

# MCLE ON THE WEB

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TEST # 70

1 HOUR CREDIT

ELIMINATION OF BIAS

To earn one hour of MCLE credit in the special category of Elimination of Bias, read the substantive material, then download the test, answer the questions and follow the directions to submit for credit.

## **The Forgotten Americans** *Interacting with individuals who have disabilities may call for different strategies to build trust*

By **ELLEN R. PECK**

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Given the numbers of people with disabilities in California and the United States, it is more likely than not that you will represent clients with disabilities, that you will encounter people with disabilities in your work as a lawyer and that you will encounter people with disabilities in your community. As the United States Department of Labor Office of Disability Employment Policy observes, progress is still needed in communication and interaction with people with disabilities. Individuals are sometimes concerned that they will say the wrong thing, so they say nothing at all or are awkward in communications or interactions — thus further segregating people with disabilities.

The challenges that arise from communicating or interacting with clients who have disabilities are the same that arise from clients who are not disabled:

- Building a trust relationship between you and the client consistent with duties under Business and Professions Code §6068(e).
- Discharging your duties to communicate with the client pursuant to Business and Professions Code §6068(m), Rule 3-500, Rules of Professional Conduct of the State Bar of California (CRPC) and civil duties arising under common law.
- Supporting California and federal anti-discrimination law, consistent with Business and Professions Code §6068(a) by not manifesting discrimination or bias by language or conduct. (See also CRPC 2-400.)

However, communicating and interacting with people with disabilities may call for different strategies and skills in building the trust relationship, communicating and ensuring that offense is not given inadvertently by use of language that people with

disabilities find objectionable.

## **Language and labels**

People with disabilities have been subjected to name calling, inaccurate labeling and have had negative images projected upon them. Their families have, too. One father's experience expresses the experience of many who are subjected to negative language, labels and images:

"I thought I would vomit the first time someone called my son a 'quad.' I have since become accustomed to the term and many others that are part of the paralysis vocabulary. But that first time . . . it felt like a racial slur. That it came from the social worker who was helping us through the complicated processes of pay and future care was unfortunate.

"She had an annoying smile that she used to punctuate her counsel. 'You will see, you just start the process and one thing follows another.' Smile. 'Medicaid will cover that.' Smile. ' . . . as a quad he should get six weeks of rehab.' Smile. We were so out of our comfort zone there was hardly any way she could help but come across as patronizing. Then, when she referred to my son in the third person as a 'quad,' well, I wanted to punch her.

"There are no soft landings with paralysis. Every-thing I wanted to doubt or hope against was no longer available. The realization, the admission that this may be forever, comes with a big thud. That was mine, the word quad did it." [theother sideofbroken.com/]

General tips about language use when referring to people with disabilities, include:

**1.** Focus on the person; not the disability. When writing or speaking about people with disabilities, it is important to put the person first. Do say, person with a disability. Group designations such as "the blind," "the retarded" or "the disabled" are inappropriate because they do not reflect the individuality, equality or dignity of people with disabilities. Further, words like "normal person" imply that the person with a disability isn't normal, whereas "person without a disability" is descriptive but not negative.

**2.** There are real "no-no's" that go beyond political incorrectness that are mean-spirited and lead to hurt feelings. These include:

- When referring to a person or child with an intellectual, cognitive or developmental disability, don't say the person is "retarded," "mentally defective," "dumb" or "slow."

- When referring to a person who has multiple sclerosis, cerebral palsy or muscular dystrophy, don't use phrases like "afflicted by MS," "CP victim" or "stricken by MD." A person with epilepsy or other seizure disorder should not be called an "epileptic."

- Don't refer to a person who uses a wheelchair as "confined or restricted" to a wheelchair or "wheelchair-bound."

- When referring, even in jest, to a person with psychiatric disability, don't say she or he is "crazy," "nuts" or "wacko."

**3.** Those of us who do not yet have a disability sometimes refer to or see a person who has a disability and is very successful or productive as a "hero." (Examples are the late Christopher Reeves or Michael J. Fox.) Many blogs and Web sites supported by and authored by persons who have disabilities say that they find references to "courageous" and "heroic" efforts of a person who has overcome his or her disability as patronizing when it implies the person has courage because of having a disability.

According to the National Association of the Deaf ("NAD"), deaf and hard of hearing people have the right to choose what they wish to be called, either as a group or on an individual basis. Overwhelmingly, they report, people who are deaf or hard of hearing prefer to be called "deaf" or "hard of hearing." In 1991, the World Federation of the Deaf (WFD) voted to use "deaf and hard of hearing" as an official designation.

