

**COLORADO SUPREME COURT
ATTORNEY REGULATION COUNSEL**

Attorney Regulation Counsel
Jessica E. Yates

Chief Deputy Regulation Counsel
Margaret B. Funk

Deputy Regulation Counsel
April M. McMurrey
Dawn M. McKnight
Gregory G. Sapakoff



Admissions Administrator
Jessica Crawley

Admissions Staff Attorney
Andrea Kristjónsson

C&F Staff Attorney
Susie Tehlirian

Attorney Admissions

November 15, 2024

Via Email: supremecourtrules@judicial.state.co.us

Re: Proposed Rule of Civil Procedure 203.5

Dear Justices of the Colorado Supreme Court:

I'm writing to provide public comments on proposed Rule 203.5. The Office of Attorney Admissions ("OAA") within the Office of Attorney Regulation Counsel supports the proposed rule.

Consistent with obligations under the Americans with Disabilities Act ("ADA"), as amended, which are incorporated into Colorado law, the OAA already provides disability accommodations for its licensure exams, and historically has published guidance on its website to facilitate the request process. The proposed new rule codifies the existence of the process, which has recently been updated on the OAA's website at:

<https://www.coloradosupremecourt.com/Future%20Lawyers/TATestingAccommodations.asp>.

HB24-1342 was enacted by the General Assembly last year, which will be codified and effective January 1, 2025, at C.R.S. § 24-34-806. While the law generally applies to professional licensure examinations, legislative testimony made clear that sponsors were primarily concerned about the Colorado Bar Examination. Under both federal and state law, a professional licensure agency can appropriately consider factors such as the integrity of the testing process and exam security in evaluating a request for a disability accommodation.

The Colorado Supreme Court has exclusive authority to regulate the admission to practice law in Colorado, including whether Colorado uses and relies on the Uniform Bar Examination developed by the National Conference of Bar Examiners:

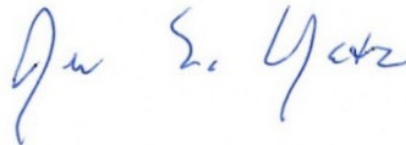
Article VI of the Colorado Constitution grants the Colorado Supreme Court jurisdiction to regulate and control the practice of law in Colorado to protect the public. This jurisdiction extends over all matters involving the licensing of persons to practice law in the State of Colorado and is exclusive. The supreme court's inherent and plenary power to regulate the practice of law includes the exclusive power to admit applicants to the Bar of this state. Pursuant to this power, the supreme court has promulgated the Rules Governing Admission to the Bar.

Smith v. Mullarkey, 121 P.3d 890, 891 (Colo. 2005) (internal citations omitted).

Accordingly, the Court has exclusive jurisdiction to adopt a rule covering the accommodations process relative to attorney and licensed legal paraprofessional exams.

With an aim of making sure that the OAA follows both federal and state law, and viewing the combined statutory scheme as consistent with and complementing the Court's exclusive power to admit applicants to the Bar of this state, the OAA believes that the proposed rule fairly reflects the Court's exercise of jurisdiction while providing an avenue for more detailed guidance by the OAA that can be refined over time.

Sincerely,

A handwritten signature in blue ink that reads "Jessica E. Yates". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jessica E. Yates
Attorney Regulation Counsel

cc: David Stark, Chair of the Advisory Committee on the Practice of Law

November 4, 2024

Via Email Only:

Colorado Supreme Court

supremecourtrules@judicial.state.co.us

Re: Comments to Proposed Changes to Rule 203.5 of the Rules Governing Admission to the Practice of Law in Colorado

Disability Law Colorado (DLC) writes in response to the Colorado Supreme Court's request for public comment regarding proposed changes to Rule 203.5 of the Rules Governing Admission to the Practice of Law in Colorado.

DLC is a 501(c)(3) non-profit organization established to protect and promote the rights of individuals with disabilities. It serves as the federally mandated and state-designated Protection and Advocacy System (P&A) for people with disabilities in the state of Colorado.

DLC wants to first acknowledge our appreciation for the efforts of the Office of Attorney Admissions (OAA) to improve their process for providing testing accommodations for the Colorado Bar Exam in accordance with the Americans with Disabilities Act (ADA). In this submission, DLC seeks to express concerns around ambiguities in these rule changes and potential problems that may exist depending on how this rule is implemented. Ultimately, our goal is to ensure that OAA is taking appropriate steps to ensure people with disabilities are afforded their rights and not facing unnecessary barriers in their pursuit to enrich the legal profession in Colorado. DLC hopes that our feedback will allow OAA to work with individuals with disabilities at the highest standard possible and avoid potential liability.

Our main concern stems from the language used in (4)(b) which states:

When an applicant provides verifiable documentation that the applicant previously received a requested disability accommodation that had been approved due to a disability that was not a temporary condition, the OAA will grant the accommodation under the following circumstances: ... The applicant provides documentation from the applicant's treating medical professional that identifies the applicant's current disability, explains why an accommodation must be offered to provide the applicant with the same level of access to the examination as other test-takers, recommends the accommodation requested by the applicant, provides sufficient information for the OAA to understand the basis for the treating medical professional's recommendation, and is signed and dated by the treating medical professional.

