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the PRACTITIONER FOR SOLO & SMALL FIRMS

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Letter From the Chair

By Sabrina L. Green

Sabrina L. Green is a managing partner of Stratton & Green, ALC and focuses on labor & employment, complex business litigation. Besides being the Chair of the California Lawyers Association Solo and Small Firm executive committee, member of the CLA Board of Representatives, she is the Attorney Coordinator for the Thomas Jefferson School of Law Employee Rights Public Clinic, member of the executive committee for the Thomas Jefferson Alumni Board of Directors, Vice President of Executive Women's Council and a member of the Board of Directors of the Hong Kong Business Association of Southern California, San Diego. Sabrina can be reached at sgreen@sglawcorp.com.

It is officially Spring. Having gone through a pandemic and being on the other side of that uphill battle, this Spring feels different. Our world here in California is reopening and all the little things I used to take for granted, I have a new appreciation of now. Having been fully vaccinated, I and my family actually went out for a dinner, something we haven't done in over a year. Mentally, just that small family affair made me feel genuinely good and very grateful my family came through this past year relatively unscathed.

This led me to think about the mental toll this pandemic has had on our collective and individual mental health. Since May is National Mental Health Awareness, I thought it appropriate that we recognize the impact that mental health and mental health issues have on us. Solo and small firm attorneys are often more isolated and cutoff than those of our brethren in the larger firms who have the opportunity to engage socially and professionally every day with their colleagues. This past year has been particularly difficult for many of us who have experienced the increased isolation and additional financial strain that came with the pandemic.

We here at the California Lawyers Association and the Solo Small Firm Section are working hard to eradicate the stigma that has long followed the term "mental health". Mental health is key to us all and so this month and every month, I encourage you to take care of you. Start the day off with a stretch, quick, meditation or some exercise. No time in the mornings…I hear you. How about doing a few desk stretches or making sure you get up from your desk every 25 minutes to get a few steps in. Make time for a lunch with a friend, participate in a silly Zoom trivia night, take an evening sunset stroll with your kids or significant other, even the smallest changes can make a big difference over time. Whatever you do, make some time for you.

If you are looking for some professional engagement, please join your colleagues for Solo Small Firm Summit being held virtually June 24-25, 2021.

Finally, if you need some inspiration or resources to get you motivated, please check out CLA's Health and Wellness Committee's resource page at https://calawyers.org/health-and-wellness.

I wish you all a happy and healthy Spring and stay tuned for in-person events coming soon.

Letter From the Editor-in-Chief

By Joshua Bonnici

Joshua Bonnici is the managing attorney for Bonnici Law Group, APC, located in downtown San Diego, where he focuses primarily on personal injury cases and appealing state and federal disability denials. His accomplishments include winning SD Metro's "40 Under 40" award, San Diego's Best Litigation Firm by the San Diego UT, and was recently selected as a Rising Star by Super Lawyers. You can learn more about Josh and his practice at www.bonnicilawgroup.com.

Spring is right around the corner, and with spring often comes "spring cleaning." Whether that involved cleaning out your home closet or garage, or reorganizing your vintage stamp collection, this time of year gives attention to getting things in order. The same can be done for a law office.

During a recent team meeting with my staff (I manage a small firm of four people) we discussed restructuring our office's policies and procedures after updates due to COVID-19. After making some changes, we started to talk about the office as a whole, and rediscovering our *why*; or why we do what we do, and why it's important beyond generating income.

As an office that mainly handles plaintiff's personal injury cases involving bicycle and car accidents, we saw a decline in new clients while a majority of Californians stopped commuting and stayed home for months during the COVID-19 stay-at-order. The decline in cars on the road meant a decline in accidents and potential cases for our office to handle. Because of this, we started to lose focus on our *why* and became more transactional in nature, making sure we were hitting goals and bringing clients in the door rather than on the deeper reasoning we enjoy helping injured plaintiffs. Once we recognized this, immediate thought and attention went back into our office's mission and view the practice of law.

Business coach and author Dr. Margie Warrel wrote on the topic in Forbes magazine[1]:

> Knowing your *why* is an important first step in figuring out *ho*w to achieve the goals that excite you and create a life you enjoy living (versus merely surviving!). Indeed, only when you know your 'why' will you find the courage to take the risks needed to get ahead, stay motivated when the chips are down, and move your life onto an entirely new, more challenging, and more rewarding trajectory.

The past year has brought many challenges to small business owners across the nation, many times requiring retooling, pivoting, and determination to keep things afloat. With attention being diverted to other issues, some have lost focus of why we are doing what we're doing. Has this happened to you? Do you need to refocus your *why*? Take some time to invest back into your business and revisit the reason you do what you do. Brainstorm with trusted colleagues and mentors, do some research of what industry leading coaches and experts have to say, and refocus your aim for your practice.

Like German philosopher Fredrick Nietzsche said: "He who has a *why* can endure any *how*." Refocus, rejuvenate, and reinvest in your *why*.

ENDNOTES

1 https://www.forbes.com/sites/margiewarrell/2013/10/30/know-your-why-4-questions-to-tap-the-power-of-purpose/?sh=7455e26473ad

MCLE Article: Informal Consultations With Outside Lawyers: How Much Can Be Shared?

