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Law Office Management

The Business Case for Disability Diversity in Legal Employment

By Cheryl L. Anderson

Legal employers increasingly recognize the diversity in their workplace is important to success. Yet many overlook disability diversity. Here's why that's a mistake.

Senior & Junior Law Firm is hiring a new associate. After looking through a pile of resumes, they select the top candidates to interview. Included in the pool is Sandra, who is top 10 at her law school with impressive co-curricular activities and externships and an excellent writing sample.

When Sandra arrives, Senior and Junior see she has braces on her legs and walks with a cane. Although they know better than to ask her whether she has a disability, they ask questions about job tasks that draw out the fact Sandra has a mild case of cerebral palsy. She explains that it has not kept her from being able to do anything so far in law school, and she doesn't expect it to affect her ability to practice.

Nonetheless, Senior and Junior decide to cut Sandra from the final pool. Their rationale is that they have other good candidates, so why pick someone who might be an inconvenience - perhaps a costly one - because of a disability?

What they didn't recognize is this: Diversity of all kinds is good for business.

Diversity efforts should include lawyers with disabilities

Law firms' commitment to diversity is often apparent on the home pages of their websites, where there may be a direct link to the firm's diversity policies. But few of those policies mention disability explicitly.

While the number of students with physical and mental disabilities attending and graduating from colleges and universities is increasing,¹ the number practicing law has shown little growth.² Attorneys with disabilities report experiencing discrimination by legal employers. In a 2004 survey of California attorneys with disabilities, for example, 45 percent reported they believed they had been denied employment because of their disability, with that number rising to 68 percent for attorneys with visible disabilities.³

Individuals with disabilities' slow progress in legal employment is not due to their inability to handle legal tasks. To quote Richard Thornburgh, who spoke at the First Annual ABA National Conference on the Employment of Lawyers with Disabilities:

By its nature, legal work is principally an intellectual and interpersonal endeavor. While this naturally forecloses some individuals from having the capacity to meet the "essential functions" of being employed as a lawyer, this also means



that the vast majority of people with disabilities that affect physical or sensory functions can readily succeed on the job.⁴

Legal employers are not required to hire attorneys unable to perform the essential functions of the position in question even with a reasonable accommodation.⁵ Often, however, attorneys with disabilities are excluded based on stereotypes and unfounded concerns about their ability to handle the demands of practice.

As the sidebar profiles indicate, lawyers with disabilities have been successful in a variety of legal settings. One of the goals of the Illinois State Bar Association Standing Committee on Disability Law, which this author recently chaired, has been to raise the profile of attorneys with disabilities and encourage firms to more actively include disability in their diversity recruitment efforts.

Brandy L. Johnson

FIRM: Feirich/Mager/Grenen/Ryan in Carbondale

PRACTICE CONCENTRATION: workers' compensation, employment law, insurance coverage and defense, appellate advocacy, medical malpractice, and personal injury litigation

YEARS IN PRACTICE:

10



What's your biggest accomplishment in practice?

An attorney's reputation in the legal community is paramount. One of my biggest accomplishments has been earning the respect of my peers and acquiring a reputation as a proficient, congenial advocate. This has been a benefit to me in numerous ways, including:

(1) client development and retention; (2) seeking and maintaining employment; (3) being recognized as trustworthy and credible by judges, arbitrators, and mediators; (4) serving as an authoritative presenter at seminars in my field of practice; and (5) having the opportunity to author articles and contribute to published texts.

How has your disability affected your practice?

My initial experiences are not unlike those discussed in the article. I graduated at the top of my class, had published several articles, held office in a legal society, and served as an editor on more than one legal journal. I did not disclose my disability when applying for jobs. While I had numerous initial interviews, I only received one second interview and, eventually, one job offer. I even had one firm cancel my interview the day after they learned of my disability.

Once employed, I learned the benefit of proving myself an asset to the firm and, over the years, the impact of my disability on my practice reduced to the point of being insignificant. While I still encounter physical barriers at times due to my wheelchair, I have been able to find a way to overcome them.

In the actual practice of law, my disability has, at times, made me more approachable and permitted me to better understand some litigants. When my disability has permitted me to be more relatable, I have found the opposing litigants tend to be more responsive and willing to work with me to reach reasonable resolutions. In cases involving certain medical conditions or issues, my firsthand knowledge has been of benefit and aided me in the litigation of the case.

What can legal employers do to improve the experience of lawyers with disabilities?

Remember the individual is, first and foremost, a colleague. Let the disability fade into the background, placing emphasis instead on the attorney's personality, work ethic, and abilities. Employers that are willing provide a supportive work environment and be open minded to accommodations will often find themselves rewarded with a loyal, hardworking, long-term employee.

Finally, I would encourage employers to create a work environment where management is approachable, disabled attorneys are encouraged to offer suggestions concerning their needs, and the overall atmosphere is one of acceptance.

The power of diversity

Why have corporations and large (and many small) law firms embraced diversity in hiring?

- They are committed to the principles of equal opportunity.

