

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

December 4, 2004

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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 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 the consultant 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.

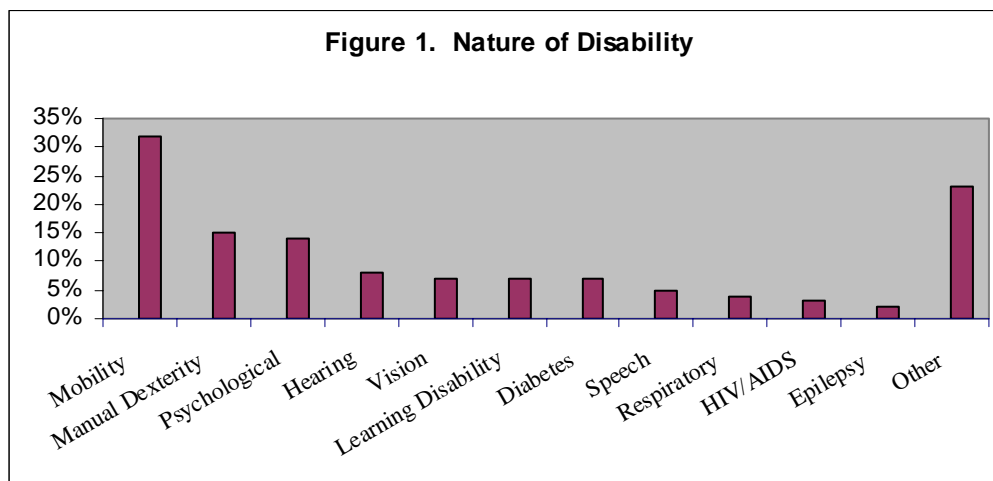
The third set of questions was aimed at determining the demographics of the survey participants as to type of practice, years in practice, location, gender, age, race, ethnicity, and wages.

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.

Section One: Nature of Disabilities and Their Impact

The survey found that most attorneys with disabilities had mobility impairments (32%) followed by manual dexterity (15%) and psychological disabilities (14%). The ADA rule defines "mental impairment" to include "[a]ny mental or psychological disorder such as emotional or mental illness." Examples of "emotional or mental illness [es]" include major depression, bipolar disorder, anxiety disorders, schizophrenia, and personality disorders. The term "psychiatric disability" is used when mental illness significantly interferes with the performance of major life activities, such as learning, thinking, communicating, and sleeping, among others.

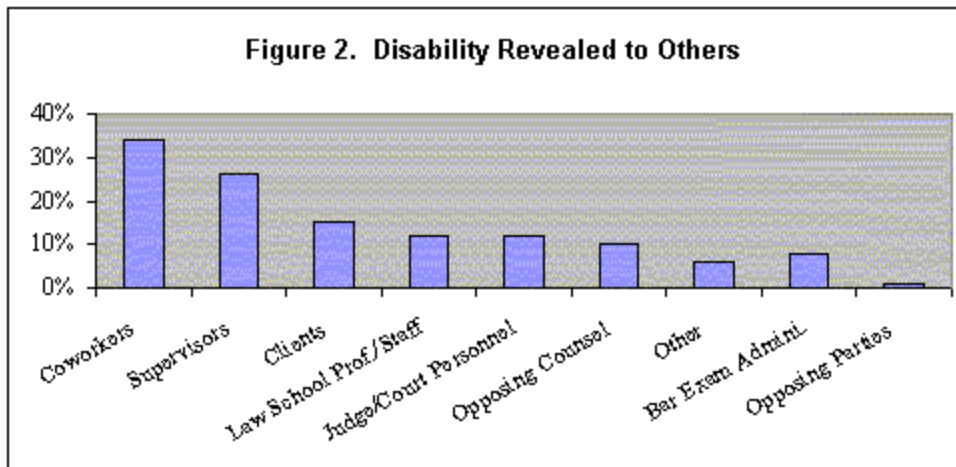
Communication disabilities ranged from hearing loss and deafness at 8% to vision impairment at 7%. Diabetes was faced by 7% of the attorneys surveyed. A substantial number of responders (23%) though did not categorize their disabilities within the types of disabilities included in the survey choices (Figure 1). (The Equal Employment Opportunity Commission (EEOC) has stated that someone with a mental illness can tell the employer or a potential employer about the illness using "plain English." This means that a person with mental disability is not required to disclose mental illness in the request for accommodations. It is possible the survey takers wanted to use the "plain English" approach and not disclose their mental disability.)



Thirty-four percent of attorneys had disabilities that were visible. Fifty percent said their disabilities were non-apparent, while 16% were not too sure.

Willingness to Reveal Disability to Others

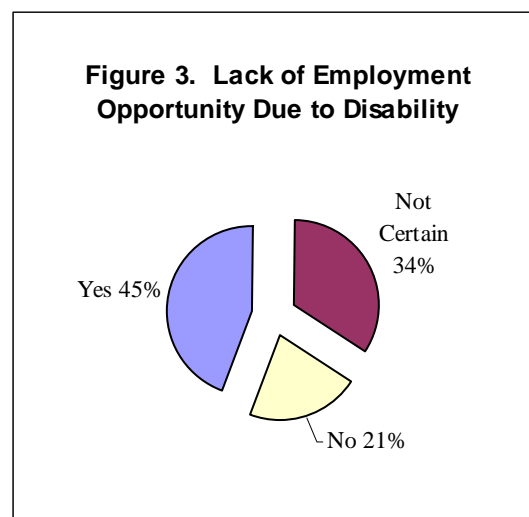
Those with non-apparent disabilities said they were more likely to let their colleagues know regarding their disabilities before letting their supervisors, clients, the courts or opposing counsel know of their disabilities (Figure 2).



Access to Employment Opportunities

Asked in the survey whether they felt that they had been denied employment-related opportunities because of their disability, almost every other attorney with a disability said yes.

The biggest barrier to practicing law was the difficulty in finding equal employment opportunities. This finding was borne out in both quantitative and qualitative measurements. Forty-five percent of the survey responders said they felt they had been denied employment-related opportunities due to their disability (Figure 3).



Comments were consistent in this regard.

Attorneys with disabilities indicated that even though they were in the upper 10% to 20% of their class, from higher level ABA-accredited law schools, they were still unable to obtain job offers after extensive applications and interviews

Attorneys with both apparent and non-apparent disabilities felt their interviews were negatively impacted due to their disability, despite their exceptional professional background, accomplishments and academic standing. Eventually, most attorneys with disabilities became discouraged and gave up on their search for that illusive job offer.