This is markedly more demanding than C.R.S. 24-34-806(3)(a)(III), which states:

A testing entity must grant an individual's request for a testing accommodation on a licensing exam if the individual: ... Provides a recommendation letter from the individual's treating medical professional that recommends the accommodations

requested by the individual. The recommendation letter must be signed and dated by the treating medical professional making the recommendation.

Our concern stems from how this rule will be implemented. The language, especially when combined with (7) of the proposed change, suggests a focus will remain on proving whether a person has a disability, not whether their disability requires a testing-related accommodation. Additionally, requiring that this letter includes information to essentially prove why a person needs a given accommodation goes against the intent of C.R.S. 24-34-806 in reducing the documentation required when a person is requesting the same accommodation that they have previously received. This rule appears to be set up to deny individuals accommodations at OAA's discretion rather than following the requirements laid out in C.R.S. 24-34-806 and the ADA.

Thank you for the opportunity to comment on the proposed rules. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Pielsticker". The signature is fluid and cursive, with the first name "Sara" and last name "Pielsticker" clearly distinguishable.

Sara Pielsticker
Disability Rights Attorney
Disability Law Colorado
spielsticker@disabilitylawco.org

**DISABILITY LAW STUDENT ASSOCIATION
UNIVERSITY OF DENVER STURM COLLEGE OF LAW**

Esteemed Justices of the Colorado Supreme Court & Office of Attorney Admissions,

We, members of the Disability Law Student Association at the University of Denver Sturm College of Law, come before you not merely as students but as voices representing a broader community committed to justice, equity, and the fundamental principles that underpin our legal system. We are here to address the critical and pressing concerns regarding the proposed modifications to Rule 203.5, which governs disability accommodations for the Colorado Uniform Bar Examination (“UBE”) and the Licensed Legal Paraprofessional Examination (“LLP Exam”).

I. Introduction: A Call for Justice and Equality

The legal profession stands as a beacon of justice, advocating for the rights of all individuals, especially those marginalized or disadvantaged. As future attorneys and legal professionals, we are deeply invested in ensuring that the pathways to entering this noble profession are equitable and just. Many of the undersigned—future attorneys who proudly identify as individuals with disabilities—stand in solidarity in pursuit of this goal. Yet, the current and proposed processes for obtaining disability accommodations in high-stakes professional examinations impose substantial barriers that undermine the very principles of fairness and justice the legal profession seeks to uphold.

II. The Inherent Inequity and Disparity in Accommodations

1. The Struggle for Fairness Amidst Systemic Barriers

Students with disabilities have long faced systemic challenges that impede their academic and professional progress. Despite demonstrating competence and dedication equivalent to our peers, we are subjected to rigorous scrutiny and hurdles when seeking accommodations that are essential—not advantageous—for our performance.

The proposed Rule 203.5, while ostensibly aimed at refining the accommodation process, fails to address the core issues that perpetuate inequity. It places an undue burden on students with disabilities, requiring extensive documentation and re-verification, even for permanent conditions. This not only questions the legitimacy of our disabilities but also undermines our integrity and the validity of our needs.

2. The Disparity Between Academic and Professional Examination Accommodations

During our tenure in law school, we have received accommodations based on a recognition of our individual needs—granted after providing thorough documentation from our doctors, consulting with university medical staff, and offering other proofs of disability. The Sturm College of Law, like many educational institutions, is committed to fostering an inclusive

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educational environment. Yet, our educational system presents unique challenges to some of us that others do not face.

For example, consider two of the undersigned: one student lives with significant hearing loss and requires audio recordings and closed captioning of lectures; another has a traumatic brain injury and PTSD, which impact cognitive clarity at times, occasionally necessitating an extra day to complete assignments. Both are poised to become effective attorneys. Without their accommodations, they would have begun law school at a significant disadvantage. These accommodations are instrumental in leveling the playing field, allowing us to fully engage with the rigorous curriculum and demonstrate our true capabilities.

However, when we transition from law school to professional examinations such as the MPRE and the Bar, we encounter a starkly different reality. The accommodations we previously relied upon are suddenly subjected to heightened scrutiny, additional requirements, and, frequently, denial. Consider again the example of the student with PTSD, stemming in part from a history of sexual assault. After successfully demonstrating to the Sturm College of Law that their needs were legitimate, this student submitted a comprehensive packet for the MPRE accommodations, including a nine-page document from their doctor detailing numerous assaults. Despite this extensive and deeply personal documentation, their request for accommodations was denied. This inconsistency not only disrupts our preparation but also signals a lack of commitment to inclusivity at the most critical juncture of our professional development.

III. Financial and Procedural Barriers: An Unjust Burden

1. The Economic Strain of Additional Requirements

The proposed rule's demand for supplementary medical evaluations imposes a significant financial burden on students already navigating the substantial costs of legal education. For many, the expense of additional testing is prohibitive, effectively barring them from obtaining necessary accommodations. This requirement disproportionately affects students from lower socioeconomic backgrounds, exacerbating existing inequalities and undermining the principle of equal opportunity.

