

RECORD NO. 10-11052

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

EVA LOCKE, et. al.,

Plaintiffs-Appellants,

v.

JOYCE SHORE, et. al.,

Defendants-Appellees.

On Appeal from the United States District Court
For the Northern District of Florida, Tallahassee Division
Honorable Robert L. Hinkle, District Judge

**BRIEF AMICUS CURIAE OF
THE NATIONAL COUNCIL FOR
INTERIOR DESIGN QUALIFICATION, INC.
IN SUPPORT OF DEFENDANTS-APPELLEES AND FOR AFFIRMATION**

PAMELA D. GILMAN
Law Offices of Pamela D. Gilman
6 Old Gate Court
Rockville, MD 20852
(301) 881-2332
(301) 881-3176 (fax)
pgilman@aol.com

Counsel for Amici Curiae
National Council for Interior Design
Qualification, Inc.

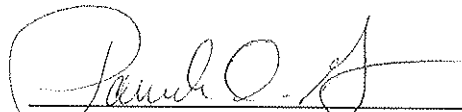
No. 10-11052

Eva Locke, et. al. v. Joyce Shore, et. al.

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to FRAP 26.1 and Circuit Rule 26.1-1, the National Council for Interior Design Qualification (Amici Curiae), a not-for-profit corporation, certifies that it has nothing to add to Appellants' Certificate.

Respectfully submitted this 7th day of June, 2010.



PAMELA D. GILMAN

Law Offices of Pamela D. Gilman
6 Old Gate Court
Rockville, MD 20852
(301) 881-2332
(301) 881-3176 fax
pgilman@aol.com

Counsel for Amici Curiae
National Council for Interior Design
Qualification, Inc.

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INTEREST OF AMICI CURIAE

The National Council for Interior Design Qualification, Inc. (NCIDQ), a not-for-profit corporation, is a federation of U.S. state and territorial regulatory boards and their Canadian provincial counterparts. Counsel for Plaintiffs-Appellant and Defendants-Appellees have consented to the submission of NCIDQ's amicus brief.

NCIDQ exists to protect the health, life safety and welfare of the public by establishing standards of competence in the practice of interior design. NCIDQ is not a professional society composed of interior designers. NCIDQ's current members include the Florida Board of Architecture and Interior Design (Defendants-Appellees).

NCIDQ serves the member boards through programs and services necessary for them to carry out their legislative mandate to regulate the interior design profession. NCIDQ's primary program is the licensure examination used by all member boards as a means to determine competency in the practice of interior design at a level of ability that protects the public health, safety and welfare. The NCIDQ Examination has been in existence since 1974.

NCIDQ subscribes to the policies and procedures of the *Standards for Educational and Psychological Testing*. To assist NCIDQ in the development of

the Examination and application of testing industry standards, NCIDQ contracts with ACT, Inc. of Iowa City, Iowa as its testing consultant. ACT is an independent, not-for-profit organization that provides a broad array of assessment, research, information and program management solutions in the areas of education and workforce development.

SUMMARY OF ARGUMENT

INTERIOR DESIGN VS. INTERIOR DECORATION

Plaintiffs-Appellants have consistently tried to define the profession of “interior design” as synonymous with the occupation of “interior decoration.” As the profession of interior design has evolved into a separate and distinct occupation from interior decoration, the public’s use of the two terms has not evolved. They are commonly used interchangeably.

One of the most public faces of the design/decoration field is HGTV. On this cable television channel viewers are exposed to many aspects of the decoration field. The television shows rarely ever distinguish between interior decorators and interior designers. However, on their Web site (<http://www.hgtv.com/decorating/hiring-a-designer/index.html>) they offer guidance as to the difference.

Interior decorators are not required to have any formal education; “you just have to have a knack,” says Charla Blake, lead instructor with the Interior Design Program at the Art

Institute of Dallas. “Interior designers, however, must have completed a certain amount of course work, taken a nationally accredited exam and have a set number of hours of on-the-job practice. In addition, 23 states require designers to have licenses, just like doctors or lawyers. If designers are licensed, that means they are accountable to a state licensing board, so you have some legal recourse in the unlikely event the designer messes up in a major way.”

“It’s a very technically oriented profession,” says Blake. “The public perception is that it’s all about picking colors and finishes and fabrics. But designers deal with historic preservation or restoration, building codes, [and] lighting issues. 80 percent of the job is dealing with manufacturers or writing specifications — the minutiae.” Id.

