

Neurodiversity in Nevada

BY JENNIFER RICHARDS, ESQ.

We often use the phrase “diamond in the rough” to describe someone with hidden potential or exceptional abilities. When assessing the value of a stone, gemologists use the term “inclusion,” rather than defect or flaw, to describe irregularities within the jewel. **Neurodiversity is a term that recognizes humans may be “wired differently”** and seeks to recognize these differences as part of the normal variation of the human brain.

In a state known for its mining industry, the legal profession needs to retool its efforts to mine an untapped talent pool of neurodiverse persons. While approximately one in four Americans is living with a disability,¹ less than 1 percent of lawyers identify as disabled.²

Across the board, persons living with disabilities face substantial barriers to meaningful employment. Neurodiverse individuals, specifically adults on the autism spectrum, have few prospects for employment despite most of these individuals possessing average or above-average intelligence.³ In the private sector, large Fortune 500 companies such as Microsoft, Dell, IBM, Ford, SAP and others are reforming their hiring practices to attract neurodiverse talent.⁴

What is Neurodiversity?

The term traditionally referred only to persons on the autism spectrum but now also includes attention deficit/hyperactivity disorder (ADHD), developmental dyspraxia, dyslexia, epilepsy, Tourette Syndrome and other diagnoses such as depression or bipolar disorder. There is an international civil rights effort to challenge the medical view that these conditions require treatment. Instead, advocates assert that these differences should be respected, understood and supported. Proponents of the effort seek to reduce stigmas and systemic barriers, and to increase access for neurodiverse individuals to participate in society on their own terms.

A commonality among neurodiverse individuals are social impairments. For example, an autism diagnosis is characterized by “persistent deficits in social communication and social interaction across multiple contexts, including deficits in social reciprocity, nonverbal communicative behaviors used for social interaction, and skills in developing, maintaining and understanding relationships.”⁵ However, neurodiverse individuals also possess attention to detail, intense concentration, the ability to recall detail and perform routine tasks in manner superior to their colleagues.⁶

Generally speaking, Title I of the Americans with Disability Act (ADA) protections extend to neurodivergent persons. So, it is critically important to reform hiring, selection and career advancement not only to harness neurodivergent persons as a competitive advantage but also to comply with the ADA.

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Recruitment, Selection and Career Development

In an interview with Haley Moss,⁷ an autistic attorney based in Florida, she emphasized that neurodiverse individuals are creative problem-solvers because they think differently. While Moss was able to secure employment immediately following graduation from law school, she notes that the traditional hiring process can be challenging for neurodivergent individuals. For persons with Autism Spectrum Disorder, eye contact, body language, understanding social cues and conversational subtext may be particularly difficult. The use of personality tests in the hiring phase is also problematic and may violate the ADA, notes Moss. In *Karraker v. Rent-A-Center*, employees had to take tests to be promoted within the company. Plaintiffs alleged that the test scores curtailed their opportunities for advancement and that the test discriminated against persons with disabilities. The Seventh Circuit found that the test constituted a medical exam under the ADA and could not be administered prior to a extending a conditional offer of employment.⁸

Once employed, neurodiverse lawyers may need reasonable accommodations under the ADA. Moss notes that these are often cost-neutral or very inexpensive. Some accommodations may be as simple as noise-cancelling headphones, a white noise machine, working remotely or adjusting the glare of fluorescent lighting. The Job Accommodation Network, a website sponsored by the Department of Labor, contains a searchable database of accommodations that may be beneficial for both employers and employees.

In the workplace, Moss noted that neurodiverse lawyers may excel at tasks like document review or discovery but cautioned that employers should take the time to independently address the

strengths and goals of everyone. She states, “We cannot simply assume that neurodiverse individuals would be unfit for roles with regular court appearances or high levels of client contact.”⁹ Indeed, taking the time to work with employees to build on their unique strengths and talents in the workplace benefits everyone. Recognizing differences as “inclusions” and not “flaws” in order to create an amiable workplace taps into another trait of neurodivergent employees – low rates of absenteeism.

Overcoming Implicit Bias

On being open about her autism and sparking a national conversation about neurodiversity in the law, Moss says that she has had to overcome stereotypes and misconceptions. As a young lawyer, she states: “I have to prove competence when others have presumed competence.” Just as specialized training may be appropriate for a neurodiverse employee, co-workers and colleagues should also engage in training.¹⁰

Therefore, to effectively mine human capital and create a diverse workforce that can solve the most challenging legal problems of tomorrow, Nevada lawyers should look for ways to attract, retain and promote neurodivergent lawyers and staff. We must also continue to have a larger conversation about inclusion for persons living with disabilities, removing stigma and eliminating systemic barriers in the profession.

This column expresses the views of its author and does not reflect the opinion of any organizations with which she may be employed or affiliated.

ENDNOTES:

1. [CDC: 1 in 4 US adults live with a disability | CDC Online Newsroom | CDC](#)
2. [2019 DiversityReport.pdf \(nalp.org\)](#)
3. Hensel, Wendy, “People with Autism Spectrum Disorder in the Workplace: An Expanding Legal Frontier,” *Harvard Civil Rights – Civil Liberties Law Review* Vol 52 (2017).
4. [Neurodiversity as a Competitive Advantage \(shrm.org\)](#).
5. Andrea Lollini, [Brain Equality: Legal Implications of Neurodiversity in A Comparative Perspective](#), 51 N.Y.U. J. Int’l L. & Pol. 69, 71 (2018)
6. *Hensel at 5*.
7. Haley Moss is an attorney, writer, speaker, and consultant based in Coral Gables, Florida. She made international headlines for becoming Florida’s first openly autistic attorney admitted to practice in Florida. She serves on the Florida Bar Young Lawyers Division Board of Governors and the Miami-Dade Florida Association for Women Lawyers. She is currently working on a book regarding neurodiversity for lawyers with the American Bar Association.
8. *Karraker v. Rent-A-Center*, 411 F. 3d 831,833 (7th Cir. 2005).
9. See also Susan D. Carle, [Analyzing Social Impairments Under Title I of the Americans with Disabilities Act](#), 50 U.C. Davis L. Rev. 1109, 1121 (2017).
10. [Neurodiversity: Disability Masking Caped-Ability | ABA Law Practice Today](#).

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