



ATTORNEYS WITH DEAF CLIENTS: WHO PROVIDES THE SIGN LANGUAGE INTERPRETER?

The Americans with Disabilities Act (ADA) prohibits attorneys from discriminating against people with disabilities, including people who are deaf.¹ In addition to prohibiting direct discrimination, the ADA requires that attorneys provide auxiliary aids or services necessary to ensure effective communication with clients who are deaf.² Sign language interpreters are one type of auxiliary aid/service.³ Generally, the ADA requires attorneys to provide and pay for qualified sign language interpreters for deaf clients when necessary to provide effective communication.⁴ As a practical matter, most individuals who are deaf will need the services of a qualified sign language interpreter in order to understand complex communications such as those that occur during a meeting with their attorney or a court proceeding.

Frequently Asked Questions

Question: Can an attorney refuse to serve an individual simply because that individual is deaf?

Answer: No. Under the ADA, attorneys cannot refuse to serve someone solely due to disability. So, for example, it would be unlawful discrimination for an attorney who practices personal injury law to refuse to meet with an individual who has been injured in an accident simply because that client is deaf.

Question: Does an attorney have to provide services to deaf individuals beyond the services provided to other individuals?

Answer: No. Attorneys are not required to fundamentally alter the services they provide in order to serve individuals with disabilities. So, an attorney who only practices bankruptcy

¹ See, 42 U.S.C § 12101 *et seq*; 42 USC § 12181(7)

² See, 42 U.S.C. § 12181; 28 C.F.R. § 36.303(c).

³ See, 28 C.F.R. § 36.303(c).

⁴ See, 28 C.F.R. § 36.301(c)

law would not be required to meet with a deaf individual to discuss that individual's housing discrimination issue.

Question: When is an attorney generally required to provide a sign language interpreter to a client or potential client⁵ who is deaf?

Answer: When the client or potential client asks for a sign language interpreter in order to participate in a meeting with the attorney.

Question: Is an attorney required to provide a sign language interpreter if the client does not ask for one?

Answer: Generally, no. However, it may be helpful for an attorney to offer to provide a sign language interpreter or other auxiliary aid/service if he or she is having difficulty communicating with a deaf client. Keep in mind that it is generally to the advantage of both the attorney and the client to ensure that communication is clear.

Question: Are there any situations in which an attorney can refuse to provide a sign language interpreter to a deaf client?

Answer: Yes. The ADA permits attorneys to offer alternate auxiliary aids/services IF those will meet the client's need. For example, some individuals who are deaf might be able to communicate by computer assisted real time translation (CART). If so, it would be OK for an attorney to offer CART as an alternative to a sign language interpreter. As a practical matter, please keep in mind that because American sign language (ASL) or other manual communication is generally the first language of most people who are deaf, many deaf individuals are not proficient in reading written English and may only be able to effectively engage in complex communications through use of a sign language interpreter.

In addition, the ADA does not require attorneys to provide auxiliary aids or services if doing so would constitute an undue financial or administrative burden or fundamentally alter the nature of their services. However, these standards are very difficult to meet. Determining whether providing a particular auxiliary aid or service constitutes an undue financial or administrative burden should be evaluated by looking at the overall resources of the attorney's practice. The fact that the cost of providing an auxiliary aid or service to one client may be more than the fees paid by that client to the attorney is not a sufficient reason for an attorney to refuse to provide an auxiliary aid or service. Generally, sign language interpreters and other auxiliary aids/services needed by people with disabilities will not constitute an undue financial or administrative burden or fundamentally alter the nature of the attorney's program.

Question: What is a qualified sign language interpreter?

Answer: A qualified sign language interpreter is an interpreter who can translate sign language into speech and speech into sign language in order to provide effective

⁵ Throughout this document, client is used to refer to both client and potential client. The ADA does not distinguish between an attorney's obligation to provide effective communication at an initial meeting to evaluate a potential case and a later meeting with a client who has signed a retainer agreement.

communication. It is generally not appropriate for family members or friends to interpret for a person who is deaf.

Question: What is effective communication?

Answer: Providing effective communication to someone who is deaf means providing communication that is just as effective as communication to others who are not deaf.

Question: Are there any tax incentives available to help attorneys provide sign language interpreters to deaf clients?

Answer: Yes. Depending on the specifics of their financial situations, attorneys who spend money in order to meet the needs of people with disabilities may be eligible for a tax credit or deduction. For more information that you can discuss with your financial advisor, please see “Tax Incentives Packet on the Americans with Disabilities Act” available from the U.S. Department of Justice (DOJ) on-line at www.ada.gov or by calling 1- 800-514-0301.

Question: Are there any other resources available to help attorneys provide sign language interpreters to clients with disabilities?

Answer: Potentially, yes. There is a Tennessee law that specifically requires state courts to provide sign language interpreters to parties and witnesses who are deaf.⁶ That law makes clear that the court should provide interpreters to deaf parties and witnesses both during court proceedings and to assist in preparation with counsel. So, if an attorney has filed a case in Tennessee state court, that attorney’s client can contact the local judicial program ADA coordinator to request that the court provide a sign language interpreter for both court proceedings and meetings with the attorney. Contact information for judicial program ADA coordinators is available online at <http://www.tncourts.gov/administration/human-resources/ada-policy/ada-contacts>
Caution: Keep in mind that in the event the court refuses to provide a sign language interpreter for attorney-client meetings, the ADA does generally require the attorney to provide a sign language interpreter where necessary for effective communication as discussed above.

Question: Can DLAC provide attorneys with legal advice regarding the ADA requirements related to a specific deaf client who has requested a sign language interpreter?

Answer: No. DLAC only provides advocacy and legal services to individuals with disabilities. DLAC will provide attorneys with general information and referral but cannot advise attorneys regarding their obligations in a specific situation. For additional information and referral, please contact DLAC at 1-800-342-1660. It may also be helpful to contact the U.S. Department of Justice (DOJ) ADA Information Line at 1-800-514-0301.

⁶ See, T.C.A. § 24-1-211.

Question: Where can attorneys obtain sign language interpreters?

Answer: There are many sign language interpreter services across Tennessee. Contact information for sign language interpreter services can be found online at the following links:

Tennessee Centers for the Deaf and Hard of Hearing

<http://www.state.tn.us/humanserv/rehab/cics.pdf>

Visual Communication Interpreting

<https://www.vcinterpreting.com/>

Registry of Interpreters for the Deaf

<https://www.rid.org/acct-app/index.cfm?action=search.members>

Disability Law & Advocacy Center of Tennessee (DLAC) is the federally mandated Protection & Advocacy (P&A) System for Tennessee. DLAC is 100% funded by the Administration for Children and Families, the Substance Abuse and Mental Health Services Administration, the Rehabilitation Services Administration, the Health Resources and Services Administration, and the Social Security Administration.

This document is provided for general reference purposes only. None of the information in this document is legal advice. To obtain legal advice regarding these issues, you should consult an attorney.

For more information about Disability Law & Advocacy Center of Tennessee, visit our website: www.DLACTN.org

Alternative formats available upon request: 1-800-342-1660 (TTY: 888-852-2852)