Interior decorators rarely work in public buildings. However, interior designers frequently do. Public buildings are more highly regulated by building codes and therefore interior designers are required to be competent in the application of building code requirements. Appellants never make this distinction. According to the U.S. Bureau of Labor Statistics interior designers “Plan, design, and furnish interiors of residential, commercial, or industrial buildings. Formulate design which is practical, aesthetic, and conducive to intended purposes, such as raising productivity, selling merchandise, or improving life style. [Interior designers] may specialize in a particular field, style, or phase of interior design.” (<http://www.bls.gov/oes/current/oes271025.htm>)

The Bureau of Labor Statistics goes on to say:

Interior designers draw upon many disciplines to enhance the function, safety, and aesthetics of interior spaces. Designers plan interior spaces of almost every type of building, including offices, airport terminals, theaters, shopping malls, restaurants, hotels, schools, hospitals, and private residences. Good design can boost office productivity, increase sales, attract a more affluent clientele, provide a more relaxing hospital stay, or increase a building's market value.

Interior designers must be able to read blueprints, understand building and fire codes, and know how to make space accessible to people who are disabled. Designers frequently collaborate with architects, electricians, and building contractors to ensure that designs are safe and meet construction requirements.

When the design concept is finalized, the designer will begin specifying the materials, finishes, and furnishings required, such as furniture, lighting, flooring, wall covering, and artwork. Depending on the complexity of the project, the designer also might submit drawings for approval by a construction inspector to ensure that the design meets building codes. If a project requires structural work the designer works with an architect or engineer for that part of the project.

Finally, the designer develops a timeline for the project, coordinates contractor work schedules, and makes sure work is completed on time. The designer oversees the installation of the design elements, and after the project is complete, the designer, together with the client, pay follow-up visits to the building site to ensure that the client is satisfied. If the client is not satisfied, the designer makes corrections.

Three areas of design that are becoming increasingly popular are ergonomic design, elder design, and environmental—or green—design. Ergonomic design involves designing work spaces and furniture that emphasize good posture and minimize muscle strain on the body. Elder design involves planning interior space to aid in the movement of people who are elderly

and disabled. Green design involves selecting furniture and carpets that are free of chemicals and hypoallergenic and selecting construction materials that are energy-efficient or are made from renewable resources. Id.

NCIDQ EXAMINATION CONTENT / REQUIREMENTS FOR FLORIDA LICENSURE

NCIDQ's Examination, as one part of the requirements for Florida licensure, is designed to test those aspects of the interior design body of knowledge, skills and abilities that specifically relate to protecting the public health, safety and welfare. While interior designers are expected by their clients to also bring skills in aesthetics, that is not the focus of the Examination.

NCIDQ routinely studies the profession to ensure that its credentialing examination assesses candidate abilities to practice interior design in a manner that protects the public health, safety and welfare. Like most examinations used for licensure decisions in other professions in the United States, the NCIDQ exam adheres to the *Standards for Educational and Psychological Testing* in developing test content. In 2008 the *Analysis of the Interior Design Profession* was conducted by ACT, Inc. for the NCIDQ Examination.

The NCIDQ Examination is composed of three sections. Two are tested in a multiple-choice format and one is tested using practical exercises.

Section 1 of the NCIDQ Examination is titled *Codes, Building Systems, Construction Standards and Contract Administration*. It covers the following content areas in a multiple-choice format: building code requirements, laws, standards & regulations, including ADA accessibility guidelines; sustainable design practices; building systems; building construction; construction documents; and, selection, specification and the use and care of furniture, fixtures and equipment (e.g. acoustics, life safety considerations, performance and properties).

Section 2 of the NCIDQ Examination is titled *Design Application, Project Coordination and Professional Practice*. It covers the following content areas in a multiple-choice format: the relationship between human behavior and the designed environment; design theory; programming; site analysis procedures (e.g. project context, existing conditions, location, surroundings, views, and geography); sustainable design practices; project coordination procedures; roles and goals of related design professionals; ethics; and, post-occupancy evaluation services.

Section 3 of the NCIDQ Examination is the Interior Design Practicum. It covers content in the following areas: programming; design theory; construction drawings and schedules; architectural woodwork; lighting; theories about the relationship between human behavior and the designed environment; building construction; sustainable design practices; building systems; interior finishes and

materials; code requirements, laws, standards and regulations; site analysis procedures; and, furniture, fixtures and equipment.

Section 3 of the Examination is administered through a series of seven design exercises that candidates complete over eight hours. The Examination is administered two times per year in more than 60 locations in the United States and Canada. The following technical drawings are excerpted from the April 2010 exam administration.

Following are the descriptions of each of the seven exercises and the specific knowledge areas tested by each exercise in Section 3 of the Examination.

