

# ***Addressing Bias - Ableism and Disability Discrimination***

April 2025

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- *Kansas Credit* – If you are seeking Kansas credit, you will need to enter the **two Attendance Verification Words** and your Kansas Bar information into the Program Survey
  - Please complete the Survey **this week**, so we can ensure you receive proper credit
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- Three ways to access Program Survey:
  1. Link available in the **CHAT** (right now)
  2. Link at the **end of the slides** (here or at [www.DowneyEthicsCLE.com](http://www.DowneyEthicsCLE.com))
  3. Link sent to you in an **email within 30 minutes** of program ending



<https://www.surveymonkey.com/r/able0425>

# Introduction

# Two Models for Disability

- Medical disability – functional limitation model
- Social disability – people are disabled by societal discrimination, not by bodies or abilities that are inherently less
  - Focus on societal barriers
  - Having a disability as part of human diversity

# (Functional) Disability

A physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions

# Functional Model – Americans with Disabilities Act

- Physical or mental impairment
  - Substantially limits one or more major life activity.
  - Includes people who have a record of such an impairment even if they do not currently have a disability
  - Includes individuals who do not have a disability but are regarded as having a disability
- 
- Focus on limitations not strengths



# Social Model of Disability

“We are more disabled by the society we live in than our bodies and our diagnoses.

“We are learning from each from each other’s strength and endurance not against our bodies and our diagnosis but against a world that exceptionalizes and objectifies us.”

Stella Young, *I'm not your inspiration, thank you very much,*  
<https://bit.ly/48fN2WQ>

**The only disability in life  
is a bad attitude.**



“No amount of smiling at a flight of stairs has ever made it turn into a ramp.” – Stella Young



I'm a Paralympian. We're not your  
'inspiration' — we're elite athletes

Be inspired by our accomplishments, not our existence.

# No Offense Intended

- On this webinar, we must use language to speak about people with disabilities
- People disagree regarding what language should be used
- General recommendation to use “person first” language
  - “person with . . .”
  - “individual who . . .”
- Some terms are seen as negative and should be avoided
  - General terms – handi-capable, challenged
  - Specific conditions – hearing impaired, retarded

# Persons with Disabilities

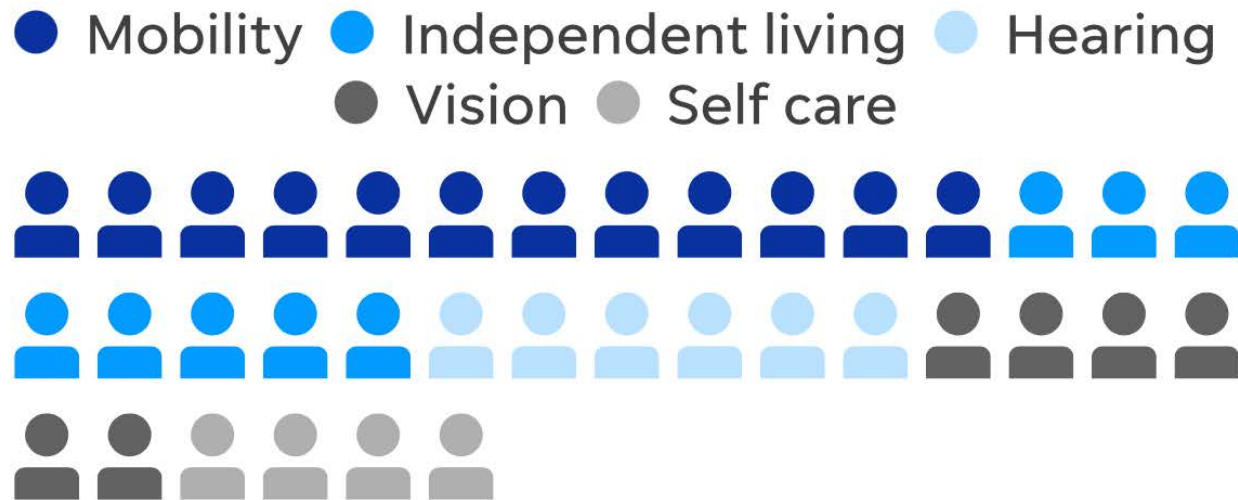
# “Capitol Crawl” – March 1990



“I want my civil rights. I want to be treated like a human being.”

