

Related Attorneys

Daniel D. Zegura

EMPLOYMENT / LICENSURE TESTING LITIGATION

In addition to its diversified Employment Law practice, Rogers & Hardin has developed deep expertise in the related field of employment certification and licensure testing litigation. For almost three decades, we have represented companies involved in the design, development, administration and scoring of large scale, high stakes professional certification and licensure tests in many states across the nation. Our practice has involved virtually every aspect of the operations of such companies, including:

- HR issues;
- Employment contracts;
- Governmental contracts and procurement issues;
- Contracting for testing sites;
- Hardware acquisition and software licensing;
- Website design and implementation;
- Online registration procedures and agreements;
- Alternative testing accommodations for test takers with disabilities;
- Dispute resolution and litigation concerning reasonable accommodations for disabilities;
- Real time oversight and advice concerning test day problems;
- Development and implementation of test security procedures and safeguards;
- Investigation and resolution of possible testing irregularities and misconduct;
- Investigation and resolution of scoring and score reporting irregularities;
- Litigation concerning allegations of disparate passing rate impact upon minority test takers;
- Responses to public records requests for information;
- Responses to governmental investigations of alleged violations of civil rights and employment discrimination laws and negotiations with investigatory agencies; and
- Compliance with relevant test development guidelines, job analysis surveys, psychometric evaluation of test performance, and bias prevention reviews, among many other issues.

Examples of our litigation experience in this specialized field include the following:

- Represented the developer of the California Basic Education Skills Test in the successful defense of a disparate impact challenge to that teacher certification test under Title VII.
- Represented the developer of the New York Liberal Arts and Sciences Test in the defense of a disparate impact challenge to that teacher certification test under Title VII. The matter is now on remand to a federal district court in New York, following appeal to the Second Circuit Court of Appeals.
- Successfully defended the developer and administrator of a Georgia teacher certification test against a claim of negligence based on the alleged erroneous scoring of a test. Summary judgment in favor of our client was affirmed on appeal to the Eleventh Circuit Court of Appeals.
- Successfully defended the developer and administrator of the New York Liberal Arts and Sciences Test against an alleged violation of the Americans With Disabilities Act based on a claimed failure to grant reasonable accommodations to a test taker with learning disabilities. Summary judgment in favor of our client was affirmed on appeal to the Second Circuit Court of Appeals.
- Successfully resolved several investigations of alleged violations of the Americans With Disabilities Act initiated by the U.S. Department of Justice and the U.S. Office of Civil Rights, based on claims of failure to grant reasonable testing accommodations to test takers with learning disabilities.
- Successfully resolved numerous public records requests seeking confidential and proprietary information from test developers under contract with state agencies.