

Diversity and the Law: Persons with Disabilities

PRESENTED BY JUDGE SUEANNA P. JOHNSON
COLORADO COURT OF APPEALS

COLORADO DEFENSE LAWYERS ASSOCIATION

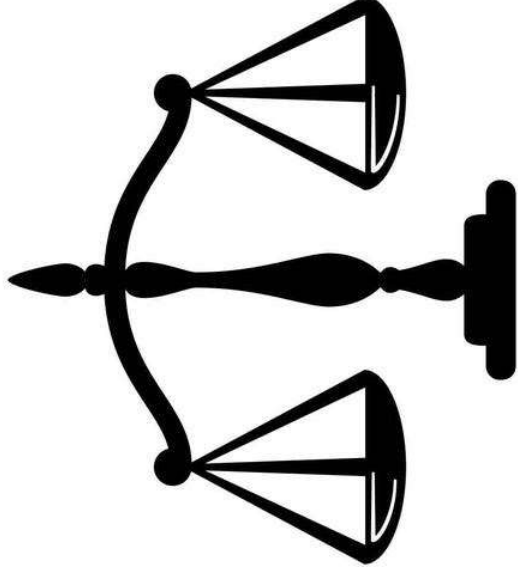
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Overview

Disability Law



Colorado Legal
Community



Workpla

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Disability Law

- Americans with Disabilities Law
- Statistics
- Four Models of Disability



Americans with Disabilities Act



The Purpose of the ADA

“To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; [and] to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.”

42 U.S.C. § 12101(b)(1) & (4).

Why is the ADA Important?

- The ADA is considered the most comprehensive disability rights law
- It applies to many different types of entities and many different types of action and inaction may be unlawful with respect to discrimination against people with disabilities

Title I of the ADA

Covers:

- All employers, private and public (some exceptions – religious)
- Generally covers employers with 15 or more employees
- Complaints filed with the Equal Employment Opportunity Commission

42 U.S.C. § 12111, 12112

Title II of the ADA

Covers "Public Services" including:

- State Governments
- Local Governments (counties, cities)
- Related Entities ("any department, agency, special-purpose or other instrumentality of the state or states or local government including transportation provided by any of the foregoing
- the National Railroad Passenger Corporation, and any component authority

42 U.S.C. §§ 12131-12165.

Title III of the ADA

Covers Public Accommodations / Services Operated by Private

- Includes full and equal enjoyment of good, services, facilities, privileges, advantages, or accommodations
- Includes forms of transportation

42 U.S.C. § 12182(a)

Who is Covered by the ADA

Antidiscrimination laws generally refer to what has been known as "suspect classes" (race, gender, religion, etc.)

What constitutes discrimination under the ADA is very different because there is a diversity of disabilities (those are blind, deaf, unable to walk, have a cognitive impairment, psychiatric impairment, etc.) and so many types of people that may be unlawful.

Many of these unlawful activities include not treating people with disabilities like everyone else.

What is Covered by the ADA

For example:

- Failing to provide reasonable accommodation to a person with a disability
- Failing to provide a reasonable modification to policies, practices and procedures for a person with a disability

What Does “Disability Mean?

The term “disability” means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities at such individual

(B) a record of such an impairment; or

(C) being regarded as having such an impairment

42 U.S.C. § 12102(1)(A)-(C).

Examples

LIFE ACTIVITIES

Caring for Oneself	Walking	Learning
Performing Manual Tasks	Standing	Reading
Seeing	Lifting	Concentrating
Hearing	Bending	Thinking
Eating	Speaking	Communicating
Sleeping	Breathing	Working

42 U.S.C. § 12102(2)(A)

2008 Amendments

The ADA was amended in 2008 to make clear that the scope of life activities is non-exhaustive

Also includes certain major bodily functions such as:

- the immune system,
- endocrine system and
- reproductive functions, among others.

42 U.S.C. § 12102(2)(B)

“Substantially Limit” Means

The impairment must be substantial and not minimal:

- A person who wears ordinary eyeglasses (not a disability) v. someone who is totally blind (a disability)
- A person who can walk a mile but then must rest (probably disability) v. a person who cannot walk at all.
- A person who can lift as much as 100 pounds (probably not disability) v. a person whose impairment limits that individual to lift even 5 pounds (maybe a disability).
- Unlike other suspect classes, disabilities are not as easy to do

What is a Reasonable Accommodation?

