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Michael Ashley Stein

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Attitudinal Barriers to Hiring Attorneys with Disabilities¹

by Michael Ashley Stein*

When Marilyn Rosenthal and Paul Miller graduated from Harvard Law School, each sent out resumes in search of legal employment. Ms. Rosenthal, who is blind, reported that after five years and 1,500 resumes, she finally landed a job as a deputy assistant counsel to then New Jersey Governor Thomas Kean.² Mr. Miller, a dwarf who had made several hundred job inquiries, was told by one Philadelphia law firm that "they didn't want clients to think they were running a side-show freak act."³ After heading the legal affairs committee of Little People of America,⁴ Mr. Miller now is on the staff of the White House Office of Presidential Personnel.

Unfortunately, the indignities endured by Ms. Rosenthal and Mr. Miller are not uncommon. In fact, the sad truth is that their stories are probably known only because they are among the few that have been reported.

Among all minority groups, attorneys with disabilities may be subject to the worst examples of discrimination in law firm hiring. For example, a 1992 study of minorities in the legal profession conducted by *The National Law Journal* reported that 11% of all partners at major law firms were women, and that blacks and hispanics each constitute 1% of the total number of partners.⁵ By contrast, the most recent statistics available from the Harvard Law School Placement Office indicate that of the 4,300 partners registered in New York law firms, only four, or less than 1/100th of one percent, identify themselves as being "disabled." The prospects for increasing the number of law firm partners with disabilities are similarly dim, as in all of New York City, there are only six associates who currently identify themselves as being "disabled."

Perhaps still more telling about the paucity of attorneys with disabilities at large law firms, is the fact that *The National Law Journal* does not even include people with disabilities among the minority groups in its surveys. Attorneys with disabilities were similarly disregarded by the extensive report compiled by the American Bar Association's Commission on Opportunities for Minorities in the Profession.

Given the lack of attention – let alone empirical research – that has been devoted to the exclusion of attorneys with disabilities from law firm practice, it is

difficult to hypothesize an accurate reason for their dramatic underrepresentation, beyond surmising from anecdotal stories that the cause may originate in general misconceptions about people with disabilities.

Along these lines, there seems to be a perception among many law firm hiring partners that due to their physical differences, attorneys with disabilities are not as capable as able bodied lawyers to withstand the rigors and stresses of the profession. For example, Kenneth Anderson, hiring partner at the 600 lawyer firm Gibson, Dunne & Crutcher in Los Angeles, was reported as saying that he feared hiring lawyers with disabilities because they might not be able to work long hours.⁶ Similarly, Cravath, Swaine & Moore's hiring partner, Evan Chesler, averred that the firm would not want to "put people into situations they can't handle."⁷ Certainly, this type of bias was held by the attorney who interviewed Stephen Gibbs, a man with quadriplegia who now has his own solo practice. Near the end of their discussion, the interviewing attorney asked Gibbs how the firm could be sure that "two weeks after hiring, Gibbs wouldn't be hospitalized with a urinary tract infection."⁸

One former dean of law student placement has suggested that in the end, the firms' reluctance to hire attorneys with disabilities may "result primarily from fear."⁹ This sentiment was echoed by Deborah van der Weijde, a Justice Department lawyer and former chair of the ABA's Young Lawyers Division Disabled Lawyers Committee. She suggested that the "widespread problem" of unemployed lawyers with disabilities was due to potential employers who "are afraid of people who are different . . . afraid they will turn off clients."¹⁰

On July 26, 1990, the Americans with Disabilities Act of 1990 (ADA) was signed into law, barring disability-based discrimination in employment, public accommodations, public service, transportation, and telecommunications.¹¹ Specifically, the law bars covered employers from discriminating against "qualified individuals with a disability."¹² Qualified individuals are defined as individuals with disabilities who can perform a job's "essential functions," either on their own or with an employer-provided "reasonable accommodation."¹³

The ADA would seem to obviate one reason advanced by law firms for not hiring attorneys with disabilities, since it effectively eradicates structural barriers in the work place. But what of the other, deeper, reason why employers do not hire more associates with disabilities: attitudinal barriers? Will these obstructions to diversity fall as well?

*President, The National Disabled Bar Association

Although there are no exact figures regarding the number and employment of attorneys with disabilities who are admitted to practice, the president of the National Association of Blind Lawyers reported that at least one-third of the nation's 500 to 600 blind lawyers are unemployed.¹⁴ There is no reason to suspect that the percentages are any better for attorneys with mobility or hearing impairments.

It is imperative that law firms, as the most visible, prestigious and highest paying employer in the legal profession, work towards eradicating this historical imbalance. As employers, attorneys are more knowledgeable than other groups regarding prohibitions against discrimination in hiring decisions. And yet, disability discrimination in law firms seems to continue unabated. When a law periodical surveyed several law firms on the ADA, partners reportedly discussed at length the effect the law

would have on clients' physical facilities, but did not consider how law firms would be subject to compliance as present or potential employers. The lone exception was Pettit & Martin partner John C. Fox, who admitted that "[l]aw firms largely are unaware of the ADA applications to them."¹⁵

This indifference is particularly egregious coming from a major segment of the legal profession. As Allegheny County Common Pleas Judge Leonard C. Staisey has pointed out, "the thing that distinguishes the legal profession from others is a reasoning process. What that has to do with walking, seeing, hearing, I don't know."¹⁶ The ultimate question for law firms was posed by Laura Cooper, a former chair of the ABA's Young Lawyers Division Disabled Lawyers Committee: "Lawyers more than anyone are supposed to be advocates for the unheard. If they don't do better, who will?"¹⁷

Endnotes

1. This essay expands upon comments made at the Third Annual Minority Recruitment and Retention Conference on *The New Paradigm: Professionalism, Leadership and Valuing Diversity*, held Nov. 20-21, 1992 at Harvard Law School. I wish to acknowledge the research assistance of Ms. Stephanie Heacox.

2. See Rosenblum, "Handicapped Lawyers: A Battle at Every Turn; Elusive Jobs, Access, Can Make Tough Adversaries," *N.J.L.J.*, Aug. 2, 1990, at 1.

3. Wiehl, "Disabled Lawyers Join in Drive on Bias in Hiring," *New York Times*, Dec. 30, 1988, at B6.

4. *Id.*

5. See MacLachlan & Jensen, "Progress Glacial for Women, Minorities," *The Nat'l L.J.*, Jan. 27, 1992, at 1, 31.

6. See Wiehl, *supra* note 3.

7. *Id.*

8. Moss, "Obstruction of Justice: Disabled Law Students Face Many Barriers to the Bar," *The Student Lawyer*, Feb. 1991, at 42.

9. Voorhees, "Handicapped Lawyers and the Private Sector," *A.B.A. J.*, Dec. 1982, 1594, 1596.

10. Marcotte, "Blind Justice Denied?," *A.B.A. J.*, March 1, 1988, at 38.

11. See 42 U.S.C. §12101 et seq.

12. *Id.*

13. *Id.*

14. See Moss, *supra* note 8, at 40.

15. Samborn, "Disabilities Act: Firms Not Ready," *The Nat'l L.J.*, Jan. 27, 1992, at 40.

16. *Id.*

17. Wiehl, *supra* note 3.