S.C. § 12202. This supports the view that Congress understood the Act

by public entities, including States, and "any department, agency, special purpose district, or other instrumentality of a state." 42 U.S.C. § 12131. Title II proscribes the discriminatory denial of benefits or exclusion from participation in all "services, programs, or activities" of public entities. 42 U.S.C. § 12132. The Board relies on this language to suggest that "governments do not offer services, programs or activities within or as part of their sovereign capacity." Supplemental Motion at 8. To accept this argument requires the Court to reject the plain meaning of the statutory terms. Licensing of attorneys is unquestionably an activity and/or program of the Board, an agency or instrumentality of the State. Nothing in the statute or legislative history suggests that only some activities, programs and services of covered entities are to be covered by title II.

Beyond services, programs and activities, title II also provides that no "qualified individual with a disability shall . . . be subjected to discrimination by any [public] entity." 42 U.S.C. § 12132. This language admits of no exception; it prohibits a public entity from discriminating on the basis of disability in any manner, whether through licensing professionals or any other official activity. The Board suggests, however, that if Congress meant to restrict licensing entities from inquiring into disability, it should have enacted a specific

---

to reach the states as sovereigns.

provision doing so. As reflected in the legislative history, such specificity is unnecessary where the intent is to cover all activities of States and local governments. Emphasizing title II's link to section 504 of the Rehabilitation Act, the House Report explains that

> [t]he Committee has chosen not to list all the types of actions that are included within the term 'discrimination' . . . because this title essentially simply extends the antidiscrimination prohibition embodied in section 504 to all actions of state and local governments.

Education and Labor Report at 84 (emphasis added).

Elsewhere the report states that

> Title II . . . makes all activities of state and local governments subject to the types of prohibitions against discrimination against a qualified individual with a disability included in section 504 (nondiscrimination).

Id. at 151 (emphasis added).

Indeed, to allow discrimination on the basis of disability in any area of government functioning denies persons with disabilities equal opportunity to benefit from those government functions, in direct contravention to the ADA's stated goal to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1).[10]

[10] As a remedial statute, the ADA "must be broadly construed to effectuate its purposes." Kinney v. Yerusalim, 812 F. Supp. 547, 551 (E.D. Pa. 1993), aff'd, 9 F.3d 1067 (3d Cir. 1993).

D. The Board's Inquiries Target Persons With Disabilities

Under title II and the title II regulation, the term "disability" means:

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> (B) a record of such impairment; or
>
> (C) being regarded as having such an impairment.

42 U.S.C. § 12102 (2); 28 C.F.R. § 35.104 (1992). The title II regulation states that "physical or mental impairment" includes "[a]ny mental or psychological disorder such as . . . emotional or mental illness . . . ." 28 C.F.R. § 35.104 (1992).[11]

---

[11] The United States relies heavily throughout on the title II regulation promulgated by the Department of Justice. Where, as here, Congress expressly delegates authority to an agency to issue legislative regulations, 42 U.S.C. § 12134, the regulations "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984). See also Petersen v. University of Wis. Bd. of Regents, No. 93-C-46-C, 2 Americans With Disabilities Act Cases (BNA) 735, 738, 1993 U.S. Dist. LEXIS 5427 (W.D. Wis. Apr. 20, 1993) (applying Chevron to give controlling weight to Department of Justice interpretations of title II of the ADA).

Agencies are also afforded substantial deference in interpreting their own regulations. The Supreme Court has stated that "provided that an agency's interpretation of its own regulations does not violate the Constitution or a federal statute, it must be given `controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" Stinson v. United States, 113 S. Ct. 1913, 1919 (1993) (quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945)). See Lyng v. Payne, 476 U.S. 926, 939 (1986); United States v. Larionoff, 431 U.S. 864, 872-873 (1977); Udall v. Tallman, 380 U.S. 1, 16-17 (1965).

