BE IT RESOLVED, That the American Bar Association is committed to providing the benefits of membership to its disabled members to the maximum extent feasible.

BE IT FURTHER RESOLVED, That a Task Force be appointed to develop specific guidelines for the implementation of this policy statement, both regarding those services provided directly by the Association as well as those provided through vendors, for approval by the Board of Governors.
I. Background - The Nature of Disability Discrimination

Despite the fact that discrimination against persons with disabilities occurs throughout our society, the general public has not associated the word "discrimination" with the segregation and exclusion of persons with disabilities. Most people assume that disabled are excluded from school or segregated from their non-disabled peers because they cannot learn or because they need special protection. Likewise, the absence of disabled co-workers is simply considered appropriate because of the assumption that disabled people cannot work.

Most people are never forced to examine their assumptions or stereotypes about disabled people unless they, or a family member, become disabled, have a disabled child, or get to know someone who is disabled. At that point, the falseness of the stereotypes and the injustices of the policies based on those stereotypes become all too apparent.

Historically, the inferior economic and social status of disabled people was viewed as an inevitable consequence of the physical and mental limitations assumed to be imposed by disability. In early societies this view of disabled people resulted in persecution, neglect and death. Over the centuries persecution was largely replaced by pity and humanitarian care, but the exclusion and segregation of disabled people remained unchallenged. Until recently, the view of disabled people as incompetent and dependent upon charity, custodial care and protection was firmly embedded in the public consciousness.

Because the biological and physical inferiority of disabled people was considered innate and self-evident, the discriminatory nature of policies and practices that exclude and segregate disabled people has been obscured. This allegedly self-evident proposition has served to justify the exclusion and segregation of disabled people from all aspects of life.

The social consequences that have attached to being disabled often bear no relationship to the actual physical or mental limitations imposed by the disability. For example, being paralyzed has meant

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1. Interestingly, a positive relationship has been established between tendencies to pity blind people on the one hand, and the tendency to espouse community segregation for the blind on the other. Lukoff & Whiteman, Attitudes Towards Blindness, 55 The New Outlook for the Blind 39, 42 (1961).
far more than being unable to walk -- it has meant being excluded from public school, being denied employment opportunities, and being deemed an "unfit parent." It is only within the last decade that a fundamental challenge to traditional notions about disability has been launched. Increasingly, the social science and psychological literature has explored the implications of a socio-political definition of disability that recognizes the critical impact of social factors on the lives of disabled Americans. There is a slowly growing awareness of the similarities between racial prejudice and the prejudice experienced by disabled people. And like women, disabled people have identified "paternalism" as a major obstacle to economic and social advancement. Gradually, public policy in the area of disability has recognized that many of the problems faced by disabled people are not inevitable, but instead are the result of discriminatory policies based on unfounded, outmoded stereotypes and perceptions.

One of the most debilitating forms of discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial of benefits, services, or other opportunities that are as effective and meaningful as those provided to others. Whereas most members of the public would find the segregated, lesser alternatives provided persons with disabilities to be offensive if that were

2. Many physically handicapped children do have the mental ability to attend public school but are denied that right due to architectural barriers and/or transportation problems. 117 Cong. Rec. 42293 (1971).

3. In Heumann v Bd. of Education of the City of N.Y., 320 F.Supp. 623 (S.D.N.Y. 1970), plaintiff was denied a license to teach "on the grounds that, being confined to a wheelchair as a result of polio, she was physically and medically unsuited for teaching."

4. Historically, child-custody suits almost always have ended with custody being awarded to the non-disabled parent, regardless of whether affectional or socio-economic advantages could have been offered by the disabled parent. I. Vash, The Psychology of Disability 144 (1981)

This issue was eloquently addressed in a landmark decision by the California Supreme Court, Carney v Carney, 24 Cal. 3d 725, 598 F.2d 36, 157 Cal. Rptr. 383 (1979). In that case the lower court awarded custody to the mother of two boys after the father was injured and became a quadriplegic. The California Supreme Court reversed, stated that "... the court's preconception ... also stereotypes William as a person deemed forever unable to be a good parent simply because he is physically handicapped. Like most stereotypes, this is both false and demeaning." 24 Cal. 3d at 737.
their only choice, rarely are those alternatives questioned as inappropriate or insufficient when offered to a person with a disability.

