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The Disabled Lawyers Have Arrived; Have They Been Welcomed With Open Arms Into The Profession? An Empirical Study of The Disabled Lawyer

Donald H. Stone†

Introduction

The Individuals with Disabilities Education Act¹ (IDEA) opened doors for disabled children to receive a free elementary and secondary education appropriate to their needs.² As a result, education is being provided to most disabled children in an integrated and mainstream setting.³ Many of these disabled children have grown up, earned a college degree, entered law school, and perhaps received academic modifications in the law school classroom.⁴ Upon their successful completion of law school, disabled law graduates have sought and received reasonable accommodation of their disabilities, but they have also encountered road blocks as they proceed through the bar exam and admissions process.⁵ If able to surmount the hurdle of admission, these disabled lawyers are knocking on the doors of law firms, seeking employment. Is there a welcome mat or a “do not enter” sign awaiting them?

Lawyers with hidden disabilities—whether mental illness, learning disability, alcohol, or drug addiction—present unique challenges for law firms as employers. Can the disabled lawyers

†. Professor of Law, University of Baltimore School of Law. The author gratefully acknowledges the assistance of Lauren Jones, a student at the University of Baltimore School of Law, in preparing this Article for publication.

1. The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1487 (2000). Congress enacted this statute to provide special education service and to ensure additional school funding to states. *Id.* § 1400(d). The law was first enacted as the Education for All Handicapped Children Act of 1975. Pub. L. No. 94-142, 89 Stat. 773 (1975).

2. *See* 20 U.S.C. § 1400(d).

3. *See id.* § 1400(c)(2).

4. *See generally* Donald H. Stone, *What Law Schools Are Doing to Accommodate Students with Disabilities*, 42 S. TEX. L. REV. 19 (2000) (offering insight into accommodating disabled law students).

5. *See generally* Donald H. Stone, *The Bar Admissions Process, Gatekeeper or Big Brother: An Empirical Study*, 15 N. ILL. U. L. REV. 331 (1995) (explaining the bar admission process for the disabled law graduate).

who seek employment perform the essential functions required of an attorney? Should law firms be required to make modifications in the workplace in order to permit a disabled lawyer to be gainfully employed? If so, what reasonable accommodations are required by law?

The Americans with Disabilities Act⁶ (ADA) is a landmark civil rights bill designed to open all aspects of American life to individuals with disabilities.⁷ The articulated purpose of the federal law is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁸ The primary focus of the ADA is to furnish “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.”⁹

According to federal census data, there were approximately 51.2 million disabled Americans in 2002.¹⁰ Over eighteen million people over the age of twenty-one reported that they experienced employment problems related to their disability.¹¹ A recent report published by the American Bar Association (ABA) recognized the need for up-to-date statistics on the number of attorneys with disabilities in the field.¹² It noted that:

[A]n important step in devising strategies to promote the full and equal participation of people with disabilities in the legal profession is to gather comprehensive data—not just on the numbers of lawyers with disabilities, but also on the number of law students and college students with disabilities—in order to gain a better understanding of the pool of potential lawyers and how to expand and respond to the needs of that pool.¹³

In 2007, as part of its census, the ABA found that out of the 11,784 lawyers who answered the question “[d]o you have a

6. Americans with Disabilities Act, Pub. L. No. 101-336, § 2, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101–12 213 (2000)).

7. *See id.* § 12101(b).

8. *Id.* § 12101(b)(1).

9. *Id.* § 12101(b)(2).

10. ERIKA STEINMETZ, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, AMERICANS WITH DISABILITIES: 2002 (2006) 1, <http://www.census.gov/prod/2006pubs/p70-107.pdf>.

11. *Id.* at 27.

12. AMERICAN BAR ASSOCIATION COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW, THE NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES: A REPORT FROM THE AMERICAN BAR ASSOCIATION FOR THE LEGAL PROFESSION (2006),

http://www.abanet.org/disability/docs/conf_report_final.pdf [hereinafter ABA REPORT].

13. *Id.* at 8.

disability?" 833 respondents answered "yes."¹⁴ This accounts for about seven percent of ABA membership; however, the ABA Commission on Mental and Physical Disability Law believes that there are significantly more lawyers with disabilities than these numbers reflect.¹⁵ Another study conducted by the National Association of Law Placement (NALP) found that about eighty-one percent of law graduates with disabilities were employed while eighty-seven to ninety percent of non-disabled law graduates were employed.¹⁶ An even greater disparity exists in the salaries of disabled lawyers when compared with non-disabled lawyers. The NALP study revealed that the mean salary for an attorney with a disability was \$66,049.00 as compared to the mean for all law graduates, which was \$77,939.00.¹⁷ These figures suggest that many lawyers with disabilities will experience pay inequity upon entering the profession.

The ABA, as one of its major goals, promotes full and equal participation in the legal profession by minorities, women, and lawyers with disabilities.¹⁸ In an ABA report, the association acknowledged that significant steps must be taken to make the legal profession more accessible to lawyers with disabilities.¹⁹

Disabled attorneys and firms face serious disability-related questions from the beginning of the hiring process throughout employment. At the initial interview stage at a law firm, should a disabled applicant be encouraged to disclose his disability to the hiring partner of the law firm? Would the disabled attorney be wise to wait until after the offer of employment is extended, or even after employment commences, before disclosure of the disability and discussion of reasonable accommodations in the workplace? At what point do hiring partners in law firms expect disclosure of a learning disability or a history of substance abuse? Once a disabled lawyer is hired, how should a firm provide him or her with reasonable accommodations in the workplace in a fair and equitable manner as required by law?²⁰

Disabled lawyers are seeking architectural accessibility, job

14. THE COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW, AMERICAN BAR ASSOCIATION, GOAL IX REPORT 2 (2008), <http://abanet.org/disability/docs/2008GoalIX.pdf>.

15. *See id.*

16. *Id.* at 3.

17. *Id.*

18. *See* American Bar Association, ABA Mission and Goals, <http://www.abanet.org/about/goals.html> (last visited Jan. 21, 2008).

19. *See* ABA REPORT, *supra* note 12, at v.

20. *See* 42 U.S.C. § 12111(9) (2000).

restructuring, leave time for counseling sessions, accessible technology, and modifications of their work schedule among other accommodations.²¹ Law firms are also beginning to see requests for additional administrative support, scheduling adjustments, and assignment of less stressful and less time sensitive work.²² How should law firms best accommodate disabled attorneys?

This Article proceeds in seven parts. Part I briefly outlines the ADA's position on reasonable accommodations. Part II addresses how law firms are reacting and responding to the fact that they employ lawyers with mood disorders, such as depression or bipolar disorder,²³ attorneys with learning disabilities, and individuals with alcohol or drug addiction. What disabilities are most often represented? Are lawyers with disabilities apt to receive work modifications to accommodate their disability? Are attorneys with mental illness provided with less stressful case assignments? Are lawyers with substance use disorders²⁴ and alcohol or drug addiction assigned co-counsel to monitor or offer support to the disabled individual?

Part III of this Article outlines the annual ABA report on lawyers with disabilities, which includes recommendations as to how employers should accommodate disabled persons from the hiring process through employment. A fundamental concern underlying the provision of reasonable accommodations within the law firm is the potentially negative impact on client representation. Part IV of this Article analyzes the balancing act of providing reasonable accommodations to the disabled lawyer and the importance of providing competent representation to the client. Part V examines attorney disciplinary proceedings pursuant to the Model Rules of Professional Conduct in order to shed light on the issues related to the disabled lawyer. Part VI discusses and analyzes court decisions in the area of reasonable accommodations in the workplace to note the impact of the ADA and the direction in which courts are heading as they tackle this challenging and significant area of law.

Empirical data contained in this Article serves as a backdrop for purposes of elaboration and comparison of these and other

21. ABA REPORT, *supra* note 12, at 50.

22. *Id.*

23. For a full description of these and other disorders, see AMERICAN PSYCHIATRIC ASSOCIATION, DESK REFERENCE TO THE DIAGNOSTIC CRITERIA FROM DSM-IV 167-83 (1994).

24. *Id.* at 12.

questions.²⁵ Attorneys from fifty law firms in nine states were surveyed to obtain data and their opinions on questions relating to employment accommodations by law firms.²⁶ Because of the significant number of disabled lawyers entering the workforce and seeking modifications and accommodations, such an inquiry is well warranted. Law firms are beginning to grapple with the disabled lawyer's claim for fair and equitable treatment, while still serving their clients to the best of their ability. Part VII presents and analyzes this empirical data. In conclusion, this Article offers recommendations regarding fair and equitable reasonable accommodations for disabled lawyers in the workplace.

I. The ADA and Reasonable Accommodation

According to the ADA:

The term "reasonable accommodation" may include—

- (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.²⁷

The ADA encourages an informal, interactive process between an employer and a qualified individual with a disability in order to determine the appropriateness of a given accommodation.²⁸ The ADA lists factors that should be considered in order to determine whether an accommodation is reasonable or would impose an undue hardship on the employer.²⁹ Factors to be considered include the nature and costs of the accommodation, the overall financial resources of the employer, the type of operation of the employer, and the impact of the accommodation upon the

25. See Donald H. Stone, *Attorneys with Disabilities Survey (2007)* [hereinafter Stone, Survey] (unpublished online survey conducted by author, original survey on file with author, survey questions and answer choices reproduced *infra* at Appendix A).

26. See Donald H. Stone, *Results of Attorneys with Disabilities Survey, Question 1 (2007)* [hereinafter Stone, Results] (unpublished data, on file with author). Survey respondents indicated that they practiced law in California, the District of Columbia, Illinois, Louisiana, Maryland, Missouri, New York, Texas, and Virginia. *Id.*

27. 42 U.S.C. § 12111(9) (2000).