By Rachelle Cohen

Rachelle Cohen is a principal in Kehr, Schiff, Crane & Cohen, LLP in Los Angeles. Her practice focuses on advising on legal ethics issues and assisting clients with their business transactions. Rachelle is a Vice Chair of the California Lawyers Association (CLA) Ethics Committee. She also is a member of the Los Angeles County Bar Association Professional Responsibility and Ethics Committee. She is currently a Co-Chair of the CLA's Corporation's Committee, is a former Vice Chair of the Executive Committee of the CLA Business Law Section, and is a former Chair of the CLA's Partnerships and Limited Liability Companies Committee. Rachelle speaks frequently and has written about legal ethics issues and corporate and transactional issues, and has been a lecturer at the USC Gould School of Law.

Although most lawyers develop a comfort level with handling certain issues and tasks, from time to time, a client will call with an unusual legal question the lawyer is unfamiliar with or with facts that do not apply easily to the law. Lawyers in a firm can consult with one another on novel legal issues or strange fact patterns. But solo practitioners must go outside their "firm" to talk to other lawyers and even those at multiple-lawyer firms might want to go outside the firm to informally consult with other attorneys. Although this type of consultation is common practice, the California Rules of Professional Conduct[1] do not provide a clear basis for permitting informal discussions among lawyers who are not associated; doing so implicates the lawyers' duty of confidentiality to clients, which is essential to the lawyer-client relationship and the ability of the lawyer to represent the client.[2]

A lawyer's duty of confidentiality is set forth in the State Bar Act at California Business and Professions Code section 6068(e)(1), which imposes the lawyer's duty "at every peril to himself or herself to preserve the secrets, of his or her client." Under Rule 1.6, without a client's informed consent, a lawyer may not reveal information protected from disclosure by California Business and Professions Code section 6068(e)(1). As explained in California State Bar Formal Opinion No. 2016-195, this duty is broader than the protection of the attorney-client privilege and applies to any information the lawyer learns as a result of representing a current client, the disclosure of which likely would be detrimental or embarrassing to the client or any information that the client has directed the lawyer not to disclose.[3] The only exception in the statute or Rule 1.6 is that a lawyer may reveal confidential information only to the extent needed to prevent a criminal act that is likely to result in death or substantial bodily harm to an individual.[4]

Other than the limited exception for death or substantial bodily harm, California's Rule 1.6 does not contain any other basis that allows disclosure of confidential information that likely would be detrimental or embarrassing to the client unless the client gives informed consent. To obtain informed consent, as defined in Rule 1.0.1(e), the lawyer would need to explain the material risks of the lawyer's disclosure for an informal consultation. A lawyer could seek the client's consent. It is possible the risk that an adverse party would get access to the information would be immaterial, especially if the consulted lawyer did a conflicts check as part of the consultation. However, the client's lawyer, by disclosing information subject to the attorney-client privilege to a consulted lawyer, would risk destroying

the attorney-client privilege with respect to that shared information. [5] The lawyer would need to disclose this risk to the client as part of the informed consent. While going through the process of getting the client's consent would avoid a Rule 1.6 violation, it makes an informal consultation much more formal and is inconsistent with how most lawyers use informal consultations - as a quick way to bounce ideas or thoughts with a colleague on a pressing issue.

In contrast to the narrow exception in the California Rules, the American Bar Association (ABA) Model Rule 1.6 permits a lawyer to disclose client confidential information when "the disclosure is impliedly authorized in order to carry out the representation." In an ethics opinion that analyzed Rule 3-100, the predecessor to Rule 1.6, the San Diego County Bar Association Ethics Committee relied on ABA Model Rule 1.6 to support the notion that lawyers were impliedly authorized to share client secrets in informal consultations to be able to competently represent the client.[6] Rule 1.1(c) provides that if a lawyer does not have the learning and skill needed to competently represent a client, the lawyer can gain that learning and skill by "professionally consulting another lawyer."

In determining California ethics issues, ABA Model Rules are not binding but may be looked to for guidance when there is no direct authority under California law and the ABA Model Rule does not conflict with California law.[7] When San Diego County Bar Association Ethics Opinion 1996-1 was published, Rule 3-100 governed a lawyer's confidentiality obligation, and although substantially similar to current Rule 1.6, it was not clear that Rule 3-100 was intended to exclude the "impliedly authorized" language in ABA Model Rule 1.6. The State Bar Rules Revision Commission that proposed the current Rule 1.6 was directed by the California Supreme Court to "be guided by and refer to the American Bar Association's Model Rules when appropriate."[8] Therefore, the decision to exclude the "impliedly authorized" language from ABA Model Rule 1.6 in current Rule 1.6 seems to be a deliberate choice. The ABA Model Rule therefore should not be relied on to evaluate the ethical propriety of California lawyers' informal consultations.