The problem of finding employment was more severe among attorneys whose disability was visible. Sixty eight percent of attorneys in this group stated they had been denied employment-related opportunities due to their disability.

Males (54%) were also considerably more likely than females (36%) to report that they had been denied employment-related opportunities due to the disability.

Of the remaining responders, 34% said they had not been denied such opportunities and 21% were uncertain about this. In this category, comments noted that those attorneys with significantly more experience in the actual work setting and/or who were known to the firm through volunteer work were more likely to secure employment. However, even with these attorneys, they noted that the certain firms still expressed doubt regarding the attorney's ability to do the job because of the attorney's disability.

Unless the disability was apparent, attorneys with disabilities preferred not to reveal their disabilities to others for fear of jeopardizing their employment. To some extent, these fears were validated as responders indicated that certain law firms, upon discovering the attorney's disability, would revoke job offers.

On a brighter note, attorneys with disabilities who were able to find legal employment believed they had received equal pay and equal benefits from their employers. The qualifier here was **having obtained a job**. Those attorneys who could not secure employment because of their disabilities were not in a position to answer this question.

Beyond these numbers, many poll responders provided poignant descriptions of interview or employment situations in which they felt they had been discriminated against because of their disabilities. These complaints usually manifested themselves into several areas as outlined below:

- **The Inability or Difficulty in Finding Employment**

As noted above, these comments focused on the unwillingness of law firms to interview or to make employment offers to attorneys with disabilities. Often the decision not to offer employment occurred AFTER the discovery of the disability, despite the attorney's qualifications and ability and an initial positive response from the firm.

- **Being Forced To Accept Lower Level Assignments Not Commensurate With Abilities or Not Receiving Equal Pay**

Many comments referred to attorneys with disabilities having to accept lower level positions due to the employer's assumption that the attorney was unable to handle a heavier workload or greater responsibility. Responders indicated that they felt they were forced to accept jobs at a lower level of pay and responsibility than they were capable of performing.

- **Feeling They Were Passed Over for Partnership or Promotion**

The responses indicate that working any amount of time short of the full workload due the attorney's disability hindered the attorney's ability to obtain high level assignments or to move up in the partnership track. This situation occurred commonly regardless of the attorney's skill, background or experience.

Access to Health Benefits and other Support

The survey questions on health insurance and other employment-related benefits were a subset of questions on whether attorneys had received unequal pay because of their disabilities. These questions assumed such attorneys had jobs or were self-employed. Regardless, attorneys with disabilities found it more difficult to obtain health insurance and other benefits.

It should be noted that at this time neither the State Bar of California nor the American Bar Association offer group health benefits. Attorneys with disabilities must hope for coverage through their employers or find coverage on their own.

Comments indicated a lack of affordable health benefits (with one example describing premiums as high as \$450 per month, with a \$2,000 deductible and 25% co-pay) or limited or no coverage through employers. Employers would offer limited coverage or would not offer any coverage at all because they were worried about potential increased costs due to the attorney's disability. There was no dearth of comments on health insurance and other benefits from the responders.

Other Perceptions

A significant number of responders described 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 some instances responders were told that although the firm had nothing against people with disabilities, they couldn't hire an attorney with a disability because it would upset the clients. In other instances, responders noted that prospective employers had appeared to be uncomfortable either because they didn't know how to react or because they had other preconceived notions about persons with disabilities.

In addition to difficulties in obtaining employment, some responders said that employers had told them that their disability would prevent them from carrying the workload routinely expected of attorneys in the firm.

Others mentioned the reluctance of firms to allow them the time necessary to deal with medical needs or appointments related to their disability. This was the case despite

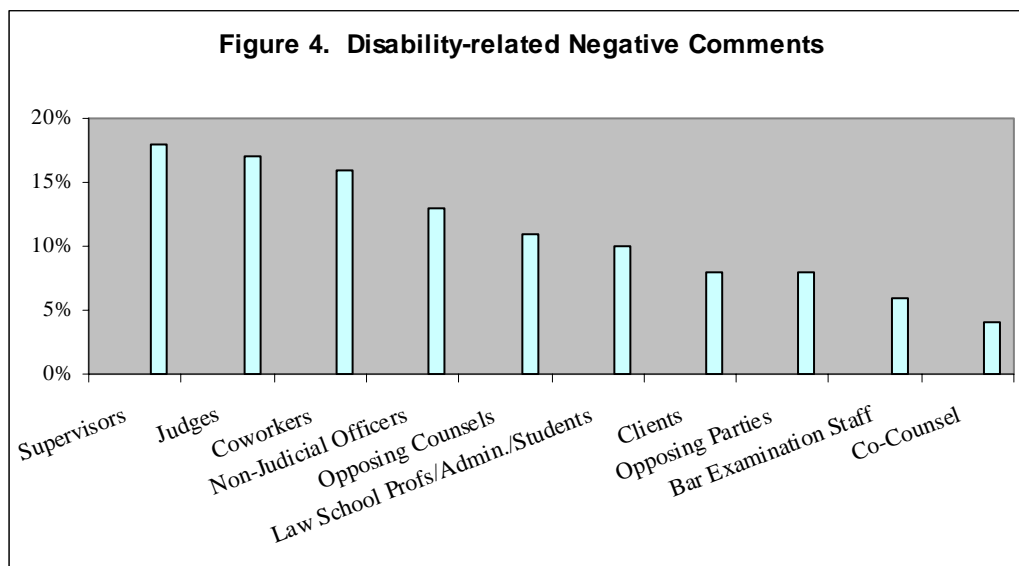
making up the time taken for disability-related appointments. As one commenter notes, the attorney was fired in a matter of weeks, after taking time off for various medical appointments.

The attorneys with disabilities also described the difficulties they had encountered in obtaining equipment or support services necessary to perform their work duties. Employers would not grant reasonable requests such as voice activated computer software or would not provide readers, transportation assistance, or full access for their service animals.

Negative Comments

Attorneys with disabilities felt that they had encountered most negative comments from their supervisors (18%), judges (17%), and co-workers (16%). This was followed by non-judicial officers (13%), opposing counsel (11%), law school professors, law school administrators, and fellow law students (10% each). It should be noted that the negative comments from clients only occurred 8% of the time (Figure 4).

Those commenting noted this situation was not encouraging. Attorneys with disabilities described situations in which secretaries had made nasty comments or laughed when the attorney with a disability would arrive for an interview. They also describe how hiring partners, who had enthusiastically discussed the position and qualifications over the phone, suddenly became non-committal when the attorney showed up at the law firm. Responders also described situations in which judges had viewed the attorneys with disabilities with disgust when the attorney had tried to practice in court. Finally, responders described an all too common comment that a person with a disability was merely seeking an unfair advantage and trying to get things others couldn't. Clients and opposing parties equally made negative comments about attorneys with disabilities, although to a lesser degree. The Bar Examination staff and co-counsel had the least negative things to say about attorneys with disabilities according to responders.