- Paulette Patterson

## 1 in 4 U.S. adults has a disability



Source: Centers for Disease Control and Prevention



# Disability Representation in America

- Disabilities more common among those living in poverty, in prison, elderly and veterans
- Getting older considered the most common cause of disability
- Only 2% of the Internet is fully accessible to people with disabilities
- Most common type in U.S. is difficulties walking, independent living, or cognition

# Three Dimensions of Disabilities

- Impairment
  - Loss of hearing
- Activity limitation
  - Difficulty walking
- Participation restriction
  - Limited involvement in social activities or life events

# Identifying Potential Disabilities

- **Communication** – limited vocabulary, speech impairment, difficulty answering questions, short attention span
- **Behavior** – Act inappropriately, easily influenced, difficulty with directions, difficulty with tasks, motion or motor impairments
- **Interactions** – eagerness to please, communicating through other, over- or under-engagement

# Types of Disabilities

- Chronic illnesses
- Communication
- Developmental
- Hearing
- Vision
- Intellectual
- Learning
  
- Mental and Physical Health
- Apparent and Invisible

# Ableism

# Ableism

- Prejudice, bias, or discrimination targeted toward the disabled
- Set of beliefs or practices that devalue or discriminate against people with disabilities
- Often rests on the assumption that disabled people need to be 'fixed' in one form or the other
- Usually from non-disabled people with good intentions
- Intertwined in culture
  
- Implicit Association Test (IAT) on Disability - <https://implicit.harvard.edu/implicit/takeatest.html>

# Ableism like Racism

- Favoring the “able” – thinking less of person with a disability
- Treating disabled as “winning” by living

# Examples of Ableism

- A well-meaning comment from a friend
- An insult from a stranger
- Mindless actions (petting a service dog without permission)
- Intentional acts of harm (pushing away someone's mobility device)
- Physical structural barriers (lamppost in middle of sidewalk)
- “Invisible” barriers (not having subtitles for a movie)



# Ableist Microaggressions

- Describing an oversight as a “blind spot” or an idea “falling on deaf ears”
- Using words like “crippled,” “retarded,” and “psycho”
- Asking if someone is “off their meds”

# Ableist Culture

- Ingrained in U.S. society, laws, building codes, customs, social practices, and language
- For many with disabilities, the disability is from society and ableism, and not the individual or the disability

# Self-Reflection Questions

- Can you tell someone has a disability by looking at them?
- Do all disabled people need accommodations?
- Do you have sympathy or pity for a disabled person?
- Do you see a person's disability before you see the individual?
- What traits, if any, do disabled people share?

# Types of Ableism

- Institutional – actions and policies in organizations or systems
  - Requiring in-person attendance in office, at functions, etc.
- Interpersonal – social interactions
  - Friends going to places without wheelchair accessibility
- Internalized – internal ableist beliefs applied to self
  - Disabled people internalize discriminatory ideas and prejudices from ableist culture or wishing they were “like everyone else”

# Benefits of Addressing Ableism

- Improved employee morale
- Stronger team dynamics
- Greater innovation
- Access to widened talent pool
- Enhanced diversity, inclusion, and belonging metrics
- Increased productivity
- Decreased turnover