However, reliance on the "impliedly authorized" language is not necessary. Often, when lawyers not in the same firm are talking through issues, they do so without mentioning clients' names or case specifics. In fact, the San Diego ethics opinion mentioned above began with the premise that the lawyers omitted client names.[9] As an alternative to the impliedly authorized disclosure exception, is it possible that a lawyer's disclosure of client confidential information in an anonymous way should not fall under the Rule 1.6? American Bar Association Formal Ethics Opinion 98-411 (August 30, 1998) noted that a general consultation in which the lawyer does not disclose information specific to the representation does not implicate the disclosure of any confidential information. However, the ABA opinion acknowledged that even sharing hypothetical facts could lead to the disclosure of confidential information if the consulted lawyer is able to match the hypothetical facts to the client or matter. Similarly, the San Diego Bar Association noted that the information a disclosing lawyer shares must be confidential information covered by the predecessor to Rule 1.6 if it enables the consulted lawyer to recognize a conflict when later approached by an adversary in the same matter. The Los Angeles County Bar Association Professional Responsibility and Ethics Committee, in its Opinion No. 529 (August 23, 2017) focused on social media and online communications, recognized that a lawyer could share sufficient information that could lead a person familiar with the litigation to identify the case despite the fact that the lawyer did not identify the client or witnesses by name.

The approach by the ABA and San Diego Bar Association opinions focuses on implied authorization, but we can achieve the same result by focusing on whether the disclosure would be embarrassing or detrimental to the client. For example, suppose a lawyer represents a driver who had an accident at a major intersection that caused a substantial pile-up which was reported on the front page of the local newspaper. The lawyer, without identifying the client, asks an attorney outside his or her firm only the following: "My client was texting while driving when an accident occurred. Is that discoverable through the client's cell phone provider?" The lawyer is disclosing information he or

she learned as a result of the representation that likely would be detrimental to the client if disclosed (that the client was texting while driving), but has not disclosed any facts that would make the lawyer know the client to whom the information relates. One could take the position that disclosing this information is not detrimental or embarrassing to the client if it is not reasonably foreseeable that the listener could tie the client to this information. Suppose in addition to that answer, the lawyer gives information about the time of day of the accident, the intersection where the accident happened, and the type of car the client was driving, but does not identify the client. Again, the lawyer is disclosing information they learned as a result of the representation. The more information disclosed, the more likely the consulted lawyer could identify the client, and the disclosure could be detrimental or embarrassing to the client.

Although there is no clear guidance in the Rules, lawyers sharing case information should take care not to give too much information that would allow the consulted lawyer to identify the client or matter. Of course, this is a difficult balancing act, to reveal enough information to get the needed guidance from the consulted lawyer, but not to reveal so much information that the client's identity might be exposed. To avoid this dilemma, a practitioner who needs guidance might hire a lawyer or associate with a lawyer to assist with the case. Assuming the arrangement otherwise is ethical, the lawyer could share the client's confidential information with a hired or associated lawyer.[10]

ENDNOTES

1 All references to a Rule are to the California Rules of Professional Conduct unless otherwise noted.

2 *See* Wutchumna Water Co. v. Bailey, 216 Cal. 564, 572 (1932).

3 Cal. State Bar Formal Op. 2016-195 n. 4 (2016) posits that client information might not be subject to the confidentiality obligations if it is generally known, meaning "information which either is easily discovered or does not even need to be discovered to become known."

4 Cal. Bus. & Prof. Code § 6068(e)(2); Cal. Rules Prof. Conduct, r 1.6(b).

5 A lawyer who consults another lawyer could share attorney-client privileged information without destroying the privilege if the disclosure is found to be "reasonably necessary for the…accomplishment of the purpose for which the lawyer is consulted." *See* Cal. Evid Code § 952; Nat'l Steel Prods. Co. v. Super. Ct., 164 Cal. App. 3d 476, 483 (1985). But whether this applies would depend on the facts and circumstances of the specific consultation.

6 *See* San Diego Cnty. Bar Ass'n Ethics Op. 1996-1.

7 *See, e.g.,* Cal. State Bar Formal Op. 1983-71; Rule 1.0, com. [4].

8 *See* Letter from Frank McGuire, Court Administrator and Clerk of the Supreme Court to Senator Joseph L. Dunn (Ret.) Executive Director and Chief Executive Officer of the State Bar of California (Sept. 19, 2014) (available at https://www.calbar.ca.gov/Portals/0/documents/ethics/2d_RRC/Miscellaneous/RAD_Agenda_Item_IIC.pdf).

9 San Diego Cnty. Bar Ass'n Ethics Op. 1996-1.

10 *See* L.A. Bar Ass'n Formal Op. 518 (2006).

REST – No Longer a Bad Word

By Marina Kats Fraigun

Marina Kats Fraigun is a Plaintiff's employment attorney. She has been practicing for more than 22 years. She was selected as one of the Top 50 Women Lawyers in Southern California in 2019, 2020, and 2021, and the Top 100 Lawyers in Southern California for the same years. She is an aggressive Plaintiff's side employment attorney who has been referred to as a "pit bull." Marina also teaches in the Paralegal Program at Los Angeles Valley College. In addition to being a passionate advocate and founder of Fraigun Law Group, Marina is happily married and is raising two teenage sons.

The lives of attorneys are replete with stress, anxiety, depression, and alcohol and drug use. It is almost a cliché. A 2016 study conducted jointly by the ABA Commission on Lawyers Assistance Programs and Hazelden Betty Ford Foundation[1] conducted a study involving approximately 13,000 lawyers, which found that 28% of respondents experienced depression, 19% experienced anxiety, and 23% experienced stress. More recently, ALM's *Mental Health and Substance Abuse Survey*, published in 2020, found that 31.2% of the respondents felt that they were depressed, 64% felt they had anxiety, 10.1% felt they had an alcohol problem, and 2.8% reported a drug problem.[2]

Lawyers love to discuss how busy they are, and how stressed out they feel. The common refusal to rest is almost a badge of honor, and even a widely presumed indicator of success. While bar associations sponsor programs and provide resources about work-life balance, there is always an undercurrent of guilt for attorneys associated with choosing to rest.

