

Taking on a Disabled Client? Now What?

Hint...be a good lawyer and remember the client is a real person.

By

Kirk Charles Simoneau, Esq.¹

You've probably seen me around; I'm that tall, handsome, once young lawyer with the cane and red sneakers. I'm not just being flamboyant. I have a disability. I even have that blue, wheel-chaired emblem on my driver's license. It isn't important that you know what my disability is, but it is important that you know I am also the child of two disabled parents. My mom and dad are deaf. So, as my short career has progressed, a great many of my clients are, have been, and probably will be disabled individuals. If you appear, for either side, at the New Hampshire Commission for Human Rights regularly, you too will start to see your share of disabled people, both as your clients or as an opponent.

This article will be, I hope, a general source of tips, advice if you will, for working with folks with a myriad of disabilities. It is meant to encourage more lawyers, on both sides of the bar, to represent disabled individuals, despite the apparent challenges, by providing a way to bridge those difficulties. It isn't a legal treatise. It isn't exhaustive. It doesn't go deeply into the law in terms of either the Americans with Disabilities Act, or our state law against discrimination. I don't even deal with the different ethical rules that come into play when representing the disabled, at least not in any depth. That, after all, is why the Bar has Mitch Simon. This is old-fashioned, common sense advice meant to convince the reader to, maybe, consider taking on a case for an atypical client. The rewards are immeasurable. Of course, some of you may find you've increased your billable hours and others may find that you've increased your bottom line by taking on cases that might not otherwise make it through your basic screening process. Those rewards are measurable. If you can increase your pool of potential clients, you can increase your pool of potential cases, presumably, thereby increasing your profit which you can then use to build a pool.

You're lawyers, so first, a little bit about the law.

The first thing you need to know is that your law office, your firm, regardless of size, is a place of public accommodation and is subject to the provisions of Title III of the Americans with Disabilities Act. Essentially, this means that you've got to eliminate barriers that might prevent disabled individuals from having access to your services and ensure effective communication with those disabled individuals unless doing so would be an undue, essentially financial, burden

¹ Kirk is the Managing Director of the U.S. News and World Report top ranked plaintiffs' law firm of Nixon, Vogelmann, Barry, Slawsky & Simoneau P.A. He takes great pride in representing disabled individuals in all manner of trials, disability related or not, but he isn't a social security disability lawyer, he's a trial lawyer. If you'd like to tell him you loved this piece, he can be emailed at ksimoneau@davenixonlaw.com. If you didn't like the article, he would rather not know.

or create some fundamental alteration in the nature of your services. In other words, you can't turn down a client just because she's disabled.

Forget, for moment, what the law says you have to do. Instead, think for a moment on the little known reward within the law for doing it. There's actually a tax credit for small businesses that remove barriers and improve accessibility for the disabled community to their businesses, hopefully ones like yours. *IRS code § 44*. Every time I meet, using an interpreter, with one of my deaf clients, I get a dollar for dollar tax credit for the cost of that interpreter. Last I checked; the credit was \$10,000. Maybe you're at a big firm, that's okay; there's a tax deduction for all size businesses that remove barriers to accessibility. *IRS code §190*. Add ramps. Use interpreters. Get a printer that writes braille. All these, and more, can qualify. Ask your tax department.

Turning back, ever so briefly, to the law; you can never bill your client for an accommodation or an auxiliary aid. If you have to hire an American Sign Language interpreter for a meeting, you cannot bill your client. If you have to buy a ramp so your client can make it into your building, you can't get reimbursed for it as a case expense. If you have to add some software to magnify documents for a visually impaired client, you'd better not charge the client. All of that is illegal, immoral and not good for developing repeat business within the tightknit disabled community. Again, the caveat is: you don't have to provide the accommodation or auxiliary aid if doing so would create an undue burden. But who among you, charging between \$200 and \$600 (or more if your name is Felmly) an hour, can honestly say he can't afford an interpreter, or ramp, or an extra 20 minutes to make sure your client truly understands.