Discrimination also results from actions or inactions that discriminate by effect as well as by intent or design, such as harm resulting from the existence of transportation, architectural, and communication barriers and the adoption or application of standards and criteria or practices and procedures based on thoughtlessness or indifference -- of benign neglect.

II. Discrimination Against Association Members

Unfortunately, such segregation, exclusion, and discrimination exist to an equal extent not just within the profession, but also within the Association with regard to the opportunity of its members with disabilities to partake of the various services and benefits offered to the general membership. Lawyers with disabilities who have attempted to participate in activities of the Association or take advantage of the benefits of membership of the Association have commonly faced with a multiplicity of barriers.

Examples of the more common physical barriers include the lack, generally, of effective and equivalent transportation at meetings to that provided other members, the use of hotels, restaurants, or other sites that fail to provide accurate information about, do not have, or will not reserve accessible rooms and adjunct facilities, and a common failure to provide information about access or accommodations in publications about meetings, continuing

5. As a result of discussions with the Young Lawyers Division Disabled Lawyers Committee, the Meetings and Travel Department several years ago began providing paratransit service between hotels at annual and midyear meetings. At the 1990 Midyear Meeting, the Association for the first time provided such transportation for social events and special events. Such services have generally not been available, however, at meetings of the Association's constituent entities, which results in members with disabilities being excluded from specific events, or not even coming to meetings.

6. Hotels generally will not guarantee handicapped accessible hotel rooms. Hotel industry practice is to offer a notation of a "request" for an accessible room, the argument being that they can't force someone out of a room. Nevertheless, a hotel could implement a "block" strategy to ensure that a sufficient number of accessible rooms are likely to be vacated using the same vacate percentages it generally uses for guaranteeing rooms in the first instance. Here again for the first time in conjunction with the 1990 Midyear Meeting, the Meetings and Travel Department at least requested hotels to guarantee handicap accessible rooms when requested.
legal education programs, or other events.\textsuperscript{7}

Another common type of barrier regards publications. Almost every survey conducted by the Association has indicated that the publications offered by the Association and through its various entities are the primary reason why many individuals join the Association. And yet these publications are not regularly available (in so far as they are not advertised as such) on audiotape or in braille as a member benefit to those lawyers who are visually impaired.\textsuperscript{8}

This lack of equal access to services and benefits offered by the Association is part of the larger problem of the continued neglect on the part of the Association to focus on disability discrimination within the profession. It is common for members of the Association to not include considerations of discrimination based on disability when discussing barriers within the profession generally. As another example, the ABA Journal contest for law office design has not in the past included a general criteria that the offices be handicapped accessible, although this past year it for the first time established an entry category for handicap accessibility.

The impact of this discrimination against members of the profession with disabilities has been to encourage the formation of organizations for lawyers with disabilities outside the Association, resulting in underrepresentation of lawyers with disabilities in the Association. For example, there are two well-known national organizations for blind lawyers. At least one of those organizations, the American Blind Lawyers Association, has approximately 500 members.

This effective exclusion of disabled lawyers from active participation in the Association's activities, which withholds from them the opportunity to network with other active members of the Association, has also made it more difficult for them to change.

\textsuperscript{7} It should be noted that as a result of a resolution brought by the Young Lawyers Division in 1986 and passed by the House of Delegates, hearing impaired attorneys are now provided accommodation at the annual and midyear meeting, and a check-off for the need for such accommodation is provided on the registration form. Publicity regarding the availability of this service, however, has been minimal. Also, in general, the Meetings and Travel Department has been cooperative to the concerns expressed by the Young Lawyers Division.