- Making existing facilities readily accessible to and usable by individuals with disabilities; and
- No reasonable accommodation is required that would impose an “undue hardship” on the public entity

42 U.S.C. § 12111(9)

Tennessee v. Lane, 541 U.S. 529 (2004)

FACTS:

- Respondents – George Lane and Beverly Jones, both paraplegics, sued the State of Tennessee for using wheelchairs
- Filed lawsuit alleging violations of Title II of the ADA, claiming that the State of Tennessee courthouses were inaccessible for people with disabilities
- Lane needed to appear at a courthouse on a criminal summons, but the courthouse had no elevator and he had to crawl up to the second floor to the courtroom
- Jones was a certified court reporter and some of the court reporters were not certified and therefore lost work opportunities

Lane (Continued)

ISSUE:

Whether Title II of the ADA – which requires state and local governments to make services available to people with disabilities – was a proper exercise of Congress's enforcement power under § 5 of the Fourteenth Amendment

Section 5 of the Fourteenth Amendment allows Congress to abrogate state sovereign immunity to enforce substantive guarantees of that Amendment



President George W. Bush signing
Americans with Disabilities Act in
on July 26, 1990

Lane (Continued)

FINDINGS OF CONGRESS DURING PASSAGE OF ADA:

- “Pervasive unequal treatment in the administration of state services and program” concerning people with disabilities
 - 1979 – most states disqualified “idiots” from voting without regard to individual capacity
 - Some states prohibited or continue to prohibit people with disabilities from marrying or serving as jurors
 - 76% of public services and programs housed in public buildings inaccessible and unusable by people with disabilities
-

Lane (Continued)

HOLDING:

Title II of ADA is a valid exercise of Congressional enforcement of Section 5 of the Fourteenth Amendment to remedy the unequal treatment of and exclusion from state judicial services of people with disabilities

Title II requires “reasonable modification” of architecture and services to make accessible to people with disabilities

For older buildings, “reasonable modifications” could include relocating services to accessible sites, assigning persons to aide persons with disabilities

“This duty to accommodate is perfectly consistent with the well-established accommodation process principle that ‘within the limits of practicability, a State must afford to individuals a meaningful opportunity to be heard in its courts.’”

Thoughts / Recommendations

- Involve people with disabilities in planning and policy recommendations or include them on committee/groups
- Encourage the judiciary to be a leader to destigmatize disabilities demonstrate to the public and participants of the legal system judiciary will make reasonable accommodations for people with disabilities
- Provide contact for ADA coordinator or liaison for judges/lawyers on TMOs, PTOs, or other general information to inform court, firm workplace that a reasonable accommodation might be needed

Statistics

United States

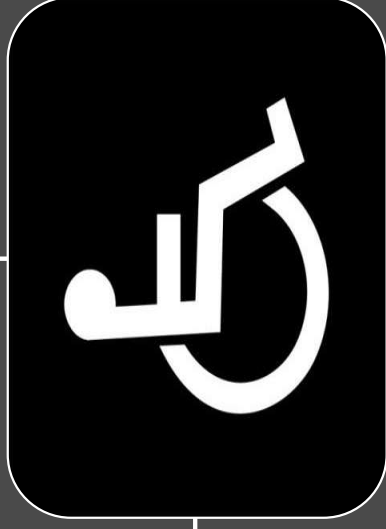
- ▶ In 2021, 42.5 million adults (13%) or 1 in 4 persons (U.S. Census)
- ▶ In 2021-22, 7.3 million students (the equivalent of 15%) in public schools aged 3-21 received special education services (National Center for Education Statistics)
- ▶ In 2022, 6,619 million persons with disabilities employed (21.3% of U.S. population rate) (U.S. Bureau of Labor Statistics)

Colorado

- ▶ In 2022, 1,015,417 million adults Colorado have a disability (1 in 10) (Center for Disease Control)
- ▶ In 2022, 111,830 students (equivalent to 12.65% in public schools) received special education services (Colorado Department of Education)
- ▶ In 2016, 41.5% of persons with disabilities were employed – understand how many people with disabilities in the workforce (American Community Survey)

