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The Arc.
*for people with intellectual
and developmental disabilities*

Barriers
Accessibility
Rights Dignity
Disability Liberty Human
Breaking the
Title ALL
Communication
Preference
Accommodations
Supports

**Ensuring Effective
Communication:**
Breaking Barriers for
Individuals with
Disabilities in Court
(and beyond)

**Thursday, October 17, 2024
1:25-2:15pm**


Stetson's 2024
National Conference on
Special Needs Planning &
Special Needs Trusts
~
St. Petersburg Beach, FL
October 2024




STETSON LAW

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Our Pledge...




**“...with liberty and
justice for all.”**



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**Disabilities that may impact
communication...**

- Mobility
- Sensory
- Cognitive due to injury
- Cognitive due to age
- Intellectual & Developmental
- Mental Health



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An individual may...

take longer to absorb information

have difficulty understanding questions, abstract concepts or instructions

have difficulty with reading and writing and money skills

have a short attention span and might be easily distracted

find it difficult to maintain eye contact

find it difficult to adapt to new situations or to plan ahead or solve problems

find communication over the phone difficult

have difficulty expressing their needs

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Disabilities impacting communication can vary due to:

- Stress, grief, depression, and traumatic events
- Temporary medical conditions and medications
- Time of day
- Recent institutionalization
- Not having access to needed accommodations or assistive technology

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MISCONCEPTIONS

- Making courts physically accessible accommodates the needs of most people with disabilities
- People with cognitive disabilities always need a guardian.
- People with disabilities need to live with their family or in facilities like nursing facilities or group homes.
- People with disabilities, especially people with mental health disabilities, are violent.

REALITY

- A wide range of accommodations are needed to make courts accessible.
- Most people with cognitive disabilities do not need a guardian.
- People with disabilities can live and work independently and may be eligible for community supports and services to do so.
- People with disabilities, especially people with mental health conditions, are over-criminalized.

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MISCONCEPTIONS RESULT IN...

- Segregation
- Institutionalization
- Isolation
- Higher risk of being subject to overbroad and unnecessary guardianship
- Lack of access to medical care and support
- Ongoing bias, stereotypes, and low expectations



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Americans with Disabilities Act (ADA) July 26, 1990

Prohibits discrimination and guarantees that people with disabilities have the **same opportunities as everyone else.**

Modeled after the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 -- the ADA is an "**equal opportunity**" law for people with disabilities.



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LEGAL OBLIGATIONS



- **Title II and Title III of the ADA:** Courts and attorneys must ensure that people with disabilities have an equal opportunity to access the benefits of their programs, services, and activities.
 - 42 U.S. Code § 12132; 42 U.S.C. § 12182(b)(1)(A)(ii)
- **Right to Effective Communication:** Whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities.
 - 28 CFR § 35.160
 - DOJ Effective Communication [Toolkit & Guidance](#)


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People who are **denied effective communication** face segregation, abuse and neglect, dehumanization, low expectations, and often guardianship

Commonly presumed that people who have communication access needs, require guardianship, when often **they may simply need appropriate supports and accommodations.**

https://youtu.be/_qkndlGznCw?si=GZlgn2bfH8svdUvT


Why is providing effective communication important?



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ONGOING REALITIES


- Some courtrooms remain physically inaccessible.
- Some court technology platforms are inaccessible.
- Court proceedings can be inaccessible to people with cognitive disabilities.
- People with disabilities are often denied their right to effective communication.
- Courts can lack clear policies about how to request and receive an accommodation or to file a complaint if they are denied an accommodation.
- Litigants with disabilities face bias and stereotypes about their credibility and capacity.



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Information & Communication Barriers

- People with disabilities often experience challenges accessing critical information they need to reach the legal system.
- People with disabilities are less likely to have access to computers and internet than people without disabilities.
- People with disabilities more often lack access to representation and disproportionately must represent themselves *pro se*.
- Courts often fail to provide information about how to request accommodations. People with disabilities are often denied effective communication.
- People who have communication access needs are commonly presumed to need guardianship, when often they may simply need appropriate supports and accommodations.



