

“You’ve Got a Friend” – What Every Lawyer Should Know About Clients with Disabilities

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Diversity and Disability

“You’ve got a friend,” is the title of the RPTE Diversity Committee’s presentation at the ABA Spring Symposia in Washington, DC. That song appeared on Carole King’s “Tapestry” album. A tapestry is a hand-woven textile used for hangings that is characterized by complicated pictorial designs – fitting for the intricate fabric that constitutes diversity. When discussing the concept of diversity we all have our own sensitivities and perspectives. The definitions of what constitutes diversity, as well as the views as to how diversity should be encouraged, and for what purposes, are subject to a myriad of views. It is this breadth itself that makes the goal of diversity so challenging, yet so rewarding. As Elvis crooned, we live in a “House that Has Everything.”

That Wheelchair Logo is So Misleading!

Diversity is often considered from a visual perspective. Racial and ethnic diversity, though important, are only one component of the tapestry that is diversity. Disabilities are a significant component of the diversity picture. Disability is typically considered in the light of the ubiquitous symbol of diversity – the International Symbol of Access (ISA), also known as the (International) Wheelchair Symbol, the blue square with the image of a person in a wheelchair in white. Yet 96% of the symptoms of most disabilities are invisible. The supposed symbol of access, and the narrow image it portrays, have in so many ways become the instrument of discrimination and misunderstanding. Just ‘cause Elvis sang “With a cane and a high starched collar,” doesn’t mean everyone with a disability has a visual symbol. Some do, some don’t.

As a society we have a difficult time understanding someone’s struggles when they lack the telltale sign of a wheel chair or something comparable. But disability comprises the full rainbow of the human condition, some visible ailments, but many more not. Hallmark makes “get well” cards. But we don’t “get well” from a chronic illness or permanent disability. Most chronic illnesses are progressive, so in fact, rather than getting well, we get worse.

Was Helen Keller “Disabled” or Able?

Even the very term “disability” has an unfortunately limiting and narrow implication. We all read about Helen Keller in grade school. The prolific American author, political activist, and well traveled lecturer was the first deaf and blind person to earn a Bachelor of Arts degree. Her condition should hardly be referred to as a “disability” in that she was more accomplished and had more “ability” than many.

Being raised on wheel chair symbols for what are predominantly invisible symptoms, focused on disability instead of ability, and with a perspective that we must wish that

someone “get well,” does not at all prepare attorneys for the reality of dealing with clients living with a broad array of health challenges. Attorneys, both in their individual practices and as part of their commitment to a system of justice that treats everyone fairly, must come to a greater understanding of the needs and desires of “disabled” clients and must work to accommodate those needs and desires to foster the same kind of relationship that is created for “non-disabled” clients.

By the Numbers

Carly Simon sang “I’ll bet you think this song is about you...” But most attorneys don’t really think this song is about them. But if the statistics hold, it is about a lot of us.

Is this discussion even relevant? Are there really a significant number of clients that this effort is warranted? Estimates are that nearly 125 million Americans (45% of the population) have at least one chronic condition, such as paralysis as a result of trauma or stroke, Alzheimer’s disease, mental disorders, HIV/AIDS, diabetes, and so on. In the United States, approximately 60 million people (22 percent of the population) suffer from multiple chronic conditions. Source: Partnership for Solutions. Better Lives for People with Chronic Conditions “The Prevalence and Cost of Chronic Conditions.” These are but one measure of what is undoubtedly a far greater component of every attorney’s current and future client base. Consider the following:

- Number of decedents dying in 2011 whose estates will file an estate tax return: 5,600.
- Number of potential clients living with Parkinson’s disease (“PD”): 1,500,000.
- Number of potential clients living with Chronic Obstructive Pulmonary Disease (“COPD”): 12,000,000.
- Number of potential clients living with Multiple Sclerosis (“MS”): 400,000.
- Number of potential clients living with visual impairment includes the following:
 - There are 61 million Americans at high risk of serious vision loss, due to the aging of our population and diseases like diabetes and macular degeneration, which are rising rapidly.
 - An estimated 13 million Americans have some form of age-related macular degeneration —the leading cause of vision impairment in people age 60+.
 - More than 4 million Americans have glaucoma, half of whom are unaware they have it.
- Number of potential clients living with hearing impairment: 24 million.

Yet by the attention given to esoteric GST tax presentations, versus those addressing health, disability and diversity, one could conclude that the above statistics would be the opposite.

The high frequency of chronic conditions in the U.S. necessitates that the entire estate planning process (from meetings with clients and advisers, to the drafting and implementation of estate plans) must all be done in a manner that is cognizant of current and potential chronic illness and disability.

How Do Those with Special Abilities View their Experiences With Lawyers?