Individuals not currently impaired but who have a history of mental illness or emotional disorder may fit into the second or third prongs of the statutory definition. Many persons diagnosed or treated for mental illness have at some time experienced substantial limitations in major life activities such as working, learning, caring for oneself, eating or sleeping.[12] The legislative history of the ADA notes that the "record of . . . impairment" prong of the definition was included in the law

> in part to protect individuals who have recovered from a physical or mental impairment which previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment would be prohibited under this legislation. Frequently occurring examples of [this] group . . . are persons with histories of mental or emotional illness . . . .[13]

Regardless of whether they have ever suffered from an actual substantial impairment of a major life activity, however, persons who have ever been diagnosed or treated for mental illness may be covered by the third prong of the "disability" definition -- "regarded as having such an impairment." 42 U.S.C. § 12102

---

[12] The title II regulation describes "major life activities" to include "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 28 C.F.R. § 35.104. The phrase "such as" indicates that the list is not meant to be exclusive.

[13] Education and Labor Report at 52; Senate Report at 23 (emphasis added). Individuals who have been diagnosed or treated for mental or emotional disorders face substantial obstacles in pursuing major life activities such as working because mental illness still carries a stigma in our society. A history of mental illness is the classic case of an "impairment that substantially limits major life activities . . . as a result of the attitude of others towards such an impairment." 28 C.F.R. § 35.104 (1992).

(2)(C).[14] Unfortunately, due to popular misconceptions concerning persons who have sought treatment for mental health problems in the past, such persons are often regarded as emotionally disabled or mentally ill although their past and/or current capability or stability may not be affected. See discussion infra. As the Supreme Court observed in School Board of Nassau County v. Arline, 480 U.S. 273, 284 (1987), Congress, in enacting the "regarded as" provision, "acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment."[15]

Here, the Board's sweeping inquiries reflect an assumption that any past diagnosis or treatment for mental or emotional condition or disorder is evidence of an impairment that is

---

[14] The title II regulation defines this prong to include persons who have "a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment . . . ." 28 C.F.R. § 35.104 (1992).

[15] The Arline case was decided under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, which prohibits discrimination against individuals with handicaps by programs receiving federal financial assistance. In the ADA, Congress adopted a definition of "disability" essentially identical to the Section 504 definition of "handicap" that was considered by the Supreme Court in Arline. The legislative history of the ADA includes numerous approving references to Arline's interpretation of the law. See Senate Report at 21-24 (1989); Education and Labor Report at 50-53. Moreover, the statute, legislative history and Department of Justice regulations make it clear that title II of the ADA is intended to provide protection at least as broad as those available under the Rehabilitation Act and its implementing regulations. See 42 U.S.C. § 12202(a); Education and Labor Report at 84; 28 C.F.R. § 35.103(a) (1992).

relevant to an applicant's ability to work as a lawyer.[16] The Board here is thus "regarding" persons with past histories of mental health treatment as persons likely to be currently impaired.

E. The Inquiry Into Past Treatment For Mental Health Is An Unnecessary Eligibility Requirement

The central issue of this case is whether Question 29 and the followup inquiries are necessary to the Board in its determinations of whether applicants are fit to practice law. If so, there is no violation of title II. However, as we demonstrate below, the Board's conduct does violate title II because Question 29 and the resulting inquiries are not necessary to the Board in making its determinations of whether individuals are qualified to practice law. As the court in Medical Society of New Jersey v. Jacobs, 1993 WL 413016, at *7, concluded, "The essential problem with the present questions is that they substitute an impermissible inquiry into the status of disabled applicants for the proper, indeed necessary, inquiry into the applicants' behavior."

a. Unnecessary Inquiries Into Disability Are Prohibited By Title II

---

[16] Indeed, Defendants' Motion to Dismiss states:

> It is of the utmost importance that the information sought by the defendants regarding an applicant's mental health is discovered prior to his being admitted to the Bar. If the defendants were to sit idle and wait for conduct related to a lawyer's impaired mental health to occur then great harm could come to those who have put their trust in that lawyer.

Motion to Dismiss at 5.

Title II does not permit inquiries into disabilities where they are not necessary to achieve the objective of determining whether individuals are fit to practice law. Unnecessary inquiries are barred by 28 C.F.R. § 35.130(b)(8),[17] which is identical in substance to a statutory provision in title III, 42 U.S.C. § 12182(b)(2)(A)(i), and the title III regulation, 28 C.F.R. 36.301(a). The legislative history of the title III statutory provision makes clear that Congress intended to prohibit unnecessary inquiries into disability.

