

The Hennepin County Bar Association,
Diversity Committee,
Disability Subcommittee

**Report and Model Guidelines
for The Integration of Attorneys and Law Students
with Disabilities into the Legal Profession**

I. Introduction

This Report and Model Guidelines were produced on behalf of the Hennepin County Bar Association ("HCBA") by the HCBA Diversity Committee Disability Subcommittee ("Subcommittee"), a group composed of attorneys and law students, both with and without disabilities, and other disability rights advocates.

The Subcommittee inquired about the treatment that lawyers with disabilities received from prospective employers and employers in the following areas: (1) the hiring process, including job interviews; (2) conditions of employment, including treatment on the job, accommodations, attitudes of co-workers and supervisors, promotional opportunities, and retention; and (3) whether or not the onset of disability preceded or succeeded employment and if that factor made a difference in their treatment by employers.

The Subcommittee applied the Minnesota Human Rights Act (MHRA) definition of disability to their analysis. The MHRA definition is substantially similar to the definition used by the EEOC. Under the MHRA, a disability is "any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment." Minn. Stat. § 363.01, subd. 13. The MHRA provides that an employer with fifteen or more employees must "make reasonable accommodation to the known disability of a qualified disabled person or job applicant unless the employer . . . can demonstrate that the accommodation would impose an undue hardship on the business . . ." *Id.* § 363.03, subd. 1(6). A qualified disabled person is "a disabled person who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question." *Id.* § 363.01, subd. 35.

A qualified disabled person should not be confused with a person who is disabled from working. A qualified disabled person is ready, willing and able to work, and may need reasonable accommodation from his or her employer occasionally or on a regular basis.

The Subcommittee composed a survey which was printed and distributed to lawyers through The Hennepin Lawyer and a direct mailing to members of the HCBA Diversity Committee. Approximately 20 lawyers responded to the written survey. The Subcommittee also held two public hearings where some lawyers who had responded to the questionnaire further elaborated on their answers, and new respondents came with information as well. The Subcommittee, through the survey and interview process, was in contact with persons with disabilities who were either lawyers or law students.

Each Subcommittee member also knew lawyers or law students with disabilities whom we each contacted and encouraged to submit material. Our experience was that many lawyers and law students with disabilities do not want to openly discuss their disabilities. They compensate, sometimes at great sacrifice to themselves, for their disabilities and do not request accommodations. We believe this data is accurately representative of the experience of disabled lawyers in Hennepin County and across Minnesota.

The results the Subcommittee obtained corresponded with the results reported by the San Francisco Bar Association's Disability Rights Committee. That committee had access to a larger population of lawyers and law students with disabilities from which to gather information. They gathered their information using a similar process and published their report in their Report and Model Guidelines for Integration Into The Legal Profession of Law Students and Attorneys with Disabilities, November 1994. We used the recommendations of that report as well as the ideas contributed by our own respondents to arrive at the recommendations and guidelines presented in this report.

Because many of the Subcommittee members themselves have a disability or know attorneys with a disability, the report reflects personal experiences, anecdotal evidence and the statistical information available from the responses to our questionnaire and interviews.

The Disability Subcommittee has concluded that people with disabilities have been discriminatorily excluded from full participation in the legal profession. The Subcommittee has concluded that legal employers must consciously and forthrightly confront and overcome the ongoing, profound barriers to equal opportunity which impede the progress of people with disabilities in the profession.

This report provides legal employers with a practical blueprint to enhance the hiring, accommodation, retention, advancement, and attitudes toward law students and attorneys with disabilities. This report and the accompanying guidelines describe the nature and pervasiveness of the discrimination facing those in the profession with disabilities and propose comprehensive and realistic solutions. The HCBA encourages bar associations and legal employers across the state to join together in a long-overdue initiative to create equal employment opportunity in our profession for law students and attorneys with disabilities.

II. The Numbers Are Increasing

The number of law students with disabilities has been rapidly increasing the last few years. Since 1991, the number of enrolled law students who reported a disability has more than tripled. This reflects a percentage growth from .5% to 1.8% of the total law school population. The numbers are expected to continue to grow. There are at least three reasons for this. First, 'mainstreaming' and other programs in the educational domain have improved opportunities for students with special needs to achieve on an equal basis with their peers. Second, public awareness of disability issues and rights has increased. Finally, more sophisticated technology is making it easier for students with disabilities to enter law school.

The exact number of law students with disabilities is still not available. It was only recently that law schools began to keep statistics on disabled students, and the reports are based on self-identification by the students. Nevertheless, it is clear that Minnesota law schools are currently sending a greater number of graduates with disabilities into the legal marketplace.

The number of attorneys in the workforce with some type of disability is certain to increase in the future, because of the aging of the "baby boomer" generation. As the relative number of older employees working increases, so will their disabilities and the need for accommodations. Employers will witness a growing number of their employees developing various disabilities, and, accordingly, must be able to accommodate them pursuant to the provisions of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, and the Minnesota Human Rights Act, ("MHRA"), Minn. Stat. § 363.03, subd. 1(6).

As a corollary to this phenomenon, with greater advances in medicine, more employees will survive major illnesses and accidents and return to work, even though they may have some remaining impairment. Medicine now offers these people the ability to adapt and perform on the job despite these difficulties. Numerous devices facilitate continuing job performance, thereby ensuring the increased presence of people with disabilities in the legal workplace.

Finally, the civil rights movement by and for people with disabilities has resulted in greater recognition of their right to full enjoyment of equal opportunity, including employment. As a result of concentrated lobbying efforts dating from the 1970s, federal and state legislation has been passed, first barring discrimination in housing and education, later expanding access to public buildings. With the passage of the ADA and analogous state legislation, non-discrimination in, and equal access to, public accommodations and employment opportunities is required.

Technological advances have also made the legal profession a viable option even for those who are severely disabled. The use of on-line computer technology and information systems like CD-ROM replaces bulky and heavy books and assists in the organization of information. Many lawyers increasingly use inexpensive e-mail and faxes to file papers and transmit information. They can appear telephonically at hearings or meetings, obviating the need to be physically present in court or to travel to meetings. Moreover, new communication technologies increase job flexibility so that lawyers can more easily work at home and better control the hours they work and their work environment. Lawyers with disabilities can capitalize on these advances, which benefit the entire profession, and use them to ensure their full participation in all aspects of the law.

People with disabilities have developed self-advocacy skills and individualized accommodation technologies in the process of asserting their own civil rights. Because a disability affects so many facets of life, people with disabilities constantly have had to fight just to obtain medical attention, government assistance, transportation, and a multitude of other services easily accessible to able-bodied people. It is only natural that many persons with disabilities have deliberately chosen law where these advocacy skills are valued. Moreover, they bring to their positions added value in their unusually high level of knowledge and ability to access state-of-the-art technology.

III. Pervasive Employment Discrimination Persists Against Law Students and Attorneys with Disabilities

Available evidence demonstrates that employers refuse to hire attorneys and law students with disabilities despite their qualifications. Nationally, the National Association for Law Placement (NALP) reports that the employment rate of recent law graduates with disabilities is much lower than that of other graduates. Surveys consistently show that attorneys with disabilities, despite their qualifications, are greatly disadvantaged in the job market, and that their starting salaries are lower than those of their non-disabled colleagues statewide.

The Disability Subcommittee found that in Hennepin County attorneys with disabilities experience difficulty in being hired if their disability precedes their hire. Attorneys in Hennepin County reported discrimination beginning with the interview process. The respondents observed:

“Once my disability was revealed, the tone of the interview changed dramatically from friendly to suspicious of me.”

During interviews, when employers learned of the applicants’ disability, the employers acted “quizzically,” “surprised,” and “clammed up and lost all eye contact.”

Some legal employers have openly welcomed disabled attorneys at job interviews:

“The interviewer was quite accommodating, and asked what physical changes were needed in the office [to accommodate the attorney’s mobility impairment].”

Respondents who were successful in being hired indicated that they used the same job-seeking skills as non-disabled applicants, such as networking. They also recommended:

“Being honest about my need for a barrier free workplace, but also stressing my ability to diversify the office and help solve the interviewer’s current hiring needs.”