Space Planning Exercise. Candidates develop a complete floor plan showing walls, doors, furniture and equipment as specified in the instruction booklet to meet programmatic requirements of a fictitious client. Candidate solutions are judged on their response to the program requirements and application of professional judgment in locating rooms, furniture and equipment that satisfies the program and multiple building code requirements, including ADA accessibility guidelines. Of specific interest in grading the solutions is how the candidates layout corridors and other “paths of egress” to allow occupants to exit the building in an emergency. (The “path of egress” is the term used in building codes to define the way in which occupants will get out of a room or suite, through a corridor or series of corridors to a vertical escape route (stairways) and eventually out of the

building. Components of the path of egress include the direction that doors open, corridors and any penetrations of corridor walls and doors.)

Lighting Design Exercise. Candidates are provided with the layout of furniture and equipment in a room. The candidate creates a design for the layout of lighting fixtures and how they are connected to wall switches. The candidate also completes a schedule that shows the types of fixtures they have selected, their quantity and wattage. The candidate's solution is judged on appropriateness of the lighting fixtures selected for each program requirement (e.g. ambient lighting vs. high-intensity lighting for a retail display) as well as the overall efficiency of the solution (energy conservation).

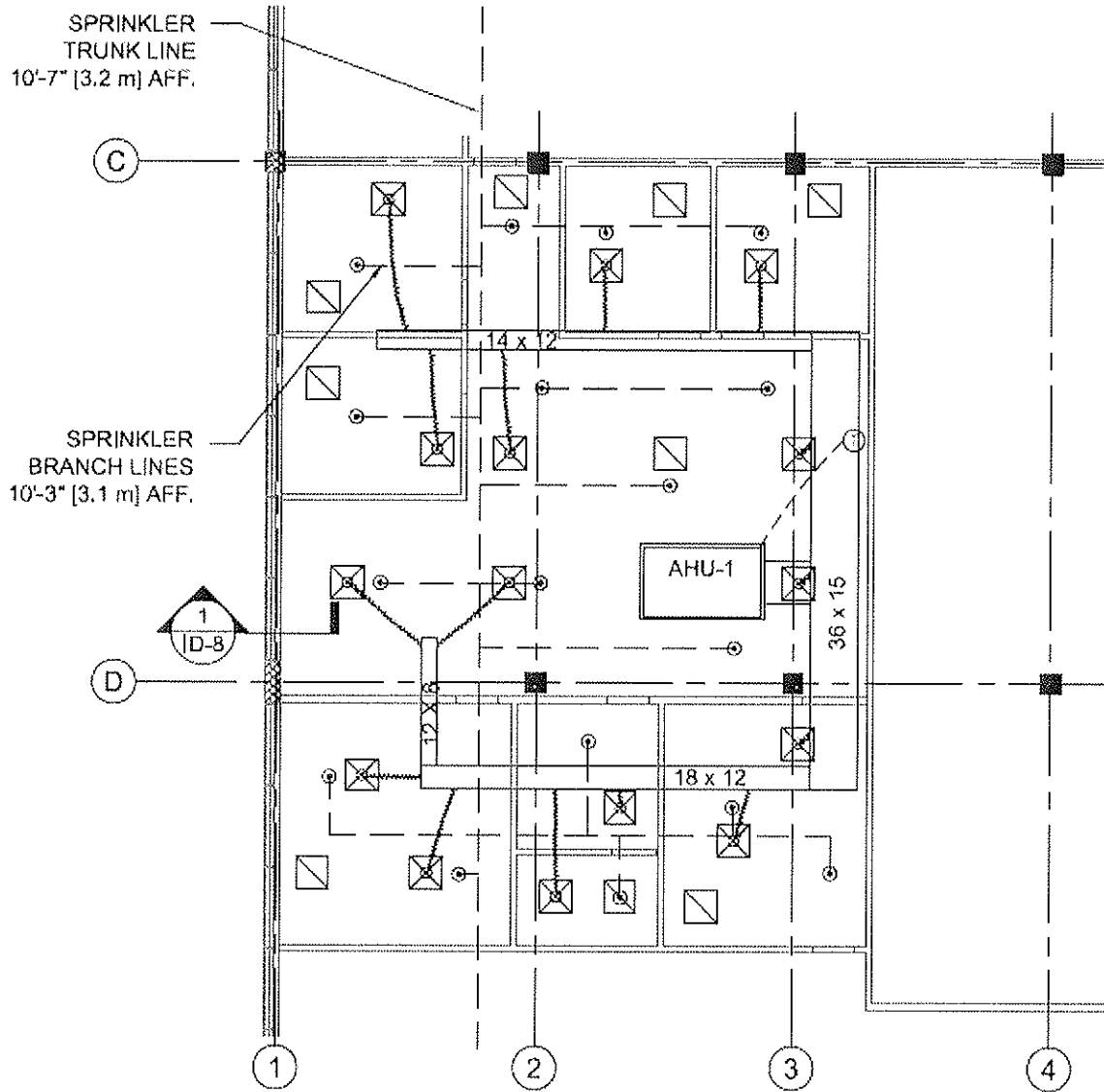
Egress Exercise. In this exercise candidates are instructed to show the correct path of egress from an existing suite to exit stairs on a multi-story building. Candidates are also required to subdivide the floor into four additional suites and determine "occupancy loads" for each suite. ("Occupancy loads" are determined using building codes to calculate the maximum number of people that will occupy the room or space.) Solutions are judged on the correct identification of at least two paths of egress from the given suite, calculation of occupancy loads and on compliance with the client's program for additional suites (appropriate size and configuration to be useable.)