- Their clients expect it (the "business case").
- Their prospective employees expect it.
- Equal opportunity is the law.
- They find they produce a better product if more experiences and points of view are represented in the problem-solving process. As one company puts it, "[a] greater number of innovative ideas and solutions are created from a group of people with different perspectives and backgrounds than from a homogeneous group whose members might basically act and think alike."⁶

How does disability diversity fit within the general diversity embrace?

- Individuals with disabilities have a history of exclusion and denial of equal opportunity, including lawyers with disabilities.⁷
- Clients likely come from families with one or more persons who have a disability. Nearly 30 percent of the 70 million American families have at least one family member with a disability. The disability market, which includes customers with disabilities and their extended networks (family members, friends, colleagues, support service providers, etc.), is a trillion dollar segment. People with disabilities purchase products and services from companies that understand and meet their needs.⁸

This attitude spans beyond the disability market. A recent poll by the University of Massachusetts found that 87 percent of Americans surveyed say they prefer to patronize businesses that hire people with disabilities.⁹ The incidence of clients with disabilities is likely to be even higher for those who practice elder law, health care law, and other categories where the client is likely to be older. Recent statistics indicate that one out of every two people over age 65 has a disability.¹⁰

- Law students have attended law school with students with disabilities, whom they see simply as colleagues.
- Both the ADA and Illinois state law prohibit disability discrimination and mandate reasonable accommodations.¹¹
- Attorneys with disabilities bring unique experiences, points of view, and problem-solving skills to the table. "[T]he creativity that people with disabilities develop to navigate their daily lives helps in problem-solving on the job."¹²

Attorneys with disabilities can, for instance, help legal employers anticipate the needs of clients with disabilities, enhancing the legal employer's relationship with those clients. They may also bring that unique insight to their legal arguments.

Attorneys with disabilities, through their life experiences having to negotiate often hostile environments, may have innovative approaches to day-to-day practice that produce previously unrecognized efficiencies in time and resources. What would clients think of a firm that refused to consider an applicant with a disability because they didn't want to accommodate his or her workplace needs? Why would they expect that firm to be good at solving *their* problems?

Robert L. Watson

FIRM: Robert L. Watson Law Office, Brighton

YEARS IN PRACTICE:

PRACTICE CONCENTRATION: Real Estate, probate, estate planning, family law and municipal representation

45



What's your biggest accomplishment in practice?

Creating a successful solo law practice in a small town, drawing clients from many larger surrounding communities. Having the respect of other attorneys and associates in the area. Experiencing a sense of satisfaction when clients send me thank you notes in which they express their

appreciation on a job well done. When clients come to see me and the first words out of their mouths are: "Bob, I have come to you because I know you will tell me the truth. I may not like it, but I know that it will be the truth."

How has your disability affected your practice?

The greatest obstacle I have to overcome because of my disability of blindness is the lack of independence. I have

to be dependent on others to read to me, to drive me to court, and to assist in research. Being blind prevents me from being as independent as I would like to be. I am not always able to get things done when I would like to have them done, because of the lack of assistance. Nonetheless, I have been a successful practicing attorney for 45 years.

What can legal employers do to improve the experience of lawyers with disabilities?

Legal employers should be honest with themselves when they are interviewing people with disabilities. It was very, very difficult for me to get a job when I graduated from law school. I went to numerous interviews and I don't think the employers ever even considered giving me a job. I would go with great hopes, only to realize very quickly in the interview process, "I'm not ever going to get a job here."

There is often a prejudice or preconceived idea concerning people with disabilities. People with disabilities make other people uncomfortable because of the disability. I can tell within five minutes if people who have never been around me before are going to like me or are so anxious to get out of my presence that they practically fall over themselves.

The overstated cost of accommodation

Despite diversity being good business, lawyers with disabilities continue to report difficulty obtaining employment. One common reason is concern about the cost of accommodation. But most accommodations require little to no out-of-pocket cost.¹³ Those that do have an average one-time cost of less than \$500.¹⁴ Law firms easily spend that much or more on other recruitment activities, like taking summer associates to lunch or baseball games.¹⁵

Beyond hiring applicants with disabilities, it's not uncommon for an attorney already with the firm to develop a disability and seek some type of accommodation. The Job Accommodation Network reports that 83 percent of the employers who contacted it for guidance did so in order to retain or promote a current employee.¹⁶ Companies reported multiple benefits from doing so: "(1) the accommodation allowed the company to retain a qualified employee, (2) the accommodation increased the worker's productivity, and (3) the accommodation eliminated the costs of training a new employee."¹⁷

Also, firms may mistakenly believe an attorney with a disability will have attendance problems or be unable to handle the rigors of practice. The data contradicts these concerns. "General studies of the employment records of people with disabilities show that they're often more reliable and yield markedly higher levels of employee retention than their non-disabled peers."¹⁸

Moreover, the EEOC indicates legal employers "are not required to lower or eliminate production standards for essential functions, either quantitative or qualitative, that are uniformly applied."¹⁹ This means that while an attorney with a disability might need a reasonable accommodation to assist her in meeting a billable hour requirement, she would not be entitled to be exempt from that billable hour requirement.²⁰

Some legal employers may avoid hiring an individual with a disability for fear they won't be able to discharge that individual for

failing to perform. Of course, as noted above, the attorney must be able to perform the essential functions of the legal job. An employer has a right to discharge any attorney who cannot do so, whether that attorney had a disability or not.