Eighty percent of the attorneys who responded to our questionnaire and were not hired by an employer who was aware of their disability, believed that their disability was a factor in the employer’s refusal to hire them:

“I was told by the interviewer that I was not being hired because of my disability [blindness].”

“The employer wrongly presumed that my disability [depression] was incurable and would always interfere with my ability to perform the job.”

Reports from the National Association for Law Placement ("NALP") on law school graduates have identified a number of differences in the employment of otherwise equally situated candidates differing only with respect to their disability status. NALP found, for example, that six months after graduation legal graduates with disabilities were far more likely to be unemployed than other graduates. If they had found a job, they were far less likely to have obtained full-time legal positions. Of those few graduates with disabilities who did find full-time employment, less than half had jobs in the private sector. In contrast, of the employed graduates without disabilities, almost three-quarters had found full-time work in the private sector.

Attorneys who became disabled after being hired were also subjected to discrimination by their employers. Respondents noted that their requests for accommodation were denied, or they were made to feel that they were not living up to the office standard because they now had a disability.

The survey indicated that this post-hire disability discrimination seems to be particularly evident if the disability is invisible. Attorneys with a non-visible disability, such as a learning disability, chronic fatigue immune dysfunction syndrome, or subtle manifestations of multiple sclerosis or other diseases, face an additional hurdle. They must decide when, if ever, to "come out" and tell their employer, co-workers, or clients about their disability. As is often reported in the racial, sexual orientation and gender contexts, many of these individuals realistically fear that employers will assume that clients will refuse to accept a law student or attorney with a disability. Because of these reactions, a lawyer with a non-visible disability may choose not to reveal it, risking failure on the job thereafter because of the unmet need for accommodations.

This "Catch-22" may be created: if an attorney reveals his/her need for accommodation, s/he may not get it. The employee may then have to respond by working twice as hard, which in turn convinces the employer that no accommodation really was necessary. The attorney is caught between choosing to convince the employer s/he has a disability that can be inexpensively accommodated, or, instead, hiding the disability and making heroic efforts to compensate. The latter may work in the short term but not the long run. This points to the need for all employers to have a defined accommodation process for ensuring appropriate and feasible accommodation of employees with disabilities. Actively demonstrating that the employer understands the process of accommodating a disability will prevent this dilemma from occurring.

Sixty-seven percent of our respondents needed accommodations to perform their jobs. Eighty-three percent requested accommodations from their employers, and only half of those were given the accommodation by their employers.

"I needed time to consult with a physician, but my employer denied my request."

An attorney with attention deficit disorder asked an "employer to tape record instructions to be sure I understood them, but the employer refused."

An attorney with a mobility impairment was criticized for being "inaccessible."

Some courts made an attorney with a mobility impairment, "appear to continue matters."

"I needed additional medical leave, but felt pressured from my employer to limit my leave time. So I returned to work sooner than I should have."

Some of the attorneys who did receive the accommodation such as handicapped parking and changes in job assignments, reported that they had to "struggle" for them.

Our respondents also encountered discrimination in promotion and retention from their legal employers. Sixty-four percent of our respondents did not receive a promotion from an employer who was aware of their disability. All of the attorneys who were not promoted believed that their disability was a factor in the employers' refusal to promote them:

[My] "employer has deferred my eligibility for partnership even though my credit for years of service and billable hours qualify me for promotion."

"I am expected to prove I am not at all impaired by my disability before I can advance at the firm."

Disabled attorneys also encountered difficulty retaining jobs. Sixty-four percent of the attorneys who responded to our questionnaire commented that they had difficulty retaining positions because of their employers' attitudes. For example, respondents observed:

[Due to the exhaustion caused by my chronic fatigue syndrome, I] "came in late, but I always made up the time. Even though I never missed a deadline, I was disciplined, put on probation, and eventually fired."

[When my employer learned of my disability, my] "responsibilities were removed" and I was subjected to a "demotion in pay." "It has become clear that my boss does not perceive that there is any career track for me—I am pursuing other opportunities."

Of the respondents whose disability occurred after their hire, ninety percent of the respondents encountered a change in the attitudes and expectations of colleagues with respect to their ability to perform their jobs. Sixty-four percent had difficulty with the attitudes and expectations of their colleagues:

Colleagues "resented" the disabled attorney for the accommodation received.

"All of a sudden it was said I couldn't perform the job duties, although prior to this I had received very high praise."

[When my employer found out about my disability, they] "seemed to increase the hurdles to complete the work."

"My employer developed a self-fulfilling prophecy that I would fail, even when I was successful in my practice, and my performance was normal for any attorney."

The employer wrongly presumed that any minor human mistake I made was caused by my disability.”

“Lawyers as a class are among the biggest perpetrators of the stigma and ignorance surrounding mental illness, which is why most of us remain in denial longer than members of other professions do.”

However, some employers used the disabled attorney’s status to create a positive perception with its staff:

“My joining the firm was perceived as a positive move for the firm and announced to the present staff in this vein.”

Nevertheless, in the end, an employer’s lack of comprehension of, and sensitively to, a disability can become a major obstacle to long-term success on the job.

IV. Practical Tools Exist to Promote the Hiring, Promotion, Advancement and Accommodation of Attorneys and Law Students with Disabilities

Although the ADA and analogous state laws provide the legal means to fight overt discrimination, subtle attitudinal barriers are much harder for attorneys with disabilities to overcome. Many employers operate from archaic and negative misconceptions of people with disabilities and the cost of accommodating them in the workplace.

Practical tools and innovative programs to assist employers in these and other areas relating to hiring, accommodating, retaining and advancing attorneys with disabilities, include:

A. Hiring Practices

Employers can take the first step by actively soliciting applications from people with disabilities. Recruitment letters should be sent to career services directors of the law schools where employers plan to interview, stating in their job advertisements that people with disabilities are encouraged to apply. The attached Guidelines for Interviewing Law Students and Attorneys with Disabilities discuss job advertisements, resume review, interview accommodations, interview approaches, and hiring criteria.

B. Policies for Providing Reasonable Accommodations for Attorneys

In order to equalize job opportunities for people with disabilities, federal and state laws have adopted the standard of “reasonable accommodations.” The ADA, for example, requires that employers make reasonable accommodations to enable a person with a physical or mental disability who otherwise meets the minimum qualifications to perform the essential functions of the job.

Employers often avoid hiring attorneys with disabilities, despite their availability and competence, because of a misplaced fear that the necessary accommodations will be very expensive. The cost of accommodations can vary widely. According to a 1998 report from the Job Accommodation Network, workplace investments are surprisingly inexpensive. Accommodations for workers with disabilities cost their employers:

- 20% cost their employers nothing at all;
- 48% cost \$1 to \$500;
- 12% cost \$501 to \$1,000;
- 5% cost \$1,001 to \$1,500; and
- 3% cost \$1,501 to \$2,000;
- 9% cost \$2,001 to \$5,000; and
- 3% cost over \$5,000.

For more information, see the Job Accommodation Network web site at <http://janweb.icdi.wvu.edu>.

One reason many accommodations cost nothing at all is that simply changing the organization of an office can sometimes enable a person with a disability to effectively perform the essential functions of the job. For example, rescheduling work hours or redistributing the workload may provide sufficient support.

It is important for employers to realize that they are not required to adopt the most expensive accommodation available. The accommodation must simply be effective for the task or essential job function at hand. In fact, employers are often surprised at how little is needed, and how inexpensive it is. In the Committee's surveys some noted that the accommodations given to attorneys with disabilities were no more than those given to any other attorney (e.g., computer, dictaphone, access to on-line research and secretarial assistance).

A small business, including a legal employer, may be eligible for tax credits when it modifies its workplace. In some situations, employees with disabilities who need specialized equipment may bring their own tools with them. The attached Reasonable Accommodations discuss specific categories of disabilities and offer examples of accommodations which might be appropriate. These accommodations range from office reorganization and management support to adapted office furniture and equipment.

C. Model Guidelines and Personnel Policies for Legal Employers

Recruitment and retention of the most talented attorneys by employers requires their adoption of personnel policies that respond to the needs of people with disabilities. As greater numbers of students with disabilities graduate from law school, and as the population ages, employers need to recognize and eliminate discriminatory barriers to advancement. Accordingly, the Subcommittee developed the attached Model Guidelines and Personnel Policies, which integrate

general principles of fairness, moral duty and social obligation with specific legal obligations. It is a guide for legal employers in their efforts to achieve full equality in the workplace.