However, once an attorney with a disability had entered the legal field, people associated with that attorney in the legal environment were supportive of the attorney. For those employed, almost two thirds said they had not encountered negative comments by others in their law practice.

Section Two: Barriers to Practice of Law

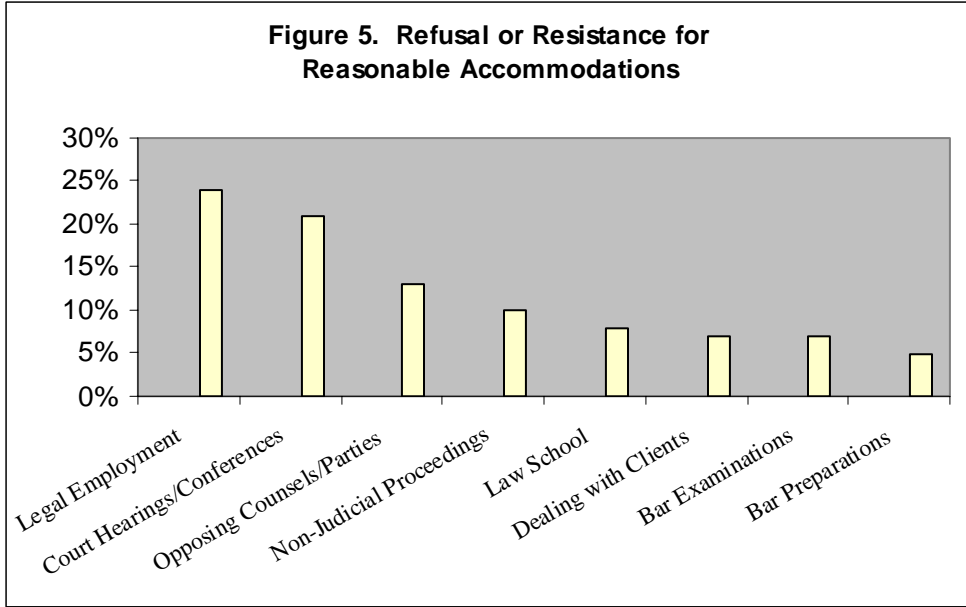
Refusal or Resistance to Requests for Reasonable Accommodations

The survey asked attorneys with disabilities whether they had encountered barriers that hindered the practice of law because of their disability. It began by asking attorneys to respond regarding their requests for reasonable accommodations and whether there was refusal or resistance in meeting the requests.

The highest incidence of situations where attorneys reported encountering refusals or resistance to making reasonable accommodations for their disabilities was in their legal employment setting (24%) and at court hearings or conferences (21%). This was followed by opposing counsel/parties refusing or resisting reasonable accommodation (13%) and similar refusal or resistance at non-judicial proceedings (13%). Dealing with clients (7%), law Schools (8%), Bar examinations (7%), and Bar preparation courses (5%) presented problems with reasonable accommodations to a lesser degree (Figure 5).

Specific comments described a variety of situations experienced by survey participants including: lack of patience for attorneys unable to move as quickly due to physical disabilities; lack of accessible court facilities; lack of appropriate technology or equipment in court settings; derogatory comments by judges about the attorney's disability in open court; attorneys with disabilities criticized as being "lazy" for having to take time off due to disability-related illnesses (even when the work was completed on time and was of high quality); failure to provide written as opposed to verbal communications for attorneys with hearing losses or deafness; limited parking suited to disability; offices and other facilities without access for persons with disabilities (e.g. no elevator, no accessible restrooms, etc); opposing counsel refusing to provide accommodations during proceedings/depositions, etc; or refusal to provide appropriate technology or equipment in work settings.

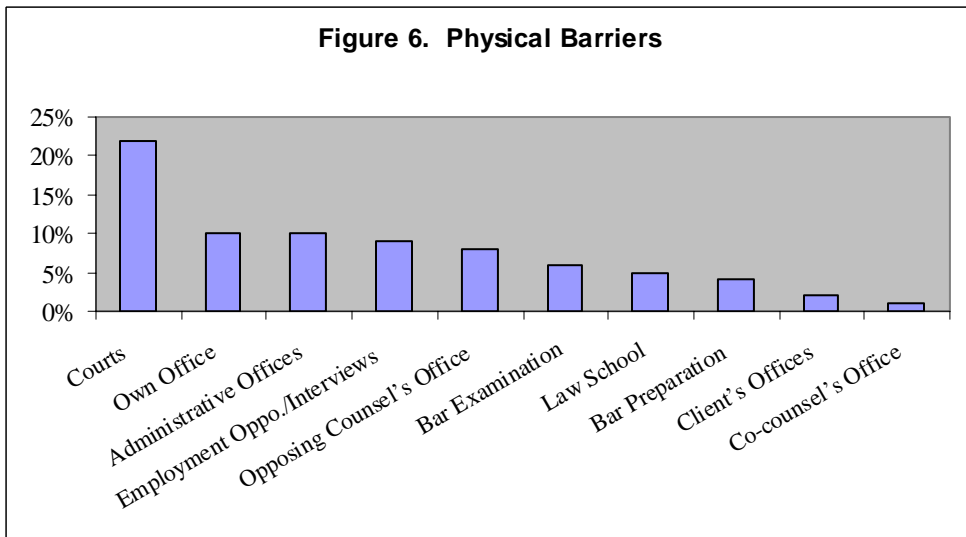
Beyond these areas, the survey also found that attorneys with disabilities were less likely to have encountered refusal or resistance to make reasonable accommodations for their disabilities in other aspects of their law practice.



Types of Barriers

The types of barriers could be divided into physical barriers and communication barriers. However, there is no clear demarcation between the two as it is likely the two can be encountered at the same time.

- **Physical Barriers** - Physical barriers to access were more likely to occur in courts (22%) than in the attorney’s own office (10%) or in administrative offices (10%). Physical barriers were also a problem at places of employment interviews (8%) and also with offices of opposing counsel (8%) (Figure 6).



Bar examinations venues (6%), law schools (5%), and Bar preparation classes (4%) offered less problems with physical barriers, while co-counsel offices were not a problem (1%).

Inaccessible technology or equipment was reported in roughly equal numbers in courts (13%) and in attorneys' offices (12%).