According to NAD, many people, print media, radio, television and other media use outmoded terms and labels that create negative images about their intellectual abilities or portray them in a negative light. These terms include "deaf and dumb," "deaf mute" and "hearing-impaired."

People who are deaf and hard of hearing believe that the words "deaf" and "hard of hearing" are not negative because they accurately describe their physical condition. "Hearing-impaired" is negative, because the label focuses on what the deaf and hard of hearing cannot do; suggests that to be anything other than "hearing" is not acceptable to mainstream society; and deaf and hard of hearing people have failed to meet the "standard." The NAD asks that people show respect for deaf and hard of hearing people by refusing to use outdated and offensive terms.

Interacting with people with disabilities also includes non-verbal conduct. Generally, treat everyone with respect and courtesy.

When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use or who wear an artificial limb can usually shake hands. (Shaking hands with the left hand is an acceptable greeting.)

If you offer assistance, wait until the offer is accepted. Then listen to or ask for instructions and do not be offended if your offer is rejected.

Treat adults as adults. Just because a person may have a disability does not mean that he or she cannot handle his or her own affairs.

Address people who have disabilities by their first names only when extending the same

familiarity to all others.

Don't be embarrassed if you happen to use common expressions such as "see you later," or "did you hear about that?" that seem to relate to a person's disability.

Don't be afraid to ask questions when you're unsure of what to do.

Specific tips for interacting with persons who have particular disabilities are available from Office of Disability Employment Policy of the United States Department of Labor; the Media Project, Research and Training Center on Independent Living, University of Kansas, Lawrence, KS; and the National Center for Access Unlimited, Chicago, IL. [csun.edu/~sp20558/dis/]

The Americans with Disabilities Act (ADA), passed in 1990, is a comprehensive federal civil rights law that prohibits discrimination on the basis of disability. Title III of the ADA and its California counterparts require that certain businesses (including lawyers) offering services to the public must also provide goods and services to individuals with disabilities in the most integrated setting possible. (See generally "Disabilities California Style" by Lorraine Woodwark [California Bar Journal, February 2003 and deaflaw.org CalCLAD's Law Column.]

### **Accessibility requirements**

Whether your office is required to comply with accessibility requirements of federal and state law or not, here are some ABC's of office accessibility:

**A:** If you provide parking to customers, provide an accessible parking space on level, smooth ground (no slopes, no gravel); marked with an official blue sign and has an eight-foot wide free area, painted with diagonal stripes, next to the parking spot so customers can get their wheelchairs out. If your office has more than 25 parking spaces, provide two accessible parking spots. (For even larger parking lots, see [usdoj.gov/crt/ada/smbusgd.pdf](http://usdoj.gov/crt/ada/smbusgd.pdf).)

**B:** Have an accessible route from parking or a public sidewalk to your entrance, with (1) no gravel, wood chips or bumpy cobblestones; (2) no changes in level above 1/2 inch or higher; (3) at least three feet of width at all spots; and (4) no tables, chairs, benches, planters or trash cans that impede the three-foot width and make it impassable.

**C:** Create an accessible entrance:

- Ramps must (1) have a slope not steeper than 1:12; (2) be three feet wide at all points; (3) be flat on top, preferably 60 inches in circumference; and (4) have handrails if the ramp's vertical rise is more than six inches.

- Entry doors must (1) open with five pounds of force or less (have an automated door, if possible) and (2) be at least 32 inches wide. Install lever handles (not

round knobs) which are easier for customers to use.

- **Public entrance:** If there is more than one public entrance, make sure that any inaccessible entrance has a sign directing customers to the accessible entrance. Any accessible public entrance must remain unlocked and available for use during all business hours.

- If your business is not on the entry floor, have elevator or ramp access to the office. Use raised “braille” markings on elevator control buttons.

Once a person with a disability comes to your office, your reception area counter, or counters or desks where services are provided, should have an accessible section that is not more than 36 inches above the floor, is at least 36 inches long. It should have clear floor space in front of the accessible surface that is 30 inches by 38 inches and permits a customer using a wheelchair to pull alongside. In your reception area, there must be space that is the same dimensions as above, in place of fixed chairs or seating.

The sensitivity training that you have learned must also be imparted to office staff so that they are prepared to communicate effectively with persons with hearing disabilities. (For example, have staff available to read paperwork aloud and possibly fill out paperwork for persons with limited coordination; and save time by providing large print contracts and audio copies of standard printed materials such as retainer agreements.) You can get further information by calling the U.S. Department of Justice hotline at 800/514-0301 or by downloading the booklet at [usdoj.gov/crt/ada/smbusgd.pdf](http://usdoj.gov/crt/ada/smbusgd.pdf).