There are many personnel policies that have an impact on attorneys with disabilities. Though not a complete list, such personnel policies include: health, disability, and life insurance; part-time and flex-time work schedules; paid time off or use of vacation time for unexpected events; parental, disability, and other leaves of absence; short-term, long-term, and permanent disability; and, of course, reasonable accommodation policies.

Without supportive guidelines and personnel policies, employees with disabilities are forced to work below their capacity as they struggle with an inefficient or counter-productive work environment. These employees often opt to leave a non-supportive environment, permanently depriving the employer of their skills, training and unique approaches and talents.

D. "Breaking Down Barriers: Overcoming Discrimination Against Lawyer with Disabilities"

Award-winning director Abby Ginzberg and the Bar Association of San Francisco produced a video highlighting attorneys with disabilities in the workplace. "Breaking Down Barriers" contains conversations with attorneys who are sight or hearing-impaired, mobility-impaired, learning-disabled, or who have a chronic illness or psychiatric disability. The attorneys, and in some cases their employers, discuss the obstacles they faced, and how they overcame them. In addition, the video provides a dramatized scenario of a law firm interview of a graduating student with a disability. "Breaking Down Barriers" is available to all HCBA members. Those wishing to borrow or seeking information on ordering the videotape should call or write HCBA, Minnesota Law Center, Suite 390, 600 Nicollet Mall, Minneapolis, MN 55402-1021. Phone: (612) 752-6600. Fax: (612) 752-6601. www.hcba.org.

MODEL GUIDELINES AND PERSONNEL POLICIES TO ACHIEVE EQUAL EMPLOYMENT OPPORTUNITY FOR ATTORNEYS WITH DISABILITIES

Law firms, legal departments and other legal institutions vary considerably in structure, management, philosophy and culture. Therefore, hiring, retention, advancement and compensation of attorneys with disabilities must be tailored to address each employer's situation. Every organization should first examine its internal environment when formulating policies and procedures that enable employees with disabilities to advance in their careers on an equal basis. However, certain principles must pervade every facet of employment. Accordingly, the guidelines and recommendations listed below integrate the general principles of fairness, moral duty, social obligation and legal structures so as to guide legal employers toward full equality in the workplace.

GENERAL EMPLOYMENT POLICIES AND PRACTICES

RECOMMENDATION 1

Management Commitment to Equality and Diversity

To be effective, an organization's commitment to equality and diversity must begin at the top. This commitment requires a management decision to adopt policies and procedures to ensure that applicants or employees with disabilities receive fair and equal treatment in recruitment, hiring, retention, advancement and compensation. Each entity should designate a manager attorney or non-attorney of substantial authority to assume responsibility for the organization's efforts to meet these goals. At least one senior-level attorney should have an active and accountable role in these efforts.

RECOMMENDATION 2

Anti-discrimination and Equal Employment Opportunity Policies

Employers should articulate, in all appropriate publications, policies, and procedures, the organization's commitment to and policy of equal opportunity in employment, which should specifically prohibit discrimination, including harassment, on the basis of disability.

SUGGESTED EEO POLICY

It is the policy of [employer] to provide equal employment opportunity for all applicants and employees. [Employer] does not discriminate on the basis of race, color, creed, religion, sex, ethnic or national origin, age, disability, marital status or sexual orientation. [Employer] also makes reasonable accommodations for employees and applicants for employment with disabilities. Requests for such reasonable accommodation should be made to [designate supervisor or office administrator, human resources director]. This policy applies to all areas of employment, including recruiting, hiring, training, promotion, compensation, benefits, transfer, and work sponsored social and recreational programs. No employee, supervisor or manager shall harass any other employee on any of the bases listed above.

Any employee, supervisor or manager who is found, after appropriate investigation, to have engaged in discrimination or harassment of another employee will be subject to appropriate disciplinary action, up to and including termination.

RECOMMENDATION 3

Training

Legal employers should conduct educational and training programs and provide employees with written guidelines intended to educate all employees, including non-lawyer staff, about disability related issues. Workshops, led by experienced outside consultants, employees with disabilities, or others within the firm, are a first step in focusing on issues affecting attorneys with disabilities. Topics could range from stereotypes encountered by individuals with disabilities, the effects of these stereotypes on personal relations, accommodations available to disabled employees, and the civil rights of people with disabilities. In addition, management should be educated on the existence of tax credits to help pay for these workshops.

It is better to provide consistent, regular training. If staff sensitivity training is being contemplated in connection with the new hire of a person with a disability, or because a current employee recently became disabled, the wishes of that employee must be considered.¹

Legal training requirements for attorneys could be satisfied by CLE classes on issues including Disability Law and elimination of discrimination based on disability, which may meet the "Elimination of Bias," requirements for CLE credits. These standards can be obtained by contacting the State Board of Continuing Legal Education at (651) 297-7100.

Part of the training could include a viewing of "Breaking Down Barriers," a video highlighting attorneys with disabilities in the workplace produced by the the San Francisco Bar Association. This video is available to all HCBA members, and may be borrowed by contacting, HCBA, Minnesota Law Center, Suite 390, 600 Nicollet Mall, Minneapolis, MN 55402-1021. Phone: (612) 752-6600. Fax: (612) 752-6601. www.hcba.org.

RECRUITMENT AND HIRING

RECOMMENDATION 4

Representation on Hiring Committees

Hiring is the single most important area of concern to individuals with disabilities. At this stage they are often overtly or subtly precluded from obtaining work, and thus never have the

¹ It is possible that the employee would feel embarrassed and very conspicuous to have such emphasis placed on his/her disability. Many people with disabilities feel so strongly about fitting into the work place as inconspicuously as possible, that they might turn down a job where they knew such training prior to their hire was taking place without being consulted. Generally, it is better to have such staff training tied to over-all diversity training and/or CLE credits, and not tied specifically to a new hire.

opportunity to demonstrate their true worth. In order to assure that individuals with disabilities are dealt with fairly in their bid for employment, employers should train all members of the hiring committee regarding the Americans With Disabilities Act and the Minnesota Human Rights Act. This training would include a review of the Acts and regulations as written, which includes some discussion of acceptable questions to applicants, plus training by a professional who can explain the full implications of the law. See 42 U.S.C. §§ 12101 – 12213 (1994); Minn. Stat. § 363.01 - .15 (1998); 29 C.F.R. § 1630 (1998). EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act; Mar. 1, 1999; A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992).

On March 1, 1999, the EEOC released a comprehensive policy guidance entitled “Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disability Act.” It also released a shorter version of the guidance entitled “Small Employers and Reasonable Accommodation.” These regulations address requesting reasonable accommodation, accommodations for job applicants and related to job performance, and undue hardship issues. They also contain an appendix containing resources for locating reasonable accommodations.

The training should also include discussion among the members of the committee themselves to explore any barriers that the members perceive to exist with respect to the hiring of people with disabilities, and the institutional responses available in order to ensure that the people with disabilities have an equal opportunity with their peers. Active participation of people with disabilities in these discussions can often change the dynamics of the committee, confronting and challenging overt or covert bias on the part of committee colleagues when necessary.

RECOMMENDATION 5 **Recruitment Letters**

Legal employers should actively recruit lawyers with disabilities, just as they now recruit lawyers who are members of other under-represented groups. The Subcommittee was unable to locate any organized groups of law students with disabilities at any of the three law schools in Minnesota at the time the report was drafted. However, employers may contact the law school career services offices for assistance and ask them to send their letter to students or recent graduates with disabilities. In addition, employers can advertise employment opportunities in a newspaper written by and for persons with disabilities, such as Access Press, 1825 University Ave. W., St. Paul, MN 55104. If an employer’s search is nationwide, the employer may contact the ABA Subcommittee of the Commission of Mental & Physical Disabilities, 750 North Lake Shore Drive, Chicago, IL 60611. (312) 988-5000. <http://www.abanet.org/disability>. In general, advertisements for job announcements should state that “persons with disabilities are encouraged to apply.”

Letters offering interviews to applicants should include the statement, "If you are a person with a disability and need a reasonable accommodation, please inform [name], of the personnel office.