The ADA requires only reasonable accommodation, and accommodations that eliminate essential functions are not reasonable.²¹ A firm that seeks to avoid hiring an attorney with a disability out of a misplaced fear about future lawsuits deprives their practice of someone who may uniquely broaden and deepen the firm's assets.

Would it be good for business, namely representing individuals, for the firm to become known as one that wouldn't hire, perhaps wouldn't even interview, an individual with a disability? Just as clients would turn away from a firm that refused to hire people of color and women out of similar fears, clients might be expected to have the same response to a firm that fails to accept otherwise qualified attorneys who are disability diverse. Such word gets around.

Recommendations

Legal employers who want to do a better job of hiring and retaining attorneys with disabilities can start with a pair of online government resources: the EEOC's Fact Sheet on Reasonable Accommodations for Attorneys with Disabilities²² and the Office of Disability Employment Policy's Employer Assistance and Resource Network's guide to interviewing applicants with disabilities.²³ They should also consider the following tips.

- Update employment policies to provide confidential ways for employees to provide information about their disabilities and seek assistance with accommodation. Encourage attorneys who need assistance to raise the issue without fear that it will slow their career advancement.
- Don't dwell on the "reasonable accommodation" label. Regard it simply as problem-solving to help keep a valuable employee or recruit a new one.
- Establish a mentoring program for attorneys with disabilities. Consider setting up an "employee resource group" specific to employees with disabilities,²⁴ and include both individuals with and without disabilities. Such a group might extend to individuals whose family members have disabilities. Include partners and shareholders to show the firm's commitment to the success of all attorneys in the organization.
- Sign the ABA Commission on Disability Rights Disability Diversity in the Legal Profession Pledge for Change.²⁵ Starting in 2014, the ABA Commission on Disability Rights has established a new award, the Champions for Disability Inclusion in the Profession, which will recognize Pledge "signatories who are making measurable progress and engaging in innovative practices to recruit, retain and advance lawyers with disabilities."²⁶ Self-nominations are permitted.²⁷

Diversity is good business, and the business case for making sure your policies and practices include disability diversity is strong. Doing so will help you make sure you're truly hiring the best candidate for the position.

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Living with diabetes: Justice Sonia Sotomayor



Justice Sotomayor has type 1 diabetes. She was diagnosed at age seven and ever since has given herself four or five shots of insulin every day. In her memoir, *My Beloved World*, she describes how learning to manage her diabetes taught her life skills she used to apply to other aspects of her life.

"[B]elieving that my life now depended on this morning ritual [of sterilizing insulin syringes and needles], I would soon figure out how to manage time efficiently: to get dressed, brush my teeth, and get ready for school in the intervals while the pot boiled or cooled. I probably learned more self-discipline from living with diabetes than I ever did from [the nuns at Catholic school]."

1. Donald H. Stone, *The Disabled Lawyers Have Arrived; Have They Been Welcomed with Open Arms into the Profession? An Empirical Study of the Disabled Lawyer*, 27 *Law & Inequality* 93, 100 (2009).
2. The National Association for Law Placement (NALP) collects data on attorneys with disabilities and found in its most recent report that only 13% of reporting firms had at least one attorney with a disability, and that among summer associates, "only a handful" were reported as having a disability. Nat'l Ass'n for Law Placement, *Reported Number of Lawyers with Disabilities Remains Small*, NALP Bulletin (Dec. 2009), available at <http://www.nalp.org/dec09disabled>. In a separate report from the same time period, NALP found that the overall employment rate of graduating law students with disabilities was 7.6% lower than the entire class of 2009. Nat'l Ass'n for Law Placement, *Jobs & JDs* 47 (2009) (finding that 88.25% of all legal graduates in 2009 were employed, but only 80.7% of graduates with disabilities were). The American Bar Association (ABA) Commission on Disability Rights reported that in 2012, 4.65% of ABA members surveyed indicated they had a disability, down from 6.87% in 2010. ABA Comm'n on Disability Rights, *Goal III Report* 12 (2013).
3. Wendy F. Hensel, *The Disability Dilemma: A Skeptical Bench & Bar*, 69 *U. Pitt. L. Rev.* 637, 645 (2008) (citing State Bar of Cal., *Challenges to Employment and the Practice of Law Continue to Face Attorneys with Disabilities* 5, 28 (2004), available at http://www.calbar.ca.gov/calbar/pdfs/reprts/2004_Attoenys-with-Disabilities-Report-Exec-Sum.pdf).
4. ABA Comm'n on Mental & Physical Disability Law, *The National Conference on the Employment of Lawyers With Disabilities: A Report from the American Bar Association for the Legal Profession* 11 (2006) [hereinafter ABA Report].
5. The Americans with Disabilities Act (ADA) makes it unlawful to discriminate against a "qualified individual," which is defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8) (2006).
6. Cummins, Inc., *The Business Case for Diversity*, <http://www.cummins.com/cmi/navigationAction.do?nodeId=15&siteId=1&nodeName=The+Business+Case+for+Diversity&menuId=1003> (last visited Jan. 9, 2014).
7. 42 U.S.C. § 12101(a)(2), (5) (2006).
8. Office of Disability Emp't Policy Emp'r Assistance & Res. Network, *The Business Case: Marketing*, [AskEARN.org](http://www.askearn.org/businesscase/marketing_level2.asp), http://www.askearn.org/businesscase/marketing_level2.asp (last visited July 1, 2013).
9. *Id.*
10. ABA Report, *supra* note 4, at 11 (comments of Richard Thornburg).
11. 42 U.S.C. § 12112 (2006 & Supp. V 2011); 775 ILCS 5/1-103(Q) (West Supp. 2011); 775 ILCS 5/2-102(A) (West Supp. 2011); 56 Ill. Adm. Code 2500.40 (eff. Feb. 5, 2009).
12. ABA Report, *supra* note 4, at 11-12 (comments of Richard Thornburgh).
13. Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact* 4 (updated 09/01/13), available at <http://askjan.org/media/downloads/LowCostHighImpact.pdf> .
14. *Id.*
15. ABA Report, *supra* note 4, at 12 (comments of Richard Thornburg).
16. Job Accommodation Network, *supra* note 13.
17. *Id.*
18. ABA Report, *supra* note 4, at 11 (comments of Richard Thornburg).
19. U.S. Equal Emp't Opportunity Comm'n, *Reasonable Accommodations for Attorneys with Disabilities*, <http://www.eeoc.gov/facts/accommodations-attorneys.html> (last visited Jan. 9, 2014) [hereinafter EEOC Fact Sheet].
20. *Id.*
21. 29 C.F.R. § 1630.2(o) (2012) (noting employers are "not required to reallocate essential functions").
22. EEOC Fact Sheet, *supra* note 19.