# Lawyers with Disabilities

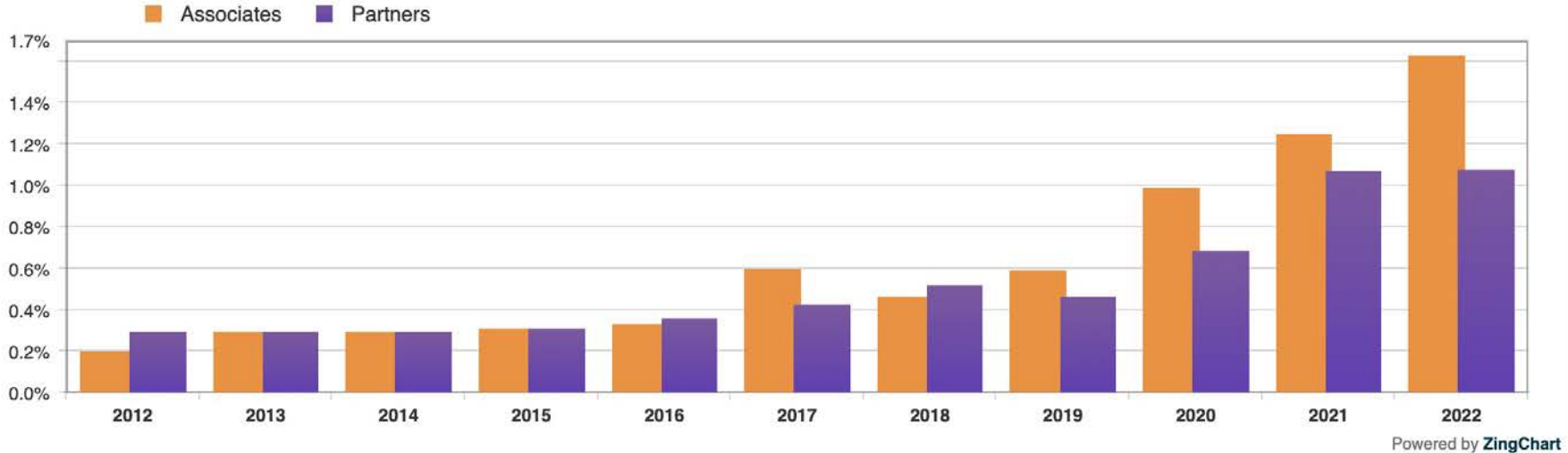
# Disabilities in the Legal Profession

## Representation in law:

- 12% of 1Ls
- 5.5% of law school graduates
- 1.4% of lawyers at law firms

82% of all people with disabilities are unemployed

### Partners and associates with disabilities: 2012 - 2022



Source: [National Association for Law Placement 2022 Report on Diversity in U.S. Law Firms](#) 



# Resources

Lawyers – ABA Commission on Disability Rights

<https://www.americanbar.org/groups/diversity/disabilityrights/>

National Disabled Law Students Association

<https://ndlsa.org>

# Disability Discrimination in Society

# Disability Discrimination

When someone is put at a disadvantage or treated less favorably because:

- they're disabled
- they have a connection with someone who's disabled
- someone else thinks they're disabled when they are not

# Misconceptions About Disability

- Disability means inability
- Disability is a “personal problem”
- People with disabilities need your “help”
- All people with disabilities have the same experiences and characteristics
- Disability is a bad word

# Accommodations

- Modifications to how the job is performed or to the work environment
- Provide disabled employees with the resources and opportunities to succeed

# Disclosure

- Central element to accommodation process
- To avoid stigma, individuals with disabilities often forgo disclosing and requesting accommodations even when needed

# Why Not Disclose

- Maintain existing relationship, status quo
- Avoid awkward conversation
- Not have to worry about disclosure to other people
- Not have to worry about stereotypical assumptions or not being taken seriously
- Fear career opportunity limitations

# Why Disclose

- Cannot accommodate what is unknown
- Psychological relief
- Realization that disability is not a barrier to successful performance



# Who Discloses (or Not)

- Women, parents, and young attorneys are less likely to disclose disabilities
- Those with less apparent disabilities (like mental health conditions) are less likely to disclose than those with more apparent disabilities