28. See 29 C.F.R. § 1630.2(o)(3) (2007).

29. *Id.* § 1630.2(p)(2).

employer.³⁰

II. The California Bar Committee on Legal Professionals with Disabilities

In 2004, the California Bar Committee on Legal Professionals with Disabilities conducted a survey and issued a report, which included recommendations on how to confront the challenges to employment and how to structure the practice of law for attorneys with disabilities.³¹ This poll of California attorneys highlighted the challenges that lawyers with disabilities continue to face, including “unemployment, refusal and resistance to reasonable accommodation requests, a shortage of services, and a surplus of skepticism.”³² The poll found that the attorneys’ disabilities included mobility impairments, manual dexterity, and psychological disabilities.³³ Almost half of the respondents believed that they were denied employment opportunities because of their disability.³⁴ The problem was reportedly more severe among attorneys whose disabilities were visible.³⁵

The poll also revealed that attorneys with non-apparent disabilities were more willing to reveal their disability to co-workers than to the court or to opposing counsel.³⁶ It may be the case that bias is perceived to be lessened as an attorney becomes more comfortable around co-workers and when an attorney’s ability rather than his or her disability is the focus of the

30. *See id.*

31. STATE BAR OF CALIFORNIA COMMITTEE ON LEGAL PROFESSIONALS WITH DISABILITIES, 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 (Dec. 4, 2004), http://hum.wa.gov/documents/disability%20documents/2004_Atorneys-with-Disabilities-Report-Exec-Sum.pdf [hereinafter POLL OF CALIFORNIA ATTORNEYS].

32. *Id.* at 1. One hundred fifty attorneys responded to the online survey, which included inquiries on the nature and impact of disability, barriers to practice, and demographics of respondents. *Id.* at 3. It is noted that twenty-eight percent of respondents were in solo practice, twenty percent in government, fifteen percent in small firms, ten percent in public interest, five percent in medium firms, three percent in large firms, and twelve percent unemployed. *Id.* at 13.

33. *See id.* at 4. Examples of psychological disabilities include major depression, bipolar disorder, anxiety disorder, schizophrenia, and personality disorders. *Id.*

34. *Id.* at 5 (noting that forty-five percent of the respondents claimed that they had been denied employment opportunities).

35. *See id.* at 28 (reporting that sixty-eight percent of attorneys with visible disabilities were denied employment-related opportunities due to their disability).

36. *See id.* at 5 (finding that disabilities were revealed to co-workers, supervisors, and clients more often than to opposing counsel, bar exam administrators, and the court).

discussion. The stigma of a disability is reduced as the attorney becomes more comfortable with those around him or her.³⁷ An attorney with a disability may believe, rightly or wrongly, that disclosing the disability to opposing counsel, often during an adversarial relationship, will be used to the advantage of the opposing counsel. The stigma and discrimination that exists is even more likely felt during the heat of battle of contested litigation, when the adversarial relationship is most heightened.

Lawyers with disabilities who sought reasonable accommodations from their employer reported experiencing refusal or resistance to such accommodations at work, in the courtroom, and while meeting with opposing counsel.³⁸ Examples of the ways in which attorneys with disabilities were not reasonably accommodated included a lack of patience for disabled attorneys, lack of accessible court facilities, lack of technology in the courthouse, derogatory comments made by judges in open court, and refusal of opposing counsel to provide accommodations during depositions.³⁹

The California poll revealed a variety of barriers encountered by disabled attorneys, ranging from physical barriers in court and in their law offices to vision-related and hearing-related communications barriers.⁴⁰ As a result of this ambitious report, the State Bar of California made several recommendations that were approved by the State Bar Board of Governors.⁴¹ One of the recommendations included that "law firms need to be educated about the advantage of hiring attorneys with disabilities and about the value of building successful partnerships between law firms and legal professionals with disabilities."⁴²

As more lawyers with disabilities enter the workforce, judges, opposing counsel, and adverse parties to litigation will see the benefits of working with and hiring disabled individuals and will hopefully participate in providing the necessary reasonable accommodations that these attorneys require. Opening the doors to allow attorneys with disabilities equal opportunity to participate in the legal profession, thereby benefiting society, will

37. *See id.* at 9.

38. *Id.* (finding the highest incidence of refusal or resistance to providing reasonable accommodation in a legal employment setting (twenty-four percent) and in court hearings (twenty-one percent)).

39. *Id.*

40. *See id.* at 10-13 (noting that other examples include barriers due to unaccommodating opposing counsel and inaccessible bar examination venues).

41. *See id.* at 15-17.

42. *Id.* at 38.

break barriers and eliminate the stigma attached to persons with disabilities.

Increasing numbers of students with physical and mental disabilities are attending and graduating from colleges and universities.⁴³ The poll of California attorneys encourages the California State Bar to partner with law schools in order to recruit individuals with disabilities to attend law school.⁴⁴ In addition to making improvements to the recruitment process, the partnership should provide support to law students with disabilities in law school and throughout the bar examination process, which will result in more people with disabilities entering the legal profession.⁴⁵ The time is now for the legal profession to recognize its unique opportunity to be at the forefront in opening doors to persons with disabilities. The legal profession and the clients it serves will be forever benefited by the willingness of legal employers to expand opportunities and reasonable accommodations to lawyers with disabilities.

III. ABA National Conference on the Employment of Lawyers with Disabilities

The American Bar Association recently announced in its annual report that one of its major goals is to promote full and equal participation in the legal profession by lawyers with disabilities.⁴⁶ This report states "[w]e have taken significant steps in making our profession more open to women, to persons of color and to those who come from racially and ethnically diverse backgrounds. We must now take similar first steps on behalf of lawyers with disabilities."⁴⁷ Some of the disabilities that were discussed include mental illness, learning impairments, and substance abuse problems.⁴⁸ This report found that the most pressing needs of lawyers with disabilities were twofold: reasonable accommodations assistance and job creation for lawyers with disabilities.⁴⁹ The report also recognized a significant hurdle in this complex issue: while there are as many

43. See Stone, *supra* note 4, at 20 (discussing law schools' provisions concerning reasonable accommodations for students with learning disabilities).

44. See POLL OF CALIFORNIA ATTORNEYS, *supra* note 31, at 17.

45. See generally *id.* (finding that only four percent of the California bar membership is composed of attorneys with disabilities, while 17.4 percent of the state's population has a disability).

46. ABA REPORT, *supra* note 12, at 1.

47. *Id.* at v.

48. See *id.* at 2.

49. See *id.* at 3.

as fifty million persons with disabilities within the general population, "there is a paucity of lawyers with disabilities in the profession."⁵⁰ The report explains that because reasonable accommodations are either unavailable or inadequate in higher education, law offices, and courthouses, individuals with disabilities are not provided with adequate opportunities to participate in the legal profession.⁵¹ As the report indicates, the combination of a dearth of employment opportunities in the legal profession and the lack of available and effective reasonable accommodations is of significant concern for the ABA. Another weighty issue is that discrimination is still present against lawyers with disabilities, as it is experienced by persons with disabilities in other areas of the community, including housing, transportation, and access to public places.⁵²

An interesting and rather controversial observation of the report is that people with disabilities typically face the greatest levels of discrimination from private law firms—precisely those employers who are most capable of funding reasonable accommodations.⁵³ The ABA report postulates that the discrimination seen from private law firms that possess the financial resources to make reasonable accommodations is due to a lack of "commitment, priorities, and basic understanding."⁵⁴ The more that individual law firms provide accommodations to their lawyers with disabilities, the greater the likelihood that other law firms will see the benefits and possibilities, and do the same. The incremental change in the culture of law firms, leading to real improvement in the lives of lawyers with disabilities, should be the hope and goal of the profession upon entering the twenty-first century.

The report provides examples of reasonable accommodations for attorneys, including: architecturally accessible workplaces; job restructuring; part-time or modified work schedules; unpaid leave; modified equipment (e.g., telecommunications devices for the deaf); modified workplace policies; alternative format training materials (Braille or large print); qualified readers or sign language interpreters; telework; changed methods of supervision;

50. *Id.* at 4.

51. *See id.*

52. *See* 42 U.S.C. § 12101(a)(9) (2000) (finding that discrimination is an ongoing problem for people with disabilities).

53. *See* ABA REPORT, *supra* note 12, at 12.

54. *Id.*

and reassignment to a vacant position.⁵⁵

The ABA report recommends that for law firms, the necessary starting point for change is the senior and managing partners' commitment to the goal of hiring and retaining lawyers with disabilities.⁵⁶ Hiring decisions by respected attorneys send a message of inclusiveness that is best demonstrated by welcoming lawyers with disabilities inside the front door.

The report made recommendations for legal employers during the application and hiring process, and in the workplace. They include: appointing a diversity representative on the firm's management committee; including people with disabilities as part of the equal opportunity language in the job announcements; asking questions in the interview process that bring out the candidate's strengths first and focus on the essential functions of the position; developing a work environment that is supportive and productive for all lawyers; incorporating flexible work arrangements and flexible hours; prorating billable hours; establishing a policy that allows lawyers to work from home; providing diversity training, creating an active mentor program; and, creating a centralized fund to pay for all reasonable accommodations.⁵⁷

The report contains many examples of embracing diversity in a way that includes lawyers with disabilities within the legal profession. The report speaks not only to law firms and disabled lawyers, but also to law students,⁵⁸ law schools,⁵⁹ and the legal profession at large.⁶⁰

IV. The United States Equal Employment Opportunity Commission's Reasonable Accommodations for Attorneys with Disabilities

A. The EEOC Fact Sheet

With disabled lawyers becoming more and more visible in the field of law, the Equal Employment Opportunity Commission (EEOC) issued a fact sheet to dispel the myth that attorneys with

55. *Id.* at 50.

56. *See id.* at 56.

57. *Id.* at 61-62.

58. *Id.* at 65 (encouraging mentor programs).

59. *Id.* at 66 (encouraging employment opportunities for law students with disabilities).

60. *Id.* at 65 (suggesting that a study should be conducted that investigates how many lawyers with disabilities are in the legal profession).

disabilities who require reasonable accommodations are less competent or less productive than attorneys without disabilities.⁶¹ Yet lawyers with disabilities still identify the lack of access to reasonable accommodations as a barrier to employment.⁶² Providing reasonable accommodations for qualified attorneys with disabilities also serves the larger goal of enabling legal employers to diversify their workplace.⁶³ The EEOC fact sheet recognizes that “most accommodations can be provided at little or no cost.”⁶⁴ It is noted that the disabled lawyer should request the reasonable accommodations, thereby taking the first step in the process by having a conversation with his or her employer.⁶⁵ Such a request should be made in a timely manner to avoid an adverse impact on job performance, discipline, or termination based on poor performance or conduct.⁶⁶ The interactive conversations between disabled attorneys and employers should center on the nature of the disability and why a reasonable accommodation is needed.⁶⁷ The EEOC fact sheet provides common examples of reasonable accommodations for attorneys.⁶⁸

The EEOC fact sheet acknowledges that employers are not required to remove an essential function of a job, noting that an attorney with a disability must be able to perform the essential functions of the position, with or without reasonable accommodation.⁶⁹ Employers are not required to lower or eliminate production standards for essential functions, change an attorney’s supervisor, or withhold discipline warranted by poor performance or conduct.⁷⁰

The EEOC fact sheet encourages a quick response from

61. THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES (2006), <http://www.eeoc.gov/facts/accommodations-attorneys.html> [hereinafter EEOC, REASONABLE ACCOMMODATIONS] (addressing the application of reasonable accommodations under the ADA to disabled lawyers and their employers).