23. Office of Disability Emp't Policy Emp'r Assistance & Res. Network, Interviewing Candidates with Disabilities, [AskEARN.org](http://www.askearn.org), <http://www.askearn.org/refdesk/Recruitment/Interviewing> (last visited July 1, 2013).
 24. Office of Disability Emp't Policy Emp'r Assistance & Res. Network, Employee Resource Groups, [AskEARN.org](http://askearn.org/r-work-place.cfm#refdesk/Inclusive_Workplaces/Employee_Resource_Groups?&_suid=137218202751704107388439493021), http://askearn.org/r-work-place.cfm#refdesk/Inclusive_Workplaces/Employee_Resource_Groups?&_suid=137218202751704107388439493021 (last visited July 1, 2013). The EARN site offers a webinar on creating disability focused ERGs.
 25. ABA Comm'n on Disability Rights, Pledge for Change: Disability Diversity in the Legal Profession, http://www.americanbar.org/groups/disabilityrights/initiatives_awards/pledge_for_change.html. The ISBA as an organization has signed the Pledge and is listed on the Commission's Diversity Honor Roll. ABA Comm'n on Disability Rights, List of Pledge Signatories, http://www.americanbar.org/groups/disabilityrights/initiatives_awards/pledge_for_change/list_of_pledge_signatories.html.
 26. Press Release, American Bar Association, ABA Signs Pledge Supporting Disability Diversity and Inclusion in the Legal Profession (Feb. 19, 2013), *available at* http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/aba_signs_pledgesup.html.
 27. The nomination form can be found at http://www.americanbar.org/groups/disabilityrights/initiatives_awards/champions.html?cq_ck=1366730879607.
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Member Comments

So You've Hired a Lawyer with a Disability ... Now What?

Eve L. Hill

Of Counsel, Brown Goldstein & Levy

Despite including lawyers with disabilities in lists of the types of diversity many employers seek to support, lawyers with disabilities continue to be underrepresented in many practice settings, especially large law firms and corporate law departments. Employers are missing opportunities to hire talented lawyers as a result of their own unfamiliarity with, or ignorance about, disability and accommodation issues. Hill walks her readers through the steps needed to create an employment environment that will include lawyers with disabilities.

People with disabilities, including lawyers, can be successful, productive, and loyal employees. Or, like nondisabled employees, they can be frustrated, unproductive, and short-term. What makes the difference? A firm's "culture" makes a major difference in the success, productivity, and loyalty of all employees. A firm's disability culture makes a major difference for employees with *and without* disabilities.

The Burton Blatt Institute (BBI) at Syracuse University is leading a consortium of researchers conducting case study research of corporate disability culture, assessing its impact and how companies can improve their disability culture.¹ The research so far has studied six companies ranging in size from 38 to 38,000 employees, in a variety of fields. The companies chosen have demonstrated success in hiring and retaining employees with disabilities. BBI analyzed what makes up a company's disability culture, how culture affects satisfaction, productivity, and loyalty of employees with and without disabilities, and what businesses can do to create a corporate culture that maximizes satisfaction, productivity, and loyalty of employees with and without disabilities.² BBI's corporate culture research is ongoing.