What is the perspective of persons living with disabilities with lawyers and the legal system? How at times do those interactions fail to account for and accommodate the unique issues faced by persons with varying disabilities?

As lawyers we have an obligation to understand our client's needs and meet those needs. What does that mean in the context of working with a client that has a disability? Invisible disabilities are a key to understanding this. Ninety six percent (96%) of symptoms are invisible. How should we as lawyers interact with clients with different disabilities? What if there is a disabled lawyer on the other side of the case?

Elvis was on this one to when he sang, "Doncha' think it's time" we addressed this in a more significant way?

How Do You Perceive Someone with a Disability?

People assume someone who is blind has less ability than a sighted person. The attitude towards someone who has a disability, is often one of limitation. The erroneous perception is often the issue. If it is a client involved, the message is one of condescension and insensitivity, which will undermine any potential relationship. Rather than making assumptions about someone's abilities, the lawyer should communicate with the client and make sure that he or she understands the scope of the client's abilities and what kinds of tools, if any, the client needs to ensure good communication with the lawyer.

For some living with chronic illness or disability, the common scenario they experience is the opposite: symptoms of fatigue and concentration are very challenging, yet these difficulties are not perceived by others. How does this impact a client (or the attorney with a disability)? Again, the message is one of indifference, insensitivity, or worse.

In fact the client that someone speaks down to, as if they have less intellectual capability, may actually be extraordinary bright, but they may have other challenges that are being ignored. A loss on both fronts. For example, someone with cerebral palsy may have trouble forming words and sentences, and the delivery may be slow. The manner of speaking, however, may not have any correlation with the quality and insight of thoughts that may be expressed with great difficulty.

Don't make assumptions. What you see is not what you get. You have to ask, be empathetic and find out what each client's particular challenges are and how you can help. As but one example, a common impact of Parkinson's Disease (PD) is the minimization of the facial expressions of the PD client. Practitioners should not assume that a blank facial expression indicates the PD client is not paying attention or following a discussion, or that the PD client has cognitive impairment.

What Should Practitioners Do?

The following discussion provides some general comments about particular disabilities and some steps practitioners might consider to make their practice (both in terms of physical amenities, as well as how practice is conducted) more comfortable and productive for clients with disabilities. The most important point is that there is no one approach or answer (perhaps other than being empathetic and considerate). Every disease or disability has its own unique implications, but on even a more personal level, every client's experience is uniquely his or her own. The same disabilities or disease may manifest itself with dramatic differences from client to client. Hopefully the suggestions and points following will demonstrate the tremendous diversity of disability, while providing some practical suggestions.

Parkinson's Disease

Let's take the example of a client that has Parkinson's Disease (PD). Practitioners should bear in mind that a PD client is not always able to judge whether or not he or she is capable of making decisions. Be alert for indications of impaired focus and understanding. If a PD client is unable to make decisions, a meeting scheduled at a better time in the future may be a simple option, if timing rather than disease progression is the issue. While many people with PD experience some degree of cognitive dysfunction, only a minority develop full dementia. The difference between cognitive dysfunction and dementia is very important, with implications for counsel's determination of legal capacity, and the client's issues of self-determination. Cognitive dysfunction is usually limited to certain "domains", such as attention and concentration. However impairment in one or two domains does not necessarily mean a lack of intelligence, or loss of intellectual ability undermining legal competency.

"I slipped, I stumbled, I fell," should remain an Elvis song, not your disabled client's experience in your office. Simple modifications can make an office environment safer and more inviting. Again, using a PD client as an example, consider some of the following modifications to your office and procedures as a starting point. In all situations, ask the client directly what can be done:

- It is OK to ask the client "what are your challenges so I can tailor my work to meet your individual needs?"
- Provide water and glasses that are within easy reach at all meetings. A client may need to take medication, or address dryness or discomfort, at different points during a meeting.
- Remove oriental carpets and other tripping hazards.
- Plan short, separate meetings rather than one long meeting if cognitive or other fatigue issues are significant.
- Have an agenda and bullet list for the meeting
- Use a smart board or flip chart with outlines of the meeting agenda and topics.
- Ensure that a bathroom is available and allow extra time for breaks if needed.
- When you are explaining concepts, be certain to inquire at frequent points along the way whether the client understands, or has any questions. Client intelligence may be intact, but they may process slower.