# Increase Employment Accessibility for Persons with Disabilities

- Focus on skills in job descriptions and remove anything not essential
- Ensure websites are fully accessible and compliant with ADA standards
- Create more inclusive job interview procedures
- Lengthen training onramps for open positions
- Normalize conversation about accommodations

# Benefits of Hiring Disabled

- Bring unique set of perspective and skills to the organization
- Have perspective on areas related to disability law
- Offer creative solutions
- Help employer comply with ADA
- Create diverse and inclusive work environment

# Ethics Rules and Disabilities

# Key Ethical Rules

Rule 4-1.1 – Competence

Rule 4-1.4 – Communication

Rule 4-1.14 – Clients With Diminished Capacity

Rule 4-8.4(g) – Professional Misconduct

# Rule 4-1.1

A lawyer shall provide competent representation to a client.

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

# Rule 4-1.4

(a) A lawyer shall:

- (1) keep the client reasonably informed about the status of the matter;
- (2) promptly comply with reasonable requests for information; and
- (3) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

# Rule 4-1.14(a)

When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.



## Rule 4-1.14 cmt [2]

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect.

Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

# Rule 4-1.14(c)

Information relating to the representation of a client with diminished capacity is protected by Rule 4-1.6. . . .

## Rule 4-1.14 cmt [3]

The client may wish to have family members or other persons participate in discussions with the lawyer.

When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege.

Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under Rule 4-1.14(b), **must look to the client, and not family members, to make decisions on the client's behalf.**

# Missouri Rule 4-8.4(g)

It is professional misconduct for a lawyer to: . . .

(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, **disability**, age, sexual orientation, or marital status. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, **disability**, age, sexual orientation, marital status, or other similar factors, are issues. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 4-1.16.

# ABA Formal Opinion 500

## Language Access in Client-Lawyer Relationship

Rules 1.1 and 1.4 establish a baseline for a lawyer's duties when there is a barrier to communication when a client is a person with a non-cognitive physical condition that affects how the lawyer communicates with a client, such as a hearing or speech disability.

# ABA Formal Opinion 500

## Language Access in Client-Lawyer Relationship

A lawyer may be obligated to take appropriate measures to ensure the lawyer's duties are properly discharged.

When reasonably necessary, a lawyer should arrange for communications to take place through an impartial interpreter or translator.

# Accommodating People With Disabilities in Your Practice

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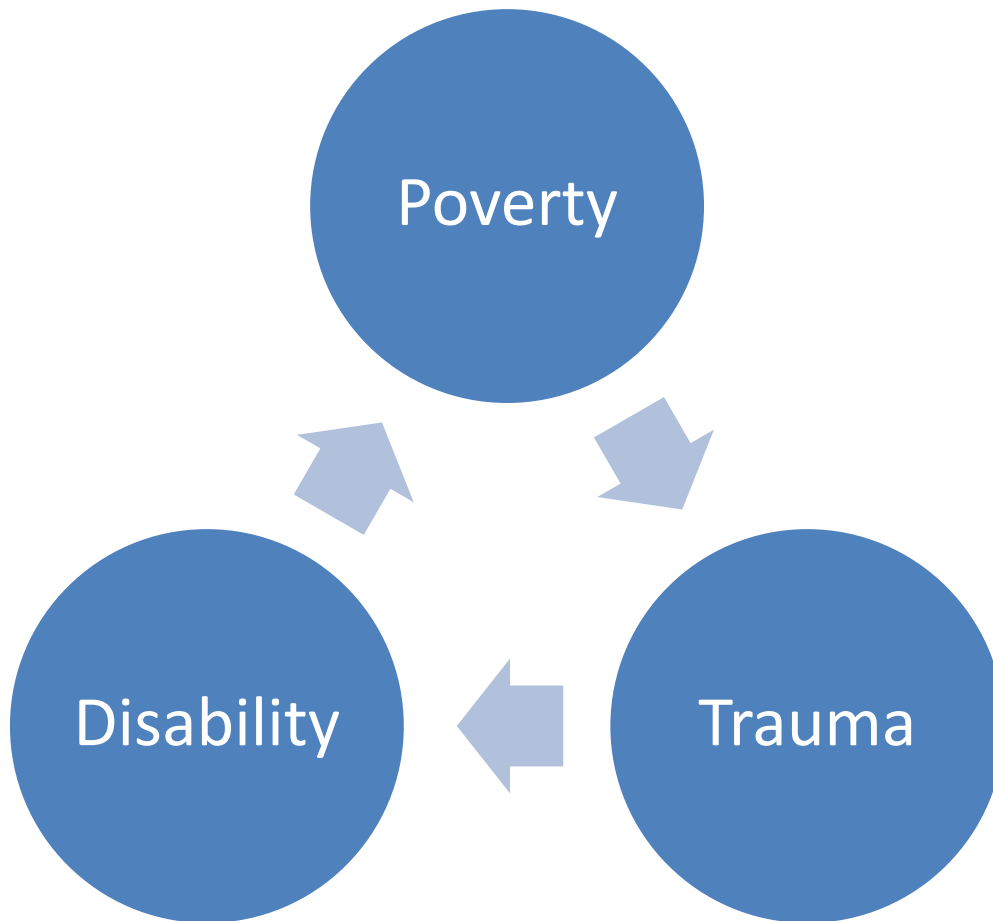
# Missouri Rule 18.01

