

# Legal Profession Must Do More For Lawyers With Disabilities

By **Rosalyn Richter** (July 3, 2023)

July is Disability Pride month, commemorating the passing of the Americans with Disabilities Act in July 1990.

The law has been described as a declaration of independence for people with disabilities, and it has changed public facilities, university protocols, and employers' approaches to providing accommodations for lawyers and legal staff, among others. Before the ADA, law students and lawyers with disabilities were left to rely on the goodwill of their employers and professors.



Rosalyn Richter

When I was a law student more than 40 years ago, a professor shockingly told me that I should not be a trial lawyer because clients and juries might not react well to my visible disability. I ultimately found others who supported and encouraged me, and I went on to have a successful tenure as a trial and appellate judge. But in many years on the bench, I saw very few lawyers with visible disabilities.

Even though the ADA has resulted in increased access, lawyers with disabilities, especially those with visible disabilities, still are significantly underrepresented in the private sector and in the litigation field.

The most recent data from the National Association for Law Placement, released in December 2022, shows an increase in the percentage of law graduates self-reporting a disability, up from 4.1% for the class of 2019 to 5.5 % for the class of 2021.[1] However, the percentage of attorneys at law firms who self-report a disability is much lower, with only 1.2% self-identifying in 2021.

Of note, the report acknowledged that of those graduates with disabilities who were employed in private practice, more than half took jobs in firms with 25 or fewer attorneys. Thus, lawyers with disabilities may be absent from BigLaw and larger corporations.

There is not much concrete data to explain why attorneys with disabilities either do not join larger law firms or corporations, or if they do, why they do not self-identify as a person with a disability.

In my experience, many lawyers with physical disabilities avoid litigation jobs because of the obstacles discussed in this article or because courthouses are not always accessible. Or, these lawyers are not hired for litigation and lead roles because of a misguided belief by a prospective employer about the stamina or overall competence of someone with a disability.

Implicit bias plays a significant role in deterring young lawyers from self-identifying as a person with a disability. The American Bar Association's Commission on Disability Rights, in partnership with the Burton Blatt Institute at Syracuse University, conducted a study in 2018-2019 that found that lawyers with disabilities and LGBTQ+ attorneys experienced significant implicit bias.[2]

Associates who do not self-identify may be worried that their employer may subconsciously see them as not tough enough or in need of assistance because of their disability. They may think that their employer will assume that they are going to have health issues or be unable

to keep up with the demands and hours involved in litigation.

Although someone with a disability who has graduated law school obviously knows how to manage their time, energy and health, associates still fear that they will be seen as "less than" if they identify as disabled. They may believe that the employer will assume that everyone with a disability needs an accommodation or that providing an accommodation may be expensive or complicated — and some firms may still incorrectly make this assumption.

The assumptions and stereotypes about people with disabilities are myriad, but they prevent law students and lawyers from self-identifying to prospective employers and in some cases, result in those who do self-identify being guided into what are perceived to be less-demanding roles.

There also may be a concern among some senior lawyers that clients and juries might be uncomfortable with the person's disability, and that message is then conveyed, directly or indirectly, to the associates on the team. My law professor's misguided perspective from 40 years ago still may be alive today, and we must actively work to combat these stereotypes.

Having presided over hundreds of trials, I find it hard to believe that the outcome of a trial, even a jury trial, is going to depend on whether an attorney uses a wheelchair or has another disability, and is much more likely to turn on whether the case is well prepared and convincing.

The lack of visibly disabled lawyers in high-level litigation or management roles makes it difficult to find mentors for younger lawyers with disabilities or for them to see a path forward in which success can be achieved while acknowledging their disability. Until this changes, allies need to step up and challenge these false assumptions.

The NALP data about the increase in graduates self-reporting a disability shows a positive change, and law firms and legal employers can and are doing more to raise awareness.

My firm did a program last year in which attorneys spoke and talked openly about their disabilities, the accommodation process and what they need to be successful in the workplace. I commend the younger attorneys, some of whom did not have visible disabilities, for their willingness to share their experiences. There needs to be more of this open dialogue at legal workplaces.