2. Procedural Hurdles and the Psychological Toll

The labyrinthine process of securing accommodations—replete with extensive paperwork, strict deadlines, and the potential for arbitrary denial—inflicts considerable stress and anxiety. It places an emotional toll on students who must repeatedly justify their disabilities, often facing skepticism or disbelief. This not only distracts from exam preparation but also detracts from mental well-being, further disadvantaging the very same students that the accommodations are meant to assist.

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IV. Overlooking New and Emerging Disabilities

1. The Plight of Students with Newly Developed Disabilities

Disabilities can emerge at any stage of life due to illness, injury, or exacerbated mental health conditions. Unfortunately, the proposed Rule 203.5 fails to consider students who lack a prior history of accommodations—including those who were never informed of their eligibility until they began law school—leaving them without necessary guidance or support. These individuals face the daunting task of navigating an already complex process without the benefit of previous documentation, effectively excluding them from fair access and placing them at a significant disadvantage.

2. The Imperative for Inclusivity

By neglecting students with newly developed disabilities, the proposed rule inadvertently perpetuates a system that privileges those with established accommodation histories while marginalizing others. This approach is antithetical to the values of a just society and the legal profession's professed commitment to advocacy for all.

V. Challenging Misconceptions and Advocating for Change

1. Confronting the Stigma Surrounding Disabilities

There is a pervasive misconception that accommodations provide an unfair advantage or that individuals with disabilities impose a burden on systems and institutions. This stigma results in policies that prioritize gatekeeping over inclusivity, make assumptions rather than recognizing legitimacy, and condemn rather than accept our genuine needs.

Accommodations are not a request for special treatment but a means to ensure equitable assessment of our abilities. They are tools that allow us to overcome barriers not of our own making, enabling each of us to contribute meaningfully to the legal profession.

2. The Inspirational Journey of Overcoming Challenges

By navigating the complexities of legal education while managing our disabilities, we exemplify resilience, determination, and adaptability—qualities that are indispensable to the practice of law. By overcoming inherent challenges, we contribute unique perspectives and strengths that enhance the diversity and richness of the legal community.

VI. Strategic Deficiencies in Proposed Rule 203.5

1. Excessive Verification Requirements

The rule's insistence on demanding extensive documentation—even for permanent disabilities—places unnecessary strain on students and disregards prior validations from reputable educational

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and medical institutions. This redundancy serves only to complicate the process without adding any substantive value.

2. Broad Discretion Leading to Potential Injustices

Granting the Office of Attorney Admissions (OAA) broad discretion to deny accommodations based on subjective criteria introduces the risk of inconsistent and unjust outcomes. Without clear guidelines or oversight, this power can be exercised in ways that inadvertently perpetuate discrimination.

3. Lack of Provisions for Newly Disabled Students

The absence of mechanisms to support students with newly developed disabilities represents a significant oversight. By not addressing their needs, the rule fails to uphold the principles of equity and inclusivity.

VII. A Collective Call to Action: Recommendations for Reform

1. Simplify and Streamline the Accommodation Process

We propose that students with documented accommodations in law school automatically receive the same accommodations for professional examinations unless there is compelling evidence of fraud or abuse. This continuity affirms the legitimacy of their needs and reduces unnecessary administrative burdens.

2. Establish Clear Pathways for Newly Disabled Students

The rule should establish accessible guidelines and support systems for students who become disabled later in life or who request accommodations at a later stage. This includes providing resources to obtain necessary documentation and facilitating timely accommodations for professional examinations.

3. Eliminate Financial Barriers

The rule should eliminate the requirement for additional, costly medical evaluations when sufficient documentation of a student's disability is already available. For students needing initial assessments, it should provide financial assistance or referrals to affordable services, ensuring that economic status does not become a barrier to accessing necessary accommodations.

4. Align Policies Across Educational and Professional Platforms

The rule should ensure that accommodation policies for high-stakes examinations are consistent with educational institutions' policies. This alignment fosters stability and predictability, allowing students to focus on demonstrating their competencies without undue concern over accommodation disparities.

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5. Promote a Culture of Inclusivity and Respect

The rule should implement training and awareness programs for those involved in the accommodation process to combat stigma and foster a more empathetic understanding of disabilities. Education can help people recognize the valuable contributions that individuals with disabilities bring to the legal profession and society at large.

VIII. Conclusion: Upholding the Principles of Justice and Equality

Honorable Justices and Office of Attorney Admissions, the legal profession is predicated on the ideals of fairness, justice, and the advocacy of rights for all individuals. By addressing the deficiencies in the proposed Rule 203.5, you have the opportunity to reaffirm these principles and set a precedent for inclusivity and equity within our profession.

We stand not just for ourselves but for future generations of legal professionals with disabilities who aspire to serve justice without being hindered by preventable obstacles. Our request is simple yet profound: to be afforded the same opportunities to succeed as our peers, judged solely on our knowledge, skills, and dedication.

