

LSBA Legal Services for Persons with Disabilities Committee
Friday, February 1, 2019
New Orleans, LA

Participants:

Elena Perez, Southeast Louisiana Legal Services (co-chair)
Stanley Bordelon II, Louisiana Department of Health
Simone Bousted, Attorney at Law
Garret DeReus, Bizer & DeReus, LLC
Margot Hammond, Attorney at Law
Gwynne Mashon, Southeast Louisiana Legal Services
Rubye Noble, Advocate
Concepcion Otero, LA Bureau of General Counsel
Steven Reed, Southeast Louisiana Legal Services
Gwender Sterling, Attorney at Law

Guests:

Ben Levine, Tulane Law School
Jessica Sawyer, Tulane Law School
Sophie Vigeland, Intern at Southeast Louisiana Legal Services
Lee Wingard, Tulane Law School

ATJ Staff:

Joanna Laidler, Projects Counsel

1. Welcome and introductions

Elena Perez welcomed members of the new Disability and Health Law Society and new LSBA staff liaison, Joanna Laidler. Corrections need to be made to the minutes from October 5, 2018, so they were deferred. The revised minutes will be presented for adoption by the Committee at the next meeting.

2. Disabilities Assistance Network (DAN) – update

The Disabilities Assistance Network (DAN) is a directory of private attorneys who are members of the Louisiana State Bar who provide legal assistance to persons with disabilities. The directory lists the parishes each attorney can provide services in. Please note that:

- a. To encourage Louisiana attorneys to sign up, the LSBA will place an advertisement in the next edition of the Bar Briefs to help promote DAN. To sign up - <https://www.lsba.org/Members/Danjoin.aspx>;
- b. To promote DAN to the public and make them aware of it. LSBA has post cards that members can distribute through their networks to raise awareness. Please remember to bring these post cards to all relevant CLEs; and
- c. As the current directory is out of date and includes attorneys who are no longer practicing in disability law, the LSBA will contact attorneys on the DAN directory and ask them to update their information.

3. Law School Outreach - update

The Committee has started inviting law students to participate in the Committee. This week we have three members from the Tulane Health Law Group in attendance and students from the Health Alliance Group are interested in attending the next meeting.

The Committee also wants to conduct outreach to Louisiana law schools through “skills” courses and informal lunches. Joanna Laidler provided an update about the progress of contacting the law schools on behalf of the Committee:

- a. LSU: The LSU Careers office (Erin Pedrami) and the Public Interest Law Society are planning Spring programming for students. They will contact us if they would like us to present. Madalyn K. Wasilczuk, Director of the Juvenile Defense Clinic indicated that her students would benefit from a training in Special Education Law. The training would be done in conjunction with the Children’s Law Committee. Joanna Laidler will contact committee members shortly, once dates/format of presentation are confirmed. Suggestions were made to speak with Committee members Jennifer Coco, Deborah Weinberg, and Parris Taylor.
- b. Tulane: Careers office (Meghan Carney/ Leslie Griffin) advised that a single lunch presentation/panel featuring both Children’s Law and Legal Services for Persons with Disabilities would get the highest student attendance. They advised us to partner with student organizations - the Public Interest Law Foundation and the Disability and Health Law Society. Joanna will follow up with Jessica Sawyer and the Disability Health Law Society to arrange a lunchtime presentation.
- c. Loyola: Joanna Laidler has been in communication with the Careers Office (Diana Mercer) but does not have any updates. Lauren Godshall is speaking with Hector Linares and can provide an update at the next meeting.
- d. Southern: Joanna has communicated with Cynthia Reed who is currently serving as a professor of Family Law and the Director of Alumni Affairs and Continuing Legal Education at SULC. No further information at this stage.

4. Other CLEs/Training ideas

Internal Training for Committee Members

The last two meetings, Committee members have provided overviews of different areas of disability law. The Committee is seeking volunteers for the rest of the year to provide short presentations at the upcoming meetings.

Other CLE Ideas

Committee members discussed ideas for CLEs that could be undertaken by the Committee. It was noted that there is a need for attorneys practicing in other areas to have a general understanding of disability law as issues relating to social security benefits, disability education can affect other practice areas including family law, contracts, and workers compensation.

