

Disability Rights Committee Newsletter | Fall 2016 Vol. 1 No. 1

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MESSAGE FROM THE CHAIR

Dear Disability Rights Committee members,

Welcome to the YLD's newest committee, the Disability Rights Committee. I am looking forward to an exciting and productive year. We will need everyone's contributions and ideas to make this committee a success. The Disability Rights Committee is for those who are interested in disability rights, ensuring that disability is considered a part of diversity, and that young lawyers with disabilities are equally included in the YLD, the ABA, and the legal profession.

Today, persons with disabilities still face a multitude of accessibility barriers, such as equal opportunity and access to gainful employment, accessibility of public accommodations, and digital accessibility barriers (such as to websites, mobile applications, touchscreen

technology, and online only services). While the Americans with Disabilities Act and State disability laws protect the right to access public accommodations, State and local programs and activities, and gainful employment, enforcement still remains at issue.

As technology improves access to the digital world, more and more businesses are “online only” establishments. Touch screen smartphones have led to the creation of mobile application services such as ride sharing and lodging services, as well as touch screen kiosks that are replacing customer service staff at transportation ticketing counters and in health care facilities. Even the majority of office equipment used today consists of touchscreens. However, access to this transformative technology, including most websites, is extremely limited and is often an afterthought to their design. This, in turn, limits access for the blind to employment opportunities, national and international commerce, health care privacy, and participation in daily activities. Lack of interpreting services in hospitals and in the workplace limit access for the deaf and hard-of-hearing to health care and employment and promotion opportunities. Failure to grant reasonable accommodations by schools and universities prevents students with disabilities from receiving a quality education.

Attitudinal barriers and misconceptions about the capabilities of disabled individuals also still exist, often leading to employment discrimination on the job or in hiring, and denial of reasonable accommodations on the job or during the interview process.

To raise awareness of these issues, the Disability Rights Committee (DRC) will host and support teleconferences on various disability and intersecting issues facing minorities, emphasize the inclusion of disabled attorneys in YLD programming, present opportunities for publication, and serve as a potential entry point into these fields of law and their respective ABA entities.

To accomplish the above, our major goals will be to:

1. Establish solid Committee membership;
2. Coordinate with other YLD committees to spread awareness about issues experienced by attorneys with disabilities within, and getting access to, the legal profession;
3. Spread awareness about digital accessibility issues for persons with disabilities, and ensure equal access to YLD web sites, materials, and meeting spaces; and
4. Serve as a resource and support group for law students and young lawyers with disabilities who are entering or enrolled in law school, or who are entering the legal profession.

There will also be multiple opportunities for members to get involved this year, and I encourage you to take advantage of them. Getting involved does not necessarily require a substantial time commitment. You can write an article or op-ed for the DRC newsletter, write a 101/201 article, present ideas for teleconferences and in-person programs at YLD conferences, participate as a speaker in a CLE or teleconference, suggest an idea for an ABA resolution, or simply send an email with a topic you would like to see the DRC address.

If you have not done so already, please subscribe to our listserv at yld-disability@mail.americanbar.org and encourage your colleagues to join the Disability Rights Committee at www.americanbar.org/groups/young_lawyers/committees/disability_rights.html.

Additionally, if you have any suggestions about initiatives or programming you would like to see implemented this year, please feel free to contact me at the email address below.

I look forward to working with all of you.

Deepa Goraya
Chair, Disability Rights Committee
Deepa.goraya@gmail.com

ARTICLES

Breaking into the Legal Profession: Perspectives of a Law Student with a Disability

By: *Cody J. Davis*

While the legal profession, and obtaining a legal education, have become ever more accessible with the continuous development of new technologies and a generally improving attitude toward professionals with disabilities, some barriers remain for law students with disabilities attempting to break into the legal profession. I would characterize most of these as soft barriers, those which go unnoticed, either because someone may see them as minor inconveniences or because the person presenting that barrier does not realize the harm they inadvertently cause.

Soft barriers may present themselves in the form of a professor's reluctance to cold call a student with a disability, a career advisor informing an employer of a student's disability prior to an interview, awkwardness and difficulty in many networking scenarios, the assumption that what works for one law student with a disability will work for another with a similar disability, and a host of other harmful misperceptions about the interests, needs, and abilities of persons with disabilities.