By enacting these recommended reforms, you will not only rectify existing injustices but also inspire confidence in the legal system's commitment to equality. Let us work together to create a legal community that truly reflects the diversity and resilience of the society it serves.

IX. An Appeal to Shared Values and the Greater Good

We appeal to your sense of justice, your commitment to the rule of law, and your dedication to upholding the rights of all individuals. Let this moment be a turning point where we collectively choose to embrace inclusivity, dismantle barriers, and foster an environment where every aspiring legal professional has the opportunity to thrive.

In doing so, we honor the spirit of the law and reinforce the integrity of our legal system. We believe that by addressing these concerns with compassion and decisive action, the Colorado Supreme Court and the Office of Attorney Admissions can set a powerful example for jurisdictions nationwide.

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Final Remarks

We thank the Justices and the Office of Attorney Admissions for the opportunity to present our concerns and recommendations. It is our sincere hope that our collective voices will contribute to meaningful change, fostering a legal profession that truly embodies the ideals of justice and equality for all.

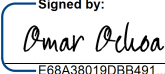
Respectfully Submitted,

The Board and Members of the Disability Law Student Association
University of Denver Sturm College of Law

Board Endorsement

President

Name: Omar Ochoa

Signature:  Signed by: Omar Ochoa
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Date: 11/15/2024

Vice President

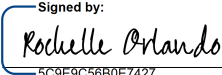
Name: Amy Lorde

Signature:  Signed by: Amy Lorde
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Date: 11/15/2024

Secretary/Treasurer

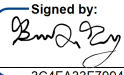
Name: Rochelle Orlando

Signature:  Signed by: Rochelle Orlando
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Date: 11/15/2024

Part-Time Representative

Name: Brenden Ray

Signature:  Signed by: Brenden Ray
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Date: 11/15/2024

Appendix:

Proposed Language for Rule Amendments

- *Specific suggestions for modifying Rule 203.5 to address the concerns raised, ensuring clarity, fairness, and compliance with federal disability laws.*

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Rule 203.5. Disability Accommodations for the Colorado Bar Examination and the Licensed Legal Paraprofessional Examination

1. Purpose and Authority

(No changes proposed to this section.)

2. Eligibility for Accommodations

Current Text:

Any applicant who is eligible to take the Colorado Bar Examination under C.R.C.P. 203.4 or the LLP Examination under C.R.C.P. 207.8 and who has a disability at the time of the administration of the examination as defined by the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, and applicable U.S. Department of Justice regulations, may request an accommodation from the OAA. A disability accommodation may include one or more changes to the administration of the examination, including but not limited to those identified in C.R.S. 24-34-806(2)(b) (effective January 1, 2025).

Proposed Amendment:

Any applicant who is eligible to take the Colorado Bar Examination under C.R.C.P. 203.4 or the LLP Examination under C.R.C.P. 207.8 and who has a disability **or has developed a disability** at the time of the administration of the examination as defined by the federal "Americans with Disabilities Act of 1990" (ADA), 42 U.S.C. sec. 12101 et seq., as amended, and applicable U.S. Department of Justice regulations, may request an accommodation from the OAA. A disability accommodation may include one or more changes to the administration of the examination, including but not limited to those identified in C.R.S. 24-34-806(2)(b) (effective January 1, 2025).

Rationale: This amendment explicitly includes applicants with newly developed disabilities, ensuring they are recognized and eligible for accommodations even without a prior history of accommodations.

3. Review Process for Accommodation Requests

Current Text:

The OAA will review an applicant's request for a disability accommodation using 28 C.F.R. § 36.309 and any other applicable law and guidance to render a decision.

Proposed Amendment:

The OAA will review an applicant's request for a disability accommodation using 28 C.F.R. § 36.309 and any other applicable law and guidance to render a decision. **The OAA shall give**

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significant weight to documentation of prior accommodations received in educational settings, including law school, and shall not require re-verification of disabilities that have already been adequately documented and confirmed.

Rationale: This ensures that applicants with a history of accommodations are not subjected to redundant verification processes, reducing unnecessary burdens.

4. Automatic Approval of Prior Accommodations

Current Text:

(4) When an applicant provides verifiable documentation that the applicant previously received a requested disability accommodation that had been approved due to a disability that was not a temporary condition, the OAA will grant the accommodation under the following circumstances:

(a) The applicant previously received the requested accommodation to take one or more of the following examinations: (i) the Multistate Professional Responsibility Exam; (ii) a bar examination administered in any United States jurisdiction; (iii) a licensure examination administered in any United States jurisdiction in which... (iv) a standardized exam that is administered by a national or state-level entity that requires all test-takers...

(b) The applicant provides documentation from the applicant's treating medical professional that identifies the applicant's current disability, explains why an accommodation must be offered...

Proposed Amendment:

(4) The OAA shall grant the same accommodations which were previously approved for the applicant in any educational setting, including law school or standardized examinations unless there is substantial evidence that such accommodations are no longer needed or would fundamentally alter the nature of the examination.

(a) The applicant shall provide documentation of prior accommodations received during law school or on standardized examinations.

