

Executive Summary

Challenges to Employment and the Practice of Law Continue to Face Attorneys with Disabilities

Results of a 2003 Online Poll of California Attorneys with Disabilities
Conducted by the State Bar of California
Committee on Legal Professionals with Disabilities

Introduction:

Fourteen years after the U.S. Congress passed the landmark Americans with Disabilities Act, California legal professionals with disabilities recite a list of challenges that they still face on a daily basis: unemployment, refusal and resistance to reasonable accommodation requests, a shortage of services, and a surplus of skepticism.

In as much as they look back with pride on more than a decade of historic change, healthy majorities of legal professionals with disabilities are not broadly optimistic about the future of their place in California's judicial system, according to a survey by the State Bar's Access & Fairness Committee on Legal Professionals with Disabilities.

The State Bar's Committee on Legal Professionals with Disabilities conducted a special online survey in 2003 to determine the challenges faced by legal professionals with disabilities in the practice of law. The Foundation of the State Bar of California provided funding for the survey. No mandatory dues paid to the State Bar were used for this project.

Invitations to participate were posted in publications or web sites available to all California attorneys such as the California Bar Journal and the State Bar Web site. E-mail and regular notices were sent to legal services programs, disability rights programs, all local bar associations, as well as minority, women, LGBT and other specialty bars, and other law related organizations. An announcement regarding the poll was also made during various programs and events at the State Bar's 2003 Annual Meeting. Initial Findings and Recommendations were published for a 60-day public comment period and this Final Report and Recommendations was approved by the State Bar Board of Governors on December 4, 2004.

Methodology

Hertz Research of Petaluma, CA conducted the online survey. It opened on April 24, 2003 and was available to attorneys through October 20, 2003. A total of 150 attorneys responded to the survey. The survey was also made available in alternative formats for attorneys who could not participate in an online survey.

Technically, the poll was not a pure random sample since there was not a viable database of California attorneys with disabilities to sample from. However, Hertz Research advises that the demographic characteristics of the poll responders were largely consistent with those of the state bar population as a whole, as measured by the most recent State Bar membership survey conducted in 2001.

The results of this survey would need to be interpreted through the bifocal prism of not being perfectly random and having a relatively small target population sample by survey research standards. This situation dictates cautious use of exact percentages of the poll's results. It is especially true in the analysis of small sub-populations, such as those attorneys with vision-related disabilities. Since only seven percent of those interviewed fall into that category (ten people altogether), the responses to those questions should be viewed more as potential areas for further research.

The cumulative weight of the survey results and, in particular, the views expressed by many responders who said they had been denied employment-related opportunities due to their disability should not be discounted though. While not a perfect gauge of issues facing the California attorneys with disabilities because of the aforementioned limitations, the consistency of responses to these questions suggests that these are issues that affect a significant number of attorneys with disabilities.

Regardless of methodology, all polls are potentially affected by a number of factors that may influence their accuracy. A common source for survey inaccuracy is sampling error. The number of responders largely determines sampling error. Statistical theory indicates that in the case of a poll with this sample size (150 total interviewees), 95 percent of the time the results of a survey of this size would be the same as interviewing the entire population of attorneys in California, with a margin of error of plus or minus 8 percent.

On Line Poll Design

The Committee on Legal Professionals with Disabilities spent a number of months outlining the general areas to be covered by the survey, drafting the questions that should be included, and addressing various format, logistical and access issues. One key area that needed to be addressed was the requirement that participation be anonymous and that all information provided be kept confidential.

The questions were then shared with Hertz Research for the final design of the survey consistent with the on-line polling technology, general survey techniques and methodology, and the confidentiality issues noted above.

The 2003 State Bar President, Mr. James Herman, was the on-line narrator introducing the subject matters for the survey. In addition to Mr. Herman appearing on the video, a sign interpreter appeared on screen for participants who were deaf or hard of hearing and whose preferred mode of communication was sign language.

For those who could not access or complete the survey on line, we provided other options including mailing the hard copy of the narrative transcript and survey questions, Faxing the survey, emailing an electronic copy, and conducting confidential phone interviews. For any individual wishing to respond to the survey, we provided the necessary accommodations to ensure participation.

Attorneys with disabilities were asked to answer questions in three general areas: nature and impact of disability, barriers to the practice of law, and demographics of survey participants.

