



Access to Justice: Ensuring that Legal Aid is Accessible to Clients with Disabilities

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Equip for Equality

Access to justice. Legal aid organizations frequently use this phrase when referring to the concept that people who cannot afford an attorney should still be



able to meaningfully participate in our justice system, and the critical role that legal aid has in providing that access. But access to justice can also refer to the commitment of legal aid organizations to ensure that their services are accessible to all of their clients, including clients with disabilities. Nearly, one in three Americans with disabilities lives in poverty,² meaning that people with disabilities are a significant percentage of legal aid clients. This article will discuss strategies that legal aid organizations can employ to ensure that their clients with disabilities have access to the place they often first go to seek justice — their local legal aid office.

The ADA's Application to Legal Aid Organizations

The Americans with Disabilities Act (ADA) was passed in 1990 to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”³ Title III of the ADA covers discrimination by public accommodations, which are businesses open to the public. When defining public accommodation, Congress specifically referenced law offices.⁴ The U.S. Department of Justice (DOJ), which enforces Title III of the ADA, has made it clear that attorneys and law offices have an obligation to make their services accessible to people with disabilities. When attorneys have failed to provide access to people with disabilities, DOJ has pursued legal action.⁵ Most legal aid organizations are also recipients of federal funds and thus, must comply with Section 504 of the Rehabilitation Act, as well as local

anti-discrimination laws that may provide protections and remedies beyond the ADA.

Physical Access

An important first step to ensure accessibility is to evaluate the legal aid office's physical accessibility. If a client with a disability cannot physically access the legal aid office, it will undermine or possibly even prevent the establishment of a meaningful attorney-client relationship.

DOJ's publication “The Americans with Disabilities Act Checklist for Readily Achievable Barrier Removal,”⁶ can be helpful with the process of evaluating accessibility of an existing legal aid office. The Checklist helps identify accessibility problems and offers solutions for the removal of barriers in existing facilities. The Checklist asks a series of questions about accessibility that follows a client's interface with a legal aid office starting with the parking lot, then the path of travel to the entrance of the building, accessibility of any elevators leading to the office, accessibility of the entrance to the office, and accessibility within the office. The Checklist also can help legal aid organizations determine the accessibility of signage, bathrooms, and drinking fountains within the office. As the Checklist indicates, involving people with disabilities in the accessibility evaluation process is a recommended strategy.

Don't Forget About Your Website

While ensuring physical access is crucial, in many circumstances a legal aid organization's website is the first point of contact for clients as they seek to identify the office location, the services provided, and any eligibility criteria. An accessible website will send a clear message that the legal aid organization is committed to serving clients with disabilities.⁷

The advancement of technology has been a great aid

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for people with disabilities, such as screen reading software that allows people who are blind to access written content. When websites are developed or updated, it is critical that accessibility for people with disabilities is part of the planning process. If not, clients with disabilities may encounter virtual barriers that undercut their efforts to gain access to justice. Examples of virtual barriers include:

- Conveying content visually through a graphic, image or chart without labeling with "alternative text" that can be read by people using screen readers;
- Content that is color coded can be inaccessible to people with colorblindness;
- Content that cannot be adjusted by font, size, or color contrast can be inaccessible for people with low vision;
- Audio information without captioning can be inaccessible to people who are deaf;
- Requiring use of a mouse without keyboard alternatives can be inaccessible to people who lack fine motor skills, such as some people with cerebral palsy; and
- Flashing visual content can trigger seizures for people with epilepsy.

The current standard for website accessibility is known as the Web Content Accessibility Guidelines, updated in 2008 (WCAG 2.0). WCAG was developed by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), and contains twelve guidelines for web access.⁸

For legal aid organizations seeking to evaluate the accessibility of their website, there are numerous resources available. The W3C has compiled a list of various sites that assess website accessibility, which can be found at www.w3.org/WAI/ER/tools/complete. There is also a Web Accessibility Evaluation Tool, which can be accessed at www.wave.webaim.org/. Additionally, the ADA National Network provides free technical assistance on certain website accessibility issues. Legal aid organizations can call (800) 949-4ADA or go to www.adata.org to identify the nearest ADA Center.

Interacting with People with Disabilities

When interacting with clients with disabilities, the general rule is to treat them as you would treat any client. This includes establishing good communication

with the client about their needs, which, for clients with disabilities, may include a discussion of what type of accommodations they need. There are, however, some basic rules you should adhere to in order to facilitate positive interactions with clients with disabilities.

When interacting with a person in a wheelchair, place yourself at eye level so that they are more comfortable and do not have to strain their neck to communicate with you. Also, do not touch, lean against, or hang onto a client's wheelchair, mobility aid, or service animal without first obtaining permission.