62. *See id.*

63. *See id.*

64. *Id.*

65. *See id.*

66. *Id.*

67. *See id.*

68. *Id.* (listing examples of reasonable accommodations); *see also* 42 U.S.C. § 12111(9) (1991) (same); 29 C.F.R. § 1630.2(o)(2) (2008) (same).

69. EEOC, REASONABLE ACCOMMODATIONS, *supra* note 61 (listing examples of essential functions of an attorney, including conducting legal research, writing motions and briefs, counseling clients, presenting an argument before an appellate court, and conducting depositions and trials).

70. *See id.* (noting that the employer also is not required to provide personal use items, such as wheelchairs or hearing aids).

management to a request for a reasonable accommodation and permits management to choose between reasonable accommodations, as long as the chosen accommodation is effective in eliminating the workplace barrier.⁷¹ The employer may be required to provide more than one accommodation if necessary to remove the barrier.⁷² The EEOC permits an employer not to provide a specific form of accommodation "if it will cause 'undue hardship', i.e. significant difficulty or expense."⁷³ However, "employers cannot base an undue hardship decision on the fears, prejudices, or preferences of clients or the public."⁷⁴

The EEOC publication is a significant and positive step towards including the disabled lawyer in the legal profession and expanding diversity by opening doors to lawyers with disabilities.

B. A Reasonable Accommodations Case

In the case of *Lyons v. Legal Aid Society*,⁷⁵ a lawyer with a physical disability requested that her employer accommodate her by providing a parking space near her place of employment.⁷⁶ Beth Lyons sought this accommodation from the Criminal Defense Division of Legal Aid (Legal Aid), whose office was located in lower Manhattan.⁷⁷ The Legal Aid Society raised the claim that the requested accommodation was unreasonable as a matter of law.⁷⁸ The court noted that the question of whether it is a reasonable accommodation to provide parking to a disabled employee would depend on factors such as employer's geographic location and

71. *See id.*

72. *See id.*

73. *Id.* (citations omitted) (explaining that whether an employer would suffer undue hardship is determined on a case by case basis, considering factors such as: the nature and cost of the accommodation needed; the overall financial resources of the facility making the reasonable accommodation; the number of employees at the facility; the size, type and location of the facility; the type of operation of the employer; and the impact of the accommodation on the operation of the facility); *see also* 42 U.S.C. § 12111(10) (detailing factors in the undue hardship determination); 29 C.F.R. § 1630.2(p) (discussing undue hardship).

74. EEOC, REASONABLE ACCOMMODATIONS, *supra* note 61.

75. *Lyons v. Legal Aid Soc'y*, 68 F.3d 1512 (2d Cir. 1995).

76. *Id.* at 1512. For a comprehensive discussion on parking for the disabled, see Donald H. Stone, *You Take My Space, I Take Your Air: An Empirical Study of Disabled Parking and Motor Vehicle Laws For Persons With Disabilities*, 33 OHIO N. U. L. REV. 665 (2007).

77. *Lyons*, 68 F.3d at 1516 (noting that Lyons could not fulfill her responsibilities as a staff attorney at Legal Aid without being able to park her car adjacent to her office).

78. *See id.* (noting that the Legal Aid Society claimed that the parking was unwarranted preferential treatment, amounting to a matter of personal convenience).

financial resources.⁷⁹ The determination of reasonableness, noted the court, depends on a common sense balancing of the costs and benefits to both the employer and the employee.⁸⁰ The obligations to provide a disabled lawyer with accommodations at work will likely be more expansive for private law firms with significant resources than for organizations with fewer resources such as legal aid societies or public defenders' offices.⁸¹

The *Lyons* court acknowledged that there is nothing inherently unreasonable in requiring an employer to furnish an otherwise qualified disabled employee with assistance related to her ability to get to work.⁸² The court found that the district court erred in dismissing Lyons' complaint.⁸³ It is unlikely, however, that Legal Aid would be required to provide the parking space because of the organization's financial limitations.⁸⁴ If Lyons had demanded the same from a large private law firm with significantly greater resources, the court would most likely have required the firm to provide the requested accommodation.

C. Challenges of Billable Hours

The financial implication of billable hours for the attorney with a disability is of profound importance. The disabled lawyer may require the reasonable accommodation of additional time to complete a task. Will the law firm absorb the additional hours, will the resulting increased costs be passed on to the client, or will the disabled attorney be compensated at a lower hourly rate when additional time is provided?

This situation presents a challenge that many law firms may not be willing to face. If the firm hires an individual with a learning disability who received accommodations in law school, such as additional time to complete an exam, is it reasonable for the firm to similarly accommodate that person by granting additional time to complete assignments? In a field where

79. *Id.*

80. *Id.* at 1516-17.

81. See 42 U.S.C. § 12111(10)(B); 29 C.F.R. § 1630.2 (p)(2) (noting that the ADA permits different outcomes on requests for reasonable accommodations, depending on the financial cost to and financial resources of the employer).

82. *Lyons*, 68 F.3d at 1517.

83. *Id.*

84. See 29 C.F.R. § 1630.9(a) (noting that providing a reasonable accommodation is not required if an employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business, and defining undue hardship as "significant difficulty or expense incurred by a covered entity").

efficient use of one's time is essential, the less than efficient lawyer may confront this unfortunate barrier to the firm's willingness to hire a lawyer with a learning disability.

The immediate past president of the ABA, Michael S. Greco, hosted the inaugural National Conference on the Employment of Lawyers with Disabilities, from which the ABA report discussed earlier was derived.⁸⁵ His suggestion when it comes to this volatile area is that billable hours should be prorated or billed directly to the firm.⁸⁶ An employer, however, is not required to lower its billable hours standard nor is an employer required to grant the attorney additional time to complete tasks.⁸⁷ If the firm is committed to diversifying, however, there are alternative accommodations that are being considered, such as less demanding or less time-sensitive cases.⁸⁸ A firm should view a disabled attorney as it might view a junior associate who is a recent law school graduate. Both probably require more time than a senior partner does to complete tasks, but the junior associate likely does not face the same discrimination as the associate with the learning disability. If law firms reframe the way they view disabilities, they may be more willing to hire a disabled lawyer.

In fact, the disabled lawyer who requires additional time to complete certain tasks may demonstrate other talents and provide skills that a non-disabled lawyer does not possess. For example, a disabled attorney may possess superior judgment and an ability to work well in a team, characteristics which should be acknowledged for leading to a cooperative atmosphere at work. An attorney's ability to cultivate and bring in new clients, which benefits the firm, also may not relate to a lawyer's disability. If a disabled lawyer lacks the capacity to complete a task in a timely manner, this should be balanced against the lawyer's skill in bringing in new clients and his or her intellect and interpersonal skills. A firm may require less billable hours to be produced by a disabled lawyer if he or she brings other skills and talents to the firm.

If a firm chooses to value the skills mentioned above, then the firm should give credit to lawyers who possess those skills. Additionally, high intellect as well as talents such as bringing out

85. See Michael S. Greco, *Forgotten Colleagues*, 17 *Experience* 31 (2007); see also ABA REPORT, *supra* note 12.

86. Greco, *supra* note 85, at 32.

87. See EEOC, REASONABLE ACCOMMODATIONS, *supra* note 61; Symposium, *Assisting Law Students with Disabilities in the 21st Century: Brass Tacks*, 15 *AM. U. J. GENDER SOC. POL'Y & L.* 881, 895-96 (2007).

88. See *infra* Part IX tbl. 2 (summarizing accommodations that law firms provide).

the best in co-counsel should not be underestimated. Furthermore, a firm may consider other options, such as paying the disabled lawyer a salary based on the lower number hours he or she bills, while permitting the disabled lawyer additional time to complete a task, thus lowering the expected number of billable hours but compensating at the same rate as a non-disabled lawyer. These accommodations, despite their financial implications to the firm, may be reasonable, especially for the larger firms with sufficient financial resources and a sufficient number of employees to compensate for the accommodation provided.

To diversify the profession and encourage and welcome disabled lawyers, law firms can do three things. First, and most importantly, they can simply absorb the cost of reasonable accommodations. Second, they can reward lawyers in ways other than meeting certain billable hour requirements. Third, and less desirably, they can grant the disabled attorney additional time to complete tasks but compensate him or her at a lower salary. This last option should only be available if other accommodations have been explored and deemed either unreasonable or financially burdensome.

V. A Lawyer's Professional Responsibilities

A lawyer is an advocate of clients, an officer of the court, as well as a citizen with a special responsibility to uphold a high quality of justice.⁸⁹ This special responsibility demands that a lawyer be "competent, prompt, and diligent" in his or her practice.⁹⁰ This higher standard should be considered and evaluated in situations where a lawyer with a disability seeks entry into the legal profession.

A lawyer's duty to provide competent representation to a client "requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."⁹¹ "A newly admitted lawyer can be as competent as a practitioner with long experience. . . . Competent representation can also be provided through the association of a lawyer of established competence in the field in question."⁹² For both the new lawyer and the disabled lawyer, interaction with other capable lawyers is often what is needed to provide competent representation. Acknowledging when an attorney needs assistance in legal

89. MODEL RULES OF PROF'L CONDUCT pmb1. (2002).

90. *Id.*

91. *Id.* at R. 1.1.

92. *Id.* at R. 1.1 cmt. 2.

representation is important to reach the goal of including more disabled lawyers in the profession.