> It also would be a violation for [a public accommodation] to invade such people's privacy by trying to identify unnecessarily the existence of a disability, as, for example, if the credit application of a department store were to inquire whether an individual has epilepsy, has ever ... been hospitalized for mental illness, or has other disability.

Senate Report at 62. See also Education and Labor Report at 105; Judiciary Report at 58. The Department of Justice emphasized this Congressional intention in the accompanying analysis to its title III regulation, 28 C.F.R. pt. 36, app. B at 590. The Title II Technical Assistance Manual, published by the Attorney General pursuant to statutory mandate, reiterates that title II prohibits unnecessary inquiries into disability. 42 U.S.C. §§ 12206(c)(3)

---

[17] 28 C.F.R. § 35.130(b)(8) provides:

> A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. (Emphasis added.)

& (d) (Supp. II 1990); U.S. Department of Justice, The Americans with Disabilities Act -- Title II Technical Assistance Manual (1992 & Supp. 1993)("Technical Assistance Manual"). Section 204 of the ADA provides that the title II regulation shall incorporate this concept. 42 U.S.C. § 12134(b); Judiciary Report at 51; Education and Labor Report at 84; 28 C.F.R. pt. 35, app. A at 430.[18]

b. The Board Cannot Establish That Its Inquiries Are Necessary For Determining Whether Individuals Are Fit To Practice Law

Title II prohibits a public entity from discriminating against a "qualified individual with a disability," which is defined in title II of the ADA and section 35.104 of the title II regulation to mean:

> an individual with a disability who, with or without reasonable modifications to rules, policies or practices ... meets the <u>essential eligibility requirements</u> for the receipt of services or the participation in the programs or activities provided by a public entity.

42 U.S.C. § 12131(2); 28 C.F.R. § 35.104 (emphasis added). Similarly, as noted in the analysis accompanying section 35.130(b)(6), a person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification. 28 C.F.R. pt. 35, app. A at 453

[18] The Board is thus incorrect that unnecessary inquiries into disabilities are prohibited only by title I of the ADA, which prohibits employment discrimination on the basis of disability.

(July 1, 1993).[19] Where, as here, public safety may be affected, a determination of whether a candidate meets the "essential eligibility requirements" may include consideration of whether the individual with a disability poses a direct threat to the health and safety of others.[20]

---

[19] The commentary to the regulation also indicates that determining what constitutes "essential eligibility requirements" has been shaped by cases decided under section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. These cases have demanded a careful analysis behind the qualifications used to determine the actual criteria that a position requires. School Bd. v. Arline, 480 U.S. 273, 287-288 (1986); Pandazides v. Virginia Bd. of Educ., 946 F.2d 345, 349-50 (4th Cir. 1991)(noting that "defendants cannot merely mechanically invoke any set of requirements and pronounce the handicapped applicant or prospective employee not otherwise qualified. The district court must look behind the qualifications"); Doe v. Syracuse School Dist., 508 F. Supp. 333, 337 (N.D.N.Y. 1981) (requiring analysis behind "perceived limitations"). See also Strathie v. Department of Transp., 716 F.2d 227, 231 (3d Cir. 1983) (finding State's characterization of essential nature of program to license bus drivers overbroad, and requiring a "factual basis reasonably demonstrating" that accommodating the individual would modify the essential nature of the program); Easley by Easley v. Snider, 841 F. Supp. 668, 673 (E.D. Pa. 1993) (finding a violation of the ADA where health maintenance program used improper eligibility criterion to screen out disabled individuals, and requiring the court to "make an independent inquiry into the essential nature of the program.").

[20] As noted in the Department's title II analysis accompanying section 35.104,

> Where questions of safety are involved, the principles established in §36.208 of the Department's regulation implementing title III of the ADA, to be codified at 28 C.F.R. Part 36, will be applicable. That section implements section 302(b)(3) of the Act, which provides that a public accommodation is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public

The purpose of the Board's licensure process is to determine whether individuals are capable of practicing law in a competent and ethical manner, i.e. whether such persons will satisfy the "essential eligibility requirements" for the practice of law.[21]

The inquiries and investigations at issue here are poorly crafted to achieve the Board's goal of identifying persons unfit to practice law. Asking about an applicant's history of diagnosis

---

> accommodation, if that individual poses a direct threat to the health or safety of others.
>
> A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.... Although persons with disabilities are generally entitled to the protection of this part, a person who poses a significant risk to others will not be "qualified," if reasonable modifications to the public entity's policies, practices, or procedures will not eliminate that risk.