- **Vision-related Communications Barriers** - The survey received ten responses from attorneys with vision impairment. The sample size is relatively small, which dictates the cautious use of exact percentages of the poll's results in the analysis of this small sub-population. Since only seven percent of those interviewed fall into this category (ten people altogether), the responses to these questions should be viewed more as potential areas for further research. The responses were divided between their ability to handle court documentation with use or non-use of technical aids and attitudes towards their service animals.

One half of the responders to the survey question on vision-related communication barriers stated they had found it hard to deal with court documentation. An equal number of attorneys said they had difficulty with documentation produced or distributed by opposing counsels, opposing parties, or their clients. Ten percent had problems at law schools and a similar number of responders expressed difficulty dealing with the Bar prep classes, Bar examination itself, and employment application or interviews.

Comments were consistent regarding reactions to the attorneys' service animals. They ranged from refusals by law firms to allow service animals in the office to refusals by court personnel to allow attorneys entry to the courthouse with their service animal.

- **Hearing-related Communications Barriers** - The survey received twelve responses from attorneys with hearing losses or deafness. The sample size is relatively small, which dictates the cautious use of exact percentages of the poll's results in the analysis of this small sub-population. This should be regarded as a potential area for further research as stated before.

When asked whether they had encountered any hearing-related communications barriers, more than one half of the attorneys with hearing losses or deafness stated that they had problems at court hearings or conferences (58%) and when they dealt with opposing counsels (58%). Fifty percent encountered problems at non-judicial proceedings. This was followed by opposing parties and witnesses (33%). Attorneys had hearing-related communication problems at employment interviews and equally so at law schools (25%) while 17% had problems at Bar preparation classes and 9% experienced problems at Bar examinations.

Comments provided by responders indicated that there appeared to be a strong, emotional resistance to employing hard of hearing or deaf attorneys. There is also an incorrect perception that hearing loss or deafness is an indication of the lack of intelligence as noted by one commenter. Commenters also point out that because sign interpreters and captioning are expensive, law firms see this as a high cost of doing business and would rather avoid having to provide these accommodations.

Some attorneys with hearing losses or deafness were somewhat encouraged by advances in technologies though. Responders were appreciative of the developments pointing out that they have access to technology in their current practice that did not exist years ago.

- **Reasonable Accommodations at Bar Examinations**

The State Bar was more responsive in providing accommodations. Only 6% of the attorneys with disabilities said they had encountered problems in receiving reasonable accommodation from the State Bar during the Bar Examination. This was also true in reporting fewer physical barriers to access or encountering inaccessible technology or equipment in these venues.

Sixty-eight percent of attorneys had not requested reasonable accommodations for the Bar examinations. The survey did not reveal whether they had knowledge of the fact that attorneys with disabilities could request reasonable accommodations for the Bar examinations.

Among those responders who said they had requested reasonable accommodations for the Bar examination, 86% said they received their requested accommodation and three out of four said they were satisfactory.

- **Accommodations in the Court Setting -- Rule 989.3**

Less than a third of the survey responders (30%) said they were familiar with California Rule of Court 989.3. This Court Rule provides for a process for attorneys, parties, witnesses, jurors or any observer to request an appropriate accommodation to participate in or attend the proceeding. Among those familiar with the Rule, 44% said they had filed a motion seeking accommodations. Satisfaction with the court response to their motions was divided, with 53% saying they were satisfied and 47% not satisfied.

Responses show a need for court education on this Rule. Comments revealed that in some situations the court ridiculed the request and addressed it during court proceedings. In other instances the court failed to provide the requested accommodation.

In the court setting, survey responders noted that it would be helpful if the courts could be more accommodating for those who are hard of hearing and would allow these attorneys to move closer to the bench. Also judges could speak up and not cover their mouths when speaking (to allow attorneys to read their lips). In situations where the attorney has a speech disability, the courts could be more patient and make more of an effort to communicate with the attorney, rather than ask co-counsel to speak for the attorney. It was also noted that court reporters often write “inaudible” in the transcripts, rather than making an effort to understand the attorney.

- **Attitudinal Barriers**

From the many comments provided by survey participants, it appears that attorneys with disabilities find that old attitudes do not die easily. People they work with in various practice settings have little or no knowledge about the nature of an attorney’s disability, nor do they seem to create an opportunity to be knowledgeable about such disability.

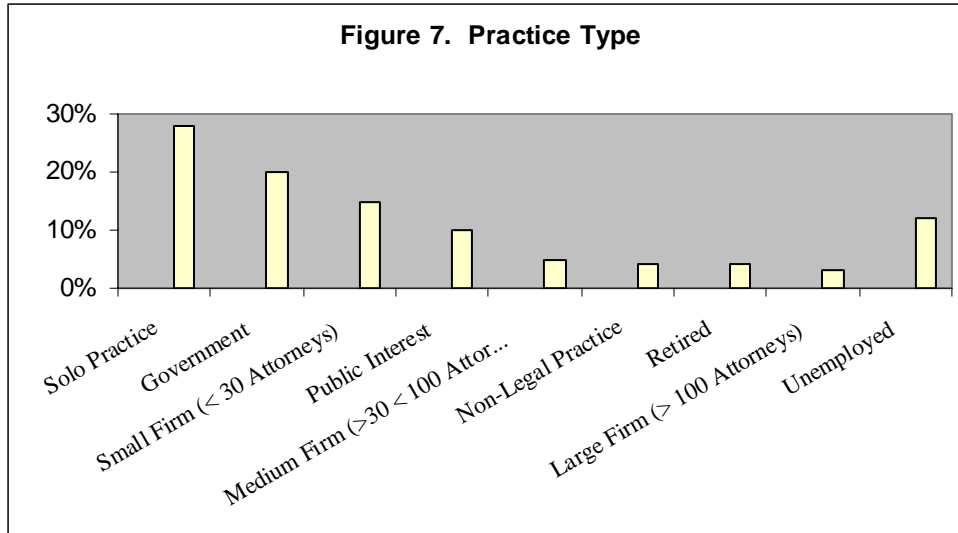
- **Other Barriers to Practice**

Attorneys with disabilities, in their comments, described difficulties faced by attorneys in the discovery setting, where opposing counsel had scheduled depositions in inaccessible locations or had failed to provide reasonable accommodations. In one particular example, deposition was set in a building that did not have an elevator. The attorney had difficulty climbing the stairs. However, the opposing counsel refused to move the deposition elsewhere. Similar examples existed where opposing counsel had refused to provide accommodations for clients with disabilities.

Section Three: 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. (See Figure 7)



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.

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 Courts' responsibility 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, only 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.