Creating an Inclusive Corporate Culture

Recruitment

Inclusive corporate disability culture begins with recruitment of people with disabilities. A firm cannot simply assume that their general recruitment efforts will result in a pool of applicants that includes lawyers with disabilities. Several targeted recruitment mechanisms are available, including the IMPACT Career Fair for law students with disabilities (<http://www.law.arizona.edu/Career/Impact/welcome.cfm>) and the National Association of Law Students with Disabilities (<http://www.nalswd.org/>). Use a variety of recruiting mechanisms to reach the widest pool of qualified applicants, rather than relying on candidates to find you or colleagues to make referrals. Law students with disabilities may not have the connections necessary to find you. Using a variety of hiring methods (e.g., resumes, telephone interviews, in-person interviews) also helps get the best candidates, including candidates with disabilities.

1. This research is funded by the U.S. Department of Labor Office of Disability Employment Policy, *grant/contract #E-9-4-6-0107*. The opinions contained in this publication are those of the author and do not necessarily reflect those of the U. S. Department of Labor.

2. Data from the study, as well as additional publications and findings, are available by contacting the author (ehill@law.syr.edu) or Meera Adya, Research Director, BBI, at madya@law.syr.edu. For more information, see <http://bbi.syr.edu/projects/corpculture/>



Firms should train partners and senior attorneys about disability issues, including disability awareness and accommodations. Even if the firm has a centralized accommodations mechanism, firm leaders should understand it and be able to explain it and contribute to it.

It is also essential to ensure that your recruitment methods and processes are accessible. Application forms and firm resumes should be available in accessible formats (e.g., large print, CD). Websites should be accessible to people with vision impairments who use screen reading software as well as to people with hearing impairments (e.g., pictures and other graphics should have text equivalents, videos should be captioned). For more information, see <http://www.w3.org/WAI/quicktips/>. Interview locations should be wheelchair-accessible. Thinking these issues through before an applicant with a disability shows up will make the process run smoothly and demonstrate the firm's commitment to including people with disabilities.

Internships can be a way to support diversity efforts. Accepting interns from diverse (including disability) communities can introduce the firm to candidates who may not have been hired based solely on their resumes.³

On the Job

BBI's research so far indicates that companies' commitment to making their training and other opportunities fully accessible is highly effective at creating an inclusive corporate culture, as reflected in positive employee attitudes and perceptions and commitment, engagement in organizational activities (including organizational "citizenship" behaviors), and intention to stay with their employers. Therefore, firms should ensure that firm events (including social events), trainings, and other activities are fully accessible, in terms of location, activities, materials, communication, etc., even if you don't know whether any of your employees (or their guests) need accessibility. If an event can't be made accessible, don't hold it. This effort should include meetings (depositions, client meetings, meetings with opposing counsel, etc.).

BBI's research indicates that companies found manager training on disability subjects to be very effective at achieving an inclusive corporate culture. Firms should train partners and senior attorneys about disability issues, including disability awareness and accommodations. Even if the firm has a centralized accommodations mechanism, firm leaders should understand it and be able to explain it and contribute to it.

Equitable access to mentoring and coaching opportunities was also found in BBI's research to be effective at achieving an inclusive corporate culture. Many firms expect mentoring/coaching relationships to evolve naturally. However, senior attorneys without disabilities may be uncomfortable

3. See L. Sandler & P. Blanck, *Accessibility As a Corporate Article of Faith at Microsoft: Case Study of Corporate Culture and Human Resource Dimensions*, 23 BEHAV. SCI. & L.39 (2005).



By taking the approach that accommodations can increase the productivity of all employees, rather than reserving accommodations for individuals for whom they are legally required, firms can demonstrate their commitment to their employees, while, at the same time, increasing productivity.

interacting with junior lawyers with disabilities and, therefore, may not seek them out for mentoring. Assigning mentors, along with disability awareness training, may help overcome that reluctance and give lawyers with disabilities access to perhaps one of the most important elements of professional success.

Research indicates that centralizing funding for accommodations can be an effective way to support inclusive corporate culture. Centralized funding can increase consistency of accommodations across departments, ensure greater confidentiality of employees' disabilities, reduce accommodation costs, and avoid departmental resistance to spending department funds on accommodations. However, the effectiveness of centralized accommodations may be tempered by the often increased formality and bureaucracy of centralized accommodation processes, and potential departmental perceptions that their employees' needs are unimportant or someone else's problem and resistance to outside mandates and interference. Centralized accommodations also may not adequately understand and respond to the needs of the employee's department, coworkers, and supervisors, leading to resentment and lack of "fit." Ideally, a balance should be struck between centralized funding and decentralized decision-making about accommodations.

According to BBI's research, allowance of accommodations for *all* employees, not just those with disabilities, is an important factor in an inclusive corporate culture. By taking the approach that accommodations can increase the productivity of all employees, rather than reserving accommodations for individuals for whom they are legally required, firms can demonstrate their commitment to their employees, while, at the same time, increasing productivity. Examples of accommodations that can benefit both employees with and without disabilities include flexible work schedules, telework, speech recognition software, and accessible print materials.