Life Safety Exercise. In this exercise candidates are required to locate on a floor plan applicable “life safety” equipment, such as exit signs, emergency lighting (connected to battery back-ups for use during power failures), fire alarms, fire extinguishers and smoke detectors. In addition, candidates must complete a door/frame/hardware schedule and a partition schedule. Candidate solutions are judged on their placement of the life safety equipment in locations that comply with the building code; completion of the door/frame/hardware schedule that accounts for the building occupants’ needs and building code requirements for fire separations; and, completion of the partition schedule to show the types of wall construction needed in specified locations to address building code requirements for fire separations as well as handle issues of sound penetration between spaces.

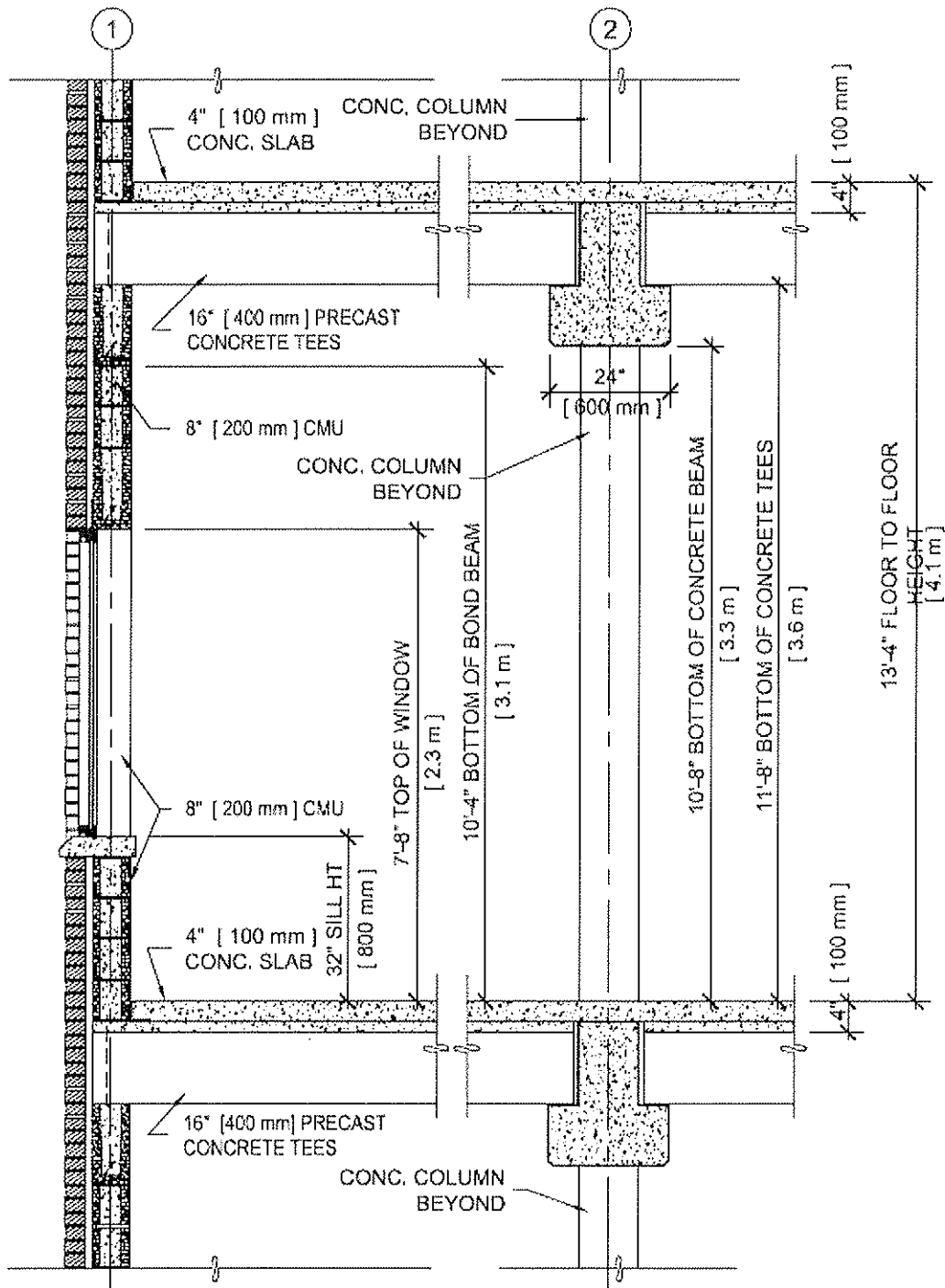
Restroom Exercise. In this exercise candidates are required to place plumbing fixtures and accessory equipment in a public restroom according to a specific program. Solutions are judged on the efficient use of space, efficient use of plumbing lines (supply water and drains) as well as compliance with building codes and ADA accessibility requirements for persons with disabilities.