When you assume, you make a out of you know who.**

One of the first things you were taught in law school, after figuring out the location of the nearest bar, was to never make assumptions, but when dealing with disabled individuals, so often we make assumptions based on a previous experience. I've done it. I also had it done to me. People have shouted at my profoundly deaf father because it helped with the last hearing impaired person. Others assume I can't manage a dinner plate with my free hand because the last guy they saw with a cane toppled over. Everyone with a disability experiences that disability differently. Everyone with a particular disability doesn't always need the same accommodation. So, don't assume what accommodation or aid your disabled client, or opponent, needs. Don't assume anything about the disability itself, but instead, ask if your client needs you to do anything that would make their experience working with you better. Ask what their preferred method of communication is. Ask if they had trouble getting into the building. The client is the best source of information about his or her disability and the best source of information about the needed, if any, accommodation.

With that said, don't be stupid. If she's told you about the disability, spend 10 minutes before your client shows up, preferably a few days in advance, and research her disability. Learn

something about the disability. There are many disabilities that come with, well frankly, shocking symptoms. Forewarned means you can better focus on your job and not so much on what could be something somewhat unnerving.

Another example of not being stupid means not being insensitive. I belong to a great organization. It's a group of trial lawyers and judges who get together monthly to have dinner and teach one another things. I'm sure you've never heard of it. One year, the group met at a new location. That location had no handicap accessible parking because of ongoing construction. I had to, with great and rather embarrassing difficulty, walk a very long way to the building up hills and along a route with other, for me, senseless obstacles. After the meeting, I asked about accessible parking for the next meeting. I was told, now knowing better about the parking situation, I should have someone drop me at the door. That's right, like a preschooler, I should have my mom drop me off. No one asked what would be helpful to me. No one asked if that would be acceptable. No one seemed to care they were breaking the law. I should hire a driver. I should inconvenience a friend. Worse, no one apologized. Apparently, it was my fault for needing to park close because I have a hard time walking. Damn neurological disorders always inconveniencing others. I skipped the next meeting and a few others. Asking what would be helpful goes a long way. And remember, for some of us, it's embarrassing to be disabled. I don't like being in my early 40's and hobbling about in pain 24/7. If you can, make it a bit easier on me by being nice about it.

Another example of insensitivity is asking a person what their disability is. I've been asked in line at the supermarket, at my kids' school events and in court, never by a judge, what's wrong with my leg. Nothing, by the way, is wrong with my leg; the problem is actually in my brain. Ask if someone needs an aid or accommodation, if it seems they are disabled, do not ask why they need it.

Enough tirades and on to actual tips on how to work with people with varying disabilities.

Sensory Disabilities – I can't see you, but you look great.

I've written elsewhere, and in unnecessary length, about representing those with hearing disabilities so, go Google that to learn more about that subject. Here, I'm focusing on those with vision difficulties. I will say, though, the Deaf person isn't supposed to supply the interpreter, you are.

One of the most important considerations when dealing with a visually impaired client is how they can best receive material. The practice of law, by its very nature, is document, written document, intense. In my office, it's protocol that my clients are copied on almost everything. If your client is visually disabled, you can't just tell your assistant to "cc" them on the "Smith letter" or the Motion for Summary Judgment. In this new age of digitizing everything, it may be commonplace to have incoming correspondence scanned and then emailed to your clients. This often does not work for the visually impaired client, even if that client has screen reading

software. Often, scanned PDFs are not accessible by reading software, but converted PDFs, those changed over from a word-processing document, are accessible; especially if they are OCR (optical character recognition) friendly.

It may seem simple to say, but, again, the best course of action is to ask your client, directly, how they would like to receive material. Sometimes, if your client has text magnification software, you simply have to use a more accessible font like Arial or Calibri to make the material readable. Others don't have such software, and prefer to have audio recordings or a qualified reader (someone who is trained to read to the blind). In this day of digital audio recordings, this is often the easiest and cheapest way to prepare material for the visually impaired client.

Your visually impaired client is going to require extra time to go over material, at least compared to your typical client. Before opposing counsel sends you two dozen lengthy, written interrogatories, alert him as to the appropriate format or make sure he knows you may need extra time to have the discovery request converted into accessible format. Believe me, with one exception (and you know who you are) opposing counsel will agree.

Also understand, the visually impaired client likely can't drive herself and is going to be subject to the vagrancy's of public transportation or other transportation services. That means you can't just call a last-minute appointment and expect your client to be able to show up. You need to plan.

Mobility Disabilities – Nothing Funny Happened on the way to the Forum.

As I mentioned earlier, parking is important. Forget about the law, which, I believe, requires you to have a handicapped accessible spot for every 25, and think about your clients. If you know you have a mobility disabled client coming and you always park your BMW by your doorway, move it. Give him that prime spot.