Perceived "fit" between a person's abilities and his/her job is another factor that is found to be highly predictive of job satisfaction and loyalty. Therefore, firms should consider assigning tasks based on employees' strengths, rather than requiring every attorney to be good at every aspect of the work. This approach is similar to "customized employment," which has been found effective in the vocational rehabilitation system for improving employment outcomes for people with significant disabilities,⁴ but it is adaptable to all levels of disability.

4. National Center on Workforce and Disability / Adult, *Customized Employment Employers and Workers: Creating a Competitive Edge; Summary Report on Customized Employment Grants and Workforce Action Grants*, DEPT. OF LABOR, available at www.dol.gov/odep.

Communicating Inclusive Corporate Culture

Using a combination of surveys, focus groups, and interviews, BBI's case study research has so far indicated that good disability culture improves satisfaction, productivity, and loyalty of all employees – with and without disabilities. Employees' perceptions of a company's culture (including openness, flexibility, fairness, commitment to diversity, valuing of employees, etc.) affect their level of engagement with the company (satisfaction, commitment to the company, engagement in organizational citizenship, and intent to stay with the company). The level of positive impact was similar for employees both with and without disabilities. Moreover, perceptions of corporate culture by nondisabled employees directly affect the experiences of employees with disabilities. The more nondisabled employees understand disability policies and understand the reasons for those policies and the fairness of those policies, the more those employees contribute to improving the employment experience of employees with disabilities.

Because employee perceptions of corporate disability culture are a key factor, it is essential that corporate disability policies and commitments not only actually be in place, but that they be communicated effectively to all employees. Disability inclusion commitments and accommodation policies that are unknown and unavailable to employees with and without disabilities lead to confusion, suspicion, and perceptions of unfairness among employees with and without disabilities.

Supervisor attitudes and approaches to disability issues affect all employees' perceptions of the inclusiveness and fairness of corporate disability policies. Often, firms will assign disability issues to a centralized department (disability office or human resources office), thus leaving supervisors out of the process. This may be perceived by employees as indicating that disability is not important to firm leadership. It may also leave supervisors without understanding of the company's disability policies, making it difficult for them to project the company's inclusive culture to their employees. Ensuring that partners and supervisors understand, and have positive attitudes toward disability, diversity, and accommodation can reduce employees' perceptions of unfairness, prejudice, and discrimination.

Firm diversity statements and goals often do not include disability. Visible, explicit commitments to inclusion of disability in diversity efforts are effective at communicating corporate disability culture. Moreover, including disability in a firm's tracking of diversity progress and outcomes is an important way of ensuring that the disability diversity commitment is taken seriously and is visible to all employees. It is acceptable to "count" employees with disabilities, as long as it is clear that the information collected is for purposes of diversity/affirmative action, participation is voluntary, and the information is kept strictly confidential. In addition, firms may consider having their disability culture "benchmarked." Such benchmarking will both contribute to the ongoing research and provide firms an assessment of their culture, comparison to other firms and companies in terms of what works and what doesn't, and identification of areas for improvement.⁵

Openness about accommodation policies and procedures reduces confusion, suspicion, and perceptions of unfairness. In addition, provision of "accommodations" in the form of flexible practices for all employees is another way of communicating corporate culture. Rather than telling employees about disability and accommodation policies only if the employee indicates that s/he has a disability or if s/he requests the information, disability and accommodation policies should be provided to all employees. Ideally, accommodations that increase productivity and effectiveness should be available to all employees. Such an open policy evidences a firm commitment to supporting the productivity of all employees, rather than a closed policy that provides "special" benefits only when legally required. ■

5. For more information on how BBI includes firms in its case studies, contact Meera Adya, Research Director, BBI, at 315-443-7346 or madya@law.syr.edu.

“Inclusion Means Including Us, Too”—Disability and Diversity in Law Schools

By Kathleen Dillon Narko

Clinical Associate Professor of Law, Northwestern University School of Law

When the legal profession talks about diversity, lawyers with disabilities are often mentioned, but are they really included? Given that nearly one out of five Americans has a disability, if lawyers with disabilities are not being included in the profession with the same zealotry given to other types of diversity, the ramifications are serious. In explaining why, Narko addresses how this can be accomplished, beginning with our law schools.

Nearly one out of five Americans has a disability.¹ Accordingly, people with disabilities comprise the largest minority group in the United States. The group is exceptionally diverse in its interests and needs, and members may join the group at any point in life. Many people overlook disability as a part of diversity. A truly diverse population, however, includes people with a range of disabilities. People with disabilities continue to be underrepresented in the legal profession. They face physical and technological barriers that prevent them from performing their work and attitudinal barriers that make performing their work more difficult. It is hard to participate in a meeting when you cannot open the door, and it is hard to show what you can do if you are not given the opportunity.

This article will explore why disability should be included in ideas of diversity and inclusion as well as the barriers people with disabilities face. I will focus on those preparing to enter the legal profession—law students. The following piece by Eve L. Hill, Senior Vice President at the Burton Blatt Institute, will focus on how employers can create a culture of inclusion for people with disabilities in the profession.

Why should disability be included in diversity?

Are people with disabilities diverse? Through their actions and attitudes, many people seem to answer “No.” Important rationales exist, however, for people with disabilities to be part of true inclusion in the profession.