Kate Dodd, diversity and inclusion consultant at law firm Pinsent Masons, says "*We've grown into a culture whereby lawyers have to be so responsive [to demands from clients and colleagues] ... We get used to thinking that everything is urgent*," [3]

Yet the "Covid-era" has changed the landscape. The pandemic has unexpectedly resulted in a heightened sense that there is light at the end of the tunnel, and has conferred long overdue permission to seek the benefits of that light[4].

In March 2020, the legal system temporarily, and almost completely, shut down. Lawyers were finally afforded the opportunity to rest, with fewer feelings of recrimination or guilt. When the legal system resumed, we continue to experience the gift of flexibility.

Rest means different things to different people. For some, the flexibility of working remotely means more time with the kids during the day, albeit sandwiched in between court hearings, Zoom meetings, depositions, and online education. Many of us had not shared a weekday meal with our kids in many years. It has been an extraordinary experience for many parents—allowing families to feel more connected. For some, the time and flexibility allowed for new exercise and other routines. The relative predictability of quarantined days allows us to be more consistent than usual. For others, rest has meant time watching television and webinars, reading books, and even enrolling in a Master Class—finally learning a new skill they have always wanted to pursue, but never had the flexibility to explore. For still others, the additional time has allowed us to clean up and organize our personal spaces, whether at home or at the office.

Mediator Jan Schau, wrote "*To me, the world has gotten narrower. We all have to make choices of what is most important. No obligations. Some liberty to be more introspective and creative.*" Family law attorney Marina Ayzenstein agrees: "*I've learned to concentrate on the more important things in life, and to let go of the less important. It was a surprise how many things I thought were important really aren't.*"

LAUSD counsel Jacquiline Wagner responds: "*I am changing my eating habits, working out, tending to my skincare. Really upscaling my self-care.*" Attorney Svetlana Brontveyn says:

I am actually grateful for this time that I get to spend at home and watch my child grow. Before the pandemic, I was on the move all day long. I had grandparents pick up my daughter up from school, take her to tennis practice, feed her. This last year, I have been doing all of it myself and am very grateful for this time. She turned from a little baby into a young woman. If it wasn't for the pandemic, I probably would not have been able to observe this change in a slow of motion. And, I love working from home and having zoom meetings!!!

Finally, attorney, therapist and writer Robin Sax says: "*Covid has allowed me to connect with lawyers from different practice areas, different jurisdictions and made expertise in various legal areas more accessible.*"

Personally, I have always been a proponent of work-life balance, travelling a lot and having fun with my family and friends. Even so, I often found my sleeping and rest hours limited, or at times even nonexistent. I never had the time to exercise, and, despite my best efforts, was never able to maintain a consistent routine. I rarely found time to read a book or listen to a webinar. During the pandemic, I bought a Peloton bike (which I had wanted for many years, but never even found the time to research) and created a consistent cycling and hiking routine. I am not alone. With more time and flexibility, coupled with the closures of indoor gyms, so many people have bought Peloton bikes that the company can't keep up with demand. I have reveled in having some free space, finding time to watch webinars in practice areas outside my own, and other endeavors for which I rarely found or made the time. I have spent much more time with my husband and teenage sons and have taken some time to read—enjoying literature (or just plain fun reading!) instead of analyzing pleadings. I have taken on some bar association activities, and have finally started writing articles, a goal of mine that for many years had failed to come to fruition, until now. The flexibility has also given me the space to work at my own circadian rhythm, conferring welcome and unexpected benefits.

The shift is a subtle one—it is the lessening of guilt about resting, the banishment of a sense of pride in being exhausted and overworked. Somehow, we all seem to feel less guilt about resting and playing—social media posts are filled with discussions of living a more balanced and rewarding life—and resting. Perhaps rest is no longer a bad word. The subtle change in culture is both necessary and overdue.

Hopefully technological developments will result in less time spent commuting, whether to the office or to court, as well as less transactional time, and will lead to greater flexibility, more quality time in the increasingly networked legal community, and perhaps even an overall reduction and improvements in mental health statistics.

Even the California Lawyers Association is looking forward in promoting the benefits of rest. In 2020, CLA created a Health and Wellness Committee, and 2021, CLA started its first #CLAWellnessChallenge, encouraging attorneys to prospectively meditate, exercise, read, practice a hobby, have a Game Night, listen to music, and call a friend. Many appear to be participating. The focus on prospective rest and mental health can only benefit its membership[5].

Maybe now, as a group, we can stop seeing rest as a bad word, and recognize that the likely benefits of a more balanced lifestyle may lead to a markedly improved outcome in our lives and future mental health studies.

ENDNOTES

1 Patrick R. Krill, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. Addiction Med., no 1, Jan.-Feb. 2016, at 46, https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx.

2 Leigh Jones, *Lawyers Reveal True Depth of Mental Health Struggles*, Law.com Int'l (Feb. 19, 2020), https://www.law.com/international-edition/2020/02/19/lawyers-reveal-true-depth-of-the-mental-health-struggles-378-134739/.