\textsuperscript{8} The ABA Journal was available for one time on audiotape, but there was an extra charge of $79 initially for members which was later reduced to $49. There was almost no demand for this service at this cost. Also, this was not marketed as a service to the disabled but was rather intended more as a "listen in your car" alternative.
their socially, economically, and professionally inferior status by withholding from them the opportunity to network with other active members of the Association.  

III The Americans With Disabilities Act

The tide, however, is very slowly changing. Society is slowly coming around to the realization that the segregation and exclusion experienced by persons with disabilities is as unacceptable in our society as is discrimination against persons based on race, religion, sex, and national origin.

In step with the times, the House of Delegates passed a resolution at the 1989 Annual Meeting supporting federal legislation which prohibits discrimination on the basis of disabilities in a manner parallel to existing prohibitions on discrimination based on race, sex, national origin, and religion. Such legislation, embodied in the Americans With Disabilities Act ("ADA"), was recently passed by Congress and has been signed into law by President Bush. The requirements of the ADA apply directly to the Association in areas such as CLE programs offered for MCLE credit and meetings for which the Association leases space from a hotel.

IV. The Current Resolution

The purpose of this resolution is to eliminate discrimination against members of the profession with disabilities in the one area in which the Association can exercise control: in the services and benefits offered to its members, either directly or through the vendors with whom it contracts. Simply stated, the Association would be required to provide the benefits of membership to its disabled members that it provides to its nondisabled members to the maximum extent feasible. The resolution covers both those areas to which the ADA applies, the requirements of which the Association of course would comply with in any event, as well as those areas in which the ADA clearly does not apply, such as publications.

The exact guidelines for implementing this policy and the resulting extent of services provided will be the responsibility of a Task Force appointed by the President of the Association. That Task Force should have representatives of various interested entities, including the Standing Committee on Membership, the Standing Committee on Meetings and Travel, the Standing Committee on Association Communications, the Young Lawyers Division, and the Conference of Section Chairs, among others.


Just as women and minorities are denied equal opportunities when business is transacted in male-only or white-only clubs, persons with disabilities are also denied equal opportunities when business is transacted in inaccessible or segregated locations.
A. "To The Maximum Extent Feasible"

The resolution recognizes through the words "to the maximum extent feasible" that there may be circumstances in which compliance with the resolution, whether by providing an equal service or a separate but integrated service, is not reasonable.

For example, if the Association determines that no city that is a potential annual meeting site has sufficient accessible accommodations to comply with this resolution, the annual meeting will still need to be held. But the extent of accessibility would continue to be an important criteria and the Association would still need to choose accessible sites and services to the fullest extent possible within a particular city. For smaller general membership meetings, feasibility would not pose a problem and the requirement would be absolute.

The other factor that enters into the question of whether the Association or its vendor must provide an equal or a separate equivalent service in any given situation is the cost of providing that service. In the ADA, the term of art used is "undue burden." For example, whether an entity would have to provide its publications in audiotape or braille form to visually impaired members would depend on the cost and whether that cost constituted an "undue burden" under the guidelines to be developed. Likewise, whether a CLE program that qualifies for MCLE credit would have to provide an on-site interpreter or would be able to offer a deaf participant a captioned videotape version of the program as a "separate" service would depend on a similar analysis.

Initial indications are that the cost of providing publications in audiotape or braille format is not significant. For example, production of audiotapes of the magazine Compleat Lawyer would cost the sponsoring entity a set-up charge of $120 per issue and $6 per copy. Braille copies would cost $75 for the set up (if a disk is provided) and $12 per copy.

Another factor is whether the Association has a choice of vendors. Just as in the example of meetings sites, if the Association has a choice of vendors, one of which provides an equal or integrated service and another which provides no service, the Association would need to choose the vendor that provides the highest level of accommodation for the disabled unless, due to price differences or some other factor, that would create an undue burden on the Association.