People with disabilities “have to be represented,” according to William Phelan of the American Bar Association’s Commission on Mental and Physical Disability Law. “Many are unemployed, or disenfranchised. They do have to be represented in diversity.” Phelan gives several reasons. First, the legal profession needs to promote diversity in general to instill faith in the legal system. “People want to see diverse leaders.” If not, they may wonder if leaders have the best interests of persons with disabilities in mind, according to Phelan. Second, law firms want and need to respond to their clients’ requests for more diversity in lawyers handling their matters. Finally, as a practical matter, including disability within diversity brings more ideas to the table. One can imagine, for example, employment

1. See generally *ABA Disability Statistics Report 2010*, <http://new.abanet.org/disability/PublicDocuments/ABADisabilityStatisticsReport.pdf> (compiling statistics from various sources, as cited in this paragraph).

disputes regarding disability accommodations handled by a lawyer with a disability. This lawyer would bring a new point of view to the litigation team.

In writing this article I sought out the views of current law students and recent graduates with disabilities. Anna Scholin, president of the National Association for Law Students with Disabilities (NALSWD), underscores the above points by stressing that disability is “yet another way people are different.” She also adds, “Lots of people with disabilities are really smart. [Excluding them] would be cutting off a lot of human talent.” NALSWD board member, Greg Oguss, states, “If diversity is good generally, then adding more diverse groups is even better.”

What barriers do law students with disabilities face?

Law students face some barriers in common with all people with disabilities and some barriers unique to law schools. One law student with whom I spoke said the professor of her anti-discrimination law class failed to cover disability rights. When asked why, he said there was no discrimination against people with disabilities since the Americans with Disabilities Act (ADA) was enacted 20 years earlier. The professor’s comments highlight how disability discrimination is viewed differently from other forms of discrimination. For many law students with whom I spoke, this professor’s statement is far from the truth of their experience.

• Physical Access

Law students, along with others with disabilities, must often navigate physical barriers at their schools. Doors with ADA-compliant handles may be so heavily weighted that they are impossible for someone in a wheelchair to open. Or automatic door openers may be inoperable, barring access to areas of the school. Elevators may break down, stranding students on upper floors. Extra-curricular events may take place in locations outside the law school that are not accessible. Similarly, volunteer opportunities for public service may not be in physically accessible locations.



It is hard to participate in a meeting when you cannot open the door, and it is hard to show what you can do if you are not given the opportunity.

Students with disabilities must ask for help to open the heavy doors, thus reducing their independence. For extracurricular events, they have the choice of either not attending or asking the group to move the event to a more accessible location. The latter may not be possible and at the very least, places the student in an uncomfortable position. No one wants to be seen as the constant complainer. Further, it takes extra effort and time for a law student to raise these issues—commodities in short supply for all law students. Instead, law schools should anticipate accessibility issues and eliminate them in all aspects of student life. A law school should not be content with complying with the minimum legal requirements for accessibility. The standard for law schools should not be literal compliance with the letter of the law. Rather, law schools should embrace the spirit of the law and show others how to achieve compliance and inclusion. Law schools should be leaders in promoting inclusion and welcoming future members of our profession.

• Testing Accommodations

Many law students with disabilities need accommodations during exams, such as additional time to complete exams or the use of adaptive equipment. Students with vision impairments may require computer screen readers and extra time to record their answers. For students with neuropathy in their fingers, typing nonstop for three hours may be a painful ordeal. They need breaks every hour. Time-and-a-half is a common accommodation, according to Stephanie Enyart, one of the founders of NALSWD. University accessibility offices generally handle this fairly well, according to students with physical disabilities.

Students with non-physical disabilities, such as learning disabilities, ADD, or ADHD, often have more difficulty receiving testing accommodations, according to Jo Anne Simon, an attorney who represents many students in this area. Many faculty and staff do not understand these disabilities and hence, do not perceive them as real. Instead, according to Simon, they view students with these disabilities as “trying to game the system.” Many students never receive information about how to get accommodations or face many hurdles to obtain them. The “prosecutor mentality” of many law schools deters students from seeking accommodations, says Simon; the students suffer academically as a result.

Even students who receive widely accepted accommodations may run into snags. One student described how his university lost all his disability documentation as well as the confirmation of his accommodations during the summer between his acceptance into law school and his arrival on campus in the fall. This student also had the experience of an accommodation being revoked the Friday before his exams were scheduled to begin the following Monday. The decision was later reversed, and he did receive his accommodation, but not without a great deal of stress as well as time and energy spent trying to reinstate his accommodation. “Accommodations are our lifeline,” said the student on condition of anonymity. “If there are no accommodations, there can be no success at any level.” The experience drove home for him that “people don’t understand disabilities.” Consistent, knowledgeable accommodations should be the rule. Accommodations merely level the playing field, rather than providing an advantage to anyone.