(b) For permanent or long-term disabilities, re-verification or additional medical documentation shall not be required beyond what was sufficient to obtain accommodations in law school, other higher education institutions, or other standardized examinations.

(c) Applicants with newly developed disabilities shall be provided with a clear, accessible process to request accommodations, with assistance from the OAA as needed to obtain necessary documentation, recognizing the urgency and importance of timely accommodations.

Rationale: This amendment simplifies the process for applicants with prior accommodations and provides a supportive framework for those with new disabilities.

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5. Reconsideration Process

Current Text:

If the OAA denies in whole or in material part an applicant's requested accommodation, an applicant may request reconsideration by the OAA through the process set forth on the OAA's website providing guidance for accommodations requests...

Proposed Amendment:

If the OAA denies in whole or in material part an applicant's requested accommodation, **the OAA must provide a detailed written explanation of the reasons for the denial.** The applicant may request reconsideration through the process set forth on the OAA's website. **During reconsideration, the OAA shall engage in an interactive process with the applicant to explore reasonable accommodations, in compliance with the ADA's requirements for an individualized assessment.**

Rationale: Ensures transparency in the denial process and promotes an interactive dialogue to find suitable accommodations.

6. Limitations on Denial of Accommodations

Current Text:

The OAA is not required to provide a requested accommodation to an applicant with a disability if the accommodation would constitute a fundamental alteration of the examination or impose an undue burden on the OAA...

Proposed Amendment:

The OAA is not required to provide a requested accommodation to an applicant with a disability if the accommodation would constitute a fundamental alteration of the examination or impose an undue burden on the OAA, **as defined strictly under the ADA and interpreted by relevant case law. The OAA must consider whether alternative accommodations could meet the applicant's needs without imposing such burdens.**

Rationale: Aligns the language with ADA standards and requires the OAA to consider alternative solutions.

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7. Discretionary Denials and Investigations

Current Text:

Unless inconsistent with applicable law, the OAA, in the exercise of its discretion, may review, investigate, or obtain an independent evaluation of any information provided by the applicant...

Proposed Amendment:

Unless inconsistent with applicable law, the OAA may review, investigate, or obtain an independent evaluation of any information provided by the applicant **only when there is substantial evidence suggesting that the information is materially inaccurate or fraudulent. The OAA must inform the applicant of any concerns and provide an opportunity to respond before making a determination.**

Rationale: Limits the discretionary power to deny accommodations and ensures fairness by allowing applicants to address any issues.

8. Guidance and Support

Current Text:

The OAA will maintain a website providing current guidance for disability accommodations requests, including forms and instructions to implement this section.

Proposed Amendment:

The OAA will maintain a website providing current guidance for disability accommodations requests, including forms and instructions to implement this section. **The OAA shall provide contact information for assistance and shall make reasonable efforts to support applicants throughout the accommodation process, recognizing the challenges faced by individuals with disabilities.**

Rationale: Emphasizes the OAA's role in supporting applicants, not just regulating them.

Additional Proposed Sections

9. Consistency with Educational Accommodations

The OAA shall make reasonable efforts to ensure that the testing environment and accommodations for the Colorado Bar Examination and LLP Examination are consistent with those provided to the applicant during their legal education, to the extent that such consistency does not fundamentally alter the examination or compromise its integrity.

Rationale: Addresses the issue of inconsistency between law school and examination accommodations.

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10. Financial Assistance for Required Evaluations

If additional medical or psychological evaluations are required by the OAA for the approval of accommodations, and the applicant demonstrates financial hardship, the OAA shall provide financial assistance or waive fees associated with obtaining such evaluations.

Rationale: Eliminates financial barriers that may prevent applicants from securing necessary accommodations.

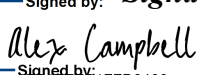
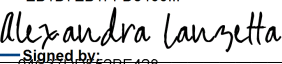
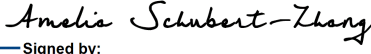
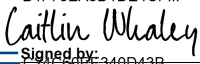
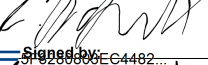
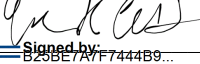

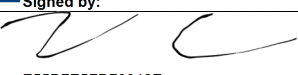
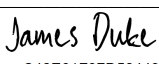
11. Timeliness and Promptness

The OAA shall process accommodation requests promptly to ensure that applicants receive determinations with sufficient time to prepare for the examination under the approved accommodations. Delays in the process should be minimized to prevent additional stress and disadvantage to the applicant.

Rationale: Ensures that the accommodation process does not inadvertently hinder the applicant's ability to prepare for the exam.