Think about portable ramps to make your building accessible. I'm proud to say David Nixon added a stair climbing seat for disabled clients who might want to use our downstairs conference room. None ever did, but it is still available. I ride it sometimes for fun.

Add grab bars around your toilet.

If you have a deposition and your client is wheelchair bound, or otherwise mobility disabled, rearrange tables and chairs in the conference room well before your client arrives. Making those changes after the client arrives, demonstrates that he and his needs, are an afterthought. In my office, I'm proud to say, my staff (thanks to Linda, Tracey, Nicole, Barbara, Deb, and Jeanne-Marie) knows which clients need which accessibility accommodations and rearrange the furniture before I even realize it needs to be rearranged. Yes, they're professional.

More importantly, they are caring. They do this, in part, because we make it a priority to provide access.

Lastly, on this issue, if your office is on the third floor and it doesn't have an elevator, don't turn away a mobility disabled client. Ask the client if it's okay to meet somewhere else. See if you can go to their home, use a colleague's office, or arrange another private location. Just don't meet in the middle of the local Dunkin' Donuts. Great coffee, bad confidentiality.

Cognitive Disabilities – Did I mention Cognitive Disabilities? Hey, I did I cover Cognitive Disabilities?

First, I get that not every joke is made in good taste. Second, I get that not every joke is funny. Third, I hope you get as you read this article that I care, so I'm trying, through humor, to get you to stay with me. If you're offended, I am sorry. And I wonder what disability you may have.

Cognitive disabilities involve things like memory issues, problem solving issues, attention, reading, linguistic, and verbal comprehension issues. Often times, you will encounter cognitive disabilities along with other disabilities, like deafness. It isn't a lack of intelligence; it's a lack of ability in a given area. Please remember that. Often, those without disabilities often treat those of us with disabilities as though we are dumb. Being slower at something doesn't mean we aren't smart. Every time I've read the story, that tortoise beats that hare. Every time.

The key in working with those with cognitive disabilities is individualized planning. Remember, the most important thing is always to ask your client what their primary choice of accommodation or aid is, but I do have some suggestions;

1. Memorialize even the most mundane of conversations and make sure you get a copy to the client. Maybe have him wait a bit as it's typed up so they can ask questions while things are fresh in her mind.
2. Provide your client with a detailed, and simplified, list of action items.
3. Whatever you provide, in terms of written and other material, to your client; don't use legal language. Talk like a person. Write like a person.
4. Respect your client the same way you would any other. Remember, our rules of professional responsibility require that you presume your client, your cognitively disabled client, is competent. I urge you to look more closely at Rule of Professional Responsibility 1.14 if you wonder if your client's mental capacity is too diminished. I encourage you to contact our ethics committee for guidance. But I implore you, most of all, to not be fooled into believing that a cognitively disabled person is a stupid person.
5. Again, plan on taking extra time for everything. Make sure the court knows you may occasionally need extensions. You don't need to detail the disability, unless of course

that's the basis of your case, but our courts are understanding if you give them a chance to be.

6. When explaining litigation to your client, take small steps and stay in sequence. It may be necessary to explain one step, and only one step, at a given meeting.
7. You may also want to think about using pictures or photographs to help explain concepts to a client that has difficulty understanding written English or spoken English. You can use pictures to help identify people or places.

Mental Health Disabilities – No Joke Here, I'm not that kind of guy.

Mental health disabilities involve disturbances of behavior, mood, thought processes and social as well as interpersonal skills. Often times they are accompanied by addiction, poverty, and homelessness. Almost always, they are accompanied by stereotypes and stigmas. Rise above the stereotypes. Avoid the stigmas. Often those with mental health disabilities are those that require the greatest amount of help from the greatest lawyers. Isn't that you, the greatest lawyer?

