



Representing Parents with Disabilities in Custody and Visitation Disputes: 10 Tips for Attorneys

A growing number of people with disabilities are becoming parents and many, unfortunately, encounter discrimination. Indeed, parents with disabilities are less likely to be awarded custody or visitation rights for their children.¹ Attorneys play a critical role in ensuring that parents with disabilities and their children are treated fairly and given the opportunity to thrive. Below are 10 tips for attorneys to assist in making sure these families are afforded their rights.

1. Screen every client for disability

Parents with disabilities face significant discrimination, particularly within the family law system. In fact, parents with disabilities are at increased risk of losing custody and visitation during divorce proceedings.² Given the high incidence of parental disability in these matters, it stands to reason that many clients may have an underlying disability (and some might not know it). As such, it is critical to screen every client for disability. To do so, ask questions such as, “Have you ever received SSI or SSDI?” “Did you receive extra assistance when you were in school?” “Do you have any difficulty reading or doing math?” “Do you have trouble remembering things?” “Have you ever seen a therapist or taken medication for depression or anxiety?” “Do you have any problems walking or lifting heavy things?” Identifying a client’s disability early is important in ensuring they are provided certain protections and rights. Notably, some parents may resist identifying as having a disability and this will need to be a conversation you have with your client. Disclosing a disability comes with protections but also significant biases about parenting abilities. Whether one chooses to disclose a disability is a personal choice. However, even if your client decides not to disclose, it is important that you

¹ NATIONAL COUNCIL ON DISABILITY, ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN (2012) [hereinafter ROCKING THE CRADLE], available at <http://www.ncd.gov/publications/2012/Sep272012>.

² Robyn M. Powell *Can Parents Lose Custody Simply because they are Disabled?* 31 GP SOLO 14 (2014), available at http://www.americanbar.org/publications/gp_solo/2014/march_april/can_parents_lose_custody_simply_because_they_are_disabled.html; Ella Callow et al., *Parents with Disabilities in the United States: Prevalence, Perspectives, and a Proposal for Legislative Change to Protect the Right to Family in the Disability Community*, 17 TEX. J. C.L. & C.R. 9 (2011).

are aware because the other parent and his/her attorney may raise concerns about the disability and you need to be prepared to address the issue.

2. Connect the parent with appropriate disability services

It is important that parents with disabilities are connected with the appropriate disability support services. For instance, local [centers for independent living](#) or clubhouses can assist parents with disabilities with housing, employment, transportation, personal assistant services, and obtaining financial or health benefits. Most states also have services for people who are Deaf or hard of hearing as well as for people who are blind or have low vision and for people with intellectual disabilities. In addition, many states provide mental health services as well as peer supports for people with psychiatric disabilities. Ensuring that your client has the appropriate supports in place will greatly help you in demonstrating that your client can safely care for his or her children.

3. Make sure the parent receives an accessible parenting assessment

Parenting assessments are often the deciding factor in custody and visitation disputes. As such, parents with disabilities must be assessed by someone who is knowledgeable and competent in evaluating people with disabilities. Be sure to inquire about the evaluator's specific experience assessing parents with disabilities, as well as their knowledge of the [American Psychological Association's Guidelines for Assessment of and Intervention with Persons with Disabilities](#). Moreover, parenting assessments must be fully accessible, conducted in the natural environment (i.e., the parent's home), and not be based on diagnosis or IQ. As discussed in #5, parenting evaluators must comply with the ADA, including providing reasonable accommodations and modifications.

4. Make sure your client has access to appropriate adaptive parenting equipment and supports

Adaptive parenting equipment (e.g., lowered cribs, talking thermometers, step-by-step instructions, and video baby monitors) and supports (e.g., personal assistant services, peer supports, and parent education) are often invaluable for parents with disabilities. Nonetheless, there is a dearth of available equipment and supports. Further, many parents may not know that such equipment and supports exist. As such, it is important that you talk with your clients with disabilities to see whether they have unmet needs or would benefit from adaptive

parenting equipment or supports. Meeting with an occupational therapist may also be useful in determining the use of adaptive parenting equipment. Remember, you want your clients to appear in the best light possible, and this includes making sure they have all necessary supports and equipment.

5. Understand the ADA and how it can be used to bolster your case

The Americans with Disabilities Act (ADA) is important to consider early on in each case involving parents with disabilities. Indeed, raise the ADA immediately if you believe your client is being discriminated against based on his or her disability. While there are fewer protections available for custody and visitation disputes than there are for child welfare proceedings, there are still notable instances where the ADA applies. For example, Title II mandates that courts are accessible to people with disabilities.³ Further, parenting evaluators have obligations pursuant to Title III of the ADA.⁴ If your client needs a reasonable accommodation or modification or auxiliary aid (e.g., ASL interpreters), you should make a written request to the court or parenting evaluator. If these requests are violated, attorneys can assist their clients with filing complaints with the [U.S. Department of Justice](http://www.dhs.gov). Attorneys must also be mindful of their legal obligations. In other words, you must also provide your clients reasonable accommodations and modifications if needed.

6. Know your client's disability

As obvious as this may seem, it is imperative to truly understand your client's disability and how it affects your client and may affect his or her children. This means reading medical records, school records, conducting research, and most importantly, talking to your client! Each person is different and each disability is different.

7. Focus on your client's strengths and abilities, as an individual and as a parent

Remember, focus on your client's strengths and abilities. During these proceedings, everyone else is going to be focused on what your client cannot do. Your job, as their advocate, is to demonstrate what he or she can do, particularly with regard to parenting!

³ See 28 CFR 35, available at http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm; *Tennessee v. Lane*, 541 U.S. 509 (2004).

⁴ See 28 CFR 36, available at http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm.

8. Partner with disability rights attorneys

Family law attorneys are not expected to know everything about disability law, just as disability rights attorneys cannot possibly know everything about family law. As such, it is important for these two bars to work together. Each state has a [“Protection and Advocacy”](#) organization with attorneys who specialize in disability law, and family law attorneys should cultivate relationships with these important groups!

9. Understand how the best interest standard in your state considers disability

In every state, parental disability may be considered in determining the best interest of a child for purposes of custody or visitation. In the 1979 case *In re Marriage of Carney*,⁵ the California Supreme Court held that a parent’s disability should not be a factor in determining custody or visitation, but other courts have issued conflicting decisions. Indeed, most states have developed their own list of factors to consider when determining the best interest of the child, and they nearly always include disability (or parent’s “health”). Analyze your state’s statutes and case law to understand how courts in your jurisdiction have considered disability when deciding the best interest standard in custody and visitation disputes. It is imperative that you demonstrate that your client’s disability is not detrimental to the well-being of the child. You will want to understand the ways in which the impact of your client’s disabilities is mitigated by having the right supports and resources in place.

10. Be aware of potential domestic violence and traumatic experiences

Women with disabilities are much more likely to experience intimate partner violence than nondisabled women. Moreover, some parents with disabilities have reported a reluctance to leave abusive partners because they fear discrimination in custody or visitation proceedings.⁶ The effects of violence and trauma can have long-term consequences. Moreover, parenting evaluations and courtroom experiences may be re-traumatizing for some clients. Therefore, it is important to consider whether your client is a domestic violence survivor and its effect on the present case. It is equally important to ensure your client has access to supports and services for violence and trauma services.

⁵ 24 Cal. 3d 725, 157 Cal. Rptr. 383, 598 P.2d 36 (1979)

⁶ ROCKING THE CRADLE, *supra* 1 at 146.