The first set of questions was aimed at identifying disabilities. If an attorney had a disability, the attorney was asked to provide additional information on the nature of that disability and the attorney's experience in the work setting as result of that disability. In addition, there were questions regarding the attorney's access to equal employment opportunities, wages, and benefit packages.

The second set of questions was aimed at determining barriers that hinder an attorney's practice of law. If an attorney had a disability, the attorney was asked to provide additional information on barriers the attorney felt were affecting own ability to practice law. There were questions on reasonable accommodations related to physical barriers to access, visual or hearing barriers, inaccessible technology or equipment barriers, and reasonable accommodations for the Bar examination. In addition, attorneys were asked to respond to accommodations made and accommodations denied at work or in a court setting.

The third set of questions was aimed at determining the demographics of the survey participants as to type of practice, years in practice, location, gender, age, race, ethnicity, and earnings.

As part of the "wrap up" to the survey, 75% of the responders indicated that they wished to participate in future State Bar research on these issues, with 88% of these individuals providing email contact information. This was a significant response, as the survey was designed to gather confidential, anonymous and candid comments from the participants in some potentially sensitive areas. The 75% follow-up participation is also important as this large number (over 100 persons) helps to maintain the diversity represented in the larger survey response group and enables us to have a broad impact as we continue to explore and address issues raised.

Survey Background and Facts

Sample Size: 150 Interviews

Interview Dates: April 24- October 20, 2003

Demographics:

- **Practice Setting**

Most lawyers with disabilities were in solo practice (28%) followed by government employment (20%). They also found employment in small firms (15%) and in public interest firms (10%). Five percent of attorneys with disabilities were employed by medium firms and 3% were employed by large firms. A significant number of attorneys with disabilities were unemployed (12%), 4% were in non-legal work and 4% of the responders were retired attorneys.

- **Years of Employment and Geographic Distribution**

A majority of attorneys with disabilities have been practicing law for more than 10 years (54%), with 22% practicing for 5-10 years and 24% practicing less than 5 years.

Geographically, attorneys with disabilities were equally distributed between Northern California (40%) and Southern California (46%). Seven percent of the attorneys practiced in Central California and an equal number did that outside of California.

- **Salaries**

Despite the number of years in practice noted above, the annual salary for a very large number (41%) of attorneys with disabilities who were employed was less than \$50,000. That was considerably less than the average salary for lawyers in general as noted in a membership survey conducted by the State Bar in 2001. The 2001 survey also found that, for the general bar membership, 16% earned under \$50,000, with 34% earning between \$50,000 and \$100,000, 38% earning between \$100,000 and \$200,000, and 12% earning over \$200,000.

Thirty-five percent of the responders to this online survey said their earnings ranged from \$50,000 to \$100,000. Twenty percent said they made between \$100,000 and \$200,000. Only a very small number of attorneys (4%) made in excess of \$200,000. The distinction to keep in mind is that the 2001 survey was a general Bar membership survey and not a foundational work to identify salary gaps among subgroups.

- **Age**

The survey showed that 52% of the responders were ages 46 to 65 years old. Twenty-eight percent were ages 36 to 45 and 17% were ages 26 to 35. Very small numbers were over age 65 (2%) or ages 18 to 25 (1%).

- **Race/Gender**

Almost 80% of the attorneys with disabilities were white. This is in line with the Bar membership make-up. The rest comprised of Asian/Pacific Islander (6%), Mixed Race (5%), Latino/Hispanic (4%), African-American (3%), and Others at (3%). Fifty-two percent of attorneys with disabilities were female attorneys and 48% were males.

Key Findings

The survey found that for attorneys with disabilities, the biggest barrier to access in practicing law is the difficulty in finding equal employment opportunities.

This finding was borne out in both quantitative and qualitative measurements. Forty-five percent of the survey respondents said they felt they had been denied employment-related opportunities due to their disability. Thirty-four percent said they had not been denied such opportunities and 21% were uncertain about this.

The problem was more severe among attorneys whose disability is apparent with 68% of this group saying they had been denied employment-related opportunities due to their disability. Males (54%) were also considerably more likely than females (36%) to report such occurrences.