Again, what follows is a list of general tips. I can't cover every situation, but if you review the list and add a little common sense, I think it will be helpful. Remember, if you have a real reason to believe a client poses a direct threat, that is a significant risk that cannot be eliminated by a modification of policies or providing an auxiliary aid or service, you do not have to represent that client and should establish some safety policies such as meetings with doors opens or simply not meeting at all. Don't act on assumptions or stereotypes, but if you think someone poses a direct threat of harm to you or another, act appropriately and cautiously. In the ordinary course, however, consider the following:

1. First and foremost, when you're dealing with someone with a mental health disability, remember that is someone with a disturbance in behavior or thought process, it's important to maintain eye contact. Truthfully, it's a respect thing; it's a client control thing; and it's a safety thing.
2. Use short non-legal sentences. Non-legal sentences are much less likely to be misunderstood.
3. Plan on meeting in a quiet room. Often times, we'll grab the conference room in the court or will chat in a hallway. Generally speaking, this isn't a good idea when dealing with any client, but it's a particularly bad idea when dealing with the client who may have difficulty controlling their behavior.
4. When explaining things to your client, have her repeat back to you what you explained to her to make certain she understands. This is also a helpful tip with a cognitively disabled client.

5. It may be useful for you to suggest that your client take notes as you discuss his matter. Ask for permission to review the notes periodically throughout the meeting to make sure he understands what you need him to understand.
6. You may want to provide your client with an agenda in advance of the meeting so that you and she can stay on goal.
7. Be flexible as to meetings. He may need to end abruptly. The meeting may need to be rescheduled. But don't become frustrated. Remember your client has a disability, it isn't his fault.
8. Don't ask your client to make multiple decisions at one meeting. Clients with mental health and cognitive disabilities often have a hard time with decision-making. Don't make it more difficult. One meeting, one decision.
9. One of the biggest issues in dealing with a client with a mental health disability is that they often have a difficult time understanding appropriate boundaries. To them, making nine phone calls to your office in a row is perfectly normal. Help her understand, by explaining it to her and putting it in writing, that you're happy to talk to her but that the phone calls need to take place at certain times during the day. Perhaps, you can agree to phone the client every Thursday at 4:30 PM.

Some Parting Shots – um, Thoughts

If you represent a disabled client, or face a disabled opponent, everything, and I mean everything, will take longer.

If you represent a disabled person in a court or administrative setting, let the court know, early and often, if and what type of accommodation or auxiliary aid is needed. Never assume that the court will remember for the next hearing what was provided at the last hearing. Our great clerks probably will, but better safe than sorry. In my experience, court personnel, and judges, are always more than willing to do what is necessary to make sure that disabled individuals receive full access to justice. Truly, I've been proud, on more than one occasion, of how gracious our judges have been to my clients. I go so far as to add a supplement to the joint discovery plan to let the court know that our deadlines are unusually spaced because the parties need more time do to a disability. It isn't necessary or advisable to announce what the disability is, but keep the court informed.

Many disabled individuals lack the common experience that we rely upon when talking to our everyday clients. You can't use the analogy of cutting up the pie, to someone who has never seen one. You can't reference the latest hit movie to someone who has never heard or seen it. Just remember many disabled individuals, because of their disability, didn't grow up watching Law and Order or CSI. Many can't watch TV or read the paper.

Whatever accommodation you might require in the courtroom, make sure you practice with it beforehand. Using two American Sign Language interpreters and a Certified Deaf

Interpreter (the preferred method for in court questioning of the prelingually deaf) to question a witness on the stand when you haven't practice beforehand can be very difficult. It can take a full 10 minutes to ask a simple question. You'll find yourself stepping on questions and answers. An individual who uses a keyboard to type answers that speaks for them, or a symbolic based "Blissboard" much like famed physicist Stephen Hawkins' DecTalk machine (technology, I'm proud to say, my wife worked on years ago) makes objections difficult because, once those machines start a sentence; they can't stop until they're done. Bring your blind client to court in advance and help her learn the room. Practice.

Remember, whenever possible, and that means always, the disabled person is your client and she is the one who deserves your time and attention. Don't get sucked in to dealing with the caretaker or a family member because it's easier to talk to them. Believe me, if you have a deaf client or an emotionally or cognitively disabled client who has a family member joining them for the meeting, it is easier to talk to the non-disabled person. Don't fall into that trap. First, it causes all sorts of privilege problems. Second, it's a rude. If she wants the family member, or helper, present that is the disabled client's choice, but remember privilege, and how it's destroyed, and remember the client is still your priority.

I'd also like you to bear in mind that, regardless of the ravings of Rand Paul, according to the 2010 census, 28% of America's disabled population lives below the poverty line. That means they make less than \$11,000 a year. I urge you to have flexible and affordable payment plans. If we don't do something, the justice gap will just keep growing and isn't that gap our legal system's biggest disability?