APPENDIX

State Bar of California CLPD Survey April 24 – October 20, 2003

Please circle the number or fill in your response in the appropriate area. You may use additional sheets, if necessary. Please return the survey by fax to Hertz Research (Fax # 707-775-3105) or by mail to Hertz Research, 226 Weller St., Petaluma CA 94952.

Note – This survey was designed to be taken primarily over the Internet and includes video introductions to each section of the poll. For your convenience, we have included the text of those videos. **Please ignore any instructions that are not relevant to this written version.**

Video Introduction

Hello. I'm James Herman, President of the State Bar of California. The State Bar is committed to ensuring that attorneys with disabilities have full access to every aspect and venue of our legal system. We want to identify any barriers that hinder the ability of lawyers with disabilities to practice in California. So to help us achieve our goal of full and complete access for all of our members, we're asking for your help by taking part in a special online research project.

The State Bar has commissioned Hertz Research of Petaluma to conduct this survey of California attorneys with disabilities. The purpose of the survey is not just to obtain demographic data, but to gather helpful information on the types of disabilities people have, and the ways these disabilities can be addressed.

Funding for this research has been provided by a generous grant from the Foundation of the State Bar of California. In order to make your participation as easy and convenient as possible, we are conducting this survey online, using Hertz Research new *Talkingpolls* program. We think you'll find this video based way of asking questions enjoyable, and of course you can take the poll at a time of your own choosing.

However, if you prefer to complete this survey through other means, such as a hard copy or via a confidential phone interview with a member of the Committee on Legal Professionals with Disabilities or CLPD, those options are available. To do so, please contact Patricia Lee at the State Bar's Office of Legal Services, Access and Fairness programs. She can be reached at area code 415, 538-2240, or by e-mail at patricia.lee@calbar.ca.gov. If you missed it, that information is available in the text box to my right.

OK, this is how our survey will work. The poll questions are broken down into three subject areas. I'll introduce each group of questions and tell you why we are asking them. Then you'll answer that group of questions and I'll introduce the next group and so on and so on.

Our first questions deal with the nature of your disability, how you deal with it in your office, and whether or not you feel you have access to equal employment opportunities, wage, and benefit packages. Remember, all of your responses to this survey are confidential and anonymous. So to begin the survey, please hit the continue button. Thank you very much.

1. What is the nature of your disability? [Circle all that apply]

- | | |
|-------------|------------------------|
| 1. Mobility | 7. Manual Dexterity |
| 2. Vision | 8. Epilepsy |
| 3. Hearing | 9. Learning Disability |
| 4. Speech | 10. Psychological |
| 5. HIV/AIDS | 11. Respiratory |
| 6. Diabetes | 12. Other _____ |

2. Is your disability apparent?

1. Yes [Skip to Q. 3] 2. No 3. Not Sure

2A. Have you revealed your disability to any of the following? [Circle all that apply]

- | | |
|--------------------------|--------------------------------|
| 1. Supervisors | 6. Opposing Parties |
| 2. Coworkers | 7. Law School Professors/Staff |
| 3. Clients | 8. Bar Exam Administrators |
| 4. Judge/Court Personnel | 9. Other _____ |
| 5. Opposing Counsel | |

3. Do you feel that you have been denied employment-related opportunities because of your disability?

1. Yes 2. No [Skip to Q. 4] 3. Not Certain

3A. Please describe why you feel that way.

4. Do you feel you have received unequal pay because of your disability?

1. Yes 2. No [Skip to Q. 5] 3. Not Certain

4A. Please describe why you feel that way.

5. Do you feel you have received unequal employment benefits because of your disability?

1. Yes 2. No [Skip to Q. 6] 3. Not Certain

5A. Please describe why you feel that way.

6. Have you encountered negative comments about your disability from any of the following?
[Please circle all that apply]

- | | |
|--------------------------|--|
| 1. Judges | 6. Co-counsel |
| 2. Non-Judicial Officers | 7. Supervisors |
| 3. Clients | 8. Coworkers |
| 4. Opposing Parties | 9. Law School Professors/Administrators/Students |
| 5. Opposing Counsel | 10. Bar Examination Staff |

6A. Have you encountered negative comments about your disability by anyone else in your law practice?

1. Yes 2. No [Skip to Q. 7]

6B. Please describe what you encountered.

Video Intro to Barriers

All right. Our next group of questions deals with whether you've encountered any specific barriers that hinder your practice of law because of your disability. We'll ask whether you've encountered things like physical barriers to access, visual or hearing barriers, or inaccessible technology or equipment. So like before, just hit the continue button to begin the next group of questions.

7. Have you encountered a refusal or resistance to make reasonable accommodations for your disability in any of the following? [Circle all that apply]

- | | |
|---|-------------------------|
| 1. Court Hearings or Conferences | 5. Dealing with Clients |
| 2. Non-Judicial Proceedings | 6. Law School |
| 3. Legal Employment | 7. Bar Preparations |
| 4. Dealings with Opposing Counsel/Parties | 8. Bar Examinations |

7A. Have you encountered a refusal or resistance to make reasonable accommodations for your disability in any other aspect of your law practice?

1. Yes 2. No [Skip to Q. 8] 3. Not Certain

7B. Please describe what you encountered.

8. Have you encountered physical barriers to access in any of the following?
[Circle all that apply]

- | | |
|------------------------------|--|
| 1. Your Office | 6. Administrative Offices |
| 2. Opposing Counsel's Office | 7. Employment Opportunities/Interviews |
| 3. Co-counsel's Office | 8. Law School |
| 4. Client's Offices | 9. Bar Preparation |
| 5. Courts | 10. Bar Examination |

8A. Have you encountered any other physical barriers to access in your law practice?

1. Yes 2. No [Skip to Q. 9]

8B. Please describe these barriers.

9. Have you encountered any vision-related communications barriers in any of the following?
[Circle all that apply. If you don't have any vision related limitations, skip to Q. 10]

1. Court Documents
2. Documents Produced/Distributed by Your Office
3. Documents Produced/Distributed by Opposing Counsel or Parties
4. Documents Produced/Distributed by Clients
5. Law School
6. Bar Preparation
7. Bar Examination
8. Employment Applications/Interviews

9A. Have you encountered any other vision-related communications barriers in your law practice?

1. Yes 2. No [Skip to Q. 10]

9B. Please describe these barriers.