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Member Endorsement:

#	Name	Signed by: <i>Signature</i>	Date
1	Alex Campbell	 Signed by: E51D7E51FFD8486...	11/15/2024
2	Alexandra Lanzetta	 Signed by: 04C37DDF52BE428...	11/15/2024
3	Amelia Schubert-Zhang	 Signed by: B4F73EA8D1DE4CF...	11/15/2024
4	Caitlin Whaley	 Signed by: C94E50EE340B43B...	11/15/2024
5	Caroline Gilbert	 Signed by: 51088306EC4482...	11/15/2024
6	Erin Cain-Hodge	 Signed by: B25BE7A7F7444B9...	11/15/2024
7	Ivon Soto Medina	 Signed by: AFF8DD0670B244C...	11/15/2024
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9	Nicholas Carlton	 Signed by: E65D7E6FD78842E...	11/15/2024
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November 10, 2024

Re: Proposed Changes to Rule 203.5

To whom it may concern:

My name is Stephanie Hochstein and I am a second year law student at the University of Denver. I was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and a specific learning disability (SLD) in eleventh grade after my math teacher would no longer provide the accommodations my private school had been giving me my whole life and referred me for an evaluation for a learning disability. I did not request accommodations during my first year of undergraduate studies and experienced failing grades and low self esteem due to not finishing exams and receiving failing grades.

The University of Florida provided accommodations after providing documentation and completing an interview. Johns Hopkins had more or less the same procedure. Before law school I was a teacher for six years and received my master's degree in secondary literacy and special education. I taught children with disabilities how to advocate and promised that the world had to make reasonable accommodations. When I got to law school, I learned this was not the case. The University of Denver held an info session about bar accommodations and said the process begins now and they were not lying. During the past year and a half, I have spent around 50 hours working on accommodations for the bar/MPRE. By the time I graduate law school, I estimate I will have spent 200 hours (which is 4 law school credits) working on the process to apply for accommodations that I may or may not receive despite receiving them in undergraduate school, graduate school, the LSAT, and on law school related exams.

Other than the time spent on bar accommodations, they also require a great deal of financial and emotional burdens. There is anxiety and discomfort for all three years of law school not knowing if you will receive the accommodations you need for a basic floor of opportunities. Furthermore, doctors receive \$100-500 for one hour of their time and charge as such, which is an immense burden for a student already paying to apply to the bar. This needs to be done for the LSAT, accommodations in law school, the MPRE, and the Bar Exam which provides an unnecessary burden to people with disabilities. Furthermore, repeated testing is time consuming, stressful, and can contribute to poor mental health.

Whatever the Supreme Court of Colorado can do to minimize the extensive time and emotional and financial expenses law students with disabilities face will align with Colorado's overall goal of inspiring and coaching diverse law students. Disabled students are included in this group and deserve an equal opportunity to join the field with their peers.

Can you tell if it took me one hour to write this letter? Or two? Does your opinion of this change if you learn it took me ten hours? People with disabilities who have made it this far in law school have the tenacity, grit, and determination to overcome all the obstacles and barriers to join the legal field if you will let them.

Respectfully,

Stephanie Hochstein



November 15, 2024

VIA ELECTRONIC MAIL

Colorado Supreme Court
2 E. 14th Avenue
Denver, Colorado 80202
Email: supremecourtrules@judicial.state.co.us

**RE: Public Comment Regarding Proposed Changes to Rule 203.5 of the Rules
Governing Admission to the Practice of Law in Colorado**

My name is Spencer Kontnik, and I am a disability rights attorney who practices in Denver, Colorado. My practice includes assisting individuals with disabilities who are seeking to obtain reasonable accommodations on licensing examinations including, specifically, the bar exam. My experience working with and litigating cases against the Office of Attorney Admissions (“OAA”) has allowed me to better understand the flaws of the current accommodation process. Respectfully, although the proposed rule amendments are a step in the right direction, they do not address the issues with the current policies, which have resulted in a pattern of discrimination toward disabled bar applicants.

First, the proposed rule changes conflict with C.R.S. § 24-35-806, which will result in policies that are inconsistent with Colorado law. The proposed rule changes create additional obligations for testing applicants with respect to the contents of a letter from a treating medical professional. *Compare* C.R.S. § 24-34-806(3)(a)(III); *with* Rule 203.5(4)(b). These additional requirements, which are not required under Colorado law, will force disabled applicants to obtain a letter from a medical professional including the following: (1) an explanation of “why an accommodation must be offered to provide the applicant with the same level of access to the examination as other test-takers;” (2) “provides sufficient information for the OAA to understand the basis for the treating medical professional’s recommendation.” The foregoing language will effectively allow the OAA discretion to deny accommodation requests, which undermines the purpose of C.R.S. § 24-34-806.

I had the privilege of working with the Colorado legislature and participated in drafting C.R.S. § 24-35-806, and one of the purpose(s) of the statute was to prevent testing agencies from implementing arbitrary standards, which differ between agencies and institutions of higher learning. *See* C.R.S. § 24-34-806(1)(a)(III), (V). The foregoing language of Rule 203.5(4)(d), which includes more onerous requirements than C.R.S. § 24-34-806(3)(a) undercuts the intent of the statute. By way of example, the OAA, through its use of retained experts, will continue to have discretion to determine what constitutes “sufficient documentation.” *See* Rule 203.(7)(the OAA may deny accommodations when the application is found to be “incomplete.”). This is exactly the type of arbitrary decision-making that C.R.S. § 24-34-806 was designed to prevent.