Gwynne Mashon noted that the professionalism session planned for the Louisiana Justice Community Conference is a presentation on public benefits for non-public benefits attorneys and the materials from that would crossover. Elena Perez suggested that this CLE could be a whole day CLE later in the year and could incorporate an ethics component relating to capacity and the practice of law. Margot Hammond suggested that the CLE could be run in multiple locations across the state. Committee members discussed the possibility of filming the CLE.

Joanna Laidler will speak with MCLE about the possibility of obtaining a discounted rate for members if the Committee is able to provide speakers and a location, and whether the session can be recorded. Committee members interested in planning this CLE or other CLEs, please contact with the Elena Perez, Lauren Godshall or Joanna Laidler.

Unmet Need (Public)

The *Louisiana Unmet Legal Needs Report* is the first formal study to measure the civil legal needs of low-income Louisiana residents. The Gap Assessment Subcommittee used data developed by contracted researchers and an LSC study of Louisiana to expand the breath of the survey results and create the final report. Joanna Laidler will circulate the report once it is made public and will provide a short summary of material relevant for committee members at the next meeting.

5. ADA Overview – Garret DeReus

Title I – Employment Law

Title II – Governmental entities (state, local municipal entities)

Title III – Private places of public accommodations e.g. Wal-Mart, Hotels

Main differences between Title II and Title III is that Title II allows for damages if you can show intentional discrimination. Both Acts allow you to sue for injunctive damage, but there are no damages available for Title III claims.

Case Law

Miraglia v. Bd. of Supervisors of Louisiana State Museum, 901 F.3d 565, 575 (5th Cir.) - On Appeal to the 5th circuit, the Court reversed the decision of the district Court. To recover damages and prove intentional discrimination the plaintiff needs to show that the defendant had notice of the issue and an opportunity to cure.

Windham v. Harris Cty., Texas, 875 F.3d 229, 237 (5th Cir. 2017) - when a plaintiff doesn't expressly request an accommodation, you can only sue for damages, if the necessary disability and resulting limitations and necessary accommodation were open, obvious, and apparent.

Tricky Issues to consider:

- Injunctive relief v. Damages
- Statute of Limitations
- Concurrent claims (e.g. Rehabilitation Act, Affordable Care Act)
- Duty to adequately inform you client/client confusion – particularly when undertaking advocacy for your client prior to litigation
- Experts, and the ability to litigate adequately

6. Website – resources

Reminder to circulate relevant announcements, articles, news, cases and updates so that they can be added to the Committee website. If Committee members have ideas on how to update the website, please let Joanna Laidler know. Joanna Laidler will update website to links to relevant disability advocacy groups and non-profits, including information contained on the Children’s Law Committee website.

7. Louisiana Bar Journal Topics

Committee members are invited to submit Bar Journal articles, usually around 1500 words. If interested in writing an article for bar journal, the Committee chairs and LSBA liaison can help coordinate with LSBA. The upcoming submission dates are Feb 6 (for the April/May Edition) and April 3 (for the June/July Edition). Students are also encouraged to co-author articles.

8. Policy/Legislative Updates

Committee members discussed what involvement this committee could have in promoting legislative changes. Margot Hammond explained that the Committee could not advocate for policy positions without first obtaining an endorsement from the Legislative Committee.

Gwynne Mashon provided information on the Behavioral Health Listening Tour conducted by The Louisiana Office of Behavioral Health. For more information, please visit https://laddc.org/wp-content/uploads/2019/01/LaDDCNews_Behavioral_Health_Listening_Tour.pdf

9. Upcoming Trainings

Council of Parent Attorneys and Advocates (COPAA) is having its annual conference in New Orleans March 7-10, 2019. There is also a Student’s rights initiative for students with disabilities occurring as same time as COPAA Conference, which costs \$75. Details can be found at: <https://www.copaa.org/page/SRI>.

10. Other Business

Nominations for the Pro Bono and Children’s Law Awards opened online on Monday December 3, 2018. Nominations will close on February 22, 2019 and the awards ceremony will be hosted by the Supreme Court on May 21, 2019. Nominations can be made online at: www.lsba.org/ATJ/ProBonoAwards.

11. Adjourn – Next Meeting April 12, 2019