In New York, the Office of Court Administration's Advisory Committee on Access for People with Disabilities, which I helped create, regularly conducts trainings of judges and court personnel about the accommodation needs of lawyers, litigants and jurors with disabilities. Such trainings help raise awareness across the profession.

As required, law firms have procedures for attorneys and staff to ask for accommodations, a positive development as a result of the ADA and state and local laws.

But more needs to be done to ensure that partners and those who supervise young lawyers with disabilities understand and respect the accommodation process. Clients, who are already focused on diversity and equity, should be asking about the inclusion of lawyers with disabilities, and firms should voluntarily keep data on lawyers who self-identify as disabled.

Another way to increase opportunities is to ensure that firm events, especially those that

involve client interaction, are fully accessible; the same for bar association events that are designed to help young lawyers network and gain important business development skills.

All too often, these events are not fully accessible. Sporting events such as golf tournaments, fun runs and firm softball games are great, but they may present challenges for lawyers with mobility disabilities. These type of events can happen, but should be balanced with events that will accommodate lawyers with physical disabilities and allow them to network in their workplaces.

Indeed, just putting access information on event notices and ensuring that events are held in accessible spaces sends a message to lawyers with disabilities that they are indeed welcome in the profession.[3]

Passage of the ADA has changed the law school environment and the legal profession — lawyers with disabilities now can ask for accommodations. But we as a profession still have a long way to go to ensure that lawyers with disabilities feel welcome and valued.

Although this article focuses on the importance of creating a welcoming environment for younger lawyers with disabilities, I recognize the reality that disability can occur at any stage of one's professional life, including as a lawyer ages. Senior lawyers, too, may be afraid to self-identify for fear of losing status, clients and, like their younger counterparts, being labeled as someone who has a limitation.

In advocating here for a workplace in which lawyers and legal staff who wish to self-identify can do so without limiting their professional opportunities, I acknowledge that not everyone may wish to be so identified. But as more people are willing to share their stories — and successes — and be open about their disability, I am hopeful that we will see a change in attitude toward those with disabilities, both visible and invisible.

The question is: What do employers see when they see a lawyer with a disability? Do they wonder if that person is less than or not up to the task, or can they see that person's talents and skills without focusing on their disability? When we get to the latter, we'll have come a long way toward conquering the implicit bias that still is presenting obstacles for success for lawyers with disabilities.

Indeed, my hope is that this article, and others like it that may appear during Disability Pride month, will go a long way toward shining a light on this hidden problem in our profession. It is time for this issue to emerge from the shadows and to be part of our conversation about diversifying the profession.

Below are some practical tips for enhancing access and creating a welcoming environment:

- Destigmatize discussions about disabilities by fostering a culture and environment where talking about one's disabilities is welcome and the norm. These conversations should start at the top, led by partners at law firms and those in leadership roles.
- Encourage and support attorneys with disabilities who want to do litigation or take on lead roles in transactional matters; make sure they get the same opportunities as their colleagues. Do not assume it's "too much" for the person with the disability. Ask them what they need to be successful and then listen to the answer.

- Make sure attorneys and staff know the procedures for requesting accommodations. Provide support, including from firm leadership, for those who may need follow-up conversations if the partner or supervisor on the matter has concerns about a particular accommodation that is being provided.
- Ensure that firm events and networking events are accessible. Don't forget that the restroom at the venue also must be accessible to someone with a mobility disability and to those who use wheelchairs.
- Create an employee resource group or other type of discussion group for lawyers with disabilities and their allies.

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[1] Employment Outcomes for Graduates with Disabilities, NALP Bulletin+ (Dec. 2022), <https://www.nalp.org/1222research>.

[2] Peter Blanck, Ynesse Abdul-Malak, Meera Adya, Fitore Hyseni, Mary Killeen & Fatma Altunkol Wise, Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+, 23 D.C. L. Rev. 23, 25 (2020).

[3] It is beyond the scope of this article to discuss in detail the accommodation and access needs of those who are deaf, hard of hearing, blind or have low vision. Their needs also should be taken into when planning events.