Second, the proposed rule changes do not address the OAA’s policy of deferring to its retained experts who have never met or evaluated disabled applicant’s requests for accommodations, over treating experts. In the past year, my firm has been forced to litigate two (2) separate cases involving circumstances where the OAA originally denied a disabled bar applicant’s request(s) for



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accommodations. *See Hause v. Colorado Supreme Court Office of Attorney Regulation Counsel*, Denver County District Court Case No. 2024CV30283; *see also Ozborn v. Colorado Supreme Court Office of Attorney Regulation Counsel*, Denver County District Court Case No. 2024CV31821. In both cases, the disabled bar applicant was denied accommodations based on the OAA's policy of deferring to its retained experts over treating experts.

The proposed rule change specifically incorporates 28 C.F.R. § 36.309, but does not address 28 C.F.R. § Pt. 36, App. A (“[r]eports from experts who have personal familiarity with the candidate should take precedence over those from, for example, reviews for testing agencies, who have never personally met the candidate or conducted the requisite assessment for diagnosis and treatment.”). The inclusion of additional language beyond C.R.S. § 24-34-806 in conjunction with the failure to incorporate 28 C.F.R. § Pt. 36, App. A, will result in very little change to the OAA's accommodation process. To the extent the OAA, or its retained experts, elect to deny the requested accommodation, they will simply note that the requested accommodation(s) lack proper application to the request for accommodations on the bar exam. This is exactly what happened in both of the foregoing lawsuits.

The proposed rule changes must be amended to comport with C.R.S. § 24-34-806 and to address the OAA's practice of deferring to its retained experts over treating excerpts. I would appreciate the opportunity to testify regarding the proposed amendments and would be happy to answer any questions you may have.

Sincerely,

KONTNIK | COHEN, LLC

s/ Michael Ozborn

Michael Ozborn (J.D)

s/ Spencer J. Kontnik

Spencer J. Kontnik,

201 Steele Street, Suite 210

Denver, Colorado 80206

Telephone: (720) 449-8448

Fax: (720) 223-7273

E-Mail: skontnik@kontnikcohen.com

s/Matthew L. Fenicle

Matthew L. Fenicle

201 Steele Street, Suite 210

Denver, Colorado 80206

Telephone: (720) 449-8448

Fax: (720) 223-7273

E-Mail: skontnik@kontnikcohen.com

MEMORANDUM

To: Colorado Supreme Court
From: Concerned Faculty, University of Denver Sturm College of Law
Date: November 15, 2024
Subject: Comment on Proposed Rule 203.5

Thank you for the opportunity to comment on Proposed Rule 203.5 concerning Disability Accommodations for the Colorado Bar Examination and the Licensed Legal Paraprofessional Examination.

We are a group of concerned faculty and staff at the University of Denver Sturm College of Law (Denver Law) with decades of collective experience working with law students with ADA accommodations, particularly with law students who seek accommodations on the Colorado and other state bar exams. Our combined experience working with applicants to the Colorado and other state bars can provide invaluable insight into the challenges faced by law students seeking accommodations for the bar examination. We write this statement in our individual capacities, and we do not speak on behalf of Denver Law as an institution.

We respectfully submit comments to support the principles of Proposed Rule 203.5 and offer amendments for consideration by the Court.

Background

We appreciate the efforts of the Office of Attorney Admissions (OAA) to respond to CO Code § 24-34-806 (2023) and establish a rule that aligns the accommodations process for admission into the legal profession in Colorado to this law. We have witnessed law students struggle to navigate the accommodations process and often fail to secure accommodations despite having received such accommodations as law students and throughout their education as for other standardized and high-stakes exams.

For example, in the 2022-2023 school year, 146 individuals at the Sturm College of Law received disability-related accommodations. This breaks down to an average of 48 law students per year, but according to data received by Disability Law Colorado, which was shared with us, far fewer individuals applied for accommodations that year. While some students may have not applied to the Colorado bar, the overwhelming majority of Denver Law students sit for the Colorado bar exam. This demonstrates a disconnect between the number of students likely eligible for accommodations and the number of students applying. Indeed, it has been our experience that many law students who could be eligible for accommodations fail to seek them out due to the complicated and unforgiving nature of the

process, the costs associated with additional mandated testing, and the number of their classmates who seek out accommodations and are ultimately denied. We are heartened by the new law and subsequent required rule changes, but we believe more needs to be done.

Concerns

Efforts to change the existing process so prospective lawyers in Colorado can apply for and secure the accommodations deserved are critically necessary. Given this, we are heartened at the new law and OAA's efforts to craft rules and ultimately shift its process in a way that aligns with this law. However, we have some concerns with the rule as currently drafted.