The
Charitable
Model

The
Medical
Model



The Social
Model

The Human
Rights
Model

Four Models of Disability

1. The Charitable Model

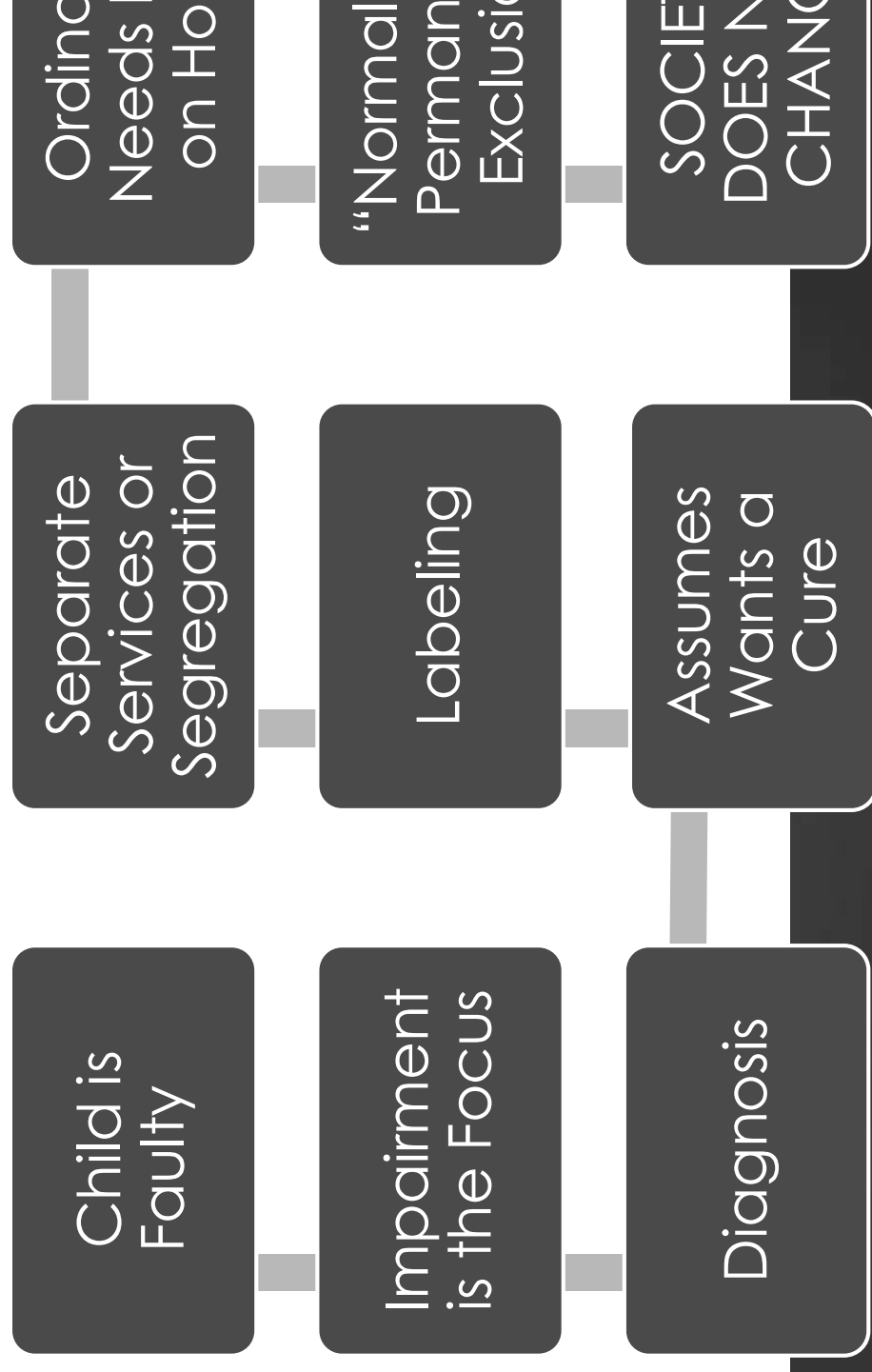