The lawyer with a disability may require reasonable accommodations such as additional time to complete an assigned task. The Model Rules of Professional Conduct state that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."⁹³ A delay in time may adversely affect a client's interest. For example, "when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed."⁹⁴ Unreasonable delay by an attorney can "undermine confidence in the lawyer's trustworthiness."⁹⁵ Therefore, a lawyer with a disability should be particularly careful to not take on more cases than he can reasonably handle, or alternatively ensure that he associates himself with co-counsel who can provide assistance.

A lawyer with a disability should also be mindful of either declining or terminating representation when the disability causes him or her to be unable to represent a client competently.⁹⁶ The Model Rules of Professional Conduct require that a lawyer must not represent a client or withdraw from representation "if the representation will result in violation of the rules of professional conduct."⁹⁷ When a "lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client," the lawyer must withdraw from representation.⁹⁸

A. *Misconduct*

There are several instances when a lawyer's disability may be a factor leading to misconduct and possible disciplinary proceedings. The Model Rules of Professional Conduct define professional misconduct to include "conduct involving dishonesty, fraud, deceit, or misrepresentation."⁹⁹ There are many examples of illegal conduct that suggest that an individual is unfit to practice law, such as violent criminal behavior or involvement with illegal drugs.¹⁰⁰

In one court case, an attorney's drug and alcohol addiction

93. *Id.* at R. 1.3.

94. *Id.* at R. 1.3 cmt. 3.

95. *Id.*

96. *See id.* at R. 1.16.

97. *Id.* at R. 1.16(a)(1).

98. *Id.* at R. 1.16(a)(2).

99. *Id.* at R. 8.4.

100. *Id.* at R. 8.4 cmt. 2 (addressing the distinction between illegal conduct reflecting adversely on an attorney's fitness to practice law and other offenses carrying no such implications).

caused him to misappropriate his client's funds.¹⁰¹ The court acknowledged that the misconduct was attributed to alcohol addiction, which presented circumstances sufficient to warrant sanctions less severe than disbarment.¹⁰² The court was willing to view this misconduct in a different light, as the addiction was, to a substantial extent, responsible for the conduct of the attorney.¹⁰³ Although not excusing the lawyer's dishonesty, the court recognized that the mitigating factor of substance abuse was causally connected to the misdeed and sufficiently exculpatory to warrant a less severe sanction.¹⁰⁴

Courts are willing to permit attorneys with substance abuse addiction who commit misconduct to seek reinstatement upon showing rehabilitation.¹⁰⁵ In one such case, the court viewed an attorney's misconduct of misappropriating funds differently because of his alcoholism.¹⁰⁶ The court suspended the attorney for thirty days, imposed counseling and active membership in Alcoholics Anonymous, and required him to associate with a practicing attorney who monitored his activities as an attorney.¹⁰⁷ The mentor or co-counsel model for attorneys with substance abuse addiction is a fair and equitable solution to situations such as this.

In another instance, Gary Mandel, an attorney who was addicted to pain killers and forged prescriptions, was not disbarred because his criminal conduct was induced by his addiction to the medication.¹⁰⁸ The court was persuaded that the misconduct was a result of the lawyer's addiction to pain medication rather than an intent to harm others.¹⁰⁹ Hence, the court held that disbarment was not warranted, and a lesser sanction of supervision was imposed.¹¹⁰ Courts appear to have been persuaded by the compelling argument that the disability of substance abuse is a mitigating circumstance.

101. Att'y Grievance Comm'n of Md. v. Miller, 483 A.2d 1281, 1283 (Md. 1984).

102. *Id.* at 1290.

103. *See id.*

104. *See id.*

105. *See* Att'y Grievance Comm'n of Md. v. Aler, 483 A.2d 56 (Md. 1984) (noting that when alcoholism is the cause of attorney misconduct, the misconduct must be viewed with respect to the attorney's chemical dependency).

106. *See id.* at 61.

107. *Id.*

108. Att'y Grievance Comm'n of Md. v. Mandel, 557 A.2d 1329, 1331 (Md. 1989).

109. *Id.* at 1330 (explaining that because the attorney forged the pain medication prescriptions to avoid the pain of withdrawal, the court was persuaded that the addiction to pain medicine led to the criminal action).

110. *Id.* at 1331.

Another Maryland court demonstrated a judicial willingness to not disbar an attorney with alcohol or drug addiction if he received rehabilitative counseling and agreed to be monitored by another practicing lawyer.¹¹¹ Zach Nichols was found to have committed misconduct as a result of his alcoholism, and therefore incompetent to practice law.¹¹² He was suspended, but permitted to be reinstated pending proof of successful completion of counseling and a willingness to be associated with another member of the bar who monitored his activities as a practicing lawyer.¹¹³

The idea that courts view a lawyer's misconduct in a different light, if alcoholism is the cause of a lawyer's misconduct, was seen again in another case in Maryland.¹¹⁴ Although Arthur Joseph Reid's license was suspended indefinitely, the court noted in his case that the focus shifts to questions of rehabilitation and the imposition of conditions to protect the public, if the lawyer is allowed to resume practice and if the cause of the misconduct is, to a substantial extent, alcoholism.¹¹⁵ The court noted that when a lawyer's misconduct is caused by alcoholism, drug addiction, or a mental disorder, the usual sanction is indefinite suspension rather than disbarment.¹¹⁶

In certain cases, however, courts have been unwilling to make the connection between an attorney's disability and his misconduct.¹¹⁷ The District of Columbia Court of Appeals came to this conclusion in the case of Matthew Marshall, an attorney addicted to cocaine.¹¹⁸ The court, referencing the ADA, found that in order for the attorney to avail himself of the protections of the ADA, he needed to show he is a qualified individual with a disability.¹¹⁹ The court found that Marshall was not qualified to

111. See *Att'y Grievance Comm'n of Md. v. Nichols*, 482 A.2d 499 (Md. 1984); see also *In re Hogan*, 490 N.E.2d 1280 (Ill. 1986) (declining to disbar an attorney who filed incomprehensible pleadings, and instead ordering the preparation of a plan designed to remedy the attorney's disability).

112. *Nichols*, 482 A.2d at 500.

113. *Id.*

114. See *Att'y Grievance Comm'n of Md. v. Reid*, 521 A.2d 743 (Md. 1987).

115. *Id.* at 745-46.

116. *Id.* at 746; see also *Att'y Grievance Comm'n of Md. v. Cappell*, 886 A.2d 112, 113-14 (Md. 2005) (discussing a conditional diversion program).

117. See, e.g., *In re Marshall*, 762 A.2d 530 (D.C. 2000) (holding that Marshall, an attorney with a cocaine addiction, was disbarred due to his misconduct).

118. *Id.* at 540.

119. *Id.* at 539 (noting that a qualified individual is an individual with a disability who, with or without reasonable modifications, meets the essential requirements of being a lawyer).

be a member of the bar because he committed serious misconduct, and no reasonable modifications were possible.¹²⁰ The court was not persuaded that the lawyer's wrongdoing was mitigated under the ADA, despite the fact that the individual had been diagnosed as a person with drug addiction and had claimed that his misconduct was caused by this disability.¹²¹ A more flexible approach to drug addiction, with sanctions other than disbarment, was suggested by the court's dissenting judge.¹²² Chief Judge Wagner proposed requiring rehabilitative treatment and monitoring, a more enlightened approach to addressing this complex issue.¹²³

B. Responsibilities of Managing Partners

Partners in a law firm and managing attorneys may be held responsible for the actions of the lawyers within their firm.¹²⁴ The Model Rules of Professional Conduct state that it is the responsibility of partners, managers, and supervising lawyers to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform" to these rules.¹²⁵ Lawyers with knowledge of specific misconduct who have direct supervisory authority are required to take reasonable remedial action to prevent violations of the Model Rules of Professional Conduct.¹²⁶ A supervising attorney is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.¹²⁷ This responsibility is significant in situations in which lawyers with disabilities, such as substance abuse, commit misconduct. There is a safety net in place to protect the interests of clients, but at the same time there is an added burden of responsibility placed on the supervising or managing attorney. Whether the result is a greater willingness to hire lawyers with disabilities may depend on the amount of risk that a law firm is

120. *Id.*

121. *Id.* at 540.

122. *Id.* at 541 (Wagner, C.J., dissenting).

123. *See id.*

124. *See* MODEL RULES OF PROF'L CONDUCT R. 5.1.

125. *Id.* (noting that such responsibilities include establishing internal policies and procedures designed to promote compliance with the Model Rules of Professional Conduct).

126. *See id.* (stating that the rule applies to lawyers who have managerial authority over the professional work of the firm).

127. *See id.* (noting that whether a lawyer has supervisory authority in particular circumstances is a question of fact).

willing to take in any given situation.

C. *Conditional Admission to the Bar*

The ABA recently adopted a model rule that will grant conditional admission to people who apply to the bar who have experienced chemical dependency or other mental illness that would have otherwise rendered them unfit to practice law.¹²⁸ Based on rules already in place in nineteen states and Puerto Rico, the new model rule allows conditional admission to people who can demonstrate recent successful rehabilitation or treatment.¹²⁹ According to the Honorable Robert Childers, Chair of the Commission on Lawyer Assistance Programs, the rule is only to be used when there is a “concern about the ability [of an applicant] to sustain their recovery, given the stress of practice.”¹³⁰ State bar authorities are given the discretion of whether to adopt the rule,¹³¹ and also of whether or not the lawyer’s conditional admittance should be available as public knowledge.¹³² Supporters believe that the rule will encourage people to seek help who previously would not have, for fear that their mental illness or substance abuse issues would preclude them from being admitted to the bar.¹³³

A disabled lawyer admitted on a conditional basis may have a variety of requirements imposed by the state bar authorities, including “meet[ing] monthly with a trained monitor, attend[ing] weekly support meetings, and undergo[ing] randomized testing.”¹³⁴ Although such a license requirement may pose a hardship on the disabled lawyer, such barriers may outweigh the alternative of license denial. The ABA rule allowing conditional admission to the bar promotes the meritorious goal of encouraging diversity within the legal profession by including more lawyers with disabilities. The conditional license should be in place for a fixed period of time when a disabled lawyer is less capable of

128. Edward A. Adams, *ABA OKs Conditional Admission to Bar for Would-Be Lawyers with Addiction, Mental Problems*, A.B.A.J., Feb. 11, 2008, available at http://www.abajournal.com/news/aba_oks_conditional_admission_to_bar/.