Beyond these numbers, many poll respondents described interview or employment situations in which they felt they had been discriminated against because of their disability. These complaints usually manifested themselves into several areas:

- The inability or difficulty in finding employment;
- Being forced to accept lower level assignments they felt were not commensurate with their abilities or not receiving equal pay;
- Feeling they were passed over for partnership or promotion;
- Finding it more difficult to obtain health insurance and other benefits;
- The difficulty in finding part-time work or at obtaining other accommodations necessary to work with their disability

A significant number of respondents described their perceptions that many law firms did not want to hire attorneys with disabilities. They spoke of their feelings that firms did not want to deal with “the hassle” or expense of accommodating an attorney with a disability, or of being told that clients were “uncomfortable” working with them.

In addition to difficulties in obtaining employment, some respondents said that employers had told them that their disability would prevent them from carrying the workload routinely expected from attorneys. Others mentioned the reluctance of firms to allow them the time necessary to deal with medical needs or appointments related to their disability.

They also described the difficulties they sometimes encountered in obtaining equipment or support services necessary to perform their work such as voice activated computer software, or not providing readers, transportation assistance or not having full access for their service animals.

The highest incidence of situations where attorneys reported encountering refusals or resistance to making reasonable accommodations for their disability were in legal employment (24%) and at court hearings or conferences (21%).

Physical barriers to access were more likely to occur in courts (22%) than in attorney’s offices (10%). Inaccessible technology or equipment was reported in roughly equal numbers in courts (13%) and attorney’s offices (12%). In their comments, a number of respondents said that law libraries were a problem in these areas.

In general, respondents reported substantially fewer problems about refusals or resistance to making reasonable accommodations at law schools, bar exam preparation courses and at bar examinations. This was also true in reporting fewer physical barriers to access or encountering inaccessible technology or equipment in these venues.

Among respondents who said they had requested reasonable accommodations for the bar exam, 86% said they received their requested accommodation and three out of four said they were satisfactory.

Less than a third of the survey respondents (30%), said they were familiar with Rule of Court 989.3. Among those familiar with it, 44% said they had made a motion under this rule. Satisfaction with the court response to their motions was divided with 53% saying they were satisfied and 47%, not satisfied.

Recommendations

1. **Law firms need to be educated about the advantages of hiring attorneys with disabilities and about the value of building successful partnerships between the law firms and legal professionals with disabilities.**

The Committee on Legal Professionals with Disabilities (CLPD) is in the process of renewing the outreach and participation in the State Bar Pledge Program, to secure new or renewed pledges from legal firms, large and small, government offices, law schools, legal services providers and bar associations to give attorneys with disabilities an equal opportunity for job interviews and job offers and to provide appropriate accommodations for these attorneys. The information on the Program, as well as the official Pledge, is included in the Appendix.

2. **Assistance should be provided to attorneys with disabilities in developing and finding part-time employment (which is an accommodation by itself), or to obtain other accommodations necessary to allow them to be productive in the employment market.**

Accommodations requested must meet the dual prong test of being reasonable and not imposing undue hardship on the requestee. Such requests are best dealt on a case-by-case basis, but additional and constituent information for law firms and other employers is essential to raise awareness and sensitivity to these issues. CLPD will be working with Pledge Program participants and using information gathered to develop resources and training programs to facilitate the provision of flexible working conditions and appropriate accommodations.

3. **Better and more affordable health and disability insurance coverage should be made available to attorneys with disabilities.**

Coverage currently is not offered through the State Bar of California or through the American Bar Association. CLPD has formed a subcommittee to work with the State Bar Group Insurance Committee to seek ways to work with entities in this area to develop various products. Given the complexities of this area, it is apparent that this effort needs a wider discussion at the State Bar level.

4. The judiciary needs further education about disabilities and the responsibility of the courts in dealing with attorneys with disabilities, as well as others with disabilities appearing before the courts.

The Administrative Office of the Courts, through the Judicial Council Access & Fairness Advisory Committee, has initiated a drive to educate the judges and court staff throughout California on disabilities and reasonable accommodations in dealing with persons and parties with disabilities. That project includes liaisons from CLPD and the State Bar Office of Legal Services, Access & Fairness Programs. At some point it should also include a wider group of attorneys with disabilities.

5. Attorneys with disabilities, as well as the courts, need further education about the provisions and procedures under California Court Rule 989.3.