“Pity” / “Unfortunate” Ro

Victim of Circumstance

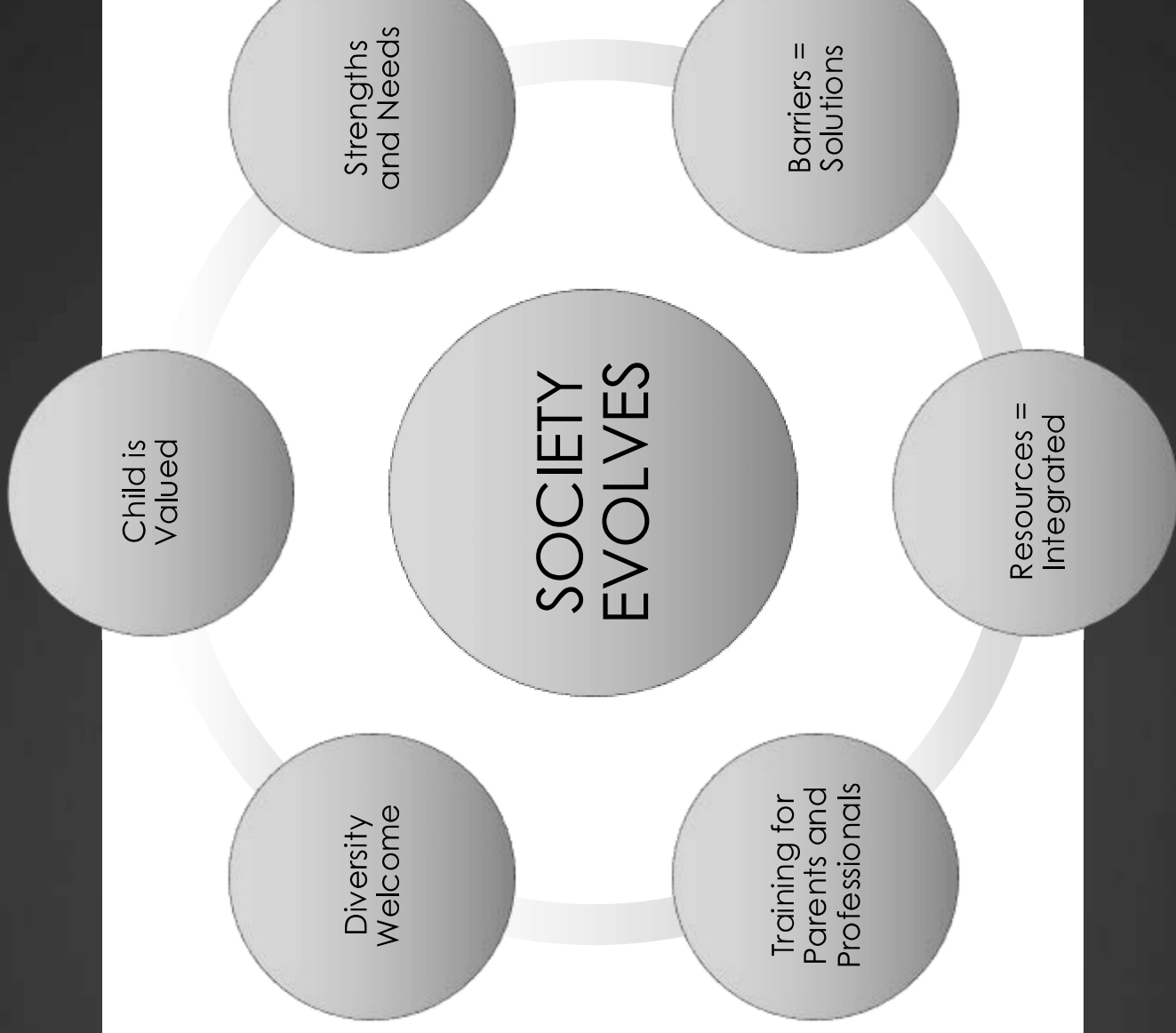
Dependence vs.
Independence

“Killing with Kindness”

