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A U.S. Supreme Court ADA Showdown Is A-Brewin': Eleventh Circuit Contradicts Seventh Circuit Regarding Non-Competitive Mandatory Reassignments

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This past week, the U.S. Court of Appeals for the Eleventh Circuit (encompassing Florida, Georgia, and Alabama) reignited an old-fashioned statutory interpretation duel. Ok, it's not as exciting as the Earps vs. the Clantons at the O.K. Corral, but it certainly has more far-reaching ramifications for employers and employees alike. The issue: whether, when an employee with a disability cannot perform the essential functions of his or her current job, the Americans with Disabilities Act (ADA) requires mandatory reassignment of minimally qualified individuals to a vacant position without competition. The Eleventh Circuit opinion – holding that the ADA does *not* mandate reassignment without competition – can be found here. Oddly enough, until relatively recently, the U.S. Court of Appeals for the Seventh Circuit (Illinois, Wisconsin, and Indiana) – which now mandates non-competitive reassignments for employees with a disability (absent special circumstances or undue hardship on the employer) – would have expressly agreed with the Eleventh Circuit. However, in a rare circuit court mea culpa, the Seventh Circuit reversed course in 2012 after a dozen years of squarely disavowing any requirement to show preferential (as opposed to non-discriminatory) treatment of individuals covered by the ADA. Echoing the Seventh Circuit's now-reversed language, the Eleventh Circuit held that "the ADA does not require reassignment without competition for, or preferential treatment of, the disabled." The court went on to state that "employers are only required to provide alternative employment opportunities reasonably available under the employer's existing policies." Because the employer had a policy of selecting the most qualified applicants for vacant positions, that meant that although the disabled employee (whose cane presented unacceptable safety hazards in a hospital's psychiatric ward) had to be given an opportunity to compete for vacant positions on equal terms with other applicants, she was not automatically entitled to the position. Interestingly, both sides of this debate cite the same Supreme Court opinion as the lynchpin of their understanding of the ADA's requirements. What's more, both circuit ringleaders have friends: the Eighth and Fifth Circuits stand with the Eleventh Circuit, while the Tenth and D.C. Circuits back the Seventh Circuit. In other words, there is only one way this ends. High noon. The Supreme Court. Date unknown.

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