129. *Id.*

130. *Id.* (alteration in original).

131. *Id.* (noting that the ABA “measure is advisory only; bar admission authorities in individual states must adopt it for it to take effect”).

132. *Id.*

133. *Id.*

134. ABAnet.org, *Model Rule on Conditional Admission to the Bar: What It Means, Next Steps* (Apr. 2008), <http://www.abanet.org/media/youraba/200804/article08.html>.

fulfilling the responsibilities of the legal profession, and such conditions should be removed upon a demonstration that the disabled lawyer is fit to practice law alone. Although the potential for conditional admission to the bar is a step in the right direction for lawyers with these types of disabilities, there are additional strategies that law firms can promote that may benefit the conditionally admitted lawyer. These strategies include requiring the conditionally admitted attorney to attend Alcoholics Anonymous or Narcotics Anonymous, practice with other attorneys, represent clients with the assistance of co-counsel, attend mental health counseling, and be compliant in taking necessary medications.

VI. Select Court Decisions Discussing Reasonable Accommodations

Lawyers with learning disabilities, entering the profession often face obstacles in the bar examination process. In *Bartlett v. New York State Board of Law Examiners*,¹³⁵ Marilyn Bartlett won a nine-year battle to obtain reasonable accommodations in taking the New York State Bar Examination.¹³⁶ By requesting accommodations in order to effectively compete on the bar examination, lawyers like Bartlett are testing the legal profession's response to disabilities in the workplace.

Bartlett, a woman with dyslexia, fought to take the New York Bar Exam with extended time and a computer to accommodate her learning disability.¹³⁷ The court analyzed the essential functions of a lawyer in order to determine the reasonable accommodations to provide on the bar exam.¹³⁸ The court determined that if Bartlett's learning "disability prevents her from competing on a level playing field with other bar examination applicants, then her disability has implicated the major life activity of working"¹³⁹

135. *Bartlett v. New York State Bd. Of Law Exam'rs*, No. 93 Civ. 4986, 2001 U.S. Dist. LEXIS 11926 (S.D.N.Y. Aug. 15, 2001).

136. *Id.* at *148 (finding that the plaintiff was entitled to "injunctive relief in the form of reasonable accommodations on the bar examination" because she demonstrated that she was disabled under the ADA); *see also* Docket, *Bartlett v. N.Y. State Bd. Of Law Exam'rs*, No. 93 Civ. 4986, 2001 U.S. Dist. LEXIS 11926 (S.D.N.Y. Aug. 15, 2001) (No. 1:93cv04986) (showing that Bartlett first brought her case to the United States District Court of the Southern District of New York in 1993, though the final decision was not made until 2001).

137. *Bartlett*, 2001 U.S. Dist. LEXIS 11926, at *3 & n.4.

138. *Bartlett v. N.Y. State Bd. of Law Exam'rs*, 970 F. Supp. 1094, 1126-28 (S.D.N.Y. 1997), *aff'd in part, vacated in part*, 156 F.3d 321 (2nd Cir. 1998), *vacated*, 527 U.S. 1031 (1999).

139. *Bartlett*, 2001 U.S. Dist. LEXIS 11926 at *143 (citing *Bartlett*, 970 F. Supp.

The court was convinced that her dyslexia substantially limited her ability to work, and that she was an individual with a disability protected under the ADA.¹⁴⁰ The *Bartlett* court concluded that Marilyn Bartlett was “substantially limited in the major life activity of reading when compared to most people,” and “substantially limited in the major life activity of working because . . . her reading impairment [was] a substantial factor in her failing the bar examination.”¹⁴¹ The court awarded injunctive relief and ordered the following reasonable accommodations on the New York State Bar Exam: “(1) double the normally allotted time, spread over four days; (2) use of a computer; (3) permission to circle multiple choice answers in the examination book; and (4) large print on both the New York State and Multistate Bar Examinations.”¹⁴² The clear and comprehensive requirements spelled out by the Bartlett court move the discussion into the workplace arena. How law firms respond to the requests and demands of lawyers with disabilities will determine to what extent diversity in the workplace will include individuals with disabilities.

In *Spinella v. Town of Paris Zoning Board of Appeals*,¹⁴³ a disabled lawyer with a visual impairment received reasonable accommodations, in the form of twice the usual time for motion responses, orders, and other documents with time requirements.¹⁴⁴ In this extraordinary case, Spinella demonstrated that as a result of his disability, it took him “twice as long to write and read and absorb material as a non-disabled attorney.”¹⁴⁵ The court recognized that with accommodations he could perform the essential functions of a lawyer, extending the workplace to the courtroom and court system.¹⁴⁶ The lawyer’s “visual impairment

at 1121) (explaining that because the court viewed the bar examination as an employment test, without the opportunity to compete fairly on the exam, Bartlett would be precluded from potential employment in the field); see generally Stone, *supra* note 5 (providing a comprehensive discussion of the bar exam).

140. *Bartlett*, 2001 U.S. Dist. LEXIS 11926 at *147–48.

141. *Id.* at *165.

142. *Id.* at *148 (citing *Bartlett*, 970 F. Supp. at 1146–47, 1153).

143. *Spinella v. Town of Paris Zoning Bd. of Appeals*, 752 N.Y.S.2d 795 (N.Y. Sup. Ct. 2002).

144. *Id.* at 797–99 (explaining that the disabled lawyer received reasonable accommodations in law school and on the bar examination).

145. *Id.* at 797; cf. *United States v. Jones*, 102 F. Supp. 2d 1083 (E.D. Ark. 2000) (granting an attorney recovering from ear surgery a five-week continuance rather than the requested three-month continuance as a reasonable accommodation from court).

146. *Spinella*, 752 N.Y.S.2d at 798 (finding that with accommodations, the disabled lawyer, a qualified individual with a disability, could perform the essential

is good cause for the failure to meet the time requirements” of the court rules.¹⁴⁷ Extending this viewpoint further to employers of disabled lawyers has seen mixed results.

In *Riley v. Fry*,¹⁴⁸ an Illinois court heard the claim of an attorney who worked as an assistant public defender and was terminated for failure to perform the essential functions of the job.¹⁴⁹ The pain from her physical disability interfered with her ability to walk, talk, and concentrate.¹⁵⁰ In this rather extreme case, in which the disabled lawyer’s physical disability caused her to be unable to work, the court refused to “protect persons who have erratic, unexplained absences, even when those absences are a result of a disability.”¹⁵¹ The court correctly acknowledged that she could not be permitted to remain employed in the job yet not be required to regularly perform the job.¹⁵²

The causal connection between a lawyer’s disability and subsequent misconduct is necessary to persuade an attorney disciplinary board to not suspend or disbar the attorney.¹⁵³ Proving this causal link for mental disabilities is a particular challenge for lawyers appearing before disciplinary boards. In the case of *In re Eckberg*,¹⁵⁴ the attorney’s anxiety disorder brought him before the state hearing board, which issued conditions on the attorney’s continued practice of law.¹⁵⁵ The board imposed conditions that included continuous counseling, despite the finding that David Eckberg was not incapable of competently practicing law.¹⁵⁶ The court, however, found it unnecessary to impose burdensome conditions on a disabled lawyer who established regular attendance at a treatment program and practiced law

functions of the job).

147. *Id.* at 799.

148. *Riley v. Fry*, No. 98 C 7584, 2000 U.S. Dist. LEXIS 14541 (N.D. Ill. Oct. 3, 2000).

149. *Id.* at *1, *17–20.

150. *Id.* at *2.

151. *Id.* at *18 (citing *Waggoner v. Olin Corp.*, 169 F.3d 481, 484 (7th Cir. 1999)) (noting that regular attendance in court was an essential function of an assistant public defender); *cf. Doe v. Att’y Discipline Bd.*, No. 95-1259, 1996 U.S. App. LEXIS 5727 (6th Cir. Feb. 22, 1996) (finding that no reasonable accommodations could permit a lawyer with a heart condition and Attention Deficit Disorder to practice law).

152. *Riley*, 2000 U.S. Dist. LEXIS 14541, at *21.

153. *See, e.g., People v. Reynolds*, 933 P.2d 1295, 1304–05 (Colo. 1997).

154. *In re Eckberg*, 733 N.E.2d 1244 (Ill. 2000).

155. *Id.* at 1246.

156. *Id.* at 1251 (noting that the attorney regularly attended counseling, pledged to continue treatment, and had continued to practice law since 1996 without complaint).

without incident for several years.¹⁵⁷

In *People v. Goldstein*,¹⁵⁸ the Colorado Supreme Court heard the appeal of a Colorado attorney with a mental illness who had unsuccessfully argued before the attorney disciplinary hearing board that disciplining an attorney for conduct caused by a mental disability was discriminatory and prohibited by the ADA.¹⁵⁹ The court rejected Goldstein's claim, finding that his mental disability did not cause the misconduct of failing to file court papers on behalf of a client nor of falsifying a judge's signature.¹⁶⁰

In another Colorado case, a lawyer with depression faced discipline due to chronic neglect of his clients.¹⁶¹ The court found that the ADA did not prevent the court from disciplining an attorney who suffered from depression if such mental illness had not directly caused that attorney's misconduct.¹⁶²

Likewise, in *Doe v. Attorney Discipline Board*,¹⁶³ a lawyer with Adult Attention Deficit Disorder was suspended from practicing law.¹⁶⁴ The court concluded that the attorney was not suspended as a result of his disability, but because he continuously "breached the most basic duties of an attorney . . ."¹⁶⁵ The court found no reasonable accommodation that could allow him to perform the essential requirements of practicing law, noting that the ADA does not require that a lawyer be held "to a lesser standard of conduct than any other attorney."¹⁶⁶

Those attorneys who commit misconduct, for example by mishandling client funds or by failing to complete work on a client's case, usually face disbarment or suspension.¹⁶⁷ In light of

157. *See id.* at 1254.

158. *People v. Goldstein*, 887 P.2d 634 (Colo. 1994).

159. *Id.* at 638 n.2; *see also id.* at 638 n.1 (explaining that the lawyer was treated for success neurosis, a condition whereby a patient unwillingly and unconsciously repeats patterns jeopardizing success in a patient's life).