2. The Medical Model



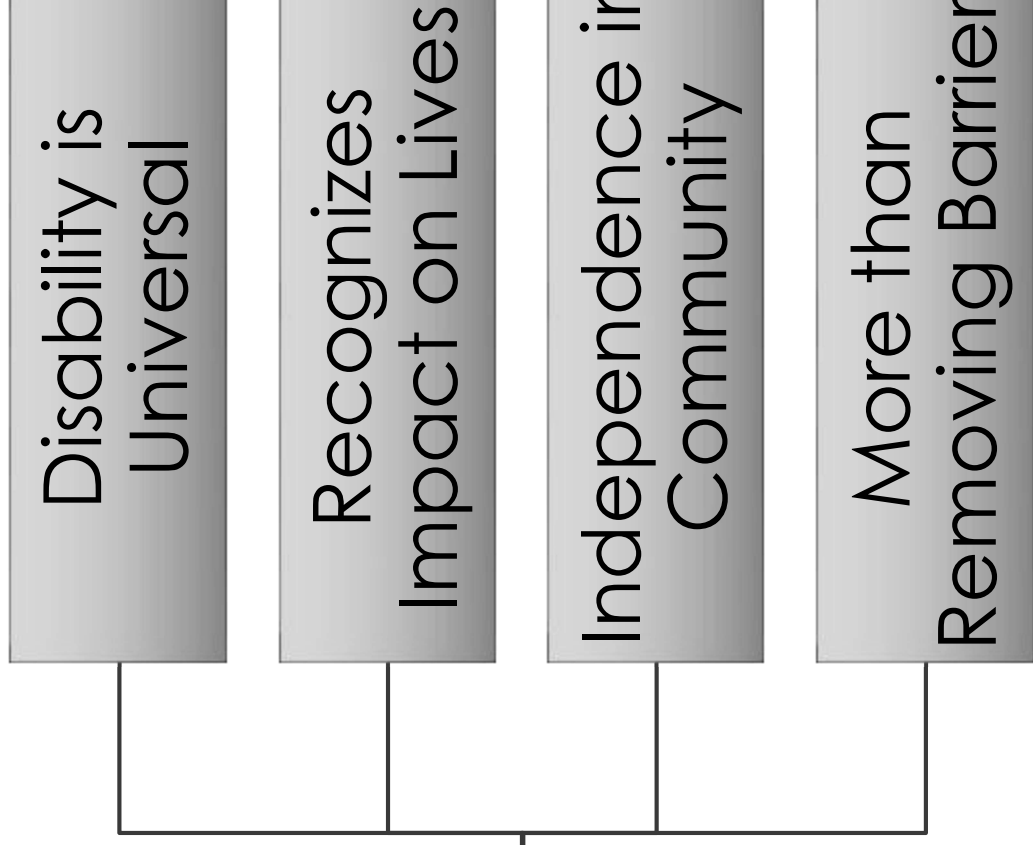
3. The Social Model



4. The Human Rights Model

Human Rights

- ✓ Life
- ✓ Health
- ✓ Free from Inhuman Treatment
- ✓ Privacy
- ✓ Equality Under the Law
- ✓ Marry / Family
- ✓ Education
- ✓ Work



Reflective Questions

- Do any of these models resonate with you with respect to your current view of disability? Have any of the models changed your view?
- How have these models been present in your educational development or professional lives?
- Are there policies or procedures or steps you can take in your firm/workplace to make the culture/environment more welcoming to and inclusive for persons with disabilities?



How Colorado Is Diversifying the Bench

- Judicial Diversity Outreach Program
- Three Areas of Focus
- Report on Judicial Diversity (2023)
- The Colorado Disability Bar Association



Colorado Judicial Institute W
coloradojudicialinstitute.org

Judicial Diversity Outreach Program



Nga Vu'o'ng-Sandoval

- In 2020, the General Assembly passed and the Governor signed House Bill 19-043 (codified at § 13-3- 101(11)(a), C.R.S.) a Judicial Diversity Outreach Program within the State Court Administration Office
- Requires the Head of Judicial Diversity to submit an annual report to the General Assembly
- Sumi Lee, Former Head of Judicial Diversity (Jan. 2020 - Jan. 2023)