3 Emma Jacobs, ***Can lawyers learn to go home and get more sleep?***, Fin. Times (Sept. 12, 2019), https://www.ft.com/content/ac34d02e-9f31-11e9-9c06-a4640c9feebb.

4 Not to be tone deaf, I recognize that the pandemic has also resulted in tremendous stress and loss for many people, for lawyers and otherwise. The purpose of this article, however, is to examine a positive side effect, or, if you will, a silver lining of the Covid pandemic.

5 Cal. Law. Ass'n: Health and Wellness, https://calawyers.org/health-and-wellness/.

Simple Video Marketing Tips for Lawyers and Law Firms

By Olga Korchyga

Olga Korchyga is the COO of Fotex Labs; a digital marketing agency focused on helping businesses grow and attain their objectives. Olga loves every aspect of digital marketing. She decided to create Fotex Labs in 2016 with the goal of surrounding herself with a team as passionate about digital marketing as she is. Fotex Labs has experienced exponential growth in the last five years with the amazing collaboration of the in-house marketing team. Olga's innovative approach to digital marketing has delivered remarkable results to clients of all sizes and industries.

Choosing to do video marketing as a law firm is the one of best decisions you can make to help attract potential clients. Video produces great results for online marketing campaigns, is a proven strategy to elevate your practice and establishes a more personal connection with prospective clients. Now, more than ever before, people select a law firm based upon the quality and presence of their digital presence. This article highlights five simple video marketing tips for lawyers and law firms and explains why video marketing is the best route for them.

WHY VIDEO MARKETING?

Why is video marketing a good strategy for lawyers and small law firms? Well, first of all, many people find lawyers intimidating and hard to reach. Why? Because normally people don't want to go with a lawyer under normal circumstances. Legal dilemmas can get complicated, which makes people want to avoid them. For a market where people don't want to reach lawyers, what are the options? It's video marketing! With the use of video, lawyers can create a direct and personal connection with clients before even meeting them. This lets them show potential clients that they're approachable and resolving their case may not be as daunting as they first thought.

Many people prefer getting information from videos rather than reading through an article. Why? Because videos are more engaging for people across different demographics. It's straightforward and easy on the viewers' side, as all they have to do is watch.

Video marketing is an excellent tool for all kinds of businesses and markets; however, it is especially beneficial for lawyers and law firms because they create an early connection with the potential client – especially in highly competitive markets like California. When it comes to legal matters, people easily get stressed. But when people see lawyers have a personable side, they are more likely to want to work with them. People will choose the lawyer they know will put their minds at ease and be easy to work with.

HOW DO YOU REACH PEOPLE?

You have to make an engaging video that will create a connection with potential clients and, most importantly, have the video reach them. What's the point of having videos if no one watches them? To achieve this, you have to distribute the video through the right channels and ensure it's reaching the right people using the following three steps:

- Distribute the video through traditional and nontraditional channels
- Promote it on social media
- Ensure you're implementing the best video marketing practices

In addition, these five simple video marketing tips will help attract potential clients, boost revenue, and drive solid results:

1. CONDUCT KEYWORD RESEARCH

Creating videos takes time, money, and effort. That is why it is essential that you start doing things right from the very beginning. First, conduct keyword research to understand the video content your target audience is searching for. You can do this by going to YouTube and typing in a term associated with your practice areas. YouTube will automatically suggest other terms below the search bar. Those suggestions are potential topics and keywords you can implement in your videos. The ways you can optimize your videos for keywords is by using the focus keyword in:

- The title of the video
- The description of the video
- Naming the video file according to the focused keywords

2. CREATE VIDEOS THAT PROVIDE VALUE

No matter what goal you're trying to achieve for your firm, it's vital that your videos are focused on your audience and that they provide as much value and information to your audience as possible. Don't make the video too serious or boring, as it's important to capture people's attention and keep them engaged. It's also essential that you show the human side of you and your firm and show them that you're amiable and not intimidating. Simply put, your videos should:

- **Create Value** - Give people a reason to come back by providing them with the information they want and answering their questions.
- **Get to the Point** - In today's world, people have attention spans of about ten seconds, so make sure you get to what people want right away. Videos should not be longer than ninety seconds.
- **Evoke Emotion** - The most successful videos play upon human emotion, such as happiness. Videos with emotions are more likely to be more memorable to the viewers.

Although speaking your mind is great, it's a good idea to create a script to make sure you get all the information you want to transmit mentioned. A good script should:

- Have a bullet list of general points/topics you'll cover
- Introduce the subject right away
- Be conversational and have smooth transitions
- Keep sentences short
- Get to the point
- Avoid jargon; keep it simple. People feel often disconnected with lawyers that use words they don't understand

3. SHOOT A HIGH QUALITY VIDEO

Once you have the setup of your video all structured out, you will then be able to finally start recording. However, it's not as simple as recording it on your phone and posting it without any edits or quality video recording methods. You have to take into account many elements, such as:

- The quality of the video
- The clarity of the audio for the video
- The lighting of the shoot location
- The stability of the video

If your video is low quality, dark, and with terrible audio, people will not watch your video. Quality is essential in this digital age, so your videos should reflect that with a quality video shoot. If possible, filming with a professional camera is the best way to record. Record yourself in a place with great lighting, and if that's not possible, then you should invest in a lighting set. Use a microphone to ensure that the audio is crisp and make sure the recording is stable and not shaky. Editing the video will be required as captions, trims, and touch-ups provide a professional touch.