Your request for accommodation will only be shared with people who directly need to know of the request in order to provide the accommodation, and will otherwise remain confidential."²

RECOMMENDATION 6

Clerkship Program for Law Students with Disabilities

The Disability subcommittee recommends that legal employers target students with disabilities in their clerkship programs. The premise of a clerkship program for students with disabilities is that opportunities will remain restricted if conventional means and criteria for selection continue. Because legal employers often rely upon clerkship programs in recruiting attorneys, it is essential that law students with disabilities be given an opportunity to participate in these programs.

The purposes of the clerkship program should be: a) to expose law students with disabilities to the work, requirements, and culture of the law firms or other legal employers; b) to help students develop skills, confidence, resume credentials, and professional contacts for the future; c) to encourage students to consider the employers in their career planning; d) to introduce law firms to talented students who might not have been selected for the employers' summer programs under traditional criteria and to demonstrate that these students can successfully meet the demands of law practice; e) to expose employers to law students with disabilities and thereby raise the awareness of people within the firm; and f) to educate legal employers regarding the minimal resources often involved in providing reasonable accommodations for law students and lawyers with disabilities.

RECOMMENDATION 7

Welcome Packets

If a "Welcome Packet" is given to new employees or summer associates, the packet should include the firm's policy of non-discrimination on the basis of disability. In addition, employers should provide information about local community resources for the disabled in the packet, including, the local Center for Independent Living, Courage Center, community health referral services, attendant referral services, transportation services, housing services, and organizations that offer recreation programs for people with disabilities. See Appendix. Welcome packets should be presented to new employees in sufficient time to allow contact with the resources, if necessary.

RECOMMENDATION 8

Employer Resumes

Employer information, such as resumes and brochures, should include disability-related pro bono services performed by members of the organization, e.g. service on the board of directors of a

² For example, an applicant with food or other allergies might request that certain foods be available or absent at a meal; an applicant with environmental illness might request that people in the office not wear perfume or aftershave. In each case, the accommodation can be provided without identifying the applicant with the disability.

disability-related organization or the Minnesota Disability Law Center. In addition, if attorneys have provided pro bono representation on particular issues involving disability, that information should be included.

RETENTION, ADVANCEMENT AND COMPENSATION

RECOMMENDATION 9

Mentoring Program

As noted in the HCBA Glass Ceiling Task Force Report, “mentoring is recognized as one of the most critical factors in developing a full practice or advancing within an organization.”³ This is especially true for people with disabilities and other groups that have traditionally been excluded from the networking process in the workplace. The mentor can serve as a resource in numerous ways: as a teacher of the law and lawyering; as a source of business opportunities and career-enhancing work assignments; as a source of feedback and publicity for the newer lawyer's accomplishments; as a link to the organization; as a troubleshooter; as a career counselor; as a source of collegiality and friendship; and as an advocate for the newer lawyer's advancement and promotion.

The mentor should be a partner or comparable-level supervising attorney who may or may not be in a supervisory relationship with the new lawyer. It is important that the mentor have the necessary position and authority, and the commitment, ability and sensitivity, to fulfill the role effectively. It is important that mentors allow for the commitment of time it will take to make such a program effective. Mentoring programs are worth the time commitment for all new lawyers since they help to provide more productive and committed employees.

RECOMMENDATION 10

Non-Discrimination In Performance Evaluations, Work Assignment and Grievance Procedures

An employer's anti-discrimination policy with regard to people with disabilities is given life through its application to existing personnel. In performance reviews employers should promote fairness and objectivity by making special efforts to identify and overcome subtle biases in the evaluation of attorneys with disabilities. Employers should apply fair, uniform, and objective standards to all employees and not presume there will be lowered expectations for disabled lawyers. If the employer believes that there is a problem in performance which is specifically related to the disability of the attorney, that problem should be discussed at length with the employee. Accommodations should be discussed and/or tried and every attempt should be made to resolve the problem before any negative action is taken.

Similarly, presumed or actual client preferences must not play a role in the assignment of work to attorneys with disabilities, just as racist or sexist client biases are not accommodated by the legal employer. If an employer exhibits confidence in an employee, the client is likely to do the same.

³

Hennepin County Bar Association, Glass Ceiling Task Force Report 43 (1993).

To ensure that discriminatory behavior can be remedied when it arises, an employer should provide employees with a neutral grievance procedure. Such a procedure should indicate that issues involving discrimination on the basis of a person's protected class status are internally grievable issues under the procedure. It is recommended that an employer assign persons to investigate and resolve grievances who are not involved in the actual evaluation procedure of the employees but who have the authority within the office to review such evaluations.

RECOMMENDATION 11

Social Function Policy

Employers should establish a policy, communicated in personnel manuals, orientation sessions and event planning meetings, stating that office functions and other employer-sponsored events must be accessible to all employees, including those with disabilities. To facilitate this, employers should make all event planners, whether internal or external to the organization, aware of this accessibility requirement. Any invitations or other communications regarding such events should state that the event is accessible, e.g., "If you are a person with a disability and need a reasonable accommodation, please inform [name]." Name a specific contact person to insure that the accommodations will be made. Ideally, employers will plan activities that include all people, understanding that they might need assistance.

EMPLOYEE BENEFITS

RECOMMENDATION 12

Insurance Benefits

Employee benefit policies are critical in recruiting and retaining valued employees. Employers should ensure that their insurance policies do not discriminate against employees with disabilities. Whenever possible, employers should negotiate with their insurer to remove discriminatory provisions from their insurance policies.⁴

Employers should also have a policy which provides that employees can set aside pre-tax income for medical expenses over and above what they receive from insurance. These policies are easily established and implemented under current law, and the amounts withheld by employees should be set at the maximum amount allowable by the IRS.

⁴ Insurance policies should not have disability-specific caps while allowing unlimited, or much larger coverage to other disabilities. There has been litigation on this issue by persons with AIDS who were given much lower coverage than that given to other disabilities arising during employment. This practice by insurance companies has particularly been discriminatory for persons with mental illness whose conditions could be treated with medication and therapy, but who cannot get adequate coverage to get these treatments in order to successfully return to work.

REASONABLE ACCOMMODATIONS

May 1999

The community of disabled individuals is as diverse as any other community. Thus, legal employers must approach reasonable accommodations for disabilities on a case by case basis, rather than on a disability by disability basis. The Minnesota Human Rights Act⁵ and the Americans with Disabilities Act⁶ both make suggestions about what might constitute a reasonable accommodation in an employment situation. Both statutes are clear that the lists they create are not exhaustive, and that each person's case and need for accommodation must be considered separately. The Subcommittee has developed examples of accommodations which are generally inexpensive, sensible, and could have positive effects on the entire workplace. The Subcommittee has, whenever possible, provided resources in the Appendix which an employer can use to seek more information.

Generally, an accommodation is required only if the employer knows that the attorney in question has a disability, and if the accommodation would allow the attorney to perform the essential functions of his/her job. The ideas and resources listed below are not exhaustive. The Subcommittee does not suggest that an employer should invest in all these resources prior to hiring a person with a disability. It is always best to begin an inquiry about reasonable accommodation with the employee or applicant himself or herself. Often, people with disabilities have very practical suggestions for accommodations which cost much less than those an employer might select without such input. Also, there are no blanket accommodations that work for everyone with a specific disability. If two employees have the same disability, they may need very different accommodations.

Technological Advances & "Closing the Gap"

As offices become more technologically advanced, the workplace often becomes much better for employees with disabilities. Increasingly, law offices are reducing or eliminating the need for attorneys to go to the law books to find information and are instead using computerized legal research tools such as West Law, Lexis and CD Rom. More court documents can be sent by fax or e-mail, and the use of these tools is expected to grow. Hearings are more often conducted using teleconferencing, which is advantageous for attorneys with or without disabilities. Dictaphones, telephone headsets and speaker phones are other generally used office equipment which can work to the advantage of attorneys with disabilities.

The Courage Center has a technology lab which has some of the equipment that is available for people with disabilities. Also, an annual event occurs each October at the Radisson South in Bloomington, Minnesota called "Closing the Gap" where the latest in equipment for all persons with disabilities is displayed and demonstrated. For more information, or to get on the mailing list for the next Closing the Gap Conference, call (612) 341-8299.

⁵ Minn. Stat. § 363.03, subd. 1(6).

