



## Representing Parents with Disabilities: 10 Tips for Attorneys<sup>1</sup>

As people with disabilities increasingly become active members of their communities, many are choosing to become parents. Unfortunately, however, parents with disabilities all too often encounter substantial discrimination, particularly within the child protection and family law systems. Attorneys have an important – and often, challenging – role they must play to ensure that parents with disabilities 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.** Longstanding research indicates that parents with disabilities face significant discrimination, particularly within the child protection system. In fact, research suggests that parents with intellectual disabilities have their children permanently removed by child welfare agencies at rates ranging from 30% to 80%.<sup>2</sup> Similarly, research indicates that parents with psychiatric disabilities face disproportionately high rates of removal, with estimates as high as 70% to 80%.<sup>3</sup> Parents with disabilities are also at increased risk of losing custody and visitation during

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<sup>1</sup> This tip sheet was originally published at <http://www.robypowell.com/representing-parents-with-disabilities-10-tips-for-attorneys/>.

<sup>2</sup> Tim Booth, & Wendy Booth, Findings from a Court Study of Care Proceedings Involving Parents with Intellectual Disabilities, 1 J. POL'Y PRACT. INTELLECT. DISABILITY 179-81(2004); Tim Booth et al., Care Proceedings and Parents with Learning Difficulties: Comparative Prevalence and Outcomes in an English and Australian Court Sample, 10 CHILD FAM. SOC. WORK 353-60 (2005); Maurice Feldman et al., Effectiveness of Home-Based Early Intervention on the Language Development of Children of Mothers with Mental Retardation, 14 RES. DEV. DISABILITY 387-408 (1993); Robert L. Hayman, Presumptions of Justice: Law, Politics, and the Mentally Retarded Parent, 103 HARV. L. REV. 1201 (1990); Gwynneth Llewellyn et al., Prevalence and Outcomes for Parents with Disabilities and their Children in an Australian Court Sample, 27 CHILD ABUSE NEGL. 235-51 (2003); David McConnell et al. Parental Cognitive Impairment and Child Maltreatment in Canada, 35 CHILD ABUSE NEGL. 621-32 (2011); Brigit Mirfin-Veitch et al., Supporting Parents with Intellectual Disabilities, 6 NEW ZEALAND J. DISABILITY STUD. 60-74 (1999).

<sup>3</sup> Loran B. Kundra & Leslie B. Alexander, Termination of Parental Rights Proceedings: Legal Considerations and Practical Strategies for Parents with Psychiatric Disabilities and the Practitioners Who Serve Them, 33 PSYCHIATRIC REHABILITATION J. 142, 143 (2009); see generally Jennifer Mathis, Keeping Families Together: Preserving the Rights of Parents with Psychiatric Disabilities, 46 CLEARINGHOUSE REV 517 (2013).

divorce proceedings.<sup>4</sup> Given the high incidence of parental disability in these matters, it stands to reason that many of your 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?” As discussed below, identifying a client’s disability early on is very important in ensuring that they are provided certain protections and rights.

2. **Connect the parent with appropriate disability services.** It is important that parents with disabilities are connected with the appropriate disability services. For instance, local centers for independent living can assist parents with housing, employment, transportation, personal assistant services, and obtaining financial or health benefits. If parents have intellectual or disability services, it is important to make sure they receive supports through their state’s intellectual and developmental disability. 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. In addition, many states provide mental health services as well as peer supports for people with psychiatric disabilities.
3. **Make sure the parent receives an accessible parenting assessment.** Parenting assessments are often the deciding factor in child welfare and family law proceedings. As such, it is vital that parents with disabilities be assessed by someone who is competent on how to evaluate 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 solely on diagnosis or IQ.

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<sup>4</sup> 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](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).

4. **Raise the ADA early and often!** It is incredibly important to raise the Americans with Disabilities Act (ADA) as soon as possible. Title of the ADA requires specific obligations of child welfare agencies, as well as dependency and juvenile courts.<sup>5</sup> Further, parenting evaluators have obligations pursuant to Title III of the ADA.<sup>6</sup> Attorneys must also be mindful of their legal obligations.
5. **Request reasonable accommodations and modifications.** Parents with disabilities have the right to receive reasonable accommodations and modifications pursuant to Titles II and III of the ADA as well as Section 504 of the Rehabilitation Act.<sup>7</sup> Requests for reasonable accommodations and modifications should be in writing and state that your client is a qualified individual with a disability who requires a reasonable accommodation or modification for that disability. There is no one-size-fits-all solution: reasonable accommodations and modifications must be individualized. The University of Minnesota has developed helpful guidance on examples of accommodations and modifications.
6. **Appeal and/or file ADA complaint in federal court.** Attorneys should consider appealing and/or filing an ADA complaint in federal court if: (1) the removal of the child was based solely on the parent's disability; (2) the court will not order accommodations of hearings, meetings, or services; or (3) a decision of the court to continue jurisdiction over the child is not reasonable based on witness and expert testimony and other evidence. Also, if the parent is denied a reasonable accommodation, be prepared to appeal (where such process exists) or to file a complaint with the departmental, state, or federal agency empowered to investigate discrimination by the court or child welfare agency (see #7).
7. **File complaint with the Department of Justice (DOJ) and Department of Health and Human Services (HHS).** Attorneys can assist their clients with filing complaints with both DOJ and HHS. DOJ has jurisdiction over both Titles II and III of the ADA and HHS has jurisdiction in child welfare matters pursuant to Title II of the ADA and the

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<sup>5</sup> See 28 CFR 35 [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm).

<sup>6</sup> See 28 CFR 36 [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm).

<sup>7</sup> See U.S. Department of Justice and U.S. Department of Health and Human Services. (2015). Protecting the Rights of Parents and Prospective Parents with Disabilities, available at [http://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf/](http://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf/).

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Rehabilitation Act. In January 2015, both agencies jointly investigated the "Sara Gordon" case.

8. **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. 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.
9. **Focus on your client's strengths and abilities.** Remember, to 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 they can do!
10. **Partner with disability rights attorneys.** Parent attorneys are not expected to know everything about disability law, just as disability rights attorneys cannot possibly know everything about dependency and family law. As such, it is hugely important for these two bars to work together. Each state has a "Protection and Advocacy" organization with attorneys who specialize in disability law, and I urge parent attorneys to cultivate relationships with these important groups!

For far too long, **parents with disabilities have struggled to maintain custody of their children due to ignorance about their disability.** This must end!