

Promoting Diversity in the Courts: John Sullivan on the ADA, 7/26/22

John Caher: Welcome to Amici, news and insight from the New York courts. I'm John Caher.

For this Diversity Dialogue segment, we're pleased to welcome to the program John Sullivan, an attorney in the court systems counsel's office. John is a statewide ADA—that's Americans with Disabilities Act—coordinator. The ADA, a civil rights law prohibiting discrimination based on disability, was enacted July 26th, 1990, 32 years ago. While March is officially disability awareness month, I think it's fair to say that the New York state court system is aware every minute of every day, and that 24/7 commitment is coordinated by Mr. Sullivan. John, thank you for coming on the program. So, in a nutshell, what is the ADA?

John Sullivan: The ADA is a federal statute that was enacted in 1990 and then amended significantly in 2008. It's modeled on the Civil Rights Act of 1964. The purpose behind the ADA was to allow people with disabilities to fully participate in all aspects of society, to eliminate discrimination against disabled people and to provide a legal remedy when discrimination does occur.

The ADA is divided into several sub chapters. Title I deals with employment discrimination. Title III deals with discrimination in places of public accommodation, which are businesses open to the public, and Title II applies to the public services that state and local governments provide.

What Title II does is protect a qualified individual with disability from being excluded from the services, programs, and activities of state or local governments. What does that mean? It means that people with disabilities must be given a full and fair opportunity to participate in and get the benefit of any court activity, be it a trial, a hearing, a motion or any other service that a court provides to the public. This opportunity to participate, regardless of whether or not you have a disability, has to be given to anyone and everyone who comes before the court, be they a party, an attorney, a witness, a juror, or even a spectator.

John Caher: What does the ADA coordinator for the courts do?

John Sullivan: We focus on Title II. The Unified Court System does not want to discriminate against anyone on the basis of disability and seeks to make sure that every person has equal and full access to the court system. We strive to provide services in a way that ensures accessibility, and my

office helps in that mission. Basically, the ADA coordinator's office helps the court ensure access to court users.

One important thing that we do is advise and consult with judges and court managers on how to provide court users with what are called “reasonable accommodations.” I mentioned that the ADA is a civil rights statute, but it's kind of a unique one in that it has built into it an affirmative action component.

The ADA requires us to take reasonable steps to affirmatively ensure that people with disabilities are not excluded from court proceedings, which means that we're legally obligated to accommodate someone if their disability would otherwise interfere with their opportunity to participate in court proceedings. We accommodate people in two ways. One, we make reasonable modifications to our processes and procedures, meaning the way we do things. Two, we provide core users with what are called auxiliary aids—services, equipment, or devices that permit communication. Our office helps the courts make sure that those auxiliary aids and services are available when needed and that court personnel are trained in knowing when they're needed and how they might best be used.

John Caher: Now, if I understand correctly, the ADA applies equally to people who work within the court system and people who utilize the court system—the public, our constituents, our clients, our customers. Your focus, or the focus of your office, is on the people on the outside coming into the court system.

John Sullivan: That's right. The people we call “court users.”

John Caher: What sort of disabilities are covered? How is disability defined?

John Sullivan: Well, we're guided by the definitions that the ADA gives in the statute, a three-part definition for a disability.

A disability is a physical or mental impairment that substantially limits one or more major life activities of a person or having a record of such an impairment or being regarded as having such an impairment. Basically, for someone to be considered disabled under the statute, they have to have an impairment that substantially impacts a “major life activity.”

Now, initially the statute didn't say what “major life activities” were, but the implementing regulations specified them as activities such as walking or seeing or hearing, learning, breathing, working, speaking, lifting,

communicating and various other things that they listed in the regulations.

Then in 2008, the ADA was amended and major life activities were added, including one referred to as the “operation of a major bodily function,” meaning the operation of various bodily systems or organs. The expansion in 2008 of what is meant by the phrase “major life activity” made it really clear that the ADA also applies to people who don't “look” disabled. The ADA also covers people who have so-called invisible disabilities. Now, the term invisible disabilities is sometimes called “hidden” or “non-apparent disabilities.” It's an umbrella term and it refers to a whole spectrum of physical, mental, or neurological conditions or diseases that impair human functioning, but are invisible or not immediately apparent to the onlooker.