I doubt that these soft barriers result from any malice or, on the other end of the spectrum, from the perception that those with disabilities must be coddled and are subject to sympathy. Rarely do soft barriers result from an unwillingness to accommodate or recognize the potential of law students or lawyers with disabilities.

Rather, I propose these soft barriers are the result of "over-accommodation" arising out of a person's want to do everything they think is best to ensure the success of a disabled individual. Of course, they are almost always incorrect in judging what is best for the disabled individual's success, and this is where the harm arises. The solution is simple, but not easy. Eliminating these remaining barriers requires self-advocacy, swaying of perceptions, and the use of the ultimate tool, education.

Cody J. Davis is a second year law student at Campbell University School of Law and a graduate student studying public administration at N.C. State University. Prior to law school, he studied political science, philosophy, and criminology. Practice areas of interest to Cody include criminal law, government, and civil rights.

Providing Equal Access to Health Care for Deaf Clients

By: Tai Tomasi

Communication access in health care settings has long been a point of emphasis for the Department of Health and Human Services (HHS), the Department of Justice (DOJ), and the Joint Commission. These entities have encouraged health care providers to voluntarily provide preferred methods of communication for deaf patients for many years. HHS' Office of Minority Health first published its voluntary standards, the National Culturally and Linguistically Appropriate Services (CLAS) Standards, 16 years ago.¹ The National CLAS Standards were designed to improve quality of care, advance health equity, and help eliminate health care disparity through the provision of culturally and linguistically appropriate services to persons of limited English proficiency and those who are deaf and hard of hearing.

The DOJ Civil Rights Division has also made communication access a point of emphasis when it launched its Barrier-Free Healthcare Initiative in 2012, stating “[t]his new initiative will make sure that people with disabilities, especially those who are deaf or hard of hearing, have access to medical information provided to them in a manner that is understandable to them.”² The Joint Commission developed guidance in 2010 for hospitals to incorporate concepts of effective communications, cultural competencies and patient and family-centered care guidelines into the care process for persons with disabilities, noting that effective communication is no longer simply a matter of a patient’s right, but an accepted component of quality of care and patient safety.³

A New Communication Rule Under the Affordable Care Act Requires Medical Providers To Consider Communication Preferences of Deaf Clients.

The most recent federal nondiscrimination rule, “Nondiscrimination in Health Programs and Activities” under Section 1557 of the Patient Protection and Affordable Care Act (ACA), has now been issued.⁴ This rule applies to all medical providers who receive federal funding through the Department of Health and Human Services (HHS), including Medicare and Medicaid funds.⁵ The rule applies to health care providers controlled by religious organizations as well as providers with fewer than fifteen employees.⁶

¹ The Department of Health and Human Services Office of Minority Health, National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care, available at <https://www.thinkculturalhealth.hhs.gov/Content/clas.asp>. The National CLAS Standards were revised in 2010 through the Office of Minority Health’s National CLAS Standards Enhancement Initiative.

² See Department of Justice Press Release, Justice Department Announces Americans with Disabilities Act Barrier-free Healthcare Initiative by U.S. Attorney’s Offices Nationwide, July 26, 2012, available at <https://www.justice.gov/opa/pr/justice-department-announces-americans-disabilities-act-barrier-free-health-care-initiative>.

³ See The Joint Commission: Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care: A Roadmap for Hospitals. Oakbrook Terrace, IL: The Joint Commission, 2010 (citing Divi C., et al., Language Proficiency and Adverse Events in U.S. Hospitals: A Pilot Study. *Int J Qual Health Care* 19(2):60-67, Apr. 2007; and Bartlett G., et al., Impact of Patient Communication Problems on the Risk of Preventable Adverse Events in Acute Care Settings. *CMAJ* 178(12):1555- 1562, Jun. 3, 2008), available at https://www.jointcommission.org/topics/monographs_and_white_papers.aspx.

⁴ See Nondiscrimination Rule, 81 Fed. Reg. 31,376 (May 18, 2016) (codified at 45 C.F.R. pt. 92). The Final Rule became effective on July 18, 2016.