When interacting with clients who are deaf using an American Sign Language interpreter, you should maintain eye contact with the client, even if the interpreter is voicing for the client. Also, speak directly to the client. Do not ask the interpreter questions that should be answered by the client; use the first person for questions like, "What time did you arrive?" not the third person like, "Ask him what time he arrived." If the client reads lips, you should position yourself so that the client can see you straight on and you should eliminate any background lighting (like sun coming through a window) that may make it difficult for the client to see your face.

When interacting with clients who are blind, you should always identify yourself and others who may be with you, especially for the initial interaction. This allows the client to match your name with your voice. Also, always ask before assisting the client; don't assume that they can't handle the situation independently. On some occasions, people with visual disabilities may indicate that they need help navigating an unfamiliar space. If so, it is best to offer them an elbow to hold onto, which will allow you to guide them to the desired destination.

Legal aid attorneys also need to understand the needs of clients with mental disabilities. Some people with intellectual disabilities may need written documents in simplified language or may need key information recorded when reading is difficult. Clients with mental illness may need to adjust meeting times because of medication side effects, may need frequent breaks because of concentration issues, or may need to interact by phone instead of in-person because of difficulty leaving their home. Flexibility can be helpful when serving clients with mental disabilities.

Language Matters

When interacting with people with disabilities and doing legal work on their behalf, legal aid organizations should take care to use appropriate language. Using appropriate language when referencing any client's identity, including people with disabilities, demonstrates

respect for the client and will often result in a more trusting attorney-client relationship.

Using "people first" language is recommended when speaking or writing about people with disabilities. So, instead of referring to a person as an "epileptic," you would say she is a "person with epilepsy." This ensures that people are not solely identified by their disability, but instead are described as a person first, and their disability is just one component of their persona.

It is also important not to add language that contains assumptions about the experiences of people with disabilities. Rather than identifying someone as an "AIDS victim," the preferred language would be a "person living with AIDS," or instead of referring to someone as "suffering from mental illness," simply indicate he or she is a "person with mental illness." People with AIDS do not necessarily view themselves as victims, nor do all people with mental illness view themselves as suffering. Additionally, using sympathy-evoking terms like victim and suffer may disempower the person with a disability by making them an object of pity.

Language also evolves over time, so descriptions that may have been acceptable at one time can become obsolete, or even worse, deemed offensive. For instance, "mental retardation" is no longer acceptable. Instead, the preferred terminology is "intellectual disability." Also, avoid using made-up phrases for disability like "handi-capable" or "differently abled," especially when writing legal documents where precise language is necessary. Additionally, remember that assistive technology enables, not restricts, access for people with

disabilities. So, it is preferred to say "wheelchair user" instead of "confined to a wheelchair" or "wheelchair bound." If you are not sure what the current language is or what a client's preference may be, it is always best to ask clients directly how they would like their disability to be characterized.

Access for People with Communication Disabilities

The ADA makes clear that public accommodations, including legal aid organizations, must furnish appropriate auxiliary aids and services where necessary to ensure effective communication with people with disabilities.⁹ The ADA regulations prohibit public accommodations from imposing a surcharge to cover the cost for providing an auxiliary aid or service.¹⁰

There are a number of auxiliary aids and services that can provide meaningful access for people who are deaf or hard of hearing. For instance, to access legal aid services, a deaf client may require a qualified American Sign Language (ASL) interpreter, and legal aid organizations have the obligation to secure and pay for the interpreter. When clients are in the office, it is generally preferred that the interpreter be physically present. However, if the client communication is being done remotely, legal aid organizations may need to utilize qualified ASL interpreters through video remote interpreting services.

Some people who are deaf or hard of hearing may prefer real-time computer aided transcription (CART) services, also known as real-time captioning. Like ASL interpreting, a legal aid organization can secure a captioner to provide this service in person or remotely. Consultation with the client is the best way to determine whether an ASL interpreter or CART is the preferred and



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effective auxiliary service.

In some limited circumstances, it may be necessary to exchange written notes with a client who is deaf. This can arise when a client comes to a legal aid office without an appointment or to obtain some preliminary information before a more in-depth intake interview. The exchange of written notes is certainly not advisable for any extended communication because many people who are deaf are not literate in written English.

Clients who are blind may also need auxiliary aids and services to access legal aid services. Some people who are blind will need relevant materials provided in Braille. However, since fewer than 10% of blind people can read Braille, it shouldn't be assumed that a blind client will need materials in Braille.¹¹ This is another example when consulting the client first is the best practice. With the rise in the use of computers, many blind people prefer to have documents sent electronically. While Microsoft products are generally accessible, PDFs and other image-based documents may not be accessible to people using screen readers.

For people who have low vision, the most common auxiliary aid is providing materials in large print. Typically, the preferred method is to use 20 point font, in bold typeface and sans serif (e.g., Arial, Tahoma, Helvetica). Also, the paper used in large print documents should have a matte or dull finish to reduce glare and an eggshell color to minimize eye strain.¹² Note that these are general guidelines and individual clients may have different preferences for how a document is provided.