Three Areas of Focus

- 1. Pipeline Development** – Engage, mentor, and inspire diverse judicial applicants, law students, and prospective law students
- 2. Selection Process and Enhancement** – Education for Judicial Nominating Commission Members and Assist Applicants and the Process
- 3. Data and Research** - Develop and Disclose judicial diversity data to the public

Pipeline

More Contact with CU
and DU Law Schools

Judicial Walking Tours

Java with Judges

Contact with Middle,
High School & College
Students

Greater Colorado Law
Student Experience

Selection Enhancement

Dream Team 2.0

Spotlight On Series

Coffee Brigade

Implicit Bias Training
for Nomination
Commissions

Data Research

Statistics or
of Juc

Polling of
Judges at
Confer

Program
Support to
Judge

Court Outr
Specialt

Race/Ethnicity Demographic of Judges (Statewide)

Source: Report on Judicial Diversity
(2023)

https://www.courts.state.co.us/userfiles/file/Administration/Judicial_Diversity/2023_JDO_Annual_Legislative_Report.pdf

Unless otherwise noted, the data reflected in this table and throughout the report reflect responses from county court, district court, and Court of Appeals Judges of the Colorado state courts as well as the Justices of the Colorado Supreme Court that were active and serving on the bench as of June 30, 2023. The data does not include demographic information for judges that were appointed but not yet taken their oaths of office as of June 30, 2023, Denver County Court judges, Magistrates, or Water Referees

Race/Ethnicity	# of Judges	% of Judges
American Indian / Alaska Native	2	0.6%
Asian	9	2.7%
Black / African American	15	4.5%
Hispanic / Latino	27	8.1%
White, not Hispanic or Latino	276	82.4%
Two or More Races - Not Hispanic or Latino	6	1.8%
TOTAL	355	

Gender Demographic of Judges (Statewide)

Source: Report on Judicial Diversity (2023)

https://www.courts.state.co.us/userfiles/file/Administration/Judicial_Diversity/2023_JDO_Annual_Legislative_Report.pdf

Gender	# of Judges	% of Judges	Percentage
Male	184	54.9%	
Female	151	45.1%	
TOTAL	335		

New Appointments: Three Year Fiscal Year Comparison

State Fiscal Year is from
July 1 to June 30

Source: Report on Judicial Diversity
(2023)

https://www.courts.state.co.us/userfiles/file/Administration/Judicial_Diversity/2023_JDO_Anual_Legislative_Report.pdf

Race	FY 2021	FY 2022
American Indian / Alaska Native	0	0
Asian	0	0
Black / African American	5	5
Hispanic / Latino	4	4
White, Not Hispanic / Latino	19	19
Two or More Races	2	2
TOTAL	30	30
POC/TOTAL	11/30	8/30



Demographic Survey from the 2022 Judicial Conference

Source: Report on Judicial
[https://www.courts.state.tx.gov/Reports/Annual Legislative Report](https://www.courts.state.tx.gov/Reports/Annual%20Legislative%20Report)

Judicial Conference Survey

Data Point	Sub-Category	Total Respondents	Decline to Answer
Sexual Orientation		224	4.5
	Bisexual, Gay, Lesbian, Other		
Veteran Status		225	0.9
		224	1.3
Disability	Yes		
	No		
Family Immigration History		225	2.2
	I am an Immigrant		
	I am a Child of an Immigrant		

Judicial Conference Survey

Data Point	Sub-Category	Total Respondents	Decline to Answer
Education		228	0.4%
	First – High School Grad		
	First – College Grad		
Work History	First – Law School Grad		
		228	0.4%
	Worked F/T Law School		
Caregiver	Law School – 2nd Career		
		226	1.3%
	Own Child/Children		
	Parent(s)/Other Adult Family		
	Other Capacity		

Judicial Conference Survey

Data Point	Sub-Category	Total Respondents	Dec to A
Race		225	2.
	American Indian or Alaska Native Only		
	Asian or Asian American Only		
	Black or African American Only		
	Middle Eastern or North African Only		
	White Only (Includes Hispanic/Latino)		