This would include such things as chronic illnesses or cognitive disabilities or developmental disabilities, psychiatric disabilities, or even chronic conditions that cause pain or fatigue or dizziness. Now the ADA has a very broad definition of disability that includes many types of impairments, both the apparent and the non-apparent.

John Caher: As you explained, a lot of those are not visible to the naked eye. If someone comes into our court system with a not obvious impairment, how do we know about it?

John Sullivan: ADA accommodation request can be made in writing either by letter or email. They can be made in person by phone. We have a public UCS webpage, and they can use that to do it, or in certain pilot locations now they can use an online request form that we've created. We ask people who know they'll be coming into court to make their request in advance, because that gives us more time to be prepared and to make the necessary arrangements.

John Caher: So are the arrangements made at the individual courts or through your office? If I'm in Chemung County, do I call you or do I call someone in Binghamton?

John Sullivan: Well, it depends on the location. In general, the court system's process for requesting accommodation asks court users to contact top level court managers. In New York City courts, it's the chief clerks and in the courts outside of New York City, it's the district executives. They're the persons that we have made responsible for responding to disability accommodation requests from most court users. There's an exception for

requests being made by people who have been summoned to jury service. Those requests go to the commissioner of jurors for the county.

John Caher: Okay. Once a district executive or a chief clerk or whomever is responsible in whatever county it is gets a request, what do they do?

John Sullivan: What they do is basically act as gatekeepers. They'll either handle requests themselves or through designated staff. With certain requests, they'll refer to the judge presiding over a person's case. I should say here that reasonably accommodating someone by making a modification to our regular practices or procedures becomes a little more complicated in the context of the court system. That's because court managers and administrators cannot exercise judicial powers. If a person wants an accommodation that is something that only a judge has the power to grant, the person has to ask the judge to do that. The chief clerk or the district executive can't do that.

John Caher: Let me come cut you off for a second. What sort of accommodation can a judge order that a district executive can't order?

John Sullivan: I'll give you some examples of that: An appearance by phone or video, more time to file papers, a request that the case be adjourned, a request that the judge change the time of day that the proceeding is held. Let's say someone is on a medication to treat a condition that they have and it makes them drowsy in the mornings. Normally the court would call the case at 9:30 in the morning, but, "Judge, I'd like to have it heard in the afternoon instead." That's something only a judge can grant for them.

John Caher: I understand.

John Sullivan: Any courtroom conditions like taking breaks frequently or having the participants speak more slowly so that someone with a processing impairment can digest what's being said or even allowing a non-attorney to participate in the proceeding. All of these things implicate a judge's inherent authority over their courtroom or the provision of an accommodation that might affect the rights of other parties to the proceeding. If a request of that nature comes to the chief clerks of the district executive's attention, it will be referred to the judge for a decision.

John Caher: I understand. Thank you. If someone needs to make or wants to make an accommodation request in advance, how do they go about it? What do they do?

John Sullivan: Well, our public ADA webpage is a great place to start. From that page, you can obtain ADA information for whatever particular courthouse you're going to. The individual page for each courthouse has information about elevators, restrooms, and parking, if there is any, and a photograph of that building's accessible entrance. It also provides an address for a dedicated ADA email box that is monitored by either the chief clerk or the district executive, or one maintained by the commissioner of jurors for summoned jurors to use. Phone numbers are also listed as another option for making a request. In some locations right now, including New York City, Monroe, Nassau, and Suffolk counties, there's also a link to our new online ADA accommodation request form and that form can be used by someone with a desktop, a laptop, or even on their phone. There are multiple options for seeking an accommodation.

John Caher: Now, when you say we're required to "accommodate," that's kind of a broad term as well. Let's explore a little bit of what that means. Does that mean if someone needs a cane, we have to get one for them? If they need a wheelchair, we've got to find one for them? If they need a hearing aid, do we provide that? What does it mean exactly?

John Sullivan: Well, under the ADA, we're not obligated to provide people with personal devices, such as canes or wheelchairs. That's personal medical equipment, or personally prescribed items such as glasses or hearing aids. We don't have to provide services of a purely personal nature, such as a personal attendant that would help you going to the bathroom or something. That's something that people have to bring themselves.

John Caher: What sort of things do we provide?