⁶ 42 U.S.C. §§ 12101-12213.

Useful National and State Networks

Because the world of technology has expanded so significantly in the past decade, employers may feel overwhelmed trying to determine which resources are both affordable and useful in their workplace. Employers naturally do not want to purchase equipment that ultimately will not be useful to employees. To that end there are two networks, one national and one local, which can provide help to employers. The Job Accommodations Network is sponsored by the National Council on Disabilities. They maintain an information bank on equipment and resources that are considered useful for persons with disabilities. You may reach them at 1-800-526-7234. Also, an ADA Coordinators Network has been established locally. It is unclear how extensive the network will become, but at this time there are 17 participants, companies and public sector employers with ADA responsibilities. It was begun by the ADA Coordinator at American Express and the ADA Coordinator at Northwest Airlines who decided that employers needed to share information about accommodations that had been tried, equipment that was useful, etc. The ADA Network meets monthly to brain-storm solutions to problems involving reasonable accommodations, and to discuss equipment or ideas that have worked in one setting or another. Contact Michelle Jordan at American Express: (612) 671-4596, or Karen Moore at Northwest Airlines, (612) 726-3608.

Employers may also wish to contact ADA Minnesota, which is staffed by a coordinator at Metropolitan Center for Independent Living ("MCIL") (651) 646-0342. ADA Minnesota involves a group of volunteers, consumers, and businesses who advise employers and consumers about disability issues and accommodations. Contact MCIL for more information.

For a handy checklist of building access issues, which consolidates the state requirements under the Minnesota State Building Code, and the federal requirements under the ADA, contact the Minnesota State Council on Disability: 1-800-945-8913, or (651) 296-6785. To get general information, or to order specific documents related to the ADA, call the ADA Department of Justice Hotline: 1-800-514-0301, or download their fact sheets from their web site: <http://www.usdoj.gov/crt/ada/adahom1/htm>.

Online Resources

The Internet provides many resource options for those researching disability related issues. Two Minnesota sites offer information and many links to other sites. The Minnesota State Council on Disability, <http://www.disability.state.mn.us>, offers a wide array of policy and resource information. The Parent Advocacy Coalition for Educational Rights (PACER), <http://www.pacer.org>, offers information on its publications, events and projects as well as state and national links.

The American Bar Association's Commission on Mental and Physical Disability Law, <http://www.abanet.org/disability>, is developing a data base of lawyers who have an interest in disability law. This will include practitioners in the area, lawyers with disabilities and others. This site includes links covering accommodation, organizations, job issues, legal information, directories, disability specific sites and other areas.

In addition to the above sites, many others may be accessed by utilizing a search engine. For most engines an efficient search may be conducted by clicking on "health" on the engine's home page, then "disability." This will usually lead to a number of options to help narrow the search.

SUGGESTIONS FOR REASONABLE ACCOMMODATIONS

Because a wide range of disabilities may require some accommodation, several major categories of disability are discussed below: Alcoholism/Chemical Dependency, Chronic Medical Condition, Environmental Allergies, Hearing Impairment, Learning Disability, Mental Health Disability, Mobility Impairment, Speech Impairment, Soft Tissue Injury, and Visual Impairment. Within each category, the type of injury or disability involved is described including how it might affect job functions and performance. Options for accommodation are then discussed.

Many of these ideas apply to several types of disabilities. Therefore, an employer will get a more complete understanding of possible accommodations by reading the entire section, rather than focusing on the category pertaining to just one disability. As will become apparent, there are many ways to provide effective reasonable accommodations.

Alcohol/Chemical Dependency

Studies over the past ten years have found that lawyers experience a high rate of alcoholism and chemical dependency. Education of the bench and bar regarding the polygenetic illness of alcoholism/chemical dependency could assist in alleviating any stigma related to addiction. Education could also help colleagues to know the recognizable signs of addiction, learn how not to “enable” the addicted colleague, and become familiar with the effective process called “intervention.” Educational information could also address the issue that alcoholism/chemical dependency is a problem that can be treated.

The organization of Lawyers Concerned for Lawyers (‘LCL’) has provided informational meetings regarding substance abuse in law firms of various sizes and in conjunction with a Minnesota Lawyers Mutual CLE on malpractice issues. An educational presentation sponsored by LCL and the Minnesota State Bar Association was given at bar convention in Duluth in 1998. Educational sessions could be conducted “over coffee,” during lunch, or on Saturday morning. Contact LCL, 450 N. Syndicate, Suite 117, St. Paul, MN 55104. (651) 646-5590.

Regarding social situations, legal employers should recognize that participants (including clients, spouses, and other guests) may choose not to imbibe alcohol for a variety of reasons. Therefore, employers hosting such social functions need to make sure that non-alcoholic alternatives are available and easily accessible when planning food and beverage choices, and that employees, clients and guests are not pressured to use alcohol.

Chronic Medical Condition

This category covers a wide range of conditions such as diabetes, epilepsy, cancer, heart disease, kidney or liver disease, HIV/AIDS, multiple sclerosis, muscular dystrophy, asthma, and hypertension.

The accommodations for persons with chronic medical conditions are varied. For example a person with heart disease might have trouble climbing stairs, while someone with multiple sclerosis might have reduced vision. (See the Mobility, Visual, and Hearing Impairment categories for a more detailed description of some accommodations these chronic medical conditions might require).

1. **Co-worker assistance.** Employees who are diabetic may face rare occasions when they go into insulin shock. Employers will want to discuss with the employee known to be diabetic what that person's medical plan is with regard to dealing with such rare occasions. If the employee seems to be losing consciousness, emergency medical attention should be sought and 911 should be called. For further information, contact the American Diabetes Association of Minnesota. (See appendix). It should be emphasized that most persons with diabetes have the condition under control and it would be rare to have to deal with this issue.

Attorneys who experience seizures or similar severe reactions generally will not need accommodation until those seizures or reactions occur. Such individuals usually have a protocol to follow in the case of a seizure or reaction and others in the work place may need to assist. Employers should discuss the employee's medical plan with the employee. For example, an employee may need assistance with an injection when they suffer a severe allergic reaction. In addition, accommodations can sometimes be made in advance to avoid a seizure. For example, work place conditions such as flickering lights which could trigger a seizure may need to be corrected. For information on accommodations for epileptic seizures, contact the Minnesota Epilepsy Foundation for further information, particularly the Training and Placement Services program, (TAPS) which is geared toward helping persons with epilepsy become employed. Contact TAPS at (651) 646-8675.

2. **Scheduling accommodations.** As for any disability, scheduling adjustments may be needed. A person undergoing dialysis treatment for kidney disease might require a flexible schedule one or two days per week to accommodate the treatment, and a diabetic might need regular rest periods so he or she could have snacks.

3. **Physical access.** It is sometimes necessary to make environmental changes to accommodate an individual with a chronic medical condition. For example, an individual with multiple sclerosis may have special temperature requirements. In this case, a space heater or an office with its own thermostat would be appropriate accommodations.

Environmental Sensitivity

Environmental sensitivities include asthma, allergy-related conditions, and multiple chemical sensitivities.

1. Physical access and co-worker assistance. It is important to find the environmental irritant that exacerbates the employee's condition and, to the extent feasible, remove it or the employee from that environment. This can be done in a variety of ways. Individuals who react to indoor irritants like tobacco smoke, scents, cleansers, or new carpets will need accommodations. Employers and co-workers must understand that it is essential to remove the substance that triggers the attacks. This may involve behavioral changes by co-workers, such as avoiding smoking or perfume at work. A policy asking employees to use scent-free soaps and beauty products may help all employees. In some cases, air filters, fans or air conditioners may help.

The employer may need to move the attorney's work area from a newly carpeted or painted area, or from a moldy basement. Even if this attorney is given his or her own office, the ventilation system can re-circulate airborne irritants from other areas of the office. Employers must plan for this employee to be able to get to the copying machine, the law library, bathrooms, and other co-workers, and these pathways (and co-workers) must be relatively free from triggering substances. Working from the home, when and if feasible for the job, may be helpful for some employees. Changing the environment to remove the substance(s) causing the attack is the key.

For questions about creating an environment free of scents, contact the University of Minnesota's School of Social Work. For the past two years, that school has had a policy of keeping a scent-free environment. They have faced many of the problems that employers would face in creating such an environment and would be a good resource to employers.