160. *Id.* The Supreme Court of Colorado affirmed the decision of the disciplinary hearing board, but on other grounds, as the issue did not properly come before the court on appeal. *Id.* at 638 n. 2.

161. *People v. Reynolds*, 933 P.2d 1295, 1305 (Colo. 1997).

162. *Id.* at 1304-05.

163. *Doe v. Att'y Discipline Bd.*, No. 95-1259, 1996 U.S. App. LEXIS 5727 (6th Cir. Feb. 22, 1996).

164. *Id.* at *3-4.

165. *Id.* at *8.

166. *Id.*

167. *See, e.g., In re Sullivan*, 530 A.2d 1115 (Del. 1987) (holding that an attorney should be disbarred for misappropriating funds, and other violations); *Attorney Grievance Comm'n of Md. v. Draper*, 514 A.2d 1212 (Md. 1986) (holding that an incompetent attorney should be put on inactive status); *In re Disability of Diamondstone*, 105 P.3d 1 (Wash. 2005) (holding that an attorney who had

some courts' overwhelming priority to protect the public, those courts may be reluctant to punish attorneys with mental illnesses with sanctions less than disbarment if they are unable or unfit to practice law.¹⁶⁸

VII. Attorneys With Disabilities Survey: Data Analysis

A. General Findings

The Attorneys with Disabilities Survey¹⁶⁹ (Stone Survey) questioned the hiring and managing partners of fifty law firms across the nation in order to solicit their opinions on disabled lawyers entering the legal profession.¹⁷⁰ Additional comments were also requested from survey participants, with the goal of providing a better understanding of the hiring decisions and challenges in accommodating lawyers with physical or mental disabilities.

Over half the firms surveyed employed a disabled attorney.¹⁷¹ The lawyers possessed a variety of physical or mental disabilities, including diabetes, mental illness, substance abuse, hearing loss, mobility impairment, and learning disabilities.¹⁷² The most common disabilities identified by respondents included diabetes, mobility, psychological/mental illness, and substance abuse.¹⁷³

The Stone Survey reported that firms provided numerous

committed various acts of misconduct should be put in disability inactive status); *In re Campbell*, 21 P.3d 1147 (Wash. 2001) (holding that an attorney found to be mentally incompetent should be placed on disability inactive status); *In re Meade*, 693 P.2d 713 (Wash. 1985) (holding that an attorney found to be mentally incompetent should be placed on inactive status).

168. See *Slaten v. State Bar of Cal.*, 757 P.2d 1, 11 (Cal. 1988).

169. Stone, Survey, *supra* note 25.

170. See Stone, Results, *supra* note 26, at Question 2 (indicating that the law firms ranged in size from as small as two attorneys to as large as over one thousand attorneys and that the surveyed firms collectively employed approximately 3,156 lawyers); *id.* at Question 1 (noting that the law firms were located in California, the District of Columbia, Illinois, Louisiana, Maryland, Missouri, Texas, New York, and Virginia).

171. See *id.* at Question 3 (indicating that twenty-eight out of fifty firms surveyed reported employing attorneys with disabilities, accounting for approximately sixty-two to eighty-nine individuals).

172. *Id.* The results also indicate that lawyers had other disabilities, such as cancer, lupus, vision loss, and epilepsy. *Id.*

173. See *id.* at Question 3. The survey used ranges for hiring partners to identify how many attorneys with each category of disability they employed. *Id.* The total number of attorneys identified in the survey as having each type of disability were as follows: diabetes, 15-24; epilepsy, 1; hearing, 5; HIV/AIDS, 2-5; learning disability, 3; manual dexterity, 3; mobility, 7-10; psychological/mental illness, 10-16; respiratory, 1; speech, none; substance abuse, 7-10; vision, 4-7; other, 4. *Id.*

reasonable accommodations to disabled lawyers in order to permit them to perform the essential functions of their job,¹⁷⁴ as required by the ADA.¹⁷⁵ The most common forms of accommodation reported included modification of work schedule, architectural accessibility, accessible technology, additional secretarial support, and modification of equipment.¹⁷⁶

As is evidenced by the results of the Stone Survey, as illustrated in Table 1, law firms are providing significant accommodations that allow disabled lawyers to perform the essential functions of their jobs. Employers demonstrate flexibility by modifying work schedules and providing additional secretarial support. Financial outlay and flexibility are often necessary elements in order to welcome disabled lawyers and afford them an opportunity to succeed.

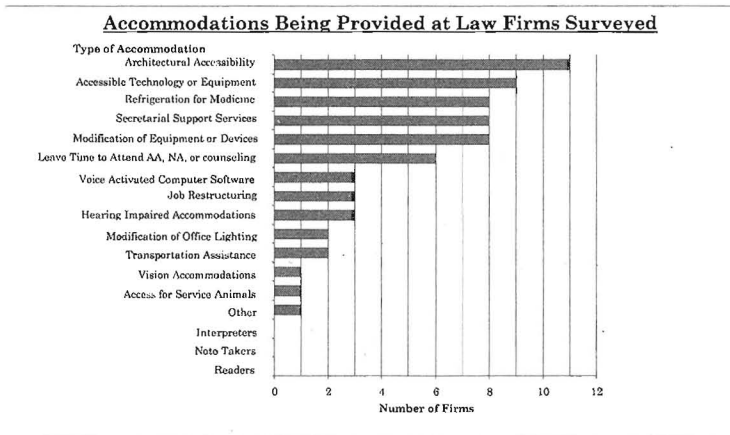


Table 1: Results from Question 4 from the Stone Survey¹⁷⁷

B. Lawyers with Learning Disabilities

The Stone Survey further inquired into the provision of reasonable accommodations specific to a lawyer with learning

174. See *id.* at Question 4.

175. See 29 C.F.R. § 1630.2 (2008) (“Qualified individual with a disability means an individual with a disability who[,] . . . with or without reasonable accommodation, can perform the essential functions of such position.”).

176. See Stone, Results, *supra* note 26, at Question 4. The results also indicate that firms provided other accommodations, such as leave time and job restructuring. *Id.*

177. *Id.*

disabilities.¹⁷⁸ An individual with a learning disability¹⁷⁹ employed as a lawyer presents unique challenges in the high pressure and often time sensitive arena of a private law firm. Examples of reasonable accommodations provided on a regular basis to lawyers with learning disabilities, as summarized in Table 2, include: allowing additional time to complete tasks; assigning less demanding cases; assigning less time sensitive work; and providing scheduling adjustments.¹⁸⁰

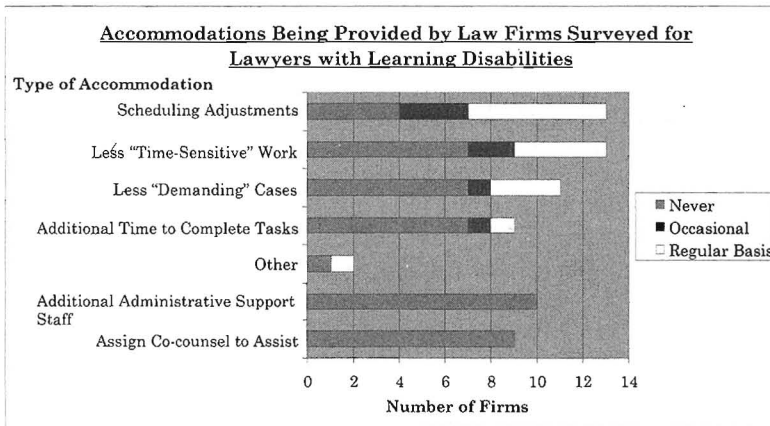


Table 2: Results from Question 5 from the Stone Survey¹⁸¹

One respondent to the Stone Survey commented, “[w]e had one attorney [sic], who has since left the firm, who needed reading and other special accommodations. We had an expert assess her needs and provided for them. She agreed with the accommodations.”¹⁸² An honest relationship between employer and employee can greatly aid in providing accommodations that are satisfactory to both parties.

One of the challenges for law firms in providing meaningful accommodations to lawyers with learning disabilities is to avoid the perception of special treatment or lowered expectations. When a firm provides additional time or less demanding cases, other

178. Stone, Survey, *supra* note 25, at Question 5.

179. See 20 U.S.C. §1401(30)(a) (Supp. 2005) (defining “[S]pecific learning disability” as a disorder involving understanding or using language, which “may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations”).

180. Stone, Results, *supra* note 26, at Question 5.

181. *Id.*

182. *Id.*

attorneys may complain of unfair treatment. However, lawyers with learning disabilities may contribute other strengths and skills that compensate for their need to be given additional time to complete a task. For example, lawyers with disabilities might bring strong interpersonal skills, high intellect, extremely high motivation, and tenacity to the workforce. The disabled lawyer's strengths could be recognized by the firm to avoid the perception of favoritism. In order to fully recognize the strengths and skills of a disabled lawyer, law firms first need to level the playing field by providing reasonable accommodations to that lawyer as well.

In an era when lawyers with disabilities continue to experience discrimination and prejudice,¹⁸³ the moral dilemma of when to disclose a learning disability to a hiring partner in a law firm is highlighted in the Stone Survey.¹⁸⁴ Employers at law firms were asked when they expect disclosure: at the initial job interview; at the time the job has been offered; or after employment commences.¹⁸⁵ The ADA clearly prohibits "inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability."¹⁸⁶ The ADA does permit "preemployment inquiries into the ability of an applicant to perform job-related functions."¹⁸⁷

According to the results of the Stone Survey, as seen in Table 3, a majority of those surveyed indicated that lawyers with learning disabilities in need of reasonable accommodations should self-identify their disability at the initial job interview.¹⁸⁸ All of the respondents indicated that a learning disability should be disclosed at some point.¹⁸⁹ The comments of survey respondents indicated a range of opinions on when the disability should be disclosed, from "[s]ometime during the interview process," to "[w]henever they think they will not be able to perform the essential functions of their job," to "when it becomes an issue."¹⁹⁰ One respondent to the survey commented that each request should be "evaluated on a case by case basis, however, it is important to be sure reasonable accommodations are feasible and in place before an employee commences work."¹⁹¹ The interview process

183. *See supra* Part VI.

184. *See* Stone, Results, *supra* note 26, at Question 6.

185. *Id.*

186. 42 U.S.C. § 12112(d)(2)(A) (2000).