Personal items are not considered auxiliary aids under the ADA. For example, legal aid organizations are not required to provide clients who are deaf with hearing aids or provide a wheelchair to a person with a mobility impairment because the person uses these devices in daily activities, not just for the interaction with a legal aid attorney.

Employees with Disabilities

Legal aid organizations often seek to promote a diverse workplace for many valid reasons, including wanting the organization to reflect the population it serves. To achieve this goal, hiring and retaining attorneys and other staff with disabilities must be part of the any broader diversity efforts.

One of the most common problems attorneys with disabilities experience in obtaining and maintaining

employment is the lack of reasonable accommodations. Title I of the ADA requires that employers with fifteen or more employees provide reasonable accommodations (changes in the workplace) to qualified applicants and employees with disabilities, unless doing so would cause an undue hardship.¹³

The Equal Employment Opportunity Commission (EEOC) has developed a Fact Sheet entitled "Reasonable Accommodations for Attorneys with Disabilities."¹⁴ This Fact Sheet provides specific guidance and examples to assist employers with addressing unique issues that may arise for attorneys with disabilities who may need accommodations in the workplace.

Another excellent resource for reasonable accommodations is the Job Accommodation Network (JAN).¹⁵ JAN provides free, confidential technical assistance about job accommodations and the ADA for employers and people with disabilities. A particularly helpful service JAN provides is "Accommodation Information by Disability: A to Z."¹⁶ This resource provides an overview of a wide variety of impairments, as well as practical accommodation ideas and organizations to contact for more information and assistance.

Conclusion

Legal aid organizations have a unique opportunity to provide access to the legal system for people who could not otherwise retain an attorney. Ensuring that the services of legal aid organizations are accessible will make the promise of access to justice a reality for low income people with disabilities.

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- 2 "Fulfilling the Promise: Overcoming Persistent Barriers to Economic Self-Sufficiency for People with Disabilities," United States Senate, Committee on Health, Education, Labor and Pensions, Sept. 18, 2014, which can be found at: <https://www.help.senate.gov/imo/media/doc/HELP%20Committee%20Disability%20and%20Poverty%20Report.pdf>
- 3 42 U.S.C. §12101(b)(1).
- 4 42 U.S.C. §12181(7)(f).
- 5 See <http://www.ada.gov/hearn.htm> — settlement of ADA litigation after attorney failed to provide ASL interpreter for a client who was deaf.
- 6 The Checklist can be found at: www.ada.gov/rachek.pdf
- 7 Recommendations about website accessibility would also apply to social media platforms like Facebook and Twitter.

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for Justice. Janerick can be reached at janerickholmes@povertylaw.org

As the first-ever Racial Justice Network Director, Kimberly Merchant leads and provides strategic oversight for the annual Racial Justice Training Institute (RJTI), as well as its expanding alumni advocacy network. Kimberly comes to the Shriver Center with twenty years of experience practicing law. Most recently, she served as the Director of the Mississippi Center for Justice's Educational Opportunities Campaign, where, among other initiatives, she spearheaded efforts to disrupt the school-to-prison pipeline. Kimberly can be reached at KimberlyMerchant@povertylaw.org

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- 2 This latter workgroup is a collaboration between the Racial Justice Network and the Legal Impact Network, a dynamic collaborative of advocacy organizations in 33 states and the District of Columbia, also hosted by the Shriver Center.

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create a gap between what people value (e.g., racial equality) and what people do (e.g., racial discrimination). His research focuses on (1) learning how implicit biases change; (2) understanding the consequences of implicit bias for behavior; and (3) developing interventions to reduce the impact of implicit biases on behavior.

- 4 <https://www.nytimes.com/2018/04/18/business/starbucks-racial-bias-training.html>
- 5 From the Center for WorkLife Law at UC Hastings College of the Law, Bias Interrupters Project. <http://biasinterrupters.org/wp-content/uploads/Identifying-Bias-in-Performance-Evaluations-Worksheet.pdf>

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- 8 www.w3.org/TR/2008/REC-WCAG20-20081211/
- 9 28 C.F.R. § 36.303.
- 10 28 C.F.R. § 36.301.
- 11 "The Braille Literacy Crisis in America," National Federation of the Blind (2009), www.nfb.org/images/nfb/documents/pdf/braille_literacy_report_web.pdf
- 12 www.acb.org/large-print-guidelines
- 13 42 U.S.C. §12112(b)(5).
- 14 www.eeoc.gov/facts/accommodations-attorneys.html#fn_2; see also, www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/Guidelines_on_Reasonable_Accommodations_for_Lawyers_for_Disabilities.authcheckdam.pdf
- 15 www.askjan.org
- 16 www.askjan.org/media/atoz.htm

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