Hearing Impairment

An individual with a hearing impairment is someone who is deaf or hard of hearing. While a hearing aid or cochlear implant may make hearing easier for some, the hearing loss is still not "corrected," and accommodations may help.

1. Technological accommodations. Communication equipment exists for persons who have a hearing impairment. Video-taped training materials may need to be reviewed for closed captioning and sound quality. Deaf employees can benefit from videotapes if they are closed captioned. Frequently, training sessions are taped using the microphone on the VCR camera or camcorder without "miking" the speakers. By not having the speakers wear microphones during taping, a sound distortion occurs and persons who are hard of hearing have difficulty deciphering the tape. Therefore, any in-house taping should have the speakers "miked."

For an employee who is hard of hearing, there are assistive listening devices, including very portable systems where the person wears a headset and the communicator holds a small device with a microphone. There are telephone amplification systems, flashing lights to show incoming calls, and, of course, TTY's to communicate with deaf and hard of hearing persons.

The state-wide Telephone Relay Service is also available. This service allows a person who is deaf to communicate by phone with a hearing person and vice versa. The relay operator types messages from the hearing person on the TTY for the deaf person, and speaks TDD messages from the deaf person back to the hearing person. This is a 24-hour service and it is free. To connect with the Relay Service, call 1-800-627-3529. Then give them the number of the deaf person who you are trying contact through their TTY.

It is also critical to remember that workplace employees will need to be trained on how to receive a call from a deaf employee, whether or not the call is received by TTY. In addition, if a business deals with the public, all employees need to have TTY and relay service training in order to meet the ADA Public Accommodation requirements.

Another workplace program change may be needed if your business relies on contacting employees by pager. A hearing impaired individual can be paged through a vibrating paging device.

2. Co-worker assistance. It may be necessary to provide interpreters for client and/or staff meetings. The employee should be questioned as to whether he/she uses American Sign Language or Signed English. The Interpreter Referral Service keeps a list of certified interpreters. There are very few certified legal interpreters. Hartman & Hallett, (612) 925-2166, Fax and TTY (612) 929-3381 is the one service that is known to be available as of the publication of this report. If an attorney must go to court, state and federal courts will be responsible for providing interpreters during the actual hearing itself. If the attorney meets with a client outside of the courtroom, it is likely that the employer will have to pay for that time. To find interpreters, or certified legal interpreters, contact either Hartman & Hallett or the Interpreter Referral Service, (651) 296-9299. In addition to interpreters, Dynamic Communications Inc.

offers courses on deaf culture to inform the hearing population of differences in communication styles.

It may also be useful for some persons who have a hearing impairment to use real time captioning. This equipment was demonstrated at a recent MSBA convention as technology that benefits all attorneys. For this, a court reporter's transcript is displayed on a screen as it is typed. Contact Caption Minnesota, Inc., (612) 322-2113 or 1-800-322-2113 or Shaddix and Associates, (612) 888-7687. For further information about available equipment, in addition to consulting with the employee himself/herself, contact the Regional Service Center for Deaf and Hard of Hearing Persons. There are several centers throughout the state; the Metropolitan Center can be contacted at (651) 297-1316. The Regional Centers provide resources to determine which equipment is most useful. Some of them have equipment which they can loan temporarily. The Centers also will help to train staff in the use of the TDD and help work out other problems. Deaf employees may also be eligible to receive training or education from the St. Paul Rehabilitation Services, (651) 296-5616. Again, new technology on the scene is always presented at the annual Closing the Gap Conference.

Workplace program changes may be required if voice-mail is part of the office communication system. Without the ability to interact with a live person on the telephone, it can be extremely difficult for a hearing impaired employee to leave a message, listen to their own voice mail or even use voice mail. This communication barrier can be accommodated by having the receptionist or secretary take down all messages from the caller in writing. Again, if your business utilizes voice mail for the public, consider providing an alternative phone number so that the hearing impaired caller can leave a message with a "live" person. Another option is to set up a link between the client's and attorney's computers.

3. Physical access. In Minnesota, the State Building Code now requires that in any building with banks of public phones, one in every four needs to be accessible to persons with hearing impairments. This means amplification on the phone as well as TDD access. In an office, this would be easy to accomplish by installing amplification equipment on the employee's telephone, or installing a portable TDD.

Finally, it should be pointed out that some attorneys may be hard of hearing but not deaf. This may require a decrease in distracting noises. It may be necessary, for example, not to have such employees sit near the copy machines or printers as they add extra external distracting noise.

Learning Disability

This category includes people who have difficulty in the visual or auditory processing of information. Examples include dyslexia, which affects reading ability, and Attention Deficit Disorder.

1. **Technological accommodations.** For employees who have learning disabilities, software is available for checking spelling and grammar as well as word prediction programs to find the appropriate word when the employee has difficulty with words. New technology is continually advancing in this area. Again, such equipment can be viewed at Courage Center or annually at the Closing The Gap Conference.

2. **Co-Worker assistance.** An employer can help by providing information in both auditory and written formats, if possible. For instance, an employee might be allowed to tape record important meetings or take notes on a laptop computer, or the employer might appoint a note taker at meetings. In addition, some employees may be more efficient if they can dictate rather than use a computer or write out the required information.

Individuals with some learning disabilities may take longer to read. Therefore, when asking them to scan documents for specific information, it helps to tab or designate the relevant pages. Clerical staff can be used to help an employee with a learning disability or attention deficit disorder, or other information-processing disability to organize files, to type instructions or record information.

3. **Scheduling accommodation.** Allowing flexible scheduling also offers significant help. For example, employees can compensate for their learning disability by allocating more time to tasks that present problems. Employees may also benefit from job sharing to increase their efficiency, concentrating on the portion of the job for which they have the most talent.

4. **Physical access.** Someone with a learning disability may have difficulty concentrating when in a noisy environment. These individuals may need a work space that can be shut off from distracting factors.

Mental Health Disability

This category includes a wide variety of covered mental health or emotional disorders, including depressive disorders, bipolar affective disorders (commonly known as manic depression), paranoid personality disorders, schizophrenia, posttraumatic stress disorders, phobias, panic disorders, obsessive-compulsive disorders, acute stress disorders, anxiety disorders, and sleep disorders.

The existence of a mental disorder does not inherently interfere with work. Persons with symptoms of mental disorders are usually able to perform their duties but can do so more efficiently with modest accommodations. Reasonable accommodations should be tailored to the individual. A reasonable accommodation for one person may not work for another, even with the same diagnosis.

The workplace is often permeated with negative stereotypes about mental disabilities. A fear of stigma inhibits disclosure of a diagnosed condition that is not otherwise visible. An employer's written policy agreeing to keep the diagnosis confidential in human resources or to one supervisor will help facilitate disclosure. Occasional workshops on stress management for all employees can incorporate education about mental disabilities that may result if stress is not handled effectively or overwhelms an individual.

The MSBA has sought to address the prevalence of depression in the legal community through the Depression Task Force formed as part of the Life in the Law Committee. Information on the Depression Task Force may be obtained at MSBA, Suite 380, 600 Nicollet Mall, Minneapolis, MN 55402. (612) 333-1183. www.mnbar.org.

One or more of the following accommodations may be useful when an employee has a mental health disability. Note that the majority are nontechnological accommodations.

1. Schedule accommodations. These are probably the most frequent accommodations needed. Persons with mental health disabilities often have disrupted sleep patterns. Employers should use flexible starting times or variable work schedules to accommodate mental disorders for which adequate sleep and recuperation may be an important part of treatment and functioning at a high level. Schedule adjustments may include the use of flexible break policies to allow for psychotherapy and for medical appointments to monitor medication. In some cases, employers could allow an individual more time to complete certain tasks, or to reach performance levels or goals.

2. Benefit changes. Employers should allow authorized leave for mental health treatment in the same way that authorized leave is allowed for pregnancy or medical conditions that cause a person to miss work, e.g., allow leave to be used in two hour increments for medical appointments. Several psychotherapy sessions held on different dates could be accommodated by granting one day of sick leave or vacation time to the employee.

3. Co-worker assistance. Provide a back-up system in a case of medical emergency that is tailored to the needs of the particular employee's level of function and recovery.