28 C.F.R. pt. 35, app. A at 448 (1993).

[21] According to the Rules of the Florida Supreme Court Relating to Admissions to the Bar:

> [t]he primary purposes of character and fitness screening before admission to The Florida Bar are to assure the protection of the public and safeguard the justice system. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a deficiency in the honesty, trustworthiness diligence or reliability of an applicant may constitute a basis for denial of admission.

Article III, Section 2 (b).

and treatment for mental disorders treats a person's status as an individual with a disability as if it were indicative of that individual's future behavior as an attorney.[22] However, diagnosis or treatment for a mental disorder provides no basis for assuming that these disabilities will affect behavior. See generally 1 Jay Ziskin, Coping with Psychiatric and Psychological Testimony 1-63 (3d ed. 1981); Bruce J. Ennis & Thomas R. Litwack, Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom, 62 Cal. L. Rev. 693 (1974) (both articles citing extensive authority establishing the inability of mental health professionals to make reliable predictions of future behavior).[23]

Questions that focus on conduct and character rather than the status of having a disability, are better indicators of an

---

[22] The ADA prohibits discrimination based on stereotypical and unfounded fears and misconceptions over the perceived consequences of disabilities. See, e.g., Title II Technical Assistance Manual at 12 ("A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However the public entity must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities") (emphasis added).

[23] Of course this is even more true with respect to bar examiners, who are not usually professionals trained in the fields of psychiatry or psychology.

> [w]hile mental stability is obviously relevant to practice, current certification standards license untrained examiners to draw inference that the mental health community would find highly dubious...Even trained clinicians cannot accurately predict psychological incapacities based on past treatment in most individual cases.

Deborah L. Rhode, Moral Character as a Professional Credential, 94 Yale L.J. 491, 581-82 (1985).

applicant's fitness to practice law. Indeed, the Board's own Rules identify "record of conduct" as the key element of the Board's character and fitness inquiry:

> An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of admission.

Rules of the Supreme Court Relating to Admissions to the Bar, Article III, Section 2 (b) (emphasis added). While the Board acknowledges that conduct is the proper focus of its inquiries, it nevertheless asserts that a record of treatment for mental illness will expose conduct that poses a risk for the practice of law.[24] This argument, however, is based on presumptions about mental illness that are simply not borne out in fact, as the authorities discussed above have concluded.

The Board's purposes are better served by questions that focus directly on conduct and behavior, including those that may be associated with mental illness. The Title II Technical Assistance Manual states that,

---

[24] See Defendants' Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss at 9: "[I]t is absolutely clear that the purpose of such questions [regarding mental health history] is not to ascertain the 'status' of applicants, but rather to determine whether a person's psychological history or condition has resulted in certain conduct or behavior in the past which might reflect on the applicant's qualifications to function in a fiduciary capacity with respect to members of the public in the practice of law in Florida."

> [p]ublic entities may not discriminate against qualified individuals with disabilities who apply for licenses, but may consider factors related to the disability in determining whether the individual is "qualified."

Technical Assistance Manual, at II-3.7200 (emphasis added). One permissible "factor related to the disability" is any inappropriate behavior associated with that disability. Thus, the Board may inquire generally about any leaves of absence or terminations from employment in the past but may not focus the inquiry only on those leaves of absence and terminations occasioned by physical or psychiatric illnesses or conditions. Similarly, the Board may inquire about personal behavior, including whether the applicant uses illegal drugs and the frequency of use.[25] The Board may also ask applicants whether there is anything that would currently impair their ability to carry out the duties and responsibilities of an attorney in a manner consistent with the Rules of the Florida Supreme Court Relating to Admissions to the Bar.[26]

---

[25] Under the ADA, "the term 'individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use." 42 U.S.C. § 12110(a).

