

Clients with Disabilities: Ethical Considerations



Terminology

2

Intellectual Disability

- Present from childhood
- Cognitive capacity (IQ) and adaptive functioning
- Severity determined by adaptive functioning

3

Mental Illness

- Wide variety of conditions that may interfere with occupational, social and daily functions
- Not tied to IQ or age
- May be temporary, cyclical or episodic

4

Developmental Disabilities

- Severe and chronic; likely to continue indefinitely
- Caused by mental and/or physical impairment
- Manifested before age 22 (exception: head injuries)
- Results in substantial functional limitations in 3 or more of major life activities listed in statute

5

Physical, Sensory and Neurological Disabilities

- | | |
|--------------------------|--------------------------|
| • Orthopedic impairments | • Traumatic Brain Injury |
| • Deaf/hard-of-hearing | • Epilepsy |
| • Blind/low vision | • Diabetes |
| • Spinal cord injury | • Cerebral palsy |
| | • Dementia |

6

Substance Use Disorder

- Presence of at least 2 of 11 criteria
- Severity determined by number of criteria
- Specific substance addressed as separate use disorder (e.g. alcohol use disorder)

7

If a client doesn't self-identify you may need to assess:

- Does the client act or talk in a different manner?
- Does the client seem unusually confused or preoccupied?
- Is the client's speech hard to understand?
- Does the client's vocabulary seem limited?
- Does the client have difficulty expressing him/herself?

8

History Questions

- Did you attend special classes in school?
- Have you ever received Mental Health or DD services?
- Do you get any kind of social security check?
- Is there a guardian, rep payee, or POA who helps with your finances or decisions?

9

Person-First Language

- Put the person *before* the disability
- Describe what a person *has*, not who a person *is*
- Reframe “problems” into “needs”

10

Examples

Say . . .	Instead of . . .
Child / adult with disability	Handicapped or disabled
She has autism.	She's autistic.
He has an intellectual disability.	He's mentally retarded.
She uses a wheelchair.	She's wheelchair-bound.
Congenital disability / Brain injury	Birth defect / Brain damage
Accessible parking	Handicapped parking

11

Attorney-Client Relationship

12

Rule 1.14(a)

- When a client's capacity to make "adequately considered decisions" in connection with a representation is diminished, the lawyer shall, as far as reasonably possible, maintain a "normal" relationship with the client

13

Commentary suggests reasons Rule 1.14 was needed

- Clients with disabilities may be unable to monitor their attorneys' performance.
- Studies found that attorneys spend less time interviewing clients with disabilities than other clients.
- There is a tendency to usurp decisions that should be left to the client.

14

"Normal" Client Relationship

- Effective communication
- Duty of loyalty to client, not guardian
- When necessary to assist in representation, presence of third person does not affect applicability of attorney-client privilege.

15

Taking Protective Action

16

Rule 1.14(b)

- May take protective action if reasonably believe:
 - Client has diminished capacity;
 - Client is at risk of substantial physical, financial or other harm unless action is taken;
and
 - Client cannot adequately act in own interest

17

Examples

- Consulting with family members
- Consulting with professionals and/or adult protective services
- Alternatives to guardianship
- Appointment of GAL or guardian

18

Factors to Consider

- Client's wishes and values, to the extent known
- Client's best interests
- Preserving client's decision-making autonomy to the greatest extent feasible
- Maximizing client's capabilities
- Respecting the client's family and social connections

19

Confidentiality of Information

- Rule 1.6(a): shall not reveal information unless client gives informed consent, disclosure implicitly authorized to carry out representation, or permitted by Rule
- Rule 1.14(c): when taking protective action, lawyer is implicitly authorized to reveal information under Rule 1.6(a) only to extent reasonably necessary to protect client's interests

20

Effective Communication

21

Rule 1.4: Lawyer shall

- Promptly notify client of decision or circumstance that requires informed consent
- Reasonably consult with client about means to accomplish objectives
- Keep client reasonably informed about status of matter
- Respond to reasonable requests for information
- Consult about limitation on lawyer's conduct

22

More Rule 1.4: Lawyer shall

- "Explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation"

23

Effective Communication: General Tips

- Learn about client's disability
- Ask about needs and preferences
- Talk to client
- Be aware of body language
- Patience, humor and the Golden Rule

24

Effective Communication: Client with ID

- Limit distractions, people present
- Begin by asking some basic questions to assess level of basic knowledge
- Ask questions a number of ways; ask the person to repeat or explain statements
- Avoid compound or complex sentences

25

More Communication: Client with ID

- Wait for a response before continuing
- Eye contact
- Concrete, not abstract
- Minimize and simplify written information

26

Effective Communication: Client with MI

- Be aware of possible processing difficulties
- Be aware of body language
- Wait for a response before continuing
- Let the person know you are prepared to believe them

27

Effective Communication: Client with Dementia

- Limit distractions
- Avoid compound or complex sentences
- Be aware of processing difficulties
- Ask yes/no questions
- Ask questions a number of ways

28

More Communication: Client with Dementia

- Do not confront untruths; work around them
- Don't finish sentence or find word unless asked
- Behavior is communication
- Have discussions earlier in the day

29

The Americans with Disabilities Act

30

Equal Access to Legal Services

- Prohibits discrimination on the basis of disability in any place of public accommodation -- including lawyer's office
- Discrimination includes failure to make reasonable modifications unless modification is fundamental alteration

31

ADA & Effective Communication

- Public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication
- If particular aid or service would result in fundamental alteration or undue burden, the public accommodation must provide an alternative aid or service (if one exists)

32

Effective Communication

- Meaningful, two-way communication
 - Qualified interpreter
 - “Companion interpreter”
 - Relay services and Video Remote Interpreting (VRI)

33

Effective Communication

- Fundamental alteration
- Undue burden
- Must provide alternative aid or service if exists

34

ADA & Effective Communication

- Must also provide auxiliary aids and services to companions with disabilities
- Should consult with individual to determine what type of auxiliary aid is needed to ensure effective communication (but ultimate decision rests with public accommodation)

35

Examples: Auxiliary Aids & Services

- | | |
|---|---|
| • Note-takers | • Telephones compatible with hearing aids |
| • Real-time computer-aided transcription services | • Video text displays |
| • Large print | • TTYs or videophones |
| • Text-to-speech technology | • Screen reader or magnifier |

36

Service Animals

- Individually trained to do work or perform tasks directly related to disability
- May exclude if fundamental alteration
 - Not allergies or fear
- If exclude, still have to offer services

37

DOJ Enforces Equal Access

- 2010 Consent Decree with Colorado attorney
 - Adopt an ADA-compliant service animal policy and post in conspicuous location;
 - Post a “Service Animals Welcome” sign;
 - Undergo training and provide training to staff; and
 - Pay \$50,000 in fees and penalties.

<http://www.ada.gov/lehouillier.htm>

38

Contact Information

*Disability Rights North Carolina
North Carolina's Protection and Advocacy System
3724 National Drive
Suite 100
Raleigh, NC 27612
919.856.2195
877.235.4210
888.268.5535 TTY
919.856.2244 fax*

39