Some individuals will undoubtedly say that, despite the qualified parameters of the recommendation, this policy will create burdens or inconveniences for the Association. If the proposal were an attempt to eliminate discrimination based on race or sex, few today would attempt to argue that the Association's convenience is more important than the principle; certainly such an argument would not carry the day in this House. Such an argument should have no more credence when the issue is discrimination based on disability.
Summary

The Association has recognized through prior policy statements that discrimination against persons with disabilities can no longer be tolerated, that the disabled have a right to as full an integration into the mainstream of life as possible. It has recognized that discrimination against persons with disabilities must be treated in the same manner as discrimination based on race, sex, religion, and national origin.

Thus, just as the Association has policy that prevents Association activities from being held in facilities that discriminate on the basis of race, sex, religion, or national origin, so must the Association adopt the current resolution that commits the Association to take steps to ensure that its members with disabilities are provided with services or benefits to the maximum extent feasible. Until the Association is ready to insist that all of our members be able to receive the full benefits of membership, including participation in all activities, we will not be treating our disabled members justly.

Respectfully submitted,

Judy Perry Martinez
Chair
GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

No. ______
(Leave Blank)

Submitting Entity: Young Lawyers Division

Submitted By: Judy Perry Martinez, Chairperson

1. Summary of Recommendation(s).

Commits the Association to providing benefits of membership to disabled members to the maximum extent feasible. Establishes a Task Force to develop guidelines to implement the recommendation for Board of Governors approval.

2. Approval by Submitting Entity.

YLD Assembly, February 1990

3. Previous submission to the House or relevant Association position.

A different version of this recommendation was submitted to the House at the 1990 Annual Meeting, but was withdrawn in order to give other interested entities more time to consider the matter and provide comments to the Division.

The Association adopted policy in August 1989 supporting federal legislation to prohibit discrimination based on disabilities and ensure equal opportunities for individuals with disabilities in public accommodations and services, among other activities. The Association also adopted policy in August 1986 which encouraged active participation of hearing impaired attorneys in the Association by improving their access to the work and activities of the Association.

4. Need for Action at This Meeting.

Now that the Americans With Disabilities Act has been signed by the President, the Association should begin the process of insuring that its disabled members receive the benefits of membership both as required by the ADA and in those areas not covered by the ADA.

5. Status of Legislation. (If applicable.)

NA
6. **Cost to the Association.** (Both direct and indirect costs.)

Implementation of this resolution will have some cost to the Association and its component entities. In general, requirements of the ADA that relate to accessibility of hotels should not involve any increased costs to the Association. Accessibility of transportation will involve a cost increase to those entities that do not already provide such transportation (the Association already provides this for the annual and midyear meetings). With regard to publications, the extra costs are expected to be quite low. For example, audiotapes of the magazine *Compleat Lawyer* would cost a set-up charge of $120 per issue and $6 per copy. Braille copies would cost $75 for the set up (if a disk is provided) and $12 per copy.

The Task Force to be created will also involve a cost to the Association, but the exact cost will depend on the number of individuals on the Task Force and the frequency of their meetings. Assuming that the Task Force meets four times during the coming year (two of which meetings would be in conjunction with the Annual and Midyear meetings so that their would be no extra cost involved), a reasonable estimate for the cost of the Task Force would be $12,000. This includes travel reimbursement and office expense reimbursement and miscellaneous headquarters office expenses. Since the Task Force would be staffed by existing staff, the recommendation does not entail any extra staff costs.

7. **Disclosure of Interest.** (If applicable.)

NA

8. **Referrals.**

This matter has been discussed with the Standing Committee on Membership and the Standing Committee on Meetings and Travel over the course of the past half year. It is being referred to the Standing Committee on Association Communications, the ABA Journal, and all sections and divisions concurrently with the submission of the final version of the Recommendation with Report.

9. **Contact Person.** (Prior to meeting.)

Judy Perry Martinez
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10. **Contact Person.** (Who will present the report to the House.)

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