4. **Physical access.** Room dividers or enclosed offices could be used to improve concentration and reduce noise and interruptions. An employer could provide noise blocking, such as reducing the volume of a telephone, or allow a person who has bipolar disorder to work in bright light or near a window. These may be particularly helpful for mental disorders like acute anxiety disorders and panic attacks. Arranging for an employee to work off-site, such as at home, may increase productivity.

5. **Supervision adjustments.** It may be necessary to change supervisory procedures to adjust to a particular diagnosis. For example, employers might provide for increased access to a supervisor to obtain reassurance and direction and feedback for employees with mental disorders like acute anxiety disorders, or who are returning to work after hospitalization. Other accommodations could include a more self-paced workload and flexible hours or the use of job sharing. This may allow an employee to produce the same amount of work expected of other employees over a week or month, but at a pace consistent with the employee's disability or treatment. Also, employers could change communication methods to provide for written, instead of, or in addition to verbal instructions. These accommodations may be particularly helpful to employees with mental disorders if the symptomology includes a tendency to personalize instruction as negative criticism, such as schizophrenia or paranoia-schizophrenia.

In some cases there are early warnings signals of mental health disabilities, e.g., schizo-affective disorders, bipolar affective mood disorders or depression. These signals may alert supervisors who need to know of the employee's disability to take simple, precautionary measures, such as to allow a "mental health" day off, allow the use of company facilities for self-help or support groups, or request a review of medication.

6. **Technological accommodations.** Some devices may be helpful for persons with mental health disabilities. For example, if a person has a mental disability that affects memory or the tendency to become over absorbed in work, the purchase of a digital watch that imparts information, such as alarms, reminders and brief notes, may be an effective reasonable accommodation. A portable computer which allows greater flexibility, or software that adds structure to time or gives prompts during the day may be useful.

As in all areas of disability, the diagnosed person is most frequently the best source for determining which accommodation is most necessary and effective.

Mobility Impairment

Ambulation, dexterity, or both can be affected by temporary or permanent mobility impairments. Individuals may use devices such as wheelchairs, crutches, or a prosthesis to assist themselves.

1. **Physical access.** It may be necessary to make physical changes in the workplace to accommodate an individual with a mobility impairment. Some accommodations for persons with mobility impairments may be very simple. Moving boxes out of hallways may suffice to widen the hallway to allow for wheelchair passage. Raising the desk may be the appropriate adjustment to allow for an accessible working space. If drinking fountains are inaccessible, they should be lowered. If this is too expensive, a paper cup holder could be placed next to the fountain. If there is an employee cafeteria, make sure that there are eating spaces of the appropriate height and an accessible way for the employee to get food in line, or available assistance to help the employee get his/her food.

It may be necessary to create an accessible entrance into, and an accessible pathway throughout the office area. Possible physical alterations could include widening doorways and halls to allow a wheelchair to pass; augmenting or replacing stairs with a ramp or elevator and installing call buttons and floor buttons low enough to be accessible to persons using wheelchairs; adding handrails to stairways; putting appropriate handbars in bathroom stalls, raising the level of the toilet seat in bathroom stalls and widening stalls; lowering fire alarms, fire extinguishers, public telephones, water fountains and counter space in cafeterias; raising desks and tables to accommodate a wheelchair; relocating files and books; and replacing doorknobs and light switches so they are usable by individuals with limited use of their hands. Every area the mobility-impaired employee uses should be accessible, including restrooms, elevators, conference rooms, lobbies, and cafeterias.

Employers who provide parking spaces for their employees are obligated to have available parking spaces which are accessible. If parking is not provided as a regular employee benefit, an employer may wish to accommodate an employee with a temporary or permanent mobility or respiratory impairment with a parking space which is close to the building, and is near the most accessible entrance.

The accommodations described above are routinely viewed as the most expensive. However, an employer should consider that such efforts will also provide improved access to many clients and their other employees. If the employer rents office space, the building owner may also be willing to share the expense of this re-modeling, particularly if it makes more than one office space accessible to clients with mobility impairments. For specific guidelines to help determine whether or not the employer's office space or building in general is accessible pursuant to the Americans with Disabilities Act, as well as the Minnesota State Building Code, contact the Minnesota State Council on Disability. See Appendix. The Council has put together guidelines that encompass both state and federal accessibility guidelines.

If an employer is considering the construction of a ramp, the employer may wish to contact the Metropolitan Center for Independent Living ("MCIL"). The MCIL may have ideas about architects skilled in building such ramps as inexpensively as possible. Also, MCIL has a self-

help program which specializes in the building of portable ramps within personal residences. Some of that expertise may be useful in an office setting as well. Contact the MCIL and ask about their Ramp Project at (651) 646-8342.

Finally, an employer can make use of possible tax breaks for making their office space accessible. As of the publication of this Report, small for-profit businesses may obtain tax credits from the I.R.S. for providing such access. See §§ 38 and 44 of the Internal Revenue Code of 1986. Businesses with gross receipts under \$1 million for the preceding year, or which employ fewer than 30 people, may take 1/2 of the cost of the eligible access expenditures above \$250, but not exceeding \$10,250, as a tax credit. The IRS Form for requesting this tax credit is Form 8826 entitled Disabled Access Credit. The rest of the expenditures for providing auxiliary aids may also be deductible under Tax Code § 162 as an ordinary and necessary business expense. Further advice on this subject should be sought from a certified public accountant or a tax attorney. The Department of Justice has published a fact sheet on tax incentives regarding physical access. Contact them at 1-800-514-0301, or <http://www.usdoj.gov/crt/ada/taxpack.htm> to get this fact sheet.

2. Co-worker assistance. Mobility problems can often be overcome by changing the way a task is typically done. Rather than having attorneys with mobility impairments get books out of the library by herself, she or he could submit a list of what is needed to the librarian and have the librarian retrieve them. Clerical support could also be used to retrieve files from storage for attorneys with disabilities who would not be able to carry such files or lift them from shelves.

3. Technological accommodations. Computers with on-line and CD-ROM capabilities, dictaphones, telephone headsets and speaker phones, faxes, electronic mail, and other office technologies allow the mobility-impaired individual to be as effective as able-bodied employees (many of whom could also perform their jobs more safely and efficiently using these devices).

Many high-tech assistive devices designed especially for mobility impaired individuals have come onto the market in recent years. Voice controlled computer telephones can perform all the functions of a standard phone and allow individuals who have no use of their hands to make and receive calls. Environmental control systems are also available that can control a variety of electronic devices including computers, lamps, appliances and thermostats. Pressure-sensitive dictaphones allow those individuals to dictate. Finally, voice recognition systems allow the user to speak commands to the computer.

4. Scheduling accommodations. Individuals with mobility impairments may also need scheduling accommodations. For example, an employee might need to keep regularly scheduled medical appointments. A person in a wheelchair may find it easier to maneuver on public transportation at times other than rush hour and may want to come in and leave on other than the usual nine-to-five schedule.

Soft Tissue Injury

This category includes Carpal Tunnel Syndrome, back or joint injuries, and arthritis. Soft tissue injuries often cause stiffness or pain and prevent extensive use of muscles. Office and ergonomic consultants can recommend many ways to prevent further injury for persons who type. These include wrist savers, adapted keyboards, ergonomic chairs, or leg and neck cushions. Employers have increasingly found that many of these ergonomically efficient devices are useful for employees in general to prevent future work-related injuries.

A variety of consultants are listed in the yellow pages under "ergonomics." These range from vocational rehabilitation organizations to workplace consultants to product manufacturers. An Internet search will yield extensive information on areas such as arthritis and Carpal Tunnel Syndrome. These in turn provide links to sites which can provide resources and information for related conditions.

1. **Physical access.** A soft tissue injury can also restrict mobility. For example, an individual might have difficulty climbing stairs or reaching for files. See the Mobility Impairment category for some suggested accommodations.
2. **Technological accommodations.** There is specialized equipment which may be useful for persons with various disabilities, i.e. voice recognition systems for computers, pressure-sensitive or voice-activated dictating devices, environmental controls which allow for the control of light switches, computers, and thermostats.
3. **Scheduling accommodations.** An individual with a soft tissue injury might need scheduling accommodations. For example, he or she might need to take a leave of absence to recover from corrective surgery, or leave early once a week to get rehabilitation services.