4. TRANSMIT THE VIDEO TO POTENTIAL CLIENTS

Now that your video is created and polished up, you can then transmit the video to potential clients! The more exposure it gets, the more likely it will reach your target audience. The point of this strategy is to get people to watch it, to ensure that happens, you should expose it to multiple channels such as:

- **Your website** - Of course, the people on your website are people that are interested in your

services, so having it there is a must! Grab people's attention immediately and deliver a great first impression right away.

- **YouTube** - YouTube has over a billion active users and is considered one of the world's largest search engines. YouTube is made for videos and is the primary place people search for them; take advantage of that!
- **Social media platforms** - Posting your video across multiple social media platforms makes for great exposure. Major social media platforms you should consider include Facebook, Instagram, LinkedIn, Twitter, Pinterest, and of course, TikTok.

5. ENSURE THAT THE VIDEOS ARE OPTIMIZED

To make the most of your video marketing campaign, it requires more than simply uploading the video. Depending on the channel and platforms you're using, you'll have to integrate the keywords within the post. That way, your video has more chances of rising up on the search list and getting clicked/tapped on and viewed. Components you should implement keywords on when optimizing your videos include:

- **Video title:** The title of your video should contain the main target keywords. Just remember that the title should also be compelling and make people interested.
- **Video description:** The description should contain keywords and give a general idea of what the video covers
- **Video tags/hashtags:** Make sure the tags/hashtags contain the keyword and that the rest are relevant to the topic at hand
- **The video itself:** Ensure that you mention the keywords during the video as well. Platforms such as YouTube recognize what you're saying and judges whether it's relevant with the title, description, and tags.

Apart from videos helping inform and create direct connections with potential clients, they also are a fantastic tool for boosting your firm's SEO (Search Engine Optimization) and generating more traffic to your website. Lawyers and law firms need to make themselves more approachable to people. Videos elicit positive responses from people by displaying that the lawyer is accessible and conscientious. Video marketing should be done consistently for the best results. While a single video can direct a good amount of traffic to your website, consistent content is the optimal way to generate proven SEO results and come out on top.

We hope these 5 simple video marketing tips for lawyers and law firms helped you see how you can optimize your video marketing strategy and why it is a great method to implement in this professional area.

Lessons for Lawyers: Accommodating Clients with Disabilities

By Michelle Uzeta

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The Americans with Disabilities Act ("ADA") is a civil rights statute, enacted in 1990, that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.[1] Law offices, regardless of size, are subject Title III of the ADA, which prohibits discrimination by places of public accommodation.[2]

Under Title III, law firms are required to, among other things (1) ensure the physical accessibility of their facilities; (2) furnish appropriate auxiliary aids and services where necessary to ensure effective communication; and (3) make reasonable modifications in policies, practices and procedures where necessary to equal access to individuals with disabilities.[3]

This article provides an overview of law offices' obligations to clients with various categories of disability, and best practices for accommodating those clients.

1. MOBILITY DISABILITIES

Individuals with mobility disabilities, and particularly those who use mobility aids such as wheelchairs or walkers, may be unable to independently access and use law offices that do not comply with the scoping and technical requirements of the ADA Standards for Accessible Design (ADA Standards).[4] Full compliance with the ADA Standards is required for law offices designed or constructed for first occupancy after January 26, 1993 or altered after January 26, 1992.[5] For law offices constructed prior to January 26, 1993 that have not been altered, Title III provides that architectural barriers be removed where "readily achievable"—in other words, where easily accomplished and able to be carried out without much difficulty or expense.[6]

Neither Title III nor its implementing regulations define with any specificity how much effort or expense is required to meet the readily achievable barrier removal obligation. This determination must be made on a case-by-case basis, taking into consideration such factors as the size, type and overall financial resources of your practice, and the nature and cost of the access improvements needed. However, the ADA's regulations for Title III and technical assistance materials published by the Department of Justice ("DOJ") do provide guidance as to types of barrier removal that are considered to be readily achievable, for example: installing ramps; rearranging furniture; installing grab bars in toilet stalls; and creating designated accessible parking spaces.[7]

Readily achievable barrier removal is an ongoing and affirmative obligation. What is readily achievable will change over time with the economy and your firm's degree of success. Federal tax incentives—both credits and deductions—are also available to help cover costs.[8]

When barrier removal is not possible and/or required, alternative means of making goods and services available must be provided.[9] For example, if your office is not accessible, and cannot be made accessible through readily achievable barrier removal, you should offer to meet clients with mobility disabilities in an alternate, accessible location. Under no circumstances should you represent your law office to be accessible when it is not.