203.5(4)(b)

Proposed Rule 203.5(4) indicates that when an "applicant provides verifiable documentation that the applicant previously received a requested disability accommodation that had been approved due to a disability that was not a temporary condition," they are granted an accommodation in certain circumstances. Rule 203.5(4)(b) describes one circumstance – if documentation is provided by a treating medical professional that identifies the applicant's current disability, explains why an accommodation must be offered to provide the applicant with the same level of access to the examination as other test-takers, recommends the accommodation requested by the applicant, and is signed and dated by the medical professional. The information required here goes beyond what is articulated in § 24-34-806. Section 24-34-806(3)(A)(III) only requires that the signed and dated letter recommend the accommodations requested by the individual. Section 24-34-806(3)(B) further states that if the requirements are met the testing entity must not require the individual to provide additional documentation.

The proposed rules mandate that the medical professional explain why an accommodation must be offered appears to not only be inconsistent with § 24-34-806(3)(B), but it also creates an added burden on the applicant and medical professional. If the medical professional recommends accommodations, as required by law, why are they asked to explain why such accommodations are needed, which is not required by law? The law specifically moves the process away from "excessive and burdensome documentation demands....", and "failures to recognize the diagnoses or recommendations provided by an individual's medical or psychological provider." § 24-34-806(1)(a)(III). The proposed rule, however, adds more documentation than required, does not appear to trust the professional's recommendation, and appears to require an applicant to justify that they both have a disability and need accommodations. None of this is aligned with the spirit of the law and the impetus for the changes. We recommend that the proposed rule more

strictly align with the requirements of § 24-34-806. More specifically, the requirements of the medical professional's documentation in 203.5(4)(b) should mirror § 24-34-806(3)(A)(III).

203.5(5)

We support a proposed rule that includes a process for reconsideration if the OAA denies an applicant's requested accommodations, in whole or in part. However, we strongly urge the proposed rule to include a timeframe for decisions, reconsiderations, and reconsideration decisions to add further transparency to the process. Additionally, we firmly recommend the Supreme Court consider a timeline for ADA accommodation applications that promotes fairness and adequate notice for applicants whose accommodations applications are denied.

A timeline where a notice of decision on an application for ADA accommodations occurs less than 10 weeks before the bar exam administration date places an undue burden on applicants seeking accommodations. Unlike peer counterparts not seeking accommodations on the bar exam, applicants seeking accommodations with adverse decisions must decide between (a) spending time and resources on a reconsideration application to be granted accommodations for which they may rightfully be entitled, and (b) time and resources on adequately preparing for the bar exam. For this reason, providing a decision and a reconsideration process on an application for ADA accommodations during the regular bar exam preparation period is fundamentally unfair to individuals with disabilities who, by nature of the process, will be provided less time to prepare for an examination where they may not receive ADA accommodations, in whole or in part. Instead of the intended purpose of the ADA to "level the playing field" for those with and without disabilities, a reconsideration process timeline that occurs during the bar preparation study period creates additional barriers for adequately preparing for the exam that undermine the purpose of the ADA.

We advocate a timeline for an ADA accommodations application process to provide adequate time for submission, consideration by the OAA, decision by the OAA, reconsideration applications, and reconsideration decisions by the OAA. We identify two possible ways to clarify and improve the timeline, with a preference for option one though we recognize this option might take additional time to develop:

- 1) Consider an ADA accommodations application regime recently adopted by the NCBE for the MPRE. This process would require an application for ADA accommodations and a decision on the application before registration for the exam is required. This would require the Colorado Supreme Court to adopt a timeline of January-February

for ADA accommodations application decisions for the July exam (before the April 1 regular application deadline) and August-September for the February exam (before the November 1 regular application deadline).

- 2) Conclude the aforementioned procedures by May 15 for the July exam and December 15 for the February exam. This timeline would require some adjustment by the OAA but would allow it to still follow its general procedures of reviewing, granting, and/or denying accommodations requests after individuals apply for admission more broadly.

Suggested, Proactive Education Measures

Once a rule is finalized, we strongly urge OAA to engage in a proactive, aggressive outreach and public education effort to inform potential Colorado bar applicants of any rule changes. Due to the challenging and traumatic experiences of those who navigated the accommodations process in Colorado over the years, many individuals who are eligible to apply for accommodations may not be aware of the new law and the subsequent new rule, once finalized. We are happy to partner with OAA in this effort to help educate and inform Denver Law students, but we know the need for information and clarification extends beyond our walls. We recommend an intentional communications strategy in partnership with local and regional law schools, the Colorado Bar Association as well as various affinity and local bar associations, and others to ensure awareness and understanding of the new changes and requirements.

Thank you for the opportunity to provide comments on this draft and for your efforts to improve the accommodations process in Colorado. Throughout your review process, please reach out to any of the faculty and staff members listed below if we can be helpful to your assessment.

Respectfully,

Prof. Christopher Engle-Newman
Assistant Director of Bar Success; Visiting Assistant Professor of the Practice
christopher.s.engle-newman@du.edu

Dean Alexi Freeman
Associate Dean of Diversity, Equity and Inclusion; Director of Externships & Social Justice Initiatives; Professor of the Practice
alexi.freeman@du.edu

Prof. Scott Johns

Director, Bar Success Program; Professor of the Practice

William.johns@du.edu

Prof. Diane Kraft

Director of the Academic Achievement Program; Professor of the Practice

diane.kraft@du.edu