Speech Impairment

1. Technological accommodations. For attorneys with disabilities who have serious speech impairments or who cannot speak due to their disabilities, there are augmentative communication devices. Such devices can be technologically advanced and can include the capability to write words, phrases and sentences on a keyboard and have them vocalized mechanically. Persons with disabilities who need such devices generally need them for independent living, and an employer may not need to purchase the equipment as an accommodation. Some health insurance carriers cover such devices. If the employee has access to Medical Assistance coverage, such devices are covered. The STAR Program, a federally funded program, provides information on how to obtain durable medical equipment, including augmentative speech devices. Contact the Division of Technology for People with Disabilities, a division of the Department of Administration, (651) 296-2771.

Text-to-speech software programs are available which synthesize speech from standard English words. The vocabulary can even be exported to portable communication devices used by speech-impaired individuals.

Visual Impairment

People whose vision is fully or partially impaired and whose vision cannot be sufficiently corrected with glasses would fall within this category.

1. **Technological accommodations.** Technology can mitigate the effects of a visual impairment. Closed circuit television (CCTV), through its magnification capabilities, enables some visually impaired individuals to read documents. Large-screen monitors display text and graphics in a variety of resolutions and magnifications. Stick-on keyboard labels can improve key visibility.

Software is available to enlarge the print on a screen. Magnifiers can be used externally to magnify print. Scanners can scan in print and then repeat the material in speech. Speech software will read the computer screen out loud. Braille translation software translates print into braille, and braille embossers can be used. Much of this equipment is on display at State Services for the Blind in their Technology lab. Again, the latest in such equipment can be viewed at Closing The Gap Conference, described at page 16, above. Finally, if an employee needs to be evaluated to determine equipment and training needs, such evaluation and training may be available from State Services for the Blind if the employee fits the definition of legal blindness. The employee can then receive short-term post-employment rehabilitation services from the agency at no expense to the employer. The employer probably will ultimately have to pay for the equipment chosen. For further information, contact State Services for the Blind: (651) 642-0500.

2. **Physical access.** Physical accommodations include physical changes in the office, like adding extra lighting or clearing boxes and equipment out of hallways. Large-print and Braille signage indicating the location of restrooms, exits, fire alarms, fire extinguishers, floors in elevator panels and outside each elevator door, and other important places might be required. In addition, the office must have smoke alarms which are audible.

3. **Co-worker assistance.** Accommodations also might include hiring a work-related personal assistant to read and/or drive for a person who is blind if it is necessary to do much traveling, or if the reading load cannot be handled by a scanner. Most persons who are blind or visually impaired can handle much of the print through current technology, so a few hours of reader service each week may be all that is required. The amount of driving time will depend on what is available in the way of public transportation. Clerical staff could be hired to perform duties for the entire office but also provide reading and driving services to the blind attorney on occasion. Clerical support could also be used to remove research materials from library shelves or to retrieve files from storage for attorneys with visual disabilities who would have trouble finding such files.

GUIDELINES FOR INTERVIEWING LAW STUDENTS AND ATTORNEYS WITH DISABILITIES

When evaluating the resume of a law student with a disability, employers should be aware that many of these students and attorneys might not have the same "traditional" type of work experience as others who do not have a disability. For instance, many people with disabilities might have never held an income-earning job because their health insurance is dependent upon receiving government assistance. Even law students in their second year are apprehensive of working in an income-producing job because their medical benefits might be jeopardized from that time on. Because employers may be disinclined to make job accommodations for someone in a volunteer position, people with disabilities also often experience difficulties finding volunteer work.

Students with disabilities have also been excluded from traditional school activities such as student government, sororities and fraternities, or recreation and sports programs. Other students might have "holes" in their resumes where they have had to take medical leaves of absence from school or work. It may have taken students with disabilities longer than their peers to get through school. When analyzing these resumes, employers need to look beyond the conventional resume test and realize that people with disabilities have many unique experiences or skills. Employers should inquire into the person's volunteer experience and participation in school committees, community organizations, and government advisory boards or other relevant experience.

Individuals with disabilities will often have experiences and skills not shared by their non-disabled counterparts. For example, in simply planning how to get to the interview, applicants who are visually or mobility impaired probably conducted thorough research on access options and chose the best ones. Lawyers and law students with disabilities have often had to overcome huge odds simply to succeed in law school. They have learned how to persevere. They have developed experience as advocates and have had to anticipate and respond to opposition and difficulty. These are all skills valued in good lawyers.

Many law students and attorneys with disabilities do not fare well in the on-campus interview programs and other traditional recruitment forums. Some decline to even participate because they believe they will not succeed, given the character of these interviews, where "first impressions" of the person and resume play such a significant role. Because the interview lasts only 20 or 30 minutes, the interviewer may not have enough time to get a sense of the individual. Interviewers must realize their own biases and make a concerted effort to look beyond a person's disability when judging the person's ability to perform the essential functions of the job.

For instance, an employer may spend the entire interview wondering how a person who is blind or in a wheelchair could perform the tasks of an attorney. Some interviewers may not know how to react when a student comes through with an interpreter or has a speech impediment. Interviewers may feel self-conscious about physical appearance when the person is blind or uses a wheelchair or other orthopedic devices. The student may look unusual in physical appearance or have movements that distract the interviewer. All too often, the person with a disability never has a chance because of the interviewer's assumptions about the cost of accommodating the law student or attorney.

The Disability Subcommittee suggests that legal employers carefully examine their hiring criteria before any interview. Employers should determine the essential functions of the job and ensure that their hiring criteria are directly related to those functions. All members of legal organizations who participate in the interview process should be trained so that they are familiar with the provisions of the ADA.

The primary consideration to remember is that an employer *cannot* inquire as to the nature, severity, or progression of a disability. Not only are such inquiries illegal, but questions regarding a person's disability sidetrack the interview. The EEOC regulations current at the publication of this report provide that employers should focus the discussion on the applicant's ability to perform the essential functions of the job, with or without reasonable accommodations. For example an employer may ask an applicant if he or she can perform the essential functions of the job with or without reasonable accommodation. An employer may also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. 29 C.F.R. § 1630.14 (1998). Nevertheless, because these law students and attorneys have voluntarily disclosed the fact that they have a disability, this is not a waiver of their right not to discuss aspects of their disability.

Legal employers should be prepared to make reasonable accommodations in the interview process itself. Employers should designate someone outside the "decision-making process" with whom applicants can freely discuss possible accommodations they might need in the interview process, e.g., physically accessible facilities or a smoke-free environment. Many with non-visible disabilities, such as a learning disability, report that they choose not to disclose their disability because of the fear of discrimination in the hiring process.

If the decision makers in an organization interview a person with a disability and find themselves uncertain about extending an offer to the applicant, they should carefully examine the reasons for their decision. They should articulate their reasons to colleagues to help them examine them more closely and determine if there is an objective reason. As with other forms of employment discrimination, "customer preference" is not an acceptable excuse for choosing not to hire a law student or attorney with a disability.

If a legal employer makes a decision to hire a law student or lawyer with a disability, numerous organizations are available to provide assistance in accommodating employees. See Appendix.

CONCLUSION

This report and other facets of the project should help in your efforts to increase representation of attorneys with disabilities in your organization. However, we encourage you to go beyond this report to actively solicit applications from people with disabilities and to provide a workplace that maximizes the contribution of every employee.

This report is one component of a comprehensive project which the Disability Subcommittee hopes will encourage Minnesota law firms, public interest law firms, corporate legal departments, and government agencies to foster the hiring of attorneys with disabilities. If you are interested in participating in this project, please contact the HCBA.

Respectfully submitted,

HCBA Diversity Committee Disability Subcommittee

The following individuals participated in the preparation of this report:

Joan Bibelhausen	co-chair	Jerry Lane
Sonja Dunnwald Peterson	co-chair	John Palmer
Wendy Cline		Suzanne Schwartz
Karen L. Dingle		Mark Siegel
Kathleen Hagen		Gregory Solum
Steve G. Heikens		Katherine Berg Stafford
Marcus Jarvis		Deborah C. Swenson
Joyce Laher		James Young

In addition, members of the HCBA Diversity Committee and the disability community were asked to review this report prior to its publication.