2. SENSORY/COMMUNICATION DISABILITIES

Communicating with clients, either verbally or in writing, is a core aspect of the practice of law. When a client has a vision and/or hearing disability, communicating effectively can present challenges. The ADA requires that lawyers take the steps necessary to ensure that clients with sensory/communication disabilities are not excluded, denied services or otherwise treated differently because of the absence of auxiliary aids and services, unless they can demonstrate that taking those steps will fundamentally alter the nature of their goods and services or result in an undue burden, i.e., significant difficulty or expense.[10]

"Auxiliary aids and services" includes things like:

- American Sign Language ("ASL") interpreters, video remote interpreting (VRI) services, notetakers, Communication Access Real-time Translation ("CART"), and the exchange of written notes for people who are deaf or hard-of-hearing, and
- qualified readers, audio recordings, and Brailled and large print materials for people who are blind or have low vision.[11]

The type of auxiliary aid or service that is required to ensure effective communication will vary in accordance with the method of communication used by your client; the nature, length, and complexity of the communication involved, and the context in which the communication is taking place.[12] For example, it may be sufficient to exchange written notes with a deaf client to advise them of a meeting date or time, but insufficient to discuss settlement offers or prepare for a deposition or trial.

In determining the specific auxiliary aid or service to be provided to a client, keep in mind that there is no one-size-fits-all approach to meeting the diverse needs of clients with sensory/communication disabilities. Needs can vary significantly. Do not make assumptions regarding the auxiliary aid or service your client requires or make unnecessary inquiries regarding the nature or severity of their impairment. An auxiliary aid or service that works well for a client with a mild hearing impairment may not work at all for a client with a more severe hearing impairment. An individual who has been blind since birth will have different needs than someone who acquired blindness as an adult. Additionally, the ability to communicate using existing and emerging technologies will differ considerably from individual to individual. Some deaf and hard of hearing individuals are comfortable using VRI services, while others may prefer lipreading or in-person interpretation. Some clients with visual disabilities may be uncomfortable using screen reading software and may prefer printed materials in alternative formats (e.g., large print or Braille). Others may absorb information better when presented aurally. It is important to consult with your client regarding their preferences and give those preferences primary consideration. Your client is in the best position to know what auxiliary aid or service will work best for them. It is important, and your responsibility, for you to be open and flexible.

Clients with sensory/communication disabilities should never be billed for an accommodation[13], nor should they be required to provide their own (e.g., you generally cannot require or ask a client to have a family member interpret for them[14]). Such expenses are your cost for doing business.

If providing a particular auxiliary aid or service will result in a fundamental alteration in the nature of your goods or services or will result in an undue burden, then you must provide an alternative auxiliary aid or service, if one exists, that will not result in an alteration or undue burden but will nevertheless ensure that, to the maximum extent possible, your client has access to, and receives the benefits from your goods and services.[15]

3. WEBSITE ACCESSIBILITY

When the ADA was enacted in 1990, Congress did not anticipate the immense role that the internet

would grow to have in peoples' lives. Although the regulations promulgated for Title III provide accessibility standards for businesses' physical locations, they do not provide guidance for the internet or web-based and mobile applications.

In light of this silence, circuit courts have come to different conclusions on whether Title III's coverage encompasses websites. In the case of *Robles v. Domino's Pizza. LLC*, the Ninth Circuit affirmed that Title III can apply to websites, holding that Title III "applies to the services *of* a place of public accommodation, not services *in* a place of public accommodation."[16] Noting that it did not have to address whether a website is itself a public accommodation[17], the panel explicitly embraced a "nexus" standard, finding that the ADA applies to Domino's website and app, because it "connect[s] customers to the goods and services of Domino's physical restaurants."[18] This nexus between Domino's website and its physical restaurants was "critical to [the Court's] analysis."[19]

Whether or not your website has a nexus that would trigger ADA coverage under the above precedent, making your website accessible is just good business. The Web Accessibility Initiative of the World Wide Web Consortium publishes well-established industry-adopted Web Content Accessibility Guidelines ("WCAG")[20] that specifically outline steps you can take to make your site user-friendly to people with disabilities, including captioning video content and adding alt text to images.

4. COGNITIVE DISABILITIES

When serving a client with a cognitive disability, you may have to adjust how you communicate or relay information in order to effectively facilitate understanding. Individuals with cognitive disabilities often experience functional difficulties with memory, problem-solving, attention and/or reading, linguistic, and verbal comprehension. Accommodating such differences takes individualized planning and effort and should be the result of an interactive process.

Have conversations early on with your client about their preferences for communicating. It is good practice to give primary consideration to your client's choice of accommodation, as they are clearly in a better position than you are to know what will work under their particular circumstances. Unless it will constitute an undue burden, or fundamentally alter the nature of your goods and services, the client's choice of accommodation should be provided.

Unless there is a power of attorney, conservatorship or similar court order in effect, you should always work under the assumption that a client with cognitive disabilities is legally competent and able to sign documents care and sign contracts. Absent an agreement with the client to do so, communications, including questions, comments, or concerns, should be directed to the client, not to their companion, spouse, child, or parent. When accommodations are requested or necessary, implement them respectfully, recognizing the client as an individual and adult.

5. MENTAL HEALTH DISABILITIES

Developing and maintaining the trusting and cooperative relationship necessary to effectively represent a client with a significant mental disability can be challenging. Mental health disabilities can be characterized by severe disturbances of behavior, mood, thought processes, and/or social and interpersonal relationships, and may require accommodation during the course of the attorney-client relationship. The prevalence of co-existing conditions or circumstances—such as addiction, poverty, and homelessness—add to the challenges you might encounter. Pushing yourself to see beyond stereotypes and stigma and taking the time to build trust and maintain open communication with your client is key.