[26] For instance, in Doe v. Syracuse School District, 508 F. Supp. 333 (N.D.N.Y. 1981), the court held that a question on a job application form asking whether the applicant had ever experienced a nervous breakdown or undergone psychiatric treatment was illegal under the Rehabilitation Act and its implementing regulations. The district court noted that, "if defendant sincerely wanted to employ persons that were capable of performing their jobs, all it had to ask was whether the applicant was capable of dealing with various emotionally demanding situations." Id. at 337.

The inquiries and investigations regarding mental health history are also unnecessary because other questions on the Florida bar applications elicit a wealth of information to illuminate an individual's past behavior. These inquiries require full disclosure of employment history, educational background, military service, criminal record, illegal drug use, fiscal responsibility, residential history, and identification of family members. These inquiries provide a sound and comprehensive basis for drawing inferences about an individual's fitness for the practice of law without resort to the mental health history.

Other courts concur in this conclusion. See In re Petition of Frickey, et al., No. C5-84-2139, 1994 WL 183523 (Minn. April 28, 1994), (order removing similar questions from Minnesota bar admissions application, finding that "questions relating to conduct can, for the most part, elicit the information necessary for the Board of Law Examiners to enable the Court to protect the public from unfit practitioners"); and Medical Society of New Jersey v. Jacobs, 1993 WL 413016, at *7 (questions regarding applicants' diagnosis of and treatment for psychiatric illness or condition are unnecessary, where the medical examiners could "formulate a set of effective questions that screen out applicants based only on their behavior and capabilities").

A recent District of Columbia study determined that information obtained pursuant to inquiries about treatment for mental health problems has "rarely, if ever, brought to light a

serious fitness question that was not highlighted by other information (concerning litigation, employment, encounters with legal authorities, academic or bar discipline, etc.)". Reishel, The Constitution, the Disability Act, and Questions about Alcoholism, Addiction, and Mental Health, 61 The Bar Examiner 10, 20 (1992).[27]

\

\

\

\

\

---

[27] The article states:

> The vast bulk of such responses [to the mental health treatment inquiry] have concerned counseling, most frequently marriage counseling, with no relevance to fitness to practice. Almost always more serious mental health problems have been signalled by responses to other questions (about arrests, crimes, debt, litigation, discipline, etc.). Indeed, since mental health information is only relevant to a fitness inquiry because it might show a risk to job performance, arguably the only evidence that is material is that the applicant's mental condition has interfered with the applicant's job, school, or analogous activities. Any such significant interference should be, and almost invariably has been, reflected in the other information the committee seeks.

Responses of about 20,000 applicants to mental health inquiries over a period of seven years never resulted in a applicant's noncertification for admission to the District of Columbia bar. Reishel, The Constitution, the Disability Act, and Questions about Alcoholism, Addiction, and Mental Health, 61 The Bar Examiner 10, 20 (1992).

c. The Board's Inquiries Unnecessarily Impose Burdens On Individuals With Disabilities [28]

In this case, an applicant's status as a person with a history of a disability is the sole criterion used by the Board to trigger a requirement for submitting an additional detailed description of facts about the disability beyond that required by the application form, and in many cases, further investigation. The questionnaire is thus used as a screening device to identify persons who will be subject to further inquiry and investigation. See Medical Society of New Jersey v. Jacobs 1993 WL 413016, at *7.

Several provisions of the title II regulation prohibit policies that unnecessarily impose greater requirements or burdens on individuals with disabilities than those imposed on others. As a State licensing entity, the Board must comply with section 35.130(b)(6), which states,

> A public entity may not administer a licensing or certification program in a manner that subjects

---

[28] Defendants' Motion to Dismiss is predicated on the proposition that "the mere presence of question number 29" on the application for admission to the Florida bar does not state a claim under title II of the ADA. Defendants' argument misstates plaintiffs' case. The Board will not process the application of nor license any person, including plaintiffs, who fail to answer Question 29. An affirmative answer to Question 29 automatically triggers additional burdens, further investigation, and more rigorous scrutiny. See Question 29 (a), (b) and (c) of the application to the Florida Bar (requiring names and complete addresses of any treating professionals, as well as beginning and ending dates of each consultation.) An affirmative answer also requires the applicant to sign nine "Authorization and Release Forms," authorizing the treating professionals to answer any inquiries, questions, or interrogatories that the Board may have, and allowing the Board to copy any documents, including medical reports or clinical abstracts.