⁵ 45 C.F.R. § 92.2, 92.4.

⁶ *Id.*

Section 92.202 of the Final Rule, “Effective Communication for Individuals with Disabilities,” requires health care providers and other covered entities to comply with the stricter communication access requirements applicable to public entities as contained in Title II of the Americans with Disabilities Act (ADA).⁷ Under the Final Rule, by incorporating the stricter ADA Title II communication access requirements, health care providers have an affirmative legal requirement to consult with a deaf or hard of hearing patient or companion and to give “primary consideration” to their communication preference.⁸

Tai Tomasi is a staff attorney with Disability Rights Iowa, the state's federally-mandated protection and advocacy agency enforcing the civil rights of individuals with disabilities. She is a graduate of the University of Iowa College of Law. While in law school, Tai focused on disability rights. She served as a student writer for the Journal of Gender, Race & Justice, was a summer law clerk at Disability Rights Advocates in Berkeley California, and participated in her school's assistive technology clinic. She received a Master's degree in public administration from the University of Utah and then moved to Iowa to work with people with disabilities.

YLD 2016 FALL CONFERENCE



American Bar Association YLD Fall Conference in Detroit, Michigan
October 20, 2016 – October 22, 2016
http://www.americanbar.org/groups/young_lawyers/events_cle.html

The YLD will be convening in Detroit, MI from October 20-22 at the Westin Book Cadillac Hotel. Sessions and events of interest include:

- Thursday, October 20th
 - Growing Your Network: Building and Maintaining Relationships (ethics CLE), 1:15-2:15 PM
 - Emerging Leaders Meeting, 3-4 PM
 - Speed Networking Event (hosted by the National Conferences Team), 5:30-6:15 PM
- Friday, October 21st

⁷ 28 C.F.R. § § 35.160-35.164.

⁸ *Id.*

- Justice for Flint: the Failures, Lessons Learned and Next Steps (CLE), 9-10 AM
- Gender Identity, Title IX and K-12 Education (CLE), 10:15-11:15 AM
- Access to Education (off-site public service implementation), 2-4 PM

NEWS AND ANNOUNCEMENTS

Webinar: America Votes! Challenges to Facing Modern Election Law and Voting Rights

October 17, 2016.

<http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=25608642>

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How Do I Tell Them? Coming Out About Mental Illness in the Workplace

October 18, 2016.

<http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=25739145>

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First Annual Disability Rights Bar Association West Coast Conference

October 20, 2016

Location: California Endowment, 10000 N. Alameda Street, Los Angeles, CA 90012

<http://disabilityrights-law.org/2016-west-coast-meeting>

Webinar: Meeting the Communication Needs of Students with Disabilities: The Interplay Between the ADA and the IDEA, October 25, 2016

<http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=25729159>

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ABA National Aging and Law Conference in Alexandria, VA, (sponsored by Commission on Law and Aging and Center for Professional Development)

October 27-28, 2016

Hilton Alexandria Old Town

http://www.americanbar.org/groups/law_aging/events_cle/nationalagingandlawconference.html

Webinar: How the Updated CMS Nursing Facility Regulations Impact Your Clients

November 9, 2016.

<http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=25808534>

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Webinar: Structured Negotiation: A Winning Alternative to Lawsuits

December 1, 2016

<http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=25757484>

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GET INVOLVED

Call for Programming Ideas

Got an idea for a live program, teleconference, or webinar? We want to hear it! The DRC is accepting programming ideas on an ongoing basis. Please send suggestions for programming to Deepa Goraya, Deepa.goraya@gmail.com

Writing Opportunities

The Disability Rights Committee is accepting submissions on an ongoing basis to be considered for publication in the newsletter or as 101/201 articles. Articles should be 150 to 500 words and report new, exciting events of interest to lawyers with disabilities or young lawyers in general. Topics may encompass recent events in the area of disability rights, relevant case decisions, diversity news, emerging trends in disability rights, or general topics of interest in this field of practice or study to young lawyers. Please send submissions or inquiries to Seth Nadler SethA.Nadler@gmail.com.