10. Have you encountered any hearing-related communications barriers in any of the following?
[Circle all that apply. If you don't have any hearing related limitations, Skip to Q. 11]

1. Court Hearings or Conferences
2. Non-Judicial Proceedings
3. Meetings with Opposing Counsel
4. Meetings/Depositions with Opposing Parties/Witnesses
5. Employment Opportunities/Interviews
6. Law School
7. Bar Preparation
8. Bar Examination

10A. Have you encountered any other hearing-related communications barriers in your law practice?

1. Yes
2. No [Skip to Q. 11]

10B. Please describe these barriers.

11. Have you encountered inaccessible technology or equipment in any of the following?
[Please circle all that apply]

- | | |
|-----------------------------|--------------------|
| 1. Court | 4. Law School |
| 2. Non-Judicial Proceedings | 5. Bar Preparation |
| 3. Your Office | 6. Bar Examination |

11A. Have you encountered inaccessible technology or equipment in any other area?

1. Yes
2. No [Skip to Q. 12]

11B. Please describe where you encountered this.

12. Did you request reasonable accommodations for the Bar Exam?

1. Yes
2. No [Skip to Q. 16]

13. Did you receive your accommodations?

1. Yes
2. No [Skip to Q. 16]

14. Were your accommodations satisfactory?

1. Yes 2. No [Skip to Q. 16]

15. Please describe why they were unsatisfactory.

16. Are you familiar with Rule of Court 989.3?

1. Yes 2. No [Skip to Q. 20]

17. Have you ever made a motion under this rule for yourself or a client?

1. Yes 2. No [Skip to Q. 20]

18. Was the court response to your motion satisfactory?

1. Yes 2. No [Skip to Q. 20]

19. Please explain why it was unsatisfactory.

Video Intro to Demographics

Our final group of questions asks you for some background information such as, the length of time you've been practicing law, how many attorneys practice in your office and some demographics such as your gender and age group. Again all of the information you provide is confidential and anonymous and will be used only for tabulation purposes. So please hit the continue button to answer this last group of questions.

20. Which of the following best describes your law practice?

- | | |
|---|-----------------------|
| 1. Solo Practice | 5. Government |
| 2. Small Firm (Less than 30 Attorneys) | 6. Public Interest |
| 3. Medium Firm (30 - 100 Attorneys) | 7. Non-Legal Practice |
| 4. Large Firm (More than 100 Attorneys) | 8. Unemployed |

21. How many years have you been practicing law?

- | | |
|------------------|-----------------------|
| 1. Under 5 Years | 4. 21-30 Years |
| 2. 5-10 Years | 5. More than 30 Years |
| 3. 11-20 Years | |

22. Where do you practice law?

- | | |
|------------------------|-----------------------|
| 1. Northern California | 3. Central California |
| 2. Southern California | 4. Outside California |

23. What is your gender?

- | | |
|---------|-----------|
| 1. Male | 2. Female |
|---------|-----------|

24. Please indicate your age group.

- | | |
|------------------|------------------|
| 1. 18 - 25 Years | 5. 46 - 55 Years |
| 2. 26 - 35 Years | 6. 56 - 65 Years |
| 3. 36 - 45 Years | 7. 66 - 75 Years |
| 4. 46 - 55 Years | 8. 76 Years + |

25. What is your ethnic or racial background?

- | | |
|---------------------------|--------------------|
| 1. White/Caucasian | 5. Native American |
| 2. African-American | 6. Mixed Race |
| 3. Latino/Hispanic | 7. Other |
| 4. Asian Pacific Islander | |

26. What is your approximate annual salary or income level?

- | | |
|--------------------------|--------------------------|
| 1. Under \$50,000 | 4. \$201,000 - \$350,000 |
| 2. \$50,000 - \$100,000 | 5. Over \$350,000 |
| 3. \$101,000 - \$200,000 | |

27. Do you have any additional comments you would like to make?

Video Wrap-up

All right. That was our last question. This survey is only part of the effort the State Bar is making to ensure that all of our members have full and complete access to every aspect of California's legal system. **If you would like to participate in follow-up research such as additional surveys or focus groups, please check the appropriate boxes on the next page.**

On behalf of all of our fellow State Bar members, I want to thank you for taking the time to share your opinions with us on this important subject. The results to this survey will be posted on the State Bar web site later this year. We hope you will find the survey results illuminating and we appreciate you taking the time to share your opinions with us. Thank you very much.

28. Do you wish to participate in future State Bar research efforts on this subject?

- 1. Yes
- 2. No [End of Survey]

29. What is the most convenient way for us to reach you?

- 1. Phone
- 2. Fax
- 3. E-mail
- 4. Regular Mail

30. Please indicate what e-mail or mailing address, fax or phone number you would like us to contact you at.

Thank you very much for your participation!

Analysis of Key Findings
State Bar of California CLPD Survey
Hertz Research - October, 2003

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

Analysis of Key Findings (continued)

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.

State Bar of California CLPD Survey Background Facts

Sample Size	150 Interviews
Interview Dates:	April 24 th – October 20th, 2003

A more detailed explanation of how the survey was conducted is available in the Summary Results section.

Summary Results
State Bar of California CLPD Survey
Hertz Research - October, 2003

Video Introduction

1. What is the nature of your disability? **[Circle all that apply]**

32% 1. Mobility	15% 7. Manual Dexterity
7% 2. Vision	2% 8. Epilepsy
8% 3. Hearing	7% 9. Learning Disability
5% 4. Speech	14% 10. Psychological
3% 5. HIV/AIDS	4% 11. Respiratory
7% 6. Diabetes	23% 12. Other _____

2. Is your disability apparent?

34% 1. Yes **[Skip to Q. 3]** 50% 2. No 16% 3. Not Sure

2A. Have you revealed your disability to any of the following? **[Circle all that apply]**
[Among those whose disability is not apparent or they are not certain about this – Will add up to more than 100% due to respondents noting more than one category]

26% 1. Supervisors	1% 6. Opposing Parties
34% 2. Coworkers	12% 7. Law School Professors/Staff
15% 3. Clients	8% 8. Bar Exam Administrators
12% 4. Judge/Court Personnel	6% 9. Other _____
10% 5. Opposing Counsel	

3. Do you feel that you have been denied employment-related opportunities because of your disability?

45% 1. Yes 34% 2. No **[Skip to Q. 4]** 21% 3. Not Certain

3A. Please describe why you feel that way. **[See Comments]**

4. Do you feel you have received unequal pay because of your disability?

21% 1. Yes 57% 2. No **[Skip to Q. 5]** 22% 3. Not Certain

4A. Please describe why you feel that way. **[See Comments]**

5. Do you feel you have received unequal employment benefits because of your disability?

26% 1. Yes 62% 2. No [**Skip to Q. 6**] 12% 3. Not Certain

5A. Please describe why you feel that way. [**See Comments**]

6. Have you encountered negative comments about your disability from any of the following?
[**Please circle all that apply**]

17% 1. Judges	4% 6. Co-Counsel
13% 2. Non-Judicial Officers	18% 7. Supervisors
8% 3. Clients	16% 8. Coworkers
8% 4. Opposing Parties	10% 9. Law School Profs/Administrators/Students
11% 5. Opposing Counsel	6% 10. Bar Examination Staff

6A. Have you encountered negative comments about your disability by anyone else in your law practice?