187. *Id.* § 12112(d)(2)(B).

188. *See* Stone, Results, *supra* note 26, at Question 6.

189. *See id.*

190. *Id.*

191. *Id.*

may be viewed as an opportunity for a lawyer with a learning disability to explain how he was successful in law school or other settings after receiving reasonable accommodations.

Placing the discussion of reasonable accommodations after a job offer is extended, but before employment commences, is a fair way to protect against discrimination. Doing so also ensures that a lawyer with a learning disability will have reasonable accommodations in place to level the playing field and promote an atmosphere of success.

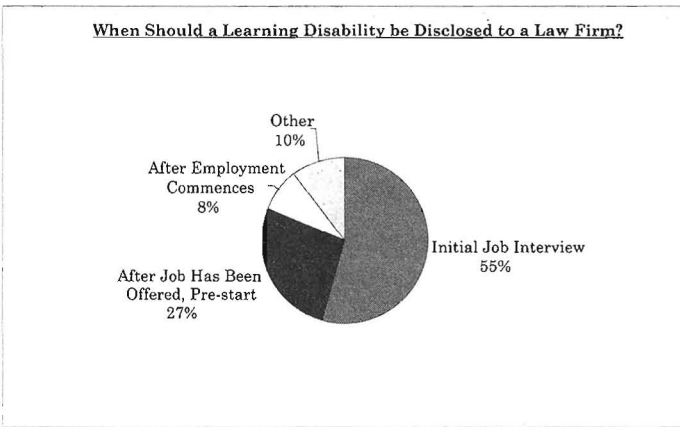


Table 3: Results from Question 6 from the Stone Survey¹⁹²

In *Doe v. Judicial Nominating Commission*,¹⁹³ an attorney sued the Commission alleging that some of the questions on the job application for judicial appointment required the applicant to disclose information on his or her physical and mental health in violation of the ADA.¹⁹⁴ Examples of questions on the application included:

Have you ever been treated for or suffered from any form of mental illness? . . . Have you been treated for or suffered from any form of emotional disorder or disturbance or otherwise been treated by psychologists, psychiatrists or other mental health care professionals, in the last five years? . . . Have you ever been addicted to or dependent upon alcoholic beverages or

192. *Id.*

193. *Doe v. Judicial Nominating Comm'n for the Fifteenth Judicial Circuit of Fla.*, 906 F. Supp. 1534 (S.D. Fla. 1995).

194. *Id.* at 1536.

any other drug?¹⁹⁵

The court found that questions such as these in the initial application were overinclusive, lacking reasonable time restrictions, and forced the disclosure of information which was not necessary to protect the public.¹⁹⁶

Employment inquiries related to a person's disability should be severely limited to questions that relate to one's ability to perform the job. Inquiries as to one's disability status, however, should be strictly prohibited.

C. *Lawyers with a Mental Illness*

The lawyer with a mental illness, such as depression or bipolar disorder, may be in need of reasonable accommodations. The Stone Survey revealed the viewpoint of the employer as to whether a particular accommodation would be viewed as reasonable, as seen in Table 4.¹⁹⁷ The most common examples of reasonable accommodations for a lawyer with a mental disorder include: permit short-term leave, reduce schedule from full to part time status, and assign less stressful work.¹⁹⁸

Employers differ in their understanding of whether accommodations for mental disabilities are reasonable.¹⁹⁹ While some survey respondents said that they would evaluate the situation on a case-by-case basis, many commented that they were concerned with the impact that such accommodations might have on the client.²⁰⁰ Respondents were unwilling to compromise the quality of the services that they provide in order to accommodate a disabled attorney.²⁰¹ One attorney commented:

Practicing law is itself very stressful. It's difficult to conceptualize who [sic] you could make this more accommodating. Some practices are more than others (E.g., litigation vs. real estate); but in all areas, there is NO room for errors, which might subject the individual or the firm to the ever increasing malpractice claims. I do think that once an issue with an attorney is identified, the firm has a responsibility to accommodate both as a requirement of law under the ADA and equally as important, to avoid malpractice claims. The real question for lawyers with mental disabilities is whether they can perform the job with or without

195. *Id.* at 1537 (citation omitted).

196. *Id.* at 1544-45.

197. Stone, Results, *supra* note 26, at Question 7.

198. *See id.*

199. *See id.*

200. *See id.*

201. *See id.*

accommodation [sic]. If the answer to that is that they must always be “supervised” by another attorney, I think the short answer there is no.²⁰²

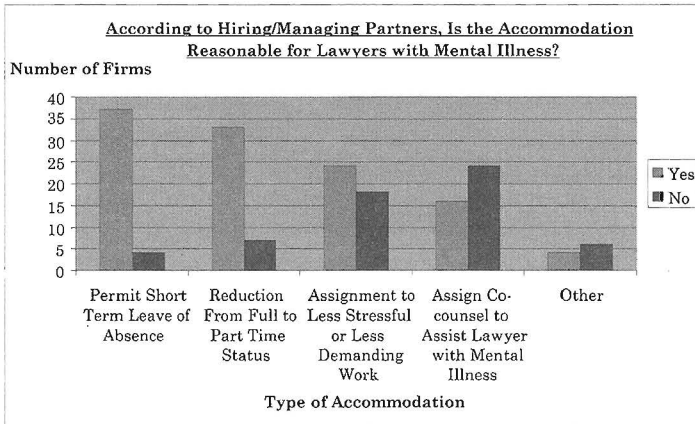


Table 4: Results from Question 7 from the Stone Survey²⁰³

Based on the survey respondents’ comments, it appears that some firms that have employed lawyers with mental illness in the past have managed to find a working solution. One firm indicated that “[o]n a short-term basis (eg [sic] for about a year period) we have provided a reduced case load and paid time off to an attorney with psychological disorder.”²⁰⁴ That same respondent, however, added, “[o]n a long-term basis, however, a lawyer with a severe psychological disorder would unlikely be able to meet the requisite standard of care and thus not be ‘fit’ under our ethical guidelines.”²⁰⁵ Although many lawyers with mental disorders can function in the employment arena without any reasonable accommodations provided, when a situation arises whereby a leave of absence or reduction in work schedule becomes necessary, it is encouraging to see that some law firms appear willing to be flexible and open-minded, as summarized in Table 5.²⁰⁶

202. *Id.*

203. *Id.*

204. *Id.* at Question 8.

205. *Id.*

206. *See id.*

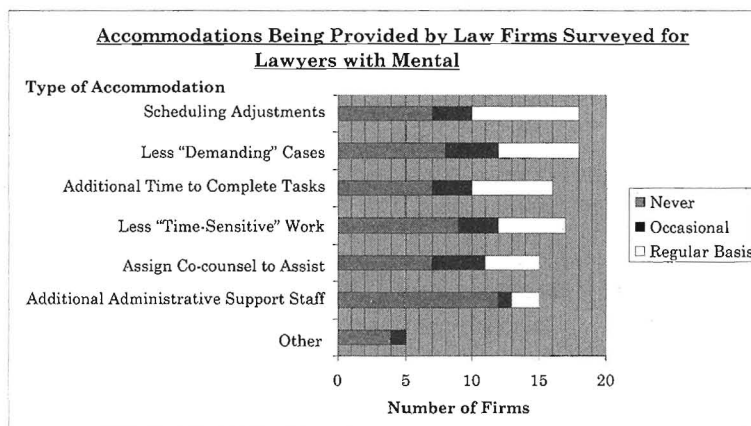


Table 5: Results from Question 8 from the Stone Survey²⁰⁷

In *Shaver v. Wolske & Blue*,²⁰⁸ the court faced the issue of what reasonable accommodations a law firm must provide to a lawyer with major depression.²⁰⁹ Shaver was provided with three weeks of vacation, but was still unable to return to work after an episode of depression.²¹⁰ When he attempted to contact his office, Shaver was told that the managing partners refused to talk to him.²¹¹ Shaver made several more attempts to meet with the firm's partners but was never given the opportunity.²¹² After Shaver's wife explained his condition and his need for additional time off to the partners, they told Shaver to take the time he needed to get well.²¹³ Despite this comment, Shaver was eventually terminated.²¹⁴ Shaver brought suit alleging handicap discrimination, failure to make reasonable accommodations, and wrongful discharge.²¹⁵ The court stated that his wife's explanation of the condition could be equivalent to an accommodation request and that "once an employee requests an accommodation, an employer is obligated to participate in the interactive process of seeking an accommodation."²¹⁶

207. *Id.*

208. *Shaver v. Wolske & Blue*, 742 N.E.2d 164 (Ohio Ct. App. 2000).

209. *Id.* at 168.

210. *Id.* at 177.

211. *Id.* at 169.

212. *Id.* at 169-70.

213. *Id.*

214. *Id.* at 170.

215. *Id.* at 167.

216. *Id.* at 175 (citing *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 314 (3d Cir. 1999)).

D. Lawyers with a Substance Abuse Problem

Although alcohol and drug addiction are considered disabilities, law firms appear less willing to provide the reasonable accommodations of additional administrative support, additional time to complete tasks, scheduling adjustments, assigning co-counsel, or assigning less demanding cases to attorneys suffering from substance abuse, as seen in Tables 6 and 7.²¹⁷ Many employers responded that they had never had to face the issue of an attorney with substance abuse, but those that have dealt with this issue mentioned supporting treatment and giving the attorney time off.²¹⁸ An analysis of the results of the Stone Survey, as seen in Table 7, indicates a stronger preference for providing accommodations to the lawyer with a mental illness than to a lawyer with a substance abuse problem.²¹⁹

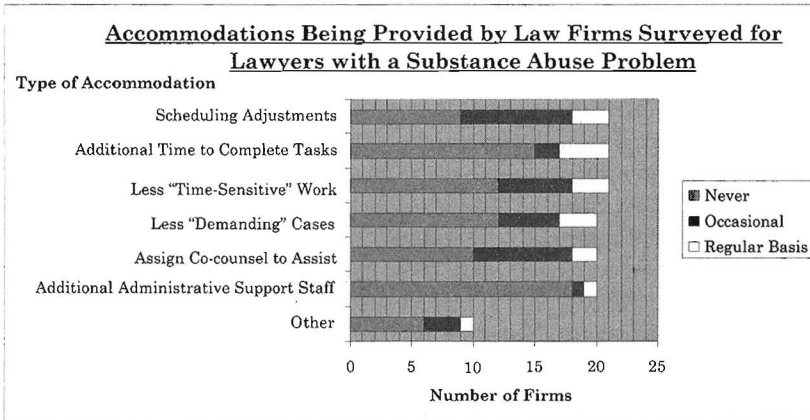


Table 6: Results from Question 9 from the Stone Survey²²⁰

217. Compare Stone, Results, *supra* note 26, at Question 9 with *id.* at Question 8.

218. See *id.* at Question 9.

219. Compare *id.* at Question 8, with *id.* at Question 9.

220. *Id.* at Question 9.

