

1-28-2015

Beyond Diversity Rhetoric: Understanding the Link between Professional Responsibility and Reasonable Accommodations for Lawyers with Disabilities

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Recommended Citation

Susan S. Fortney, *Beyond Diversity Rhetoric: Understanding the Link between Professional Responsibility and Reasonable Accommodations for Lawyers with Disabilities* JOTWELL (2015)

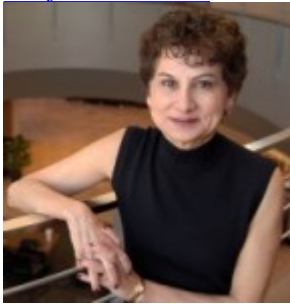
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Beyond Diversity Rhetoric: Understanding the Link between Professional Responsibility and Reasonable Accommodations for Lawyers with Disabilities

<http://legalpro.jotwell.com/beyond-diversity-rhetoric-understanding-the-link-between-professional-responsibility-and-reasonable-accommodations-for-lawyers-with-disabilities/>

Alex B. Long, *Reasonable Accommodation as Professional Responsibility, Reasonable Accommodation as Professionalism*, 47 U.C. Davis L. Rev. 1753 (2014).



[Susan Fortney](#)

Over the last three decades organized bar groups and law firms have embraced the value of diversity, taking steps to promote diversity among ranks of lawyers. These diversity initiatives fall short when they do not include the interests of lawyers in different groups. One group that is often ignored is comprised of lawyers with disabilities. That is one of the reasons that I especially liked this article.

Professor Long's article is a welcome addition to the scholarship on diversity in the legal profession. It addresses important issues that deserve attention, providing insightful observations on the connection between professional responsibility and the inclusion and treatment of lawyers with disabilities. Specifically, the article examines the inextricable link between lawyers' professional responsibility under the ethics rules, professionalism, and the Americans with Disabilities Act (ADA) provisions that require reasonable accommodations for persons with disabilities.

Professor Long introduces the discussion with eye-opening accounts to illustrate how the legal profession has been slow to remove barriers that exclude persons with disabilities. Statistics and stories speak volumes. For example, thirteen years after passage of the ADA, a study indicated that there were 100 violations of accessibility codes in a courthouse built in 2011. (P. 1755, n. 6.)

Meaningful inclusion of persons with disabilities goes beyond access to courthouses, but requires addressing challenges that prevent full access and participation by lawyers with disabilities. The first challenge for persons with disabilities is dealing with hurdles in law school, such as documentation of disability status. Those who graduate from law school must navigate rigid requirements for admission to law practice, such as onerous mental health screening in some states. Following admission, lawyers with disabilities often encounter discrimination in hiring and employer reluctance to make reasonable accommodations.

These obstacles, coupled with employers' concern related to productivity and the perceived costs associated with accommodations, contribute to the disproportionately low number of practicing lawyers with disabilities. (P. 1774-79.) Although the U.S. Census Bureau reported that 19% of the civilian noninstitutionalized population has a disability of some kind, a 2009 survey of law firms revealed that only .23% of lawyers were identified as

having a disability. (P. 1756 (citing a U.S. Department of Commerce report and a survey conducted by the National Association of Law Placement).) It is unclear if these statistics accurately reflect the number of lawyers with disabilities because some of those lawyers may not report their status because they are concerned about the stigma associated with admitting that they are lawyers with disabilities. These statistics could change if more lawyers understood the professional responsibility dimensions of including lawyers with disabilities. Professor Long advances this worthy goal by persuasively arguing that lawyers should recognize that making reasonable accommodations is a means of complying with the professional obligation to provide competent representation.

Part I of Professor Long's article provides a concise explanation of the provisions under the ADA requiring reasonable accommodations for qualified individuals who can perform the essential functions of the employment position. This overview includes a discussion of the benefits of accommodation, not just for the individuals with disabilities, but also for co-workers and clients. Part II analyzes the problems confronting lawyers with disabilities and their employers. This examination reveals how the preconceived notions of lawyers who make hiring decisions and concerns of employees with disabilities contribute to the reluctance to provide and seek reasonable accommodations. Understanding the role of perceptions, Part III suggests an analytical framework that could help shape attitudes of legal employers on the subject of lawyers with disabilities. Professor Long points out that the discussion concerning employment of lawyers with disabilities has largely framed the issues in legal terms under the ADA. He urges lawyers to rethink that approach and to treat the reasonable accommodation requirement as a means of complying with professional obligations to clients, as well as a means of advancing core values of the legal profession. (P. 1750.)

Professor Long notes that disciplinary rules in a few jurisdictions expressly prohibit discrimination. Because the failure to make reasonable accommodations is treated as discrimination under the ADA, lawyers arguably have an ethical duty to make accommodations in jurisdictions with anti-discrimination ethics rules. (P. 1779-80.) In other states, Professor Long asserts that managing and supervisory lawyers are ethically obligated to make reasonable accommodations because state versions of ABA Model Rule 5.1 require that they make "reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." (P. 1781.) Rule 5.1(b) imposes similar obligations on supervising attorneys. Thus, Professor Long argues that these rules require that partners and supervising lawyers take steps to ensure that other members of the firm are providing competent representation. (P. 1781.)

In discussing lawyer's ethical obligations to make reasonable accommodations Professor Long provides guidance to both employing attorneys and employees on how they approach a discourse on reasonable accommodations. This is another reason that I like this article: it provides practical suggestions on dealing with reasonable accommodation issues. It also makes concrete recommendations on how leaders of the bench and bar can promote the connection between professional responsibility, professionalism, and reasonable accommodation.

In addition to leaders of the bench and bar, other audiences would benefit from reading this article. Most obviously, hiring and managing attorneys should examine firm practices after reading the article. The article also helps lawyers with disabilities appreciate their own responsibility with respect to seeking reasonable accommodations. Professors and lawyers who work in the areas of lawyers' professional conduct and admission to law practice should also read the article.

As noted in the introduction above, lawyers with disabilities are a group that is too often unrecognized when considering diversity of the legal profession. Although we have made some strides in advocating for increased diversity, the legal profession still has a long way to go in taking steps that actually promote diversity. Thanks to Professor Long we have a new conceptual framework that can help foster diversity by recognizing the connection between reasonable accommodation, professional responsibility, and professionalism.

Cite as: Susan Fortney, *Beyond Diversity Rhetoric: Understanding the Link between Professional Responsibility and Reasonable Accommodations for Lawyers with Disabilities*, JOTWELL (January 28, 2015) (reviewing Alex B. Long, *Reasonable Accommodation as Professional Responsibility, Reasonable Accommodation as Professionalism*, 47 **U.C. Davis L. Rev.** 1753 (2014)), <http://legalpro.jotwell.com/beyond-diversity-rhetoric-understanding-the-link-between-professional-responsibility-and-reasonable-accommodations-for-lawyers-with-disabilities/>.