Systems Integration Exercise. In this exercise candidates use the information in the program booklet and the technical drawings for a building as shown in the two drawings below.

Mechanical Plan:



Building Section:



Candidates are provided with conflicts on the various drawings between the placement of furniture, lighting equipment, plumbing equipment, electrical

equipment, air handling equipment, fire sprinklers and structural systems.

Candidates are asked to describe the conflict and write a statement noting how they would resolve the conflict. This task is one commonly performed by interior designers who coordinate the work of architects, engineers and other consultants. Solutions are judged on the candidate's ability to recognize the conflicts and resolve them in a professionally sound manner incorporating building code requirements and cost efficient solutions.

Millwork Exercise. In this exercise candidates are asked to develop a floor plan and construction details for the construction of a piece of cabinetry (millwork). The candidate's solution is judged on the functionality of the layout as well as the buildability of the millwork. Candidates are told to incorporate accessible functions for people with disabilities and the solutions are judged on the selection of appropriate heights and widths of various components to meet ADA accessibility requirements as well as how the solution meets the program requirements for function.

For all seven exercises, application of building codes and ADA accessibility requirements are judged more critically than any functional or aesthetic concerns. For this reason, these seven exercises form the core component of the NCIDQ Examination's assessment of candidate skills in applying building code requirements in order to protect the users of the buildings.

The profession of interior design is not the same as interior decoration. Interior Design is a profession in the United States that has more than 150 accredited degree programs at the Bachelor's or Master's degree level. There are more than 25,000 NCIDQ Certificate holders who have completed the prerequisite education and experience and passed the NCIDQ Examination. Interior decoration is an occupation with little uniformity in the education, training and qualifications of its practitioners. One – interior design – serves to protect the public from harm in the spaces that people occupy (homes, offices, hotels, restaurants, airports, etc.) while making those spaces more functional, efficient and pleasing. The other – interior decoration – exists primarily to offer services to residential clients, in non-public spaces, that apply creativity and aesthetic solutions. While there is a place for both to exist, interior design deserves regulation by state agencies specifically to ensure the public that its practitioners are competent to provide the services that consumers want in a manner that will protect the users of public buildings while in those buildings.

CONCLUSION

The court below properly found that the interior design licensing law does not violate either the First Amendment, the Commerce, Due Process or Equal Protection Clauses. This court should AFFIRM.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) in that it has less than 7,000 words excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).
2. This brief complies with the type face requirements of Federal was produced using Microsoft Word, Times New Roman 14pt type in compliance with rules 32(a)(5) and (6).

Respectfully submitted this 7th day of June 2010 via Federal Express for delivery to the Court on June 8, 2010.



PAMELA D. GILMAN

Law Offices of Pamela D. Gilman
6 Old Gate Court
Rockville, MD 20852
(301) 881-2332
(301) 881-3176 (fax)
pgilman@aol.com

Counsel for Amici Curiae
National Council for Interior Design
Qualification, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by U.S. Mail
this 7th day of June, 2010, on:

Bill McCollum
Attorney General
Jonathan A. Glogau
Chief, Complex Litigation
PL-01, the Capitol
Tallahassee, FL 32399-1050

William H. Mellor
Clark M. Neily, III
Institute for Justice
901 North Glebe Road, Suite 900
Arlington, VA 22203-1854

Daniel J. Woodring
Woodring Law Firm
3030 Stillwood Court
Tallahassee, FL 32308-0520


Pamela D. Gilman