Judicial Conference Survey

Data Point	Sub-Category	Total Respondents	Dec to An
Race		225	2.
	American Indian/Alaska Native, Black/African American, White, Multiracial		
	American Indian/Alaska Native and White		
	Asian/Asian American and White		
	Some Other Race		
	Some Other Race and White		

Judicial Conference Survey

Data Point	Sub-Category	Total Respondents	Decline to Answer
Ethnicity		228	3.1%
	Hispanic, Latino, or Spanish Origin		
	Not Hispanic, Latino, or Spanish Origin		



Colorado Disability Bar Association

Accomplishments (Since October 2020)

- CDBA is incorporated as a 501(c)(3)
 - Board of Directors Appointed and Officers elected
 - 45+ members (will charge dues soon)
 - Collaborating with the disability student associations at CU and DU Law Sch
 - Three articles in the *Colorado Lawyer* (More to Come)
 - 15+ speaking engagements and/or CLEs / Podcast Episode on *Adventures i*
 - Encouraged ARC to Include disability in annual demographics survey
-

CDBA – Things to Come / Become a Member

- Website
- More Speaking Engagements / CLEs (Disability and Non-Disability Related)
- Resources on or Books About Disability Law / Persons with Disabilities Stories
- Pipeline Work for Judicial Candidates
- Develop Half Day to One Day CLE Seminar with Judge and Lawyer Present
- Eventually Form Foundation, Award/Scholarship Recognition Dinner/Event

Membership – Contact Ellen Blatt, Secretary
codisabilitybarassn@gmail.com

Persons with Disabilities in the Workplace

Top Row (L-R):

Judge Anita Schutte
Second Judicial District

Matthew Simonsen
Hutchison Black & Cook LLC

Bottom Row (L-R):

Gregg Carson
Colorado Attorney General's Office

Magistrate Jamin Alabiso
First Judicial District



Having Persons with Disabilities in the Workplace

Resilience

Excellent Planners

Think Outside the BOX

Prepared

Problem-Sol

Efficie

Persons with Disabilities in the Workplace: Steps Forward

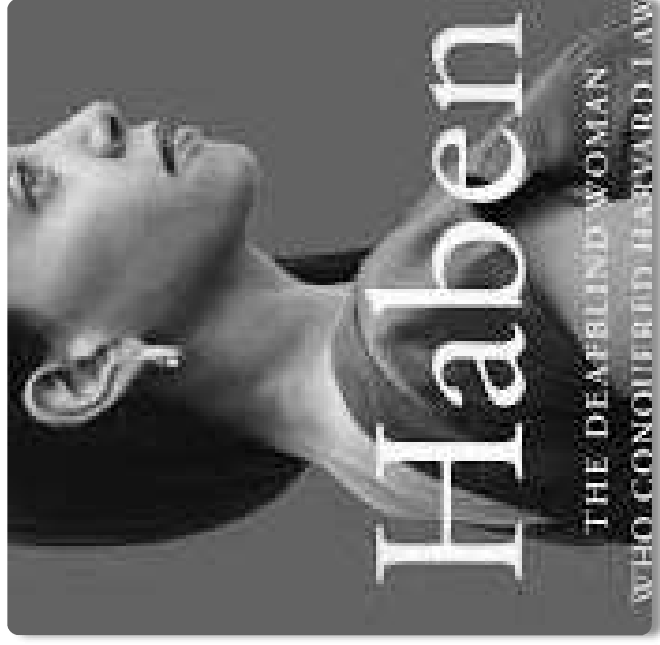
- Whether or Not to Disclose During Job Interview
 - Updating Judicial Website / Judicial Learning Center / Court
 - Opinion Writing – Lived Experience, Tone, Word Choice
 - Openly Disclosing Disability in the Courtroom
 - Demographic Information / ADA Awareness for Bar and Law
 - More Awareness in Legal Community – Firms, Specialty Bars
-

“Although [I] appeared to enjoy life rapturously, [I] was so overcome with mental depression, that [I] never dare carry a knife in [my] pocket.”

- Abraham Lincoln

“The only thing worse than being blind is having sight but no vision.”

-Helen Keller



“Disability is not something an individual overcomes. I’m still disabled. I’m still Deafblind. People with disabilities are successful and we develop alternative technologies and our communities choose inclusion.”