Two areas where students continue to face uneven playing fields are areas critical to the success of law students: the LSAT and the bar exam. The ABA’s Phelan describes a situation where a law student with vision impairment asked for accommodations to take the LSAT. His request



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for a computer screen reader was denied, and he was told that he would have a person read the questions aloud to him. On the day of the test the trained reader did not appear, and an untrained volunteer agreed to read instead. The untrained reader had difficulty pronouncing many of the words, and the prospective law student had difficulty understanding him and completing the exam. This student was then faced with a dilemma: take his chances with his scores based on a faulty reader or cancel his test results and postpone his application to law school for a year.

Similar difficulties arise with accommodations for the bar exam. Stephanie Enyart sued the National Conference of Bar Examiners to be able to use a computerized screen reader as well as a text magnifier. The U.S. Court of Appeals for the Ninth Circuit recently ruled in her favor.² Students face roadblocks at their entrance to law school as well as their exit. If they are unable to score well on these examinations, they may never become lawyers. Admission to law school or passing the bar should turn on a student's knowledge and abilities, rather than the type of accommodation allowed.

· **Technology Accommodations**

Enyart states that common challenge for students with vision and other impairments is getting textbooks in an accessible format. Usually, this requires the law school or the publisher to provide an electronic version of the textbook. Although the process varies from school to school, some students receive their books six-to-eight weeks after the start of classes. For many, this makes it almost impossible to catch up on reading. In addition to textbooks, many students often cannot obtain access to the study guides that most law students take for granted. It is hard to imagine going through law school without at least one commercial outline.

Phelan concurs technology accommodations are a significant issue for students with vision or hearing impairments. Many websites are not accessible. They include images without explanatory text, so that a computer screen reader will simply say "image" instead of describing

2. *Enyart v. National Conference of Bar Examiners, Inc.*, --- F.3d ---, 2011 WL 9735 (9th Cir. 2011) (Nos. 10-15286, 10-16392).



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the picture. Or a video may have no subtitles for someone with a hearing impairment. With instruction becoming increasingly web-based, law schools should again anticipate this opportunity to allow students to learn on equal footing with their peers.

In addition, students who are deaf or hard of hearing depend on communication to learn. They can benefit from Communication Access Realtime Translation (CART), live transcription of spoken words by a court reporter, according to Michael Schwartz, Associate Professor of Law and Director of the Disability Rights Clinic at Syracuse University College of Law. The transcription can then be projected on a screen in the classroom. Schwartz, who is deaf, says CART can enable students who are deaf to follow speech that may be too fast-paced for sign-language interpreters. Schwartz prefers to receive information through CART and express himself through a sign language interpreter, noting that it is “exhausting” to follow an interpreter for extended period. Law schools need to be aware of assistive technology and offer it when needed.

· Career Placement

Another common complaint that Scholin and Enyart have heard is that law school career placement offices need more education on how to place students with disabilities. Some students have been told they should only consider jobs with the government, that only the government would accommodate their needs and provide adequate benefits. The perception among many law students with disabilities, according to Enyart, is that career placement offices, although well-meaning, “don’t know what to do with differences.”

According to the ABA’s Phelan, concerns about how employees with disabilities will perform in the workplace are misplaced. Many employers fear that attorneys cannot meet billable hour requirements. If lawyers “have accommodations, they can do it, especially ones who have had [the disability] for years.” Carrie Griffin Basas, Visiting Assistant Professor at the University of North Carolina School of Law and disability law specialist, notes, “We all have special needs and crises. To decide one population has more problems than others is wrong.”

Phelan notes that an attorney “would not have gotten through law school and the bar exam if they couldn’t do it.” These attorneys with disabilities are “used to dealing with tough situations.” They are often “excellent advocates and industrious.” Recent graduate and former NALSWD board member, Rebecca Williford, echoes Phelan’s statements. “People with disabilities are survivors, and it’s going to take a lot to derail them. It’s not the job of law school administration to make the decision that a person can’t work in a firm.” Law schools should inform students with disabilities about all employment options.

What should law schools do?

What should law schools do to accommodate students with disabilities and ease their way into the legal profession? According to Enyart, law schools should reach out to students with disabilities and seek their opinions on how to improve technology and accessibility. NALSWD has issued a best practices guide for law schools that may help foster communication between law schools and their students. Without law schools reaching out to students with disabilities, the students have to ask for every accommodation. One student notes he feels alienated from his classmates because of his very different experience. This feeling of isolation is the opposite of inclusion. Our profession should do more, starting at the law school level, if not before.

Attorney Simon agrees, stating, “Law schools should set a tone of inclusion and acceptance of a diverse student population in all its manifestations.” Syracuse’s Michael Schwartz stresses that law schools should do more than meet minimum ADA requirements at the lowest cost possible. “They’re the deaf ones,” Schwartz says of law schools. “They’re not listening” to the needs of students (while stressing his university is an exception). Schwartz says law schools should ask, “What can we do to make it welcoming?”

Many of the law students interviewed describe themselves as members of “the ADA Generation.” That is, they have gone through school with “the ADA protecting us,” says Enyart. “We have very similar challenges to other communities” within diversity, says Enyart. The other law school groups within the diversity community realize this, according to Scholin, embracing disability as another diverse group. Scholin states that disability is “yet another way people are different,” and “we want to be accepted despite our differences.” As Enyart summed it up, “Inclusion means including us too.” ■



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