6. STRATEGIES FOR COMMUNICATING WITH CLIENTS WITH COGNITIVE AND/OR MENTAL HEALTH DISABILITIES

There is no standard approach for effectively communicating with and representing individuals with cognitive or mental health disabilities. Each individual will differ in terms of ability, severity of symptoms, and life circumstances. The following are suggestions for strategies that may work in some instances:

- Maintain eye contact while talking.

- Avoid legalese and present information in a clear, concise and concrete manner.
- Repeat information as necessary, using different wording or a different communication approach.
- Break down information or tasks into small steps.
- Keep discussions goal directed.
- Prepare agendas for meetings.
- Memorialize conversations and agreements in writing.
- Establish timelines for tasks and follow-up.
- Create and share lists of action items.
- Be flexible in meeting times and locations and cognizant of transportation issues your client may have.
- Use a quiet room or location for meetings.
- Allow your client to include a significant other in meetings to help facilitate communication and trust. **Be cautious, however, of any implications this may have concerning attorney-client privilege.*
- Don't ask the client to make important decisions abruptly, or to make multiple decisions at once. Allow time for information to be fully understood and absorbed.
- Outline expectations clearly.
- Establish a structure for communication and contact, keeping in mind limitations your client may have due to his or her income restrictions and functional limitations. Set boundaries with your client when necessary (e.g., setting particular days for check-ins).

7. POLICY MODIFICATION

Law offices must reasonably modify their policies, practices, or procedures to avoid discrimination.[21] For example, if a client who is blind wishes to be accompanied in your office by their guide dog you must permit the guide dog to accompany the client in all areas of your office that are open to the public unless you can demonstrate that such a modification will fundamentally alter the nature of your goods or services.[22]

8. DIRECT THREAT

Although the presence of a disability is no more linked to dangerous or violent behavior than the ability to roll your tongue, occasionally, a client may exhibit behaviors that pose a danger to the health or safety of you or others in your office. The ADA does not require you to permit an individual to participate in or benefit from your goods or services when that individual poses a "direct threat" to the health or safety of others.[23]

A direct threat is defined for purposes of the ADA as "a significant risk ... that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services."[24] In determining whether an individual poses such a threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.[25] Absent such an assessment, excluding an individual from the opportunity to participate in or benefit from your goods or services may open you up to liability. Operating on assumptions, stereotypes, and/or subjective fears and biases will not suffice to meet the direct threat standard.

CONCLUSION

The presence of a disability may pose unique challenges for both clients and lawyers navigating the attorney-client relationship. Ensuring that individuals with disabilities have equal access to your law practice requires planning, flexibility, a willingness to communicate, and knowledge of your obligations under the law.[26]

ENDNOTES

1 42 U.S.C. § 12101 et seq.

2 42 U.S.C. § 12182 et seq.

3 42 U.S.C. § 12182(b)(2)(A).

4 36 C.F.R. pt. 1191, apps. B & D; 28 C.F.R. pt. 36, subpart D.

5 28 C.F.R. §§ 36.401 & 36.402. *See also* 28 C.F.R. § 36.406.

6 28 C.F.R. § 36.304.

7 28 C.F.R. § 36.304(b).

8 *See Tax Incentives for Improving Access*, Adaptive Env't Ctr. (Sept. 4, 1998), https://www.ada.gov/archive/taxpack.pdf (discussing I.R.C. §§ 44 & 190).

9 28 C.F.R. § 36.305.

10 28 C.F.R. § 36.303(a).

11 *See* 28 C.F.R. § 36.303(b).

12 28 C.F.R. § 36.303(c)(1)(ii).

13 28 C.F.R. § 36.301(c).

14 28 C.F.R. § 36.303(c)(2)-(4).

15 28 C.F.R. § 36.303(h).

16 Robles v. Domino's Pizza, LLC_, 913 F.3d 898, 905 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 122 (2019) (emphasis in original).

17 *Id.* at 905, n. 6.

18 *Id.* at 905-06. *Cf.* Gil v. Winn-Dixie Stores, Inc., No. 17-13467, 2021 U.S. App. WL 1289906, at *12 (11th Cir. Apr. 7, 2021) (declining to adopt the "nexus" standard and holding that the absence of auxiliary aids on Winn-Dixie's website does not act as an intangible barrier to Winn-Dixie's physical stores—the operative place of public accommodation).

19 *Id.* at 905.

20 *See Web Content Accessibility Guidelines (WCAG) Overview*, Web Accessibility Initiative (Updated Apr. 3, 2021) https://www.w3.org/WAI/standards-guidelines/wcag.

21 28 C.F.R. § 36.302.

22 28 C.F.R. § 36.302a9c).

23 28 C.F.R. § 36.208(a).

24 28 C.F.R. § 36.104.

25 28 C.F.R. § 36.208(b).

26 This article only addresses a lawyers' obligations under the ADA. Additional responsibilities and liabilities exist under state laws including the Unruh Civil Rights Act, Cal. Civ. Code 54.1. The failure to accommodate and/or provide effective communication to clients with disabilities may also run afoul of attorneys' ethical obligations. *See, e.g.*, Cal. Rules of Pro. Conduct r 1.1 & 1.4(b); Model Rules of Pro. Conduct r 1.1 & 1.4(b) (Am. Bar Ass'n),

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