This particular rule currently is under revision and will be circulated for public comment. However, the attorneys with disabilities must understand the rule as it stands and the accompanying Form MC 410 to be used for submitting requests for reasonable accommodations for themselves, their clients, witnesses and other parties with disabilities. CLPD will collaborate with the Court to conduct outreach and education on this Rule.

6. Increased outreach is needed to spread the word about the Bar Examination rules and procedures for requesting reasonable accommodations during the examinations.

CLPD is serving as a resource to the State Bar Office of Admissions to provide input on the rules and procedures, as well as to assist with the dissemination of this information to law students.

CLPD also has initiated an effort to work with law school deans to alert applicants who have disabilities regarding the importance of timely and well documented petitions for reasonable accommodations during the bar exam. The committee is about to discuss a similar approach to distribute this information through the Bar preparation classes.

7. **We need to partner with law schools and other organizations to recruit individuals with disabilities to attend law school and to provide support to law students with disabilities while in law school and through the bar examination process, so that higher numbers of persons with disabilities enter the legal profession.**

According to the 2001 State Bar Membership Survey, 4% of the bar membership were individuals with physical disabilities. This is in sharp contrast to State of California Census statistics (Year 2000) showing 17.4% of the state's population were individuals with disabilities.

The State Bar Access & Fairness Committees are also conducting a high school outreach program designed to encourage students from diverse backgrounds to consider the law as a career. The program will recruit attorneys from various backgrounds, including those with disabilities, to make presentations at the high school "Street Law" programs run by various law schools. Through interaction with attorneys who can serve as role models and who can provide insight into their experiences and the need for a diverse bar membership, it is hoped that more students from diverse communities will pursue a legal career.

Also, CLPD is considering law student mentoring programs and other outreach efforts to address these needs.

8. **Attorneys in general need further education about the needs of attorneys (and other parties) with disabilities in various practice settings.**

In particular, during the discovery process, attorneys should be required to schedule discovery sessions in locations that are accessible to all parties and to provide interpreters, equipment, or other devices/technology to accommodate the party with the disability.

CLPD is currently seeking advice from the State Bar Committee on Professional and Conduct (COPRAC) to determine the applicability of the Rules of Professional Conduct and/or the need to propose revisions to the current Rules to address these situations (through the State Bar Rules Revision Commission).

CLPD is also working with the Judicial Council Access and Fairness Advisory Committee to consider developing a Rule of Court to address this situation.

Finally, CLPD is considering the development of additional principles and guidelines for practice in cases involving attorneys, parties, or witnesses with disabilities for consideration by the State Bar Board of Governors and local bar associations.

Conclusion

While helping to identify the types of disabilities experienced by California attorneys, the survey has raised many issues.

The foremost issue is that of lack of employment opportunities. As survey participants point out, the biggest barrier to the employment of persons with disabilities is society's stereotypes and misconceptions. As one responder stated, "all else is meaningless, if attorneys with disabilities cannot get work."

Coalitions must be built to eliminate the misconceptions that attorneys with disabilities have nothing to offer, that they create burdens and liabilities. In fact, the opposite is true. Attorneys with disabilities have great contributions to make to the legal field and reasonable accommodations are not only necessary legally, but also they provide the setting for these great contributions to happen.

The results of the survey indicate that disabilities are age, race and gender neutral. Disabilities may have occurred before becoming an attorney or after becoming an attorney. The focus should be on the universal picture of disabilities and issues of barriers, reasonable accommodations, technologies, health and other benefits, attitudes, laws and regulations, and programs of inclusiveness. As survey responders noted, there is much ignorance in the practice of law. The assumptions lump everyone into one large group, whereas the reality is that those with disabilities are unique with individual needs. These needs and the issues they present must be addressed, so that we can utilize the great minds that these attorneys possess for solving other problems.

Many of the survey responders expressed their appreciation for having the opportunity to complete this survey and provide information on issues and experiences they had encountered in the practice of law. They were appreciative that the State Bar was reaching out to define the issues and consider possible solutions. Their sense of appreciation should not remain unfulfilled. The issues raised by the survey must be addressed and efforts must be expanded to ensure full and equal employment opportunities for legal professionals with disabilities and chronic medical conditions. Our legal profession and the public will be enriched by their contributions.

Approved by the State Bar Board of Governors
December 4, 2004