- All court employees shall perform court duties without manifesting bias or prejudice or engaging in harassment.
- Court employees shall not, in the performance of court duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment **based upon sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.**

# Access to Courts

- 82% of low-income households with person with disability encountered at least 1 legal issue in last year
  - 48% encountered at least 5 legal issues
- Most difficult legal problems often affect those with disabilities
  - Government benefits
  - Healthcare access
- Persons with disabilities four times more likely to be victims of crime

2022 Justice Gap Measurement Survey



# Clients in Court/Tribunal

- ADA Title II requires reasonable accommodation in judicial system
- Courts have ADA coordinators
  - <https://www.courts.mo.gov/mcw/findacourt/adaCoordinatorList.htm>
- ADA Accommodation form – submit at least 2-3 weeks ahead
- May be requested in open court but usually moved to non-public setting

# Ableism in Justice System

- Police escalate to deadly force
  - Disabled people represent disproportionate number of those stopped, arrested, or murdered by police
  - In 2015, police shot 124 people having a mental health crisis, who called the police for medical treatment
- Lack of adequate accommodations in Court
  - Absence of ASL interpreters or Braille/audio accessibility
  - Makeshift arrangements that negatively draw attention to disability
  - Barriers for disabled litigants, jurors, attorneys, and court employees
- Neglect
  - Prisons abuse and isolate their disabled populations

# Courtroom Accessibility Issues

- Signage
  - Poorly placed, inaccurate or insufficient
- Courthouse entrances
  - Separate from general entrance
  - Accessible entrances not actually inaccessible
- Courtrooms
  - Inaccessible counsel tables, spectator seating, jury boxes, witness boxes
  - Inaccessible technology platforms

# Barriers in the Legal Process

- Legal
  - 2/3 of state dependency statutes allow courts to determine a parent is unfit based solely on disability
- Physical
- Economic
  - Adults with disabilities 2x likely experience poverty
- Information and Communication

# Disabled More Likely to Face Burdensome Legal Problems

- Employment discrimination
- Access to healthcare
- Disputes over disability benefits
- Poor working conditions
- Criminal charges
- Victims of crime



# Stigma Compounds Access Issues

- People with disabilities not seen as credible
- Person with disabilities not deemed to deserve accommodation

# Need for “Reasonable” Accommodations

- Change of policy (e.g., allowing service animal)
- Changing practices and procedures
  - Use of assistive devices
  - Adjusting schedule
  - Moving procedure

# Examples of Accommodations

- Presence of support person or animal
- Provide testimony *in camera* or through video technology
- Use communication aids or interpreters
- Use facilitator
- Comfort breaks
- Clear explanation of trial process