> qualified individuals with disabilities to discrimination on the basis of disability * * *.

28 C.F.R. § 35.130(b)(6). Section 35.130(b)(3)(i) further provides,

> A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration ... that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.

28 C.F.R. § 35.130(b)(3)(i).

Also applicable is the regulatory provision prohibiting discriminatory eligibility criteria which states:

> A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

28 C.F.R. § 35.150(b)(8).[29]

This case does not present a situation where an individual has been denied admission to the bar based on disability. However, title II and its implementing regulations proscribe more than total exclusion on the basis of disability. See e.g., Medical Society of New Jersey, 1993 WL 413016, at *7. Section 35.130(b)(6) prohibits administering a licensing program "in a manner that subjects qualified persons with disabilities to discrimination." Similarly, section 35.130(b)(3)(i) prohibits

---

[29] See also 28 C.F.R. § 35.130(b)(1)(ii) and (iii) (prohibiting title II entities from providing qualified individuals with disabilities with a benefit or service that is not equal to that afforded others and not as effective in providing an equal opportunity to gain the same benefit afforded to others).

use of "methods of administration" that have a discriminatory effect. Finally, as pointed out in the interpretative guidance accompanying the regulation, section 35.130(b)(8) not only outlaws overt denials of equal treatment of individuals with disabilities, it prohibits policies that unnecessarily impose requirements or burdens on individuals with disabilities greater than those placed on others. 28 C.F.R. pt. 35, app. A at 453-54 (1993). It also prohibits unnecessary inquiries into disability as discussed above.

The Florida Board of Bar Examiners' inquiries and reporting requirements concerning diagnosis and treatment for mental illness impose requirements on persons with histories of disabilities that are greater than those imposed on other applicants. The Board requires applicants to state (1) whether they have ever consulted a mental health professional or any other medical practitioner for any mental, nervous or emotional condition, or drug or alcohol use; (2) whether they have ever been diagnosed as having a nervous, mental or emotional condition, drug or alcohol problem; and (3) whether they have ever been prescribed psychotropic medication.

Affirmative answers automatically trigger a requirement that the applicant identify and provide the complete address of each individual consulted for the condition, and record the beginning and ending dates of consultation. Letters are then sent to the named professionals, asking very broad and detailed questions about the applicant's treatment history, regarding, inter alia,

diagnosis, whether treatment goals have been achieved, results of any psychological testing, etc.

The Board of Bar Examiners also requires the applicant to release all records and to give up all rights to confidentiality with his or her treatment professional. If this is not done, the application will not be processed. The Board may investigate information received about an applicant's history of treatment beyond the letter to the treatment professional. It may in its discretion hold a hearing and require the applicant to attend and respond to further questions about his or her history of mental health treatment.

Neither Ellen S. nor Annabel R., the two plaintiffs seeking preliminary injunction, nor any other applicant to the Florida bar who has ever consulted any psychiatrist, psychologist, mental health counsellor, or medical practitioner for any "nervous, mental or emotional condition" may practice law in Florida without agreeing to reveal to the Board the fact of that consultation and any and all details of such consultation that the Board deems appropriate. On December 7, 1993, plaintiff Ellen S. received a letter from John Moore, Executive Director of the Board of Bar Examiners. It stated that her entire application would be terminated if she did not answer Question 29. Termination of her application would require her to retake the bar examination and submit an entirely new application, along with the necessary fees. This is apparently the standard

response of the Board of Bar Examiners if an applicant refuses to answer Question 29.