John Sullivan: We provide things like American Sign Language interpreters or any other kind of interpretive services that relates to a disability, because there are other kinds of interpreters for the deaf or hard of hearing that go beyond American Sign Language. We also provide what are called assistive listening devices, which are basically devices that brings sound directly to a person's ear. It's not good for a deaf person, but it's good for someone who's hard of hearing and has some hearing loss. We can also provide what's called CART [Communication Access Realtime Translation Services] which enables people to get a simultaneous transcript of what's occurring projected on a screen in real time. We also have a variety of things we can do to accommodate people who are blind or have low vision. We can enlarge court documents. We can provide things in large print or in braille, things like that.

John Caher: What are the biggest challenges in meeting all those needs. There must be a myriad of needs and a myriad of places every single day. What are the biggest challenges?

John Sullivan: Well, I would say from my perspective, it's twofold. One is public awareness, making sure that court users who have a disability are aware that they can get a particular accommodation when they come to court and we will provide reasonable accommodations for them. So publicizing that fact and the process by which people can obtain an accommodation is a continuing challenge, especially reaching people who aren't on the internet, where we have a lot of information that tells people how to obtain an accommodation. Or people who aren't represented by an attorney or reaching people for whom English is not their primary language. That's always a challenge.

The second biggest challenge is raising awareness on the part of our own people, our court employees and judges, training people on what the ADA requires and the resources that we have available for meeting our responsibilities and how to engage with people with disabilities in general. That's an ongoing and never-ending process, so training can never be a one-and-done kind of thing because employees come and go all the time. We have to continually reach out and educate our own people about what we can and should be doing for people with disabilities who come to court.

John Caher: So to a large extent, it's really an access to justice issue, our attempt to ensure that someone who needs to come to the courts for whatever reason, whatever relief they seek, are able to do that. People are not denied justice because they can't get in the door.

John Sullivan: That's right. We have an obligation to make our programs, services, and activities as the statute refers to them accessible. That's an obligation on our part that exists, even if there's problems with physical accessibility into or out of the courthouse. As you know, a lot of our courthouses are old and they often present challenges, particularly for people with mobility impairments, both getting into the courthouse and getting around once they're in there.

Now, in New York State, localities are responsible. We don't own our own courthouses. They're provided to us by localities, so they're responsible for making them physically accessible. We basically ask the localities, "Listen, make sure at least one building entrance is accessible so someone can get in. Then once they're in the building, make sure at least one courtroom on the civil side and at least one courtroom on the

criminal side is fully physically accessible," meaning that somebody with a difficulty using doors can get through the door. There has to be enough space for a wheelchair, the tables have to be at the right height, etcetera.

This allows us then to relocate a proceeding, if necessary, into that accessible courtroom. Of course, the newer buildings that are built, it's not so much a problem because they're built under federal law. They're built to be ADA compliant. So with the newer building, that's not really a problem. But even if a building's physically inaccessible, we can't throw up our hands and say, "Oh, sorry, that clerk's office where you need to file papers is up a flight of stairs. There's no other way to get there." We still have to make that service of being able to file papers available to people. The way we do that, as I said, is to modify our policies and procedures. Normally, we would require someone to come right into the court clerk's office to file papers, and in the case of a person who couldn't get up the stairs, we'd send a court clerk downstairs to accept papers for filing. It's just a commonsense way of altering the way you normally do things.

John Caher: Sure. Other than that we're required to do it by federal law, it seems like it's just flat out the right thing to do.

John Sullivan: Yeah, absolutely. It is a court system. We're used to the idea that everyone is to be treated the same. But when it comes to people with disabilities, differential treatment is sometimes what's required. In other words, under the ADA, equal access trumps identical treatment. You just have to do things a little bit differently when the need arises and to make sure that people have access, and we have to modify our practices.

John Caher: How did you end up in this line or in this specialty?

John Sullivan: Well, I worked in counsel's office for many years and as part of my responsibilities, I handled a lot of disability discrimination lawsuits lodged against the court system or court employees, so I became quite familiar with the ADA from an employment context. Gradually, I became the person in counsel's office that people looked to for advice on how to interpret the ADA and what we needed to do and to help design our webpages and how we could reach out to people about getting accommodations. So it became a good fit.

John Caher: So, what's a really good day?

John Sullivan: A good day is when people are getting what they need in courts in terms of accommodation!

John Caher: On this anniversary, John, I want to thank you for coming on the program and thank you for all you do for the people in the State of New York.

John Sullivan: You're welcome, John. Thank you.