25% 1. Yes 63% 2. No [**Skip to Q. 7**] 12% 3. Not Sure

6B. Please describe what you encountered. [**See Comments**]

Video Intro to Barriers

7. Have you encountered a refusal or resistance to make reasonable accommodations for your disability in any of the following? [**Circle all that apply**]

21% 1. Court Hearings or Conferences	7% 5. Dealing with Clients
10% 2. Non-Judicial Proceedings	8% 6. Law School
24% 3. Legal Employment	5% 7. Bar Preparations
13% 4. Dealings with Opposing Counsel/Parties	7% 8. Bar Examinations

7A. Have you encountered a refusal or resistance to make reasonable accommodations for your disability in any other aspect of your law practice?

29% 1. Yes 52% 2. No [**Skip to Q. 8**] 19% 3. Not Certain

7B. Please describe what you encountered. [**See Comments**]

8. Have you encountered physical barriers to access in any of the following?
[**Circle all that apply**]

10% 1. Your Office	10% 6. Administrative Offices
8% 2. Opposing Counsel's Office	9% 7. Employment Opport/Interviews
1% 3. Co-counsel's Office	5% 8. Law School
2% 4. Client's Offices	4% 9. Bar Preparation
22% 5. Courts	6% 10. Bar Examination

8A. Have you encountered any other physical barriers to access in your law practice?

16% 1. Yes

72% 2. No [**Skip to Q. 9**]

12% 3. Not Sure

8B. Please describe these barriers. [**See Comments**]

9. Have you encountered any vision-related communications barriers in any of the following?
[**Circle all that apply – Among only those with vision related disabilities – Ten respondents**]

50% 1. Court Documents

30% 2. Documents Produced/Distributed by Your Office

50% 3. Documents Produced/Distributed by Opposing Counsel or Parties

50% 4. Documents Produced/Distributed by Clients

10% 5. Law School

10% 6. Bar Preparation

10% 7. Bar Examination

10% 8. Employment Applications/Interviews

9A. Have you encountered any other vision-related communications barriers in your law practice?

34% 1. Yes

66% 2. No [**Skip to Q. 10**]

9B. Please describe these barriers. [**See Comments**]

10. Have you encountered any hearing-related communications barriers in any of the following?
[**Circle all that apply - Among only those with hearing related disabilities – 12 respondents**]

58% 1. Court Hearings or Conferences

50% 2. Non-Judicial Proceedings

58% 3. Meetings with Opposing Counsel

33% 4. Meetings/Depositions with Opposing Parties/Witnesses

25% 5. Employment Opportunities/Interviews

25% 6. Law School

17% 7. Bar Preparation

9% 8. Bar Examination

10A. Have you encountered any other hearing-related communications barriers in your law practice?

30% 1. Yes

70% 2. No [**Skip to Q. 11**]

10B. Please describe these barriers. [**See Comments**]

11. Have you encountered inaccessible technology or equipment in any of the following?
[Please circle all that apply]

13% 1. Court	6% 4. Law School
8% 2. Non-Judicial Proceedings	4% 5. Bar Preparation
12% 3. Your Office	7% 6. Bar Examination

11A. Have you encountered inaccessible technology or equipment in any other area?

20% 1. Yes 80% 2. No [**Skip to Q. 12**]

11B. Please describe where you encountered this. [**See Comments**]

12. Did you request reasonable accommodations for the Bar Exam?

32% 1. Yes 68% 2. No [**Skip to Q. 16**]

13. Did you receive your accommodations? [**See Comments**]

86% 1. Yes 14% 2. No [**Skip to Q. 16**]

14. Were your accommodations satisfactory?

75% 1. Yes 25% 2. No [**Skip to Q. 16**]

15. Please describe why they were unsatisfactory. [**See Comments**]

16. Are you familiar with Rule of Court 989.3?

30% 1. Yes 70% 2. No [**Skip to Q. 20**]

17. Have you ever made a motion under this rule for yourself or a client?

44% 1. Yes 56% 2. No [**Skip to Q. 20**]

18. Was the court response to your motion satisfactory?

53% 1. Yes 47% 2. No [**Skip to Q. 20**]

19. Please explain why it was unsatisfactory. [**See Comments**]

Video Intro to Demographics

20. Which of the following best describes your law practice?

- | | |
|--|--------------------------|
| 28% 1. Solo Practice | 20% 5. Government |
| 15% 2. Small Firm (Less than 30 Attorneys) | 10% 6. Public Interest |
| 5% 3. Medium Firm (30 - 100 Attorneys) | 4% 7. Non-Legal Practice |
| 3% 4. Large Firm (More than 100 Attorneys) | 12% 8. Unemployed |
| | 4% 9. Retired |

21. How many years have you been practicing law?

- | | |
|----------------------|--------------------------|
| 24% 1. Under 5 Years | 23% 4. 21-30 Years |
| 22% 2. 5-10 Years | 5% 5. More than 30 Years |
| 26% 3. 11-20 Years | |

22. Where do you practice law?

- | | |
|----------------------------|--------------------------|
| 40% 1. Northern California | 7% 3. Central California |
| 46% 2. Southern California | 7% 4. Outside California |

23. What is your gender?

- | | |
|-------------|---------------|
| 48% 1. Male | 52% 2. Female |
|-------------|---------------|

24. Please indicate your age group.

- | | |
|----------------------|----------------------|
| 1% 1. 18 - 25 Years | 36% 5. 46 - 55 Years |
| 17% 2. 26 - 35 Years | 16% 6. 56 - 65 Years |
| 28% 3. 36 - 45 Years | 2% 7. Over 65 Years |

25. What is your ethnic or racial background?

- | | |
|------------------------|------------------------------|
| 79% 1. White/Caucasian | 6% 4. Asian/Pacific Islander |
| 3% 2. African-American | 5% 5. Mixed Race |
| 4% 3. Latino/Hispanic | 3% 6. Other |

26. What is your approximate annual salary or income level?

- | | |
|-----------------------------|------------------------------|
| 41% 1. Under \$50,000 | 20% 4. \$100,001 - \$200,000 |
| 35% 2. \$50,000 - \$100,000 | 4% 5. Over \$200,000 |