The facts here are thus markedly different than those in Medical Society of New Jersey, supra, where the court found that the challenged questions operated as an unlawful screening device, but declined to issue an injunction because plaintiffs were already licensed to practice medicine and the Board had no plans to conduct investigations based on the challenged questions. Here, plaintiffs cannot obtain professional licenses until the full inquiries are concluded.[30]

Mental health treatment is often bound up with intensely personal issues such as family relationships and bereavement. The Board's licensure inquiry is invasive not only because it requires persons who answer the questions in the affirmative to provide information about these issues, but because it also requires them to disclose details about what is arguably the most private part of human existence -- a person's inner mental and emotional state. Of potentially even more harm is the Board's

---

[30] As the court in the Medical Society of New Jersey stated: "With regard to the renewal applications, the Board has asserted, and its assertion is unchallenged, that all licensees who complete their applications will be issued renewal licenses, regardless of their responses to the challenged questions." 1993 WL 413016 at *11. The Board in this case has never offered to abandon further inquiries if plaintiffs answer Question 29, however. In this case, in contrast to the Medical Society of New Jersey, the Board is clearly pursuing investigations and/or further inquiries of persons who answer Question 29 in the affirmative. In any event, the United States disagrees with the Medical Society court's view that asking the questions, so long as they are not acted upon, does not violate title II. See Part D., supra.

attempt to obtain information about the person's fitness from others; the Board's investigators apparently may engage in a full-fledged exploration of an applicant's condition with the person's colleagues and supervisors, asking questions regarding the person's diagnosis or treatment for mental, emotional or nervous disorders. It is not difficult to imagine the attendant potential damage to an individual's reputation.

The inquiries are also invasive and burdensome because of the stigma which still attaches to treatment for mental or emotional illness. The Supreme Court has recognized that individuals have a substantial liberty interest under the Due Process Clause of the Constitution in avoiding the social stigma of being known to have been treated for a mental illness. Parham v. J.R., 442 U.S. 584, 600 (1979); Addington v. Texas, 441 U.S. 418, 426 (1979).[31] See also Smith v. Schlesinger, 513 F.2d 462, 477 (D.C. Cir. 1975) ("[m]ental illness is unfortunately seen as a stigma. The enlightened view is that mental illness is a disease...but we cannot blind ourselves to the fact that at present, despite lip service to the contrary, this enlightened view is not always observed in practice") (ordering Department of

[31] In Parham, the Court found that a person's liberty is "substantially affected" by the stigma attached to treatment in a mental hospital: "The fact that such a stigma may be unjustified does not mean it does not exist. Nor does the fact that public reaction to past commitment may be less than the public reaction to aberrant behavior detract from this assessment. The aberrant behavior may disappear, while the fact of past institutionalization lasts forever." Parham v. J.R., 442 U.S. 584, 622, n.3 (1979) (Stewart, J., concurring in judgment).

Defense to present investigative file on plaintiff, whose security clearance had been revoked.)[32]

In light of these cases, defendants' characterization of the questions at issue here as a mere "inconvenience" for persons with histories of mental disability, Motion to Dismiss at 7, is puzzling at best. But the Board's inquiries into an individual's history of disabilities also has a more insidious discriminatory effect. Concern over the Board's inquiries about diagnosis and treatment for mental illness deters law students and other applicants from seeking counseling for mental or emotional problems. See Stephen T. Maher & Lori Blum, A Strategy for Increasing the Mental and Emotional Fitness of Bar Applicants, 23 Ind. L. Rev. 821, 830-33 (1990) (detailed discussion of how such

---

[32] See also In Re John Ballay, 482 F.2d 648, 668-69 (D.C. Cir. 1973) ("[d]ischarged patients must not only cope with stigma of having once been hospitalized, but must often continue to cope with the 'mental illness' label itself....Even the most enlightened persons may unwittingly harbor views associated with this stigma."), Estate of Roulet, 23 Cal.3d 219, 228-29 (1979) (finding that there is compelling evidence that society "still views the mentally ill with suspicion" and noting that:

> [i]n the ideal society, the mentally ill would be the subjects of understanding and compassion, rather than ignorance and aversion. But that enlightened view, unfortunately, does not yet prevail. The stigma borne by the mentally ill has frequently been identified in the literature: 'a former mental patient may suffer from the social opprobrium which attaches to treatment for mental illness and which may have more severe consequences than do the formally imposed disabilities. Many people have an irrational fear of the mentally ill.' The former mental patient is likely to be treated with distrust and even loathing; he may be socially ostracized and victimized by employment and educational discrimination.

