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What We Say and Do Matters:
People First or Identity First, Appropriate Behavior of
Ourselves and out Staff

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Recent CDC data indicates that more than one fourth- 27%- of Americans have a disability.¹ It is a statistic that is both startling and useless. It tells us virtually nothing about the people impacted. The CDC breaks it down further, showing that 12.1% have mobility impairments, 12.6% have cognition disabilities, 7.2% have an independent living disability, 6.1% have hearing impairments, 4.8% have visual impairments, and 3.6% have self-care disabilities.² That is a total of 46.4% of Americans. That breakdown did not include a number of types of disabilities, like people with autoimmune disorders, chronic pain conditions, or mental health disabilities. Many people have multiple disabilities. Even within well-defined categories of disability, such as visual impairment, disability can range from a person who needs screen magnification, but can otherwise generally function within the confines of societal expectation to someone who has no light perception or movement.

Even determining if a person is “disabled” is fraught. Jonathan Mooney spends the bulk of his book *Normal Sucks: How To Live, Learn, And Thrive Outside The Lines*, trying to answer for his children if he is disabled. I frequently cannot decide if I am disabled, my complete blindness and chronic pain condition notwithstanding. The Social Security Administration defines what it is to be disabled, but so does the Veteran’s Administration, and the definitions do not agree.

There’s an unlimited number of ways to be disabled. It means a myriad of things to the people who fall into its sometimes capacious definitions. It may mean an entirely different set of things to the family members, friends, support groups, and strangers interacting with people with disabilities. Even within groups who agree on what it means to be “disabled”, the sense of how to approach disability varies.

All of this means that when trying to decide how to behave in a practice where we are likely to interact with people with disabilities, the landscape is not just uncertain. It is constantly shifting. It makes creating a general set of rules and accommodations difficult for even the most conscientious person.

That even the concepts are difficult, does not mean that we should not work to establish guidelines for our practices and our lives that will allow us to approach this issue with the compassion, diligence, and humor necessary to be effective.

The Ethical Rules

¹ <https://www.cdc.gov/ncbddd/disabilityandhealth/>

² Id.

There are several provisions under the Texas Disciplinary Rules of Professional Conduct that address our interactions with our clients who have diminished capacity. These rules must be followed, but they also provide for only the minimum required. It is always permissible to go beyond what the rules require to serve our clients. The relevant provisions of those rules are:

Rule 1.03. Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment:

5. If a client appears to suffer from diminished capacity, a lawyer should communicate with any legal representative and seek to maintain reasonable communication with the client, insofar as possible. Even if the client suffers from diminished capacity, it may be possible to maintain some aspects of a normal attorney-client relationship. The client may have the ability to understand, deliberate upon, and reach conclusions about some matters affecting the client's own well-being. Children's opinions regarding their own custody are given some weight. Regardless of whether a client suffers from diminished capacity, a client should always be treated with attention and respect. See also Rule 1.16 and Rule 1.05, Comment 17.

Rule 1.05. Confidentiality of Information

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information;

or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

Comment:

17. When representing a client who may have diminished capacity, a lawyer should review Rule 1.16, which, under limited circumstances, permits a lawyer to disclose confidential information to protect the client's interests.

Rule 1.16. Clients with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another

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