27. Do you have any additional comments you would like to make? **[See Comments]**

Video Wrap-up

28. Do you wish to participate in future State Bar research efforts on this subject?

75% 1. Yes

25% 2. No [**End of Survey**]

29. What is the most convenient way for us to reach you?

5% 1. Phone

88% 2. E-mail

7% 3. Regular Mail

30. Please indicate what e-mail or mailing address, fax or phone number you would like us to contact you at.

State Bar of California CLPD Survey Background Facts

Sample Size

150 Interviews

Interview Dates:

April 24th – October 20th, 2003

How This Survey was Conducted and Potential Sources of Error

This survey was conducted online by Hertz Research of Petaluma, California. Invitations to participate were posted in publications or web sites available to most California Attorneys such as the California Bar Journal and the State Bar Web site. An announcement regarding the poll was also made at the State Bar Annual Meeting.

Technically, this poll is not a pure random sample since there was not a viable database of California attorneys with disabilities to sample from. That said, the demographic characteristics of the poll respondents are largely consistent with those of the state bar population as a whole, as measured in other surveys.

So the results of this survey need to be interpreted through this bifocal prism. Not being perfectly random and having a relative small sample by survey research standards dictates the cautious use of exact percentages of the poll's results. This 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.

On the other hand, the cumulative weight of the survey results and in particular, the views expressed by many respondents who said they had been denied employment-related opportunities due to their disability should not be discounted. While not a perfect gauge 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 respondents largely determines sampling error. Statistical theory indicates that in the case of a poll with this sample size (150 Total Interviews), 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, give or take approximately eight percent.

However, other sources of error also can impact the accuracy of poll results conducted online and with other techniques. These include but are not limited to the percentage of the population choosing to participate, the likelihood a possible respondent is connected to the Internet, the wording, and ordering of questions, and the techniques used to determine possible survey participants. The cumulative impact of all of these potential sources of error is impossible to assess precisely.

The State Bar of California

PLEDGE PROGRAM

Background

The Americans with Disabilities Act of 1990 (“ADA”) and related state and federal laws have provided a means to end discrimination against persons with all types of disabilities such as vision impairment, hearing impairment, mobility impairment, or medical conditions which limit a person’s ability to work for extended time periods. Nonetheless, legislation alone cannot overcome the prejudices and stigmatization that have historically evolved from a societal mind-set nurtured on the fiction that disabilities equate with diminished competence.

Overcoming the attitudinal barriers and institutional impediments imbedded in a culture of indifference, represents a formidable challenge. It will require nothing less than a “retrofitting” of our interpersonal values and organizational structure, which exists at the root of the problem.

The State Bar of California has clearly acknowledged its responsibility to address this issue, particularly as it has impacted on legal professionals. A significant action taken by the Board of Governors in meeting the problem head-on, was to establish a special committee for this purpose. The Committee on Legal Professionals with Disabilities was formed with the charge to recommend policies and programs, which would promote full and equal participation in the legal profession and legal system for legal professionals with disabilities and chronic medical conditions. Although the State Bar’s leadership role is essential here, the ultimate success of this enterprise will depend on a unified effort exerted by the entire legal community to accomplish the mission.

Implementation

Toward this end and as part of the Committee’s overall outreach strategy, the legal community is invited to participate in a Pledge Program. This is viewed as an initial step for enlisting the assistance and support of various sectors of the legal profession -- large law firms¹, bar associations, law schools and the courts. The Pledge Program is intended to be phased in over time and is considered a long-term continuing program.

Signatories will be requested to endorse the program both in word and in deed, within the context of their own operations. An initial informational packet, including a pledge to be signed by the top executive, will be sent to legal employers. Employers will submit signed pledges and requests for recognition to the State Bar.

Recognition

The State Bar will issue a Proclamation to designated Pledge Program Signatories in recognition of their commitment to the full and equal participation of persons with disabilities and chronic medical conditions in the legal profession.

To increase the visibility and status of the participants and to increase visibility, awareness and acceptance of the employment of this population, public recognition will be sought for the Signatories. Also, they will be acknowledged to all other Signatories. On a continuing basis, Signatories also will be publicized to all interested state and national media both within and outside the legal community.

¹ Following initial introduction of the Pledge Program to large law firms in the private sector, the Committee plans to reach out and involve sole proprietorships, partnerships, firms of all sizes, public agencies, and other organizations and entities which employ attorneys and judges.

Law Firm Pledge

The Law Firm of _____

and its attorneys subscribe to the fundamental belief that society is best served by a legal profession which reflects an inclusive, diversified, membership. Accordingly, we support the provision of full and equal employment opportunities, and reasonable accommodations to access such opportunities, for persons with disabilities and chronic medical conditions in the legal profession.

In recognition of our commitment to the promotion and full and equal participation of persons with disabilities and chronic medical conditions in the legal profession, the firm and its attorneys make the following pledge:

The firm pledges to conform to the obligations under the Americans with Disabilities Act of 1990, and related state and federal laws; and,

The firm pledges to ensure a work environment which is free of bias against persons with disabilities; and,

The firm pledges to accord all qualified persons with physical and mental disabilities full and equal employment opportunities in all aspects of the application and employment process, including recruitment, hiring, retention, advancement, compensation, training, work-related activities and all other policies and practices and terms, conditions and privileges of employment, held and desired, unless to do so would impose an undue hardship or an individual poses a direct threat; and,

The firm pledges to provide reasonable accommodations to otherwise qualified applicants and employees with disabilities in all aspects of the application and employment process, unless to do so would impose an undue hardship or an individual poses a direct threat; and,

The firm pledges that in all aspects of the application and employment process all qualified persons with disabilities shall have full and equal opportunities (i) to be considered for a job; and (ii) to perform the essential functions of a job, held or desired; and, (iii) to attain the same level of performance as their counterparts without a disability; and (iv) to enjoy the same level of terms, conditions, and privileges of employment as are available to their counterparts without a disability; and,

The firm pledges to implement policies and procedures in furtherance of the objectives of this pledge program; and,

The firm pledges to work collaboratively with the State Bar, the Judiciary, Law Schools and Bar Associations in furtherance of the objectives of this pledge program.

On behalf of the firm, I am submitting this pledge to the State Bar of California to evidence the commitment of our firm to further the objectives of this pledge program and to request recognition for such commitment as well as to consent to the firm name being recognized publicly as a signatory to this pledge.

Dated: _____

Firm Name: _____

Managing Partner _____

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