(citing People v. Burnick, 14 Cal.3d 306, 321 (1975)).

inquiries have deterrent effect). Indeed, this deterrence factor was part of the basis for the State of Minnesota Supreme Court's order in In re Petition of Frickey, et al., No. C5-84-2139 (Minn. Apr. 28, 1994) (deleting questions regarding mental health history from bar admissions application on grounds that the questions deterred law students from seeking needed counseling.)[33]

Even when treatment is sought, its effectiveness may be compromised, because knowledge of the Board's potential investigation of issues surrounding treatment is likely to undermine the trust and frank disclosure on which successful counseling depends. See Maher & Blum, supra, at 824, 833-46.[34]

---

[33] The court's conclusion is supported by studies suggesting that law students may decide against seeking treatment because they are afraid that it might disqualify them from admission to the bar. In a recent survey of over 13,000 law students, 41 percent responded that they would seek assistance for a substance abuse problem if they were assured that bar officials would not have access to the information. As to whether they would refer a friend who had a substance abuse problem, 47 percent responded that they would if bar officials would not have access to the information. Association of American Law Schools, Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools, 44 Journal of Legal Education 35, 55 (1994) It can be reasonably assumed that a study asking the same questions about mental health problems would show similar findings.

[34] The chilling effect of the Board's practices runs completely counter to the goal ostensibly served by the inquiries -- ensuring that applicants will be fit practitioners. See Deborah L. Rhode, Moral Character as a Professional Credential, 94 Yale L.J. 491, 582 (1985). Medical practice is a highly stressful enterprise, and many persons can benefit from mental health counseling as physicians. As Professor Maher and Dr. Blum state in their article regarding the use of analogous questions in the licensure process for attorneys:

Thus, rather than improving the quality of attorneys in the State, the Board's inquiries may have the perverse effect of deterring those who could benefit from treatment from obtaining it, while penalizing those who enhance their ability to perform successfully as attorneys by seeking counseling.

A recent court of appeals decision confirms that requiring persons to undergo medical scrutiny solely on the basis of their status as a member of a protected class violates anti-discrimination laws. In EEOC v. Massachusetts, 987 F.2d 64 (lst Cir. 1993), the Court of Appeals for the First Circuit addressed whether a Massachusetts statute, requiring that employees 70 or older pass an annual medical examination as a condition of continued employment, violated the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (1986). The court found the state law to be facially discriminatory because it "allows age to be the determinant as to when an employee's deterioration will be so significant that it requires special treatment" and thereby

---

> [I]f there is any wisdom in the choice to inquire at the cost of discouraging treatment, it is penny-wise and pound-foolish because it discourages applicants from taking advantage of opportunities to develop their mental and emotional fitness before they are admitted to the bar. This is a mistake because law practice is stressful, and students need to prepare for the stress of practice, just as they need to prepare for its other demands. Through counseling, students can develop healthy coping strategies that will permit them to deal with the stress of practice. Without adequate preparation, they may resort to unhealthy coping strategies, such as drug or alcohol abuse.

Maher & Blum, supra, at 824.

"strikes at the heart of the ADEA [whose] entire point ... is to abandon previous stereotypes about the abilities and capacities of older workers." 987 F.2d at 71. See also Medical Society of New Jersey 1993 WL 413016, at *7 ("In the context of other anti-discrimination statutes, it has been held to be fundamental that an individual's status cannot be used to make generalizations about that individual's behavior.") (citing Los Angeles Dep't of Water and Power v. Manhart, 435 U.S. 702 (1978)).

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

III. Conclusion

For the foregoing reasons, the United States urges the Court to conclude that the Board's use of the challenged inquiries violates title II of the ADA. Accordingly, Defendants' motion to dismiss should be denied and Plaintiffs' motion for preliminary injunction should be granted.

Dated: Washington, D.C.

June ___, 1994

Respectfully submitted,

KENDALL COFFEY
United States Attorney
for the Southern District
of Florida

By: VERONICA HARRELL-JAMES
Assistant United States
Attorney
Florida Bar No. 644791

DEVAL L. PATRICK
Assistant Attorney
General
Civil Rights Division

By: _____
JOHN L. WODATCH
JOAN A. MAGAGNA
SHEILA M. FORAN
Attorneys
U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035-6738
Tel: (202) 307-0663