- It may be beneficial for some clients to tape record the conversation so they can replay it many times to assure they understand all the key points.
- Have someone such as a friend, family member, or other adviser, accompany the person with chronic illness to the meeting to provide a second pair of ears.
- At the end of the meeting, provide a bullet list of important conclusions.
- If the client experiences tremors, hand weakness or other symptoms, some people with chronic illness might not be able to take notes. Many may have difficulty multi-tasking so taking notes while listening might be difficult. It might be more productive for someone else to take notes and let the client simply listen
- If the client has “to – do” items, a succinct list should be written down

Hearing Impaired

As with most disabilities, the amount of hearing loss experienced by the hearing impaired varies greatly. Again, without understanding the scope of the hearing impaired client’s needs, the lawyer may be ill-prepared to deal with such clients. The hearing impaired use visual clues instead of, or in addition to auditor clues to understand communication. For some, amplification might suffice. Others might prefer written communication. Many will use several approaches. For example, does the client use sign language? If so, what variation of sign language? Does the client read lips? One of the issues to remember is that to a hearing impaired person, sign language is just another means of expression, just like French or Spanish. American Sign Language is comprised of visual clues, such as hand signals, that are used to represent concepts or words. Because it is independent of the English language, differences, and potential difficulties can arise.

If a sign language interpreter is going to be used, one has to think about the logistics. Will it be simultaneous translation? How will complex legal terms to be “signed?” There may be no signs for a particular legal term. How does the lawyer try to ensure that the nuances of legal terms are not “lost in translation.” This may involve trying to explain complex legal terms in lay terms. For example, the idea of waiving of rights is a difficult term in sign language. How does one know that a deaf person effectively understood and waived their *Miranda* rights? How does one explain credit default swaps or collateralized mortgage backed securities?

Who do you direct your attention to? The client or the interpreter? If the actual party is ignored, it can be problematic. As a rule of thumb, a lawyer should direct his conversation to the client, not the interpreter.

Visual Impairment

Changes in vision (these might include loss of visual acuity, double vision, visual field defects) can be substantial. These might require printing drafts and documents in larger bolder type, taking other measures requested by the client, or making other modifications that practitioners would generally consider for a visually impaired client.

Dick Nenno uses a special Brail typewriter to take notes. There is no barrier of communication as there might be with someone who has a hearing impairment. There is really no standard answer; there is tremendous variability by person. Sensitivity is the key.

Neurological Impairments

Unless well advanced, neurologic impairments often are difficult to ascertain, and even if identified, difficult to understand the boundaries and implications. Practitioners should keep in mind that while many of symptoms sound familiar (e.g., fatigue), the level, scope and nature of these symptoms are qualitatively different from what healthy individuals experience. It is therefore difficult for those not familiar first hand with the particular disease to truly understand the full ramifications it has to the client.

As an example, client living with MS often experience fatigue. MS fatigue is not the type of “tired” that a nap will necessarily improve. It is far more dramatic and disabling than most people unfamiliar with MS can appreciate. Research indicates that as many as 90% of those living with MS experience significant fatigue. Studies have indicated that fatigue can be the most disabling symptom. This is a very difficult symptom since most people understand what it feels like to be tired, but MS fatigue is very different, often exponentially so. Fatigue can be both physical and cognitive. Cognitive fatigue is a major issue for many people living with MS. It is also a condition which is misunderstood and underappreciated. For many clients, the presence of cognitive fatigue could actually be the most substantial impediment to the estate planning process, not the impact of the physical fatigue. If MS fatigue occurs while you are meeting with a client, it may be necessary to adjourn the meeting for another day. The onset of MS fatigue can often not be anticipated by the client so it may be impossible for the client to request a meeting time that will avoid the issue.

Those living with MS will often view dealing with fatigue as “energy management”. They only have a limited amount of energy, or productive hours, in a day and have to budget when and how to use it. For many, sleeping doesn’t help, but resting to give the body a chance to recoup may be helpful. For others, a nap will help. But that nap may require much more than a “cat nap,” perhaps an hour or hours depending on the individual. Without that rest functioning may be quite difficult. For others, napping will not eradicate the fatigue.

Practitioners should endeavor to advise their staff to be flexible to schedule meetings that coordinate with the MS client’s physical schedule. For most people with MS, mid to late afternoon is the peak period for fatigue and likely to be the least productive. A meeting scheduled during a time of extreme fatigue won’t be productive.

Cognitive changes generally do not interfere with a person’s ability to make sound decisions; nor does it mean the inability to choose an heir or sign a will. As explained earlier, the deficits in some chronic illnesses, such as MS or PD, tend to be very focused rather than global. In contrast global dementia is commonly seen in Alzheimer’s disease. This fact is often misunderstood and can lead to planners misperceiving the appropriate recommendations to pursue.

Conclusion

The tapestry of our society is comprised of a wide array of colors, textures and more. The myriad of faces disability brings to diversity only add to the dimensions and beauty of what makes us human. If we as practitioners not only accommodated those with health issues but actively sought them out and were proactive in meeting their special needs, it would not only grow our businesses economically, but it would add a wonderful dimension to each of us professionally. If we all only made a modest effort, then truly as Carole King sang, we'd "feel the Earth move."