### **Using the Internet**

Internet and other electronic communication methods are powerful tools to communicate with your clients and prospective clients with disabilities. Your ability to establish or improve modes of communication with people with disabilities may result in the retention of existing clients and attraction of new clients.

Web accessibility ensures equal access and equal opportunity to people with disabilities. An accessible Web site also can help people with disabilities more actively participate in society because it presents the potential for unprecedented access to information and interaction for many people with disabilities. Accessibility barriers to print, audio and visual media can be much more easily overcome through Web and other technologies.

For more information, see “How People with Disabilities Use the Web” [[www.w3.org/WAI/EO/Drafts/PWD-Use-Web/#](http://www.w3.org/WAI/EO/Drafts/PWD-Use-Web/#)]. This information describes how different disabilities affect Web use and includes scenarios of people with disabilities using the Internet. For tips about improving your Web site’s accessibility see “Developing a Web Accessibility Business Case for Your Organization,” which describes many different benefits of Web accessibility, including benefits for organizations. [[www.w3.org/WAI/bcase/Overview.html](http://www.w3.org/WAI/bcase/Overview.html)].

## **Conclusion**

More than ever, people with disabilities need access to justice. By continuing to improve your skills and strategies for communication and interaction with people with disabilities, you can serve the system of justice and people who need to access it and make a difference.

■ *Ellen R. Peck, a former State Bar Court judge, is a sole practitioner in Escondido and a co-author of The Rutter Group California Practice Guide: Professional Responsibility.*

**Test — Elimination of Bias**  
**1 Hour MCLE Credit**

This test will earn one hour of MCLE credit in Elimination of Bias.

1. The United States Department of Labor Office of Disability Employment Policy believes that communication and interaction with people with disabilities needs no improvement.
2. Whether a client has a disability or not, a lawyer must communicate with the client adequately.
3. Lawyer has a First Amendment right to violate the ADA in the operations of a law practice which otherwise must comply with the ADA.
4. Use of the word “quad” is an acceptable term to refer to someone who has mobility problems in four limbs of their body.
5. Designations such as “the blind,” “the retarded” or “the disabled” are appropriate to use as a shorthand term for easy reference.
6. Use of “normal person” to refer to a person without a disability is acceptable.
7. Mary Jane Smith’s reference to one of her former special education students as “retarded” is appropriate nomenclature.
8. After Meryl Terpitute’s secretary referred to client Joan Doe as “confined and restricted” to a wheelchair, Meryl should ask secretary not to refer to Joan as “wheelchair-bound” or “confined and restricted” to a wheelchair but simply say that Joan uses a wheelchair.
9. It is appropriate to express to a person with a disability how heroic and courageous she is for being able to live with a disability.
10. The members of the National Association of the Deaf (NAD) and the World Federation of the Deaf (WFD) voted to use “deaf and hard of hearing” as an official designation.
11. When lawyer Peter Pan meets his new client, Captain Hook, Peter should offer to shake hands with Hook, who has an artificial right hand.
12. Noticing that Captain Hook is having trouble carrying the stack of papers regarding his potential trespass action against the Lost Boys, Peter asked if he could help but properly took no further action when Captain Hook replied, “no.”

**13.** Peter should be embarrassed for saying “How did you handle that?” when told about the latest Lost Boys raid of his ship.

**14.** Title III of the Americans with Disabilities Act and its California counterparts require that certain law offices, practices and firms must provide goods and services to individuals with disabilities in the most integrated setting possible.

**15.** An accessible parking space must be marked with an official blue sign and have an eight-foot-wide free area next to the parking spot.

**16.** An accessible route from parking or a public sidewalk to a business required to comply with the ADA can be made of gravel and be two feet wide.

**17.** An accessible entrance should have a ramp that is three feet wide at all points and is flat at the top with 60 inches in circumference.

**18.** Entry doors for customers with wheelchairs need not be automated.

**19.** If there is more than one public entrance, any inaccessible entrance need not have a sign directing customers to the accessible entrance.

**20.** If there is an accessible entrance for persons with disabilities, even if a law firm is required to comply with the ADA, there are no requirements for counters or seating areas in a reception area.

### **Certification**

■ This self-study activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one hour in elimination of bias.

■ The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

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ELIMINATION OF BIAS

- Print the answer form only and answer the test questions.
- Mail only form and check for \$20 to:

MCLE ON THE WEB — CBJ  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

- Make checks payable to State Bar of California.
- A CLE certificate will be mailed to you within eight weeks.

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Name

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Law Firm/Organization

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Address

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State/Zip

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State Bar Number (required)

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| 1.  | True___ False___ | 11. | True___ False___ |
| 2.  | True___ False___ | 12. | True___ False___ |
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