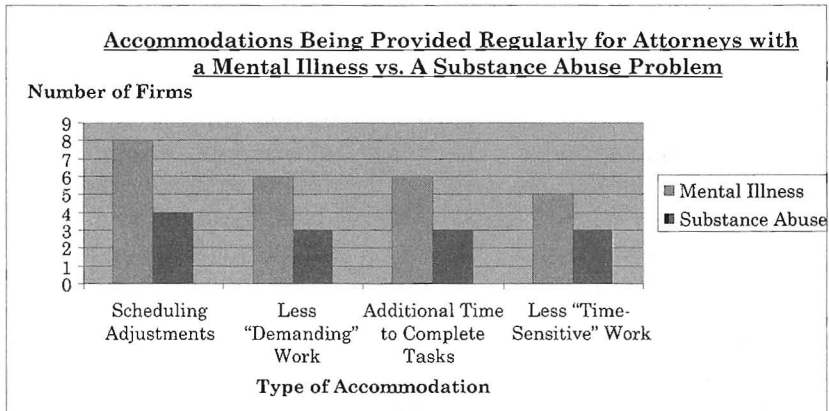


Table 7: Comparison of Results from Questions 8 & 9 from the Stone Survey²²¹

The survey respondents' comments, as summarized in Table 8, reveal that for the attorney with an alcohol or drug problem, the course of action in addressing the situation is more likely to be a temporary leave of absence, as reported by sixty-three percent of the respondents, than a reduction to part-time status, as reported by only fourteen percent of respondents.²²² The reaction of the employer to the attorney with a substance abuse problem reveals that employers are more willing to accommodate and permit continued employment for the mentally ill lawyer than the lawyer with an addiction.²²³ This might be attributed to the fact that society may be more understanding of mental illness than it is of alcohol and drug addiction. It may be that an attorney with a mental illness can still handle the essential functions of the job with reasonable accommodations, while an attorney with a substance abuse problem may be unable to do so. At least, that is the perception of the survey respondents.²²⁴

When asked what action a firm would take upon learning that an attorney had a substance abuse problem, the most frequent response was to encourage that attorney to enter counseling or a treatment program.²²⁵ This response reflects the point often expressed in court decisions that the disabled lawyer

221. Compare *id.* at Question 8, with *id.* at Question 9.

222. See *id.* at Question 10.

223. Compare *id.* at Question 8, with *id.* at Question 9.

224. Compare *id.* at Question 8, with *id.* at Question 9.

225. *Id.* at Question 10; see *infra* tbl.8.

should take action to address the disability.²²⁶ It is promising that only four of the law firms responding to the survey would immediately discharge a lawyer diagnosed with a substance abuse problem.²²⁷

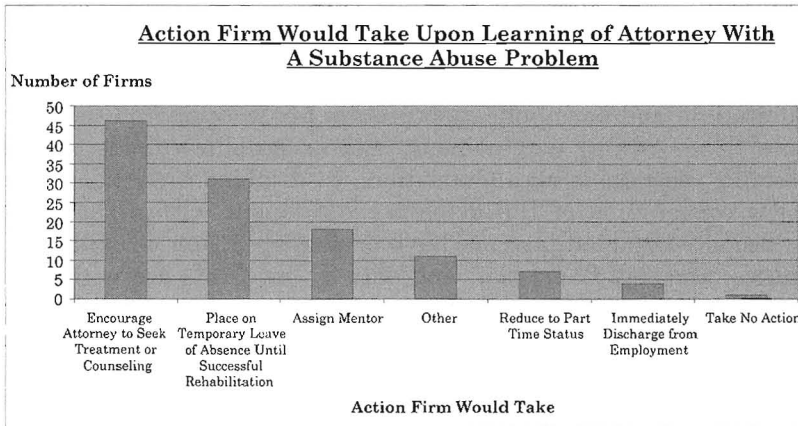


Table 8: Results from Question 10 from the Stone Survey²²⁸

Almost half of the respondents commented on Question 10 of the Stone Survey,²²⁹ which asked participants about the actions that their firm might take upon learning of an attorney with a substance abuse problem.²³⁰ Many of the comments said that this question is heavily dependent upon the circumstances.²³¹ One attorney responded, “[m]y firm would likely support that lawyer in his/her efforts to eliminate the problem, but only so long as the lawyer was likewise using his/her own best, and successful, efforts to end the problem.”²³²

Conclusion

The purpose of the ADA is to eliminate discrimination against persons with physical and mental disabilities.²³³ A

226. See, e.g., *In re Eckberg*, 733 N.E.2d 1244, 1254 (Ill. 2000) (noting that it was unnecessary to impose burdensome conditions on a disabled lawyer who established regular attendance at treatment).

227. Stone, Results, *supra* note 26, at Question 10.

228. *See id.*

229. *See id.*

230. Stone, Survey, *supra* note 25, at Question 10.

231. *See* Stone, Results, *supra* note 26, at Question 10.

232. *Id.*

233. 42 U.S.C. § 12101(b)(1) (2000).

primary way to accomplish this goal is to encourage the inclusion of disabled individuals in mainstream American society. Integration should start in elementary and secondary schools. Disabled students who successfully navigate the educational system and pursue a legal education often receive reasonable accommodations in their educational programs that level the playing field and permit opportunities for success.

Disabled law graduates who have passed the bar examination and bar application process are knocking on the door of law firms seeking employment. Encouraging law firms to hire and offer reasonable accommodations to disabled lawyers should be the cornerstone of the disability movement within the legal profession. Disabled lawyers have a wide spectrum of skills and abilities, and will flourish if, and only if, law firms are willing to provide a welcome mat for disabled attorneys, by exhibiting flexibility and open-mindedness to these attorneys. The success that disabled students have shown will expand with an increase in the hiring by law firms of individuals with disabilities. The goals of the ADA in fulfilling the American dream will be a reality. All of us will be watching our nation's law firms take the lead.

Recommendations:

- 1) Encourage law schools to accept and provide reasonable accommodations to disabled students.
- 2) Encourage bar admission and licensing boards to be flexible in accommodating disabled lawyers.
- 3) Encourage legal employers to offer reasonable accommodations to disabled lawyers.
- 4) Demonstrate to the court system that disabled lawyers can perform essential functions of the job.
- 5) Encourage flexibility among employers, asking them to provide scheduling adjustments, time off for counseling, mentor systems, supportive aids or secretaries and job restructuring.
- 6) Encourage employers to make all reasonable efforts to compensate the disabled lawyer who requires additional time to complete certain tasks at the same rate as a non-disabled lawyer, by either providing additional support services or co-counsel, or by recognizing other skills and talents of the disabled lawyer that are not readily seen in the billable hour system.
- 7) Support the ABA's recent recommendation of granting conditional admission to lawyers who experience

substance abuse issues or mental illnesses and are in the process of demonstrating successful rehabilitation or treatment.

APPENDIX A**ATTORNEYS WITH DISABILITIES SURVEY**

Donald Stone

1. In what state do you practice law?

2. How many lawyers are currently employed in your firm?
 - ___ 1
 - ___ 2-9
 - ___ 10-24
 - ___ 25-49
 - ___ 50-99
 - ___ 100-149
 - ___ 150-249
 - ___ 250-999
 - ___ 1000 or more

3. Are you aware of any attorneys currently employed in your firm with the following disabilities? (Please indicate the number of attorneys with the following disabilities)

	0	1	2-5	6-10	11 or more
Diabetes					
Epilepsy					
Hearing					
HIV/AIDS					
Learning Disability					
Manual Dexterity					
Mobility					
Psychological/Mental Illness					
Respiratory					
Speech					
Substance Abuse (Alcohol or Drug Addiction)					
Vision					
Other					
Other (Please Specify)					

4. Are you aware of any of the following reasonable accommodations (modifications or adjustments) being provided to a disabled lawyer at your law firm? (Check all that apply)

- Access for service animals
- Accessible technology or equipment
- Accommodations for hearing impaired
- Accommodations for visually impaired
- Architectural accessibility to access the law firm (physical barrier)
- Interpreters
- Job restructuring
- Leave time to attend AA, NA, or counseling sessions
- Modification of equipment or devices
- Modification of office lighting
- Modification of work schedule
- Note takers
- Readers
- Secretarial support services
- Transportation assistance
- Voice activated computer software
- Working refrigeration for people on medicine
- Other

Comments:

5. For lawyers with learning disabilities, several challenges may be presented to provide reasonable accommodations. Which of the following have been provided by your law firm?

Never	Occasional	Regular Basis	N/A
	(once/year)	(weekly)	

- Additional admin. support staff
- Additional time to complete tasks
- Assign co-counsel to assist
- Less "demanding" cases
- Less "time sensitive" work
- Scheduling adjustments
- Other

Comments:

Less "time sensitive" work
 Scheduling adjustments
 Other
 Comments:

9. For lawyers with substance abuse (alcohol or drug addiction), several challenges may be presented to provide reasonable accommodations. Which of the following have been provided by your law firm?

	Never	Occasional (once/year)	Regular Basis (weekly)	N/A
Additional Admin. support staff				
Additional time to complete tasks				
Assign co-counsel to assist				
Less "demanding" cases				
Less "time sensitive" work				
Scheduling adjustments				
Other				
Comments:				

10. If you were informed that a lawyer in your law firm was diagnosed with alcoholism or substance abuse, what would you (your firm) do? (Choose all that apply)

Assign mentor
 Encourage attorney to seek treatment or counseling
 Immediately discharge from employment
 Place on temporary leave of absence until successful
 rehabilitation
 Reduce to part time status
 Take no action
 Other
 Comments: