

ABA DISABILITY STATISTICS REPORT

-2011-

*A compilation of statistics on individuals and
lawyers with disabilities, their employment, and
the legal profession.*



The following is extracted from the ABA Commission on Mental and Physical Disability Law's 2011 Goal III Report.

I. Summary

The American Bar Association, through its Commission on Mental and Physical Disability Law, issues a collection of information regarding statistics on individuals and lawyers with disabilities, their employment, and the legal profession. For 2011, the Commission reports the following highlights:

- ❖ National statistics show that attitudinal and economic barriers for individuals with disabilities lead to extremely low employment rates and salaries, especially when compared to individuals without disabilities. The current economic crisis exacerbates the low rate of employment of individuals with disabilities, including lawyers.
- ❖ The ABA reports that approximately 6.87% of its members identify themselves as having a disability.
- ❖ The percentage (3.4%) and number (5,292) of the 157,598 law students at ABA-accredited law schools who requested accommodations has increased slightly from last year (3.2% and 4,941 respectively), demonstrating a slow but steady increase in these numbers over the past few years.

- ❖ The number of lawyers who hold leadership positions in ABA entities increased marginally from 31 for 2009-2010 to 32 this year.
- ❖ Forty-one percent of ABA entities report having a lawyer with a disability in a leadership position, a slight decrease increase from 44% in 2009-2010, no chairs or chairs-elect have a disability, however.

II. Introduction

The American Bar Association (ABA) was founded in 1878 by 100 lawyers from 21 states. Today, the ABA has over 400,000 members making it the largest voluntary professional association in the world. The ABA provides law school accreditation, continuing legal education (CLE), information about the law, programs to assist lawyers and judges, and initiatives to improve the legal system for the public. The ABA's primary mission is "[t]o serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession."

To help carry out this mission, the ABA established Goal III: "[t]o eliminate bias and enhance diversity." An objective of Goal III is to "[p]romote full and equal participation in the association, our profession, and the justice system by all persons." The tenets of Goal III were drawn from its predecessor, former ABA Goal IX, which was "to promote full and equal participation in the legal profession by minorities, women, persons with

disabilities, and persons of differing sexual orientations and gender identities." This 2011 report on the status of lawyers with disabilities within the ABA and its entities is an effort to advance Goal III and its ideals.

Stemming from the ABA's long history of promoting reform of the justice system, the ABA established in 1973 the Commission on the Mentally Disabled to focus on the advocacy needs of people with mental disabilities. After the passage of the Americans with Disabilities Act of 1990, the Commission broadened its mission to serve all people with disabilities, and therefore changed its name to the Commission on Mental and Physical Disability Law (Commission). The Commission's mission is to "promote the ABA's commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities and their full and equal participation in the legal profession."

The Commission is composed of lawyers and other legal professionals, many of whom have disabilities, are experts in the field of disability law, or have experience in assisting individuals with disabilities. These members serve on several committees (see Section VIII.A). For example, the Committee on Lawyers with Disabilities focuses on issues of importance to those who may have a disability in the legal community. The Commission's Committee on ABA Goal III prepared this report. Through these committees and other programs, the Commission is the only entity within the ABA—and the legal profession—that has a comprehensive

focus on all lawyers and law students with disabilities on a national level.

III. THE STATUS OF AMERICANS WITH DISABILITIES

This section estimates the number of people with disabilities in the United States, in the workplace, and in the legal profession.

A. PEOPLE WITH DISABILITIES IN THE UNITED STATES

According to the most recent and comprehensive data from the U.S. Census Bureau (USCB), in 2005, 54.4 million Americans reported having a disability—nearly one in five (19%)—with 6.5 million reporting a severe disability. Using the most recent 2008 data from the USCB, the American Community Survey (ACS),¹ Cornell University's Rehabilitation Research and Training Center on Disability Demographics and Statistics (Center) reported 12.9% of the U.S. population over the age of five as having a disability, with the largest represented type of disability being an "ambulatory disability" (6.9%).

It has been frequently stated that people with disabilities constitute America's largest minority group.²

¹ The American Community Survey is a relatively new tool developed by the USCB. It is an interim report for the decennial census, has a much smaller survey population, and provides timelier pictures of the American population.

² See e.g., National Organization on Disability (http://www.nod.org/news/harris_interactive_survey_largest_minority_group_falls_behind_in_companies/)

B. PEOPLE WITH DISABILITIES IN THE WORKPLACE

i. Recent figures

Recent statistics and surveys that reveal attitudinal barriers in society regarding the employment of persons with disabilities help explain the small number of lawyers with disabilities who are employed in the legal profession. Based on the most recent 2008 ACS numbers, the Center reported that there were 18,312,900 Americans with disabilities of working age (21 to 64).³ However, only 39.5% were working, compared to 79.9% for non-disabled persons. This reveals a large employment gap between the disabled and non-disabled of 40.4 percentage points.

The Department of Labor's Bureau of Labor Statistics (BLS)—using data from the Current Population Survey, a monthly sample survey of U.S. households—released a labor force characteristics summary in August 2010 for 2009. BLS stated that that the employment-population ratio was 19.2% among those with a disability and 64.5% for those without a disability. These figures provide an even larger employment gap between the disabled and non-disabled at 45.3 percentage points. BLS reported that 8 out of 10 individuals with disabilities

³ The 2009 prevalence rate for individuals with disabilities in the American working population was at 8.4%.

were not in the labor force.⁴ compared to 3 out of 10 for those with no disability.⁵

For 2008, the Center reported that for full-time/full-year jobs, 25.4% of working-age persons with disabilities were employed, compared to 60.4% for non-disabled persons. Median annual salaries for disabled workers were 12.5% less than those for non-disabled workers.

Shawn Fremstad of the Center for Economic and Policy Research concluded in September 2009 that "[d]is ability is both a fundamental cause and consequence of income poverty." He reports that (1) around 50% of all working-age adults who experience income poverty have a disability; (2) nearly 66% of adults experiencing long-term income poverty have a disability; and (3) individuals with disabilities experience income poverty more than those in any other single minority, ethnic, or racial group. Fremstad noted that people with disabilities have a more difficult time retaining income for necessities due to the substantial cost associated with having a disability (e.g., extra medical bills, purchasing assistive devices) and that these costs rise as the severity of the disability rises. The Center, citing the ACS, finds the poverty rate for workers with disabilities was significantly higher (25.3%) than the rate for non-disabled workers (9.6%).

⁴ Individuals who are neither employed nor unemployed.

⁵ The vast majority of those not in the labor force stated that they do not want a job, yet BLS did not provided reasoning for their desire to remain out of the labor force.

ii. Attitudes and surveys

When polling individuals with disabilities, a Kessler Foundation/National Organization on Disability (KF/NOD) 2010 survey found that only 21% of those who are of working age (18 to 64) said that they are employed full or part-time, compared to 59% of working age-people with no disability. Seventy-three percent of those who described themselves as unemployed cited their impairment as one of the reasons why they did not have a job. While 43% of all individuals with disabilities claimed that they have encountered some form of job discrimination, this number dropped significantly to 26% when limited to experiences in the past five years.

Studies regarding employer attitudes and activities are also worth noting. A 2010 KF/NOD survey of over 400 American companies found that “[a]lthough corporations recognize that hiring employees with disabilities is important and, for the most part, do not perceive the costs of hiring people with disabilities to be prohibitive, most are not hiring many people with disabilities and few are proactively making efforts to improve the employment environment for them.” The survey found that few companies, 29% of those surveyed, have either a disability diversity-specific policy or program and only 18% of companies offer disability education programming. The costs associated with accommodating an employee with a disability appears to be a non-issue for most employers, as the survey found that 62% of employers believe the costs of hiring a person with a disability is the same as hiring a person without a

disability. The survey concluded that “[t]he reason most employers are doing so little [about disability diversity] is that disability, and the employment of people with disabilities, does not seem to be on their radar.”

The U.S. Department of Labor’s Office of Disability Employment Policy, in a November 2008 report, surveyed a sample of American companies in various industries and of various sizes. The survey found that only 19.1% of the companies surveyed employed individuals with disabilities, and only 13.6% actively recruited people with disabilities. In addition, only 8.7% of the companies surveyed had hired someone with a disability within the past year. Moreover, 72.6% of those companies cited the “nature of work being such that it cannot be effectively performed by a person with a disability,” as a hiring challenge.

iii. The current economic crisis

The recent—and possibly ongoing—recession has exacerbated problems for individuals with disabilities. While there is much attention and concern over America’s high unemployment rate, which has been hovering around 9%, BLS reported that for 2009 the unemployment rate for individuals with disabilities was at 14.5%. In November 2009, BLS reported an employment-to-population ratio of 18.4% for individuals with disabilities, the lowest percentage since monthly tracking of this figure began in 2008. For the entire year of 2009, that number was only slightly better at 19.2%.

Professor H. Stephen Kaye of the University of California, San Francisco, while using BLS statistics, concluded that there was a direct effect of the recession upon workers with disabilities. He stated that the disproportional effect has resulted in a 9% decline in the presence of workers with disabilities in the employed labor force.

Even worse is that—as purported by Professor Kaye—economic downturns, and the unfortunate conditions they create, have the ability to negatively affect the mental and physical conditions of the workforce, thus resulting in increased disability among labor force participants.

As Joseph Shapiro reported for National Public Radio, during the current job crunch the unemployment rate for those with disabilities is nearly double that of those without disabilities. Moreover, this number may be on the conservative side, because the majority of the current data does not consider how many people with disabilities have given up looking for work and are not in the labor force. Finally, the recession’s effect on state budgets has led to cuts in the areas typically important to those who are unemployed and have a disability, namely vocational training, post-secondary education assistance, and social services.

On the employer side, only 2% of companies surveyed by the KF/NOD reported that in the last three years they had a new hire with a disability.

C. LAWYERS WITH DISABILITIES IN THE LEGAL PROFESSION

i. Recent figures

To begin with there is a pipeline problem: individuals with disabilities are less likely to apply and be admitted to law school. As described above, there is a strong disability-poverty correlation. Therefore, many of those with disabilities are not even able to finance law school, let alone sustain the burden of its debt. Moreover, the Center reports that only 12.3% of working-age persons with disabilities held a Bachelor's degree or higher, compared to 30.6% of non-disabled persons, an 18.3 percentage point gap. This education disparity helps explain why so few persons with disabilities become lawyers, as many individuals with disabilities lack the educational background and academic prerequisites to apply to law school.

The ABA conducts an annual census of its lawyer members. According to 2010 figures, 32, 122 of the approximately 383,000 ABA members completed the census questionnaire. Of the 7,731 respondents who answered the query "Do you have a disability?," only 531, or 6.87% answered affirmatively. This number is a slight increase from the 2009 census at 6.76%, but still less than 2007's 7.18%. This percentage is far lower than one would expect given the national statistics on the percentage of Americans with disabilities. Extrapolating this figure to the entire ABA membership, approximately 26,306 members would report having a disability for 2010.

BLS reported that for those who were employed and had a disability in 2009, 0.9% were in the legal profession (e.g., lawyers, judges, magistrates, law clerks, court reporters, paralegals). The number for those who worked in the legal profession in 2009 and did not have a disability was higher at 1.2%. BLS also reported that for the third quarter of 2010 (July, August, and September), 3.2% of those employed in the legal occupation had a disability. This figure is noticeably higher than the 2.6% reported for the third quarter of 2009. Also, Professor Kaye of UC San Francisco, based off of BLS data found that workers with disabilities have a much greater presence in "low-skill" occupations as opposed to "high skill" occupations.

The ABA's Market Research Department collected relevant statistics on lawyers with disabilities for its National Lawyer Population Survey in 2009, but did not ask about disability in 2010 because only 3 of 54 American jurisdictions that license attorneys collected information on lawyers with disabilities. In 2009 Colorado estimated 0.15%, or approximately 29 lawyers, had a disability; Delaware estimated less than 1%, or 25 lawyers; and South Dakota estimated 1%, or 17 lawyers.

The Commission hypothesizes that all of these numbers may be substantially less than the actual number of lawyers with disabilities in the ABA and the profession. Many may choose not to answer the question relating to disability status due to confidentiality concerns, while others may not consider themselves as having a disability.

These low percentages of lawyers with disabilities reflect at least four trends: (1) relatively few college students with disabilities attend law school due to factors ranging from lack of funds to problems with attaining accommodations for the Law School Admissions Test; (2) not everyone with a disability who attends graduates or passes the bar; (3) due to socioeconomic factors and a lack of offered accommodations, it appears that a lower percentage of lawyers with disabilities join the ABA than non-disabled lawyers; and (4) a greater percentage of law school graduates with disabilities do not find employment as lawyers. Ultimately, these figures also reflect the need to have a comprehensive national effort to collect information on lawyers with disabilities.

For 2010-2011, the ABA Section of Legal Education and Admissions to the Bar indicated that of 157,598 law students in ABA-accredited law schools (both J.D. and LL.M students), 5,292 (3.4%) were provided accommodations—up from 4,941 (3.2%) for 2009-2010. Yet despite such increases, it is worth noting that these figures do not reflect an actual estimate or figure as to how many law students in ABA-accredited law schools have a disability.

There has been a small but steady rise in the number of law students with disabilities who request accommodations over the past few years. Although there is a rise in total students enrolled over this period, the percentage of law students who request accommodations has increased as well. The National Association for Law Placement (NALP)

conducts an annual survey and study, entitled *Jobs & J.D.'s: Employment and Salaries of New Law Graduates*, on the employment rates of law graduates by gender, minority, and disability. For the class of 2009, 80.7% of 590 law graduates with disabilities were employed after graduation, compared to 84.4% of 565 law graduates last year, a sharp decrease. Even compared to other groups, graduates with disabilities do not fare well as 89.2% of non-minority law graduates and 84.8% of minority law graduates attained employment. Graduates with disabilities have an employment rate 7.6 percentage points lower than the entire class of 2009.

In the same survey, 9.3% of disabled law graduates indicated that they were unemployed and seeking a job—a noticeable rise from the 8.1% reported for the class of 2008 and 7.4% reported for the class of 2007—compared to 5.8% for all non-minority law graduates and 7.1% for all minority law graduates.⁶

Of the 232 salaries reported by graduates with disabilities, the mean salary was \$84,018 and the median salary was \$62,973. These salaries were considerably lower than the mean and median salaries computed by NALP for men and woman graduates of all races: \$93,454 and \$72,000 respectively (19,513 salaries reported).

These somber statistics led NALP to conclude that: “Graduates with disabilities were less likely to

be employed and, if employed, less likely to obtain jobs in private practice than the class [of 2009] as a whole—and more likely to obtain government and public interest positions.”

There is also concern over retention and promotion of lawyers with disabilities. Even if the small number of lawyers with disabilities who make it into and through law school attain employment, it is necessary to make sure they are afforded the opportunity to remain and prosper at their jobs. Having lawyers with disabilities climb the ranks of their firms or organizations also sends a strong signal to potential employees with disabilities that the legal profession does embrace disability diversity. Yet, as noted by Stephen D. Yslas, general counsel of Northrop Grumman in a *National Law Journal* article, simply hiring from minority groups is not enough. As he stated, “law firms are [already] lagging behind corporate America in making diversity a focal plan of their business plans.” To make sure lawyers with disabilities are accommodated and able to stay with an employer, he suggests that “[d]iversity in law firms and in corporate law departments needs to become an enduring core value attitude and practice that continues long after the current attorney population has moved on.”

ii. The recent economic crisis and the legal profession

The current economic crisis is still negatively impacting the legal profession. According to the *ABA Journal*, BLS data showed that for November 2010 the legal sector had a second month of job loss with 1,100 fewer jobs. The data also shows that the legal sector has 100 fewer jobs in November 2010 than November 2009. The *National Law Journal* reported in November 2010 that the country’s larger law firms are still cutting jobs with 1,1400 for the past year.

For all law graduates of the class of 2009, NALP reported that the employment rate of new law graduates dropped to 88.3%, the second straight year of decline, after a historical high of 91.9% for the class of 2007. Moreover, NALP concludes that this rate masks a number of weaknesses in the current job market for new graduates, including “higher rates of part-time and temporary employment, the fact that several thousand graduates had their law firm job start dates deferred beyond the usual fall timeframe, and the fact that one in five employed graduates was seeking different employment.”

D. DISABILITY DIVERSITY IN THE LEGAL PROFESSION

In recent years, ABA presidents have made disability diversity a priority. Past ABA President Michael S. Greco (2006-2007) hosted the First National Conference on Employing Lawyers with Disabilities, a groundbreaking event for the legal and disability communities. Past ABA President William H. Neukom (2007-2008), in his *ABA Journal’s* President’s Message of November 2007, recognized

⁶ Yet what is still not known from statistics on law students is what percentage of students with disabilities graduate as opposed to students with no disabilities.

that, although it is difficult to determine the exact degree that the disabled community is underrepresented in the legal community, it is evident that “[l]awyers with disabilities, too, have greater difficulty getting a job after law school and have higher rates of unemployment than lawyers who do not have disabilities.” He called on the legal profession to embrace the objectives of then-Goal IX in order to root out invidious discrimination.

Past ABA President H. Thomas Wells, Jr. (2008-2009) hosted a series of programs with ABA leadership on Goal III. The programs culminated at his diversity summit in Washington, DC on June 18-20, 2009. That same week he hosted—along with this Commission, the Association of Corporate Counsel, and the Minority Corporate Counsel Association—the Second ABA National Conference on the Employment of Lawyers with Disabilities. More information about the employment conference, including the event’s official report, can be found at: <http://www.abanet.org/disability>. After the employment conference, at the ABA Annual Meeting, President Wells held a follow-up meeting to discuss the transitional steps for promoting diversity in the legal profession.

Immediate-Past President Carolyn B. Lamm (2009-2010) made diversity a central focus of her term. Under her Presidential Diversity Initiative, President Lamm created the Presidential Diversity Commission. The Diversity Commission’s purpose was to help, among other groups, lawyers with disabilities “navigate the cultures and practices in law firms and corporations to pierce the glass

ceiling.” The Diversity Commission held a learning program series for diverse lawyers—that included presenters with disabilities—throughout the 2009-2010 bar year and published a blueprint for promoting diversity in the legal profession, *Diversity in the Legal Profession: Next Steps* (available at: <http://new.abanet.org/centers/diversity/PublicDocuments/Next%20Steps%20Final-Virtual%20Accessible%20042010.pdf>).

The current President, Stephen N. Zack, in promoting a forthcoming Commission publication on the employment of persons with disabilities (see Section VIII.B below), has emphasized the importance of ABA Goal III and declared that: “Employing persons with disabilities is not only the right thing to do, but it is sensible and wise.”

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<http://www.abanet.org/disability>

Published January 28, 2011.

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