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Accommodations

- Qualified interpreters (including ASL and certified Deaf interpreters)
- Notetakers
- Screen readers
- Computer-aided real-time transcription (CART)
- Augmentative and alternative communication devices
- Communication boards
- Closed caption decoders
- Video interpreting services
- Video/text displays
- Visual descriptions
- Physical changes to the courtroom space
- Proceedings at certain times of day
- Extra time or breaks or delays
- Description of visually presented materials
- Qualified readers
- Assistance filling out forms
- Audio recordings
- Plain language or easy read materials
- Braille materials
- Large print materials
- Materials in electronic format
- Supported decision-making



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Practice Tips & Strategies 1 of 2

- **Focus on the person, not on the disability.**
- Extend the person the same **dignity, consideration & respect** you would expect for yourself.
- Always assume (because it is nearly always true) **that every person has a way of communicating.**
- A diagnosis, IQ, manner of communication, assistive technology or aid, or level of support **does not** determine whether a person has diminished capacity.
- Public benefits systems like Medicaid Waivers, Supplemental Security Income (SSI), are **deficit based**. Access to them does not necessarily mean a person needs a guardian.



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- **Ask what accommodations a person may need at the onset**—this can create a more welcoming environment.
 - To the extent feasible, provide those accommodations
- **Recognize that the presence of accommodations may disrupt** how you typically run your courtroom.
 - For example, they may require slowing down the pace of the proceeding
- To the extent possible, try to draft your orders and opinions in **plain language**
- Work with your court's ADA coordinator



Practice Tips & Strategies 2 of 2

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Strategies for Supporting Communication Access Needs



- Ask individual about themselves and match their language.
- Use plain language, concrete terms and ideas.
- Avoid compound questions
- Avoid frustrating questions about time, complex sequences, or reasons for behavior.
- Highlight important information to improve memory retention.
- Repeat information to improve retention.
- Be careful not to provide nonverbal cues that may aid and/or improperly influence a person's response (resist the need to fill in the blanks)
- Take short breaks, as individuals learn best with multiple, short sessions rather than a few, long sessions.

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A few more practice tips...

Words to avoid:

- Non-verbal
- Severe or profound
- Disorders, impairments, and deficits
- Complex communication needs
- Non-communicative

Words to use:

- Use person-first language unless a person with a disability specifically asks you not to.
- Describe the supports and accommodations a person needs
- Refer to conditions and disabilities



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How to Report a Disability Rights Violation: Effective Communication



How to Report a Disability Rights Violation

If you believe that you or someone else experienced unlawful discrimination, you can report a disability rights violation.

1 Report using our online form.

By completing the online form, you can provide the details we need to understand what happened. We will review it, and your report is immediately sent to our staff for review.

2 We review your report.

Teams that specialize in handling your type of issue will review it. If it needs to be forwarded to another team or agency, we will try to connect your complaint to the right group.

3 We determine next steps and get back to you.

Possible outcomes include following up for more information, starting a mediation or investigation, directing you to another organization for further help, or informing you that we cannot help.

Think you or someone you know has experienced a disability rights violation?

[File a complaint](#)

<https://www.ada.gov/>

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RESOURCES

- **ADA Best Practices Tool Kit for State and Local Governments, Chapter 3, General Effective Communication Requirements Under Title II of the ADA**, retrieved 7/22/2022 at <https://archive.ada.gov/pcatoolkit/chap3toolkit.htm>
- **Something to Talk About: Supported Decision Making and Access to Justice for All**, https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-42/bifocal-vol-42-issue-6-july-august-2021/something-to-talk-about-supported-decision-making-and-access-to/ .
- **Communication FIRST**: <https://communicationfirst.org/wp-content/uploads/2023/07/C1st-The-Words-We-Use-Style-Guide-v1-July-2023.pdf>
- **4th National Guardianship Summit | Recommendations** <http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability>. See also (video): <https://youtu.be/SBqwFqS51BM>.
- **Center for Public Representation**: <https://supporteddecisions.org/>



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Justice Intermediary Starter Kit

Justice Intermediaries have been introduced in a few countries around the world. It is a recognised approach to ensuring effective participation for people with disabilities. The Justice Intermediary Starter Kit (JISK) has been designed to promote a similar approach in places that want to know more about starting a scheme.



<https://justiceintermediary.org/>

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**THANK
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QUESTIONS?



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