# Strictly Personal Accommodation Usually Not Legally Required

- A free lawyer
- Help with eating or restroom

# Clients with Disabilities

- Be understanding and accommodating
- Communicate at eye-level
- Provide client file materials in client's preferred format
- Ask before you help
- Communicate naturally and with expressions
- Do not usurp client's decision making

# Communication Suggestions

- Ask ALL CLIENTS how best to interact
- Limit distractions
- Find comfortable environment
- Be patient and willing to repeat information
- Consider having support person present
- Use visual and other communication aids
- Check for understanding
- Discuss appropriate behavior, attire, etc.
- Avoid legal terms
- Modify documents and forms (e.g., larger font)

# Office Accommodations (NYSBA)

- Smartboards in conference rooms so clients can zoom in on text
- Different kinds of pens – including claw pens – so clients can comfortably sign documents
- Chairs with arms so people can lift themselves out of chairs
- A ramp at the office entrance
- Conference room easily accessible
  - Need to go through fewer doors
  - Light, stable furniture that can be easily moved
  - Good lighting
  - No door thresholds to get in the way of walkers or wheelchairs
- No trip hazards
- Sound insulation in rooms to make it easier to hear
- Valet parking
- Sloped edges on tables so people leaning on their arms do not get nerve damage.
- Easy-to-clean floors in case of an accident
- Policies and procedures to accommodate varying disabilities
- Use larger fonts
- Consider making house-calls

# Disability Access Tax Credit

- For small businesses – less than \$1M in gross receipts or 30 full-time employees
- Tax credit equal to 50% of eligible access expenditures from \$250-10,250 per year
- Includes expenditures for
  - removal of architectural barriers in buildings or vehicles
  - purchase of adaptive equipment (assistive technology) or the modification of equipment to allow access for employees or customers
  - sign language interpreting or real time captioning for employees or customers with hearing impairments
  - readers for employees or customers who have visual impairments
  - production of print materials in alternative formats like audio tape, braille or large print.



# Be a Better Ally

- Believe people when they disclose a disability
- Do not assume you know what someone needs
- Challenge ableism when appropriate
- Admit mistakes and apologize when necessary
- Treat disabled people with respect

# Conduct to Avoid

- Refusing to accommodate disabilities
- Treating people with disabilities as children
- Making assumptions about quality of life
- Rude comments and nosy questions
- Invading personal space
- Touch without permission (including service animals)
- Using disabled people for inspiration objectification

Don't feel sorry for them,  
help them succeed

# Conclusory Matters

- **Questions** – If you have questions after the program, please email them to Paige Tungate at [ptungate@DowneyLawGroup.com](mailto:ptungate@DowneyLawGroup.com)
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# Timed Agenda

- 0-5 Introduction
- 5-55 Discussion of dealing with ableism or disability discrimination in the practice of law

# Future Programs

**May 8** - Thursday at 12:00 Noon CT - ***Legal Ethics and Speaking to the Media***

**May 20** - Tuesday at 3:00 PM CT - ***Legal Ethics When Dealing with Non-Clients***

**June 4** - Wednesday at 12:00 Noon CT - ***Addressing Bias - Ableism and Disability Discrimination***

**June 12** - Thursday at 12:00 Noon CT - ***Legal Ethics Update 2025 - Part 2***

**June 17** - Tuesday at 3:00 PM CT - ***Addressing Bias - Ableism and Disability Discrimination***

**June 27** - Friday at 12:00 Noon CT - ***Legal Ethics and Artificial Intelligence***

**June 30** - Monday at 12:00 Noon CT - ***Addressing Bias - Ableism and Disability Discrimination***

**June 30** - Monday at 3:00 PM CT - ***Legal Ethics Update 2025 - Part 2***

[www.DowneyEthicsCLE.com](http://www.DowneyEthicsCLE.com)



# Thank you



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