

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 and deaf companions when necessary for 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 at a court proceeding.

FREQUENTLY ASKED QUESTIONS

What is effective communication?

Effective communication occurs when a deaf individual is able to understand an attorney's written or spoken communication and can successfully exchange information with an attorney. Effective communication is a two-way street: A deaf client should be able to understand an attorney, and an attorney should be able to understand a deaf client. An attorney must provide a deaf client with the same level of communication as a client who is hearing. When effective communication is provided, everyone involved can understand and convey relevant information. This is achieved through auxiliary aids/services, such as sign language interpreters, that make communication possible between all parties.

Who is entitled to effective communication?

An **individual with a disability** is entitled to effective communication under the Americans with Disabilities Act. Disability means a physical or mental impairment that substantially limits one or more of the major life activities (e.g., hearing); a record of such impairment; or being regarded as having such an impairment.⁵

A **companion with a disability** is also entitled to effective communication. A "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, etc., of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. One example of a companion would be the deaf parent of a juvenile.⁶

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

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

³ See 28 C.F.R. § 36.303(b)(1)

⁴ See 28 C.F.R. § 36.301(c)

⁵ See 28 C.F.R. § 36.105(a)(1)

⁶ See 28 C.F.R. § 36.303(c)(1)-(2)

What is an auxiliary aid or service?

Auxiliary aids and services are services or devices that ensure effective communication for individuals with disabilities.

They include:

- Qualified sign language interpreters
- Note-takers
- Written Notes (in limited instances)
- Video Remote Interpreting devices
- Instant text or messaging (in limited instances)

Written notes, texts, and lip reading may suffice for short interactions, such as scheduling an appointment, but when lengthy or complex information is being exchanged, a sign language interpreter will generally be necessary for effective communication.

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

No. Under the ADA, attorneys cannot refuse to serve someone on the basis of disability. 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. It is also discriminatory for an attorney to refuse to provide a deaf client with an appropriate auxiliary aid or service so that the deaf client may effectively communicate with an attorney or charge a fee to a deaf client for the interpreter.

Who is a qualified sign language interpreter?

A qualified sign language interpreter is an interpreter who can translate sign language into speech and speech into sign language. They can interpret competently, accurately, and impartially in order to provide effective communication. Attorneys cannot require clients who are deaf to bring another individual, such as a family member, to interpret for them.

Sign language interpreters can either be on-site or through Video Remote Interpreting (VRI).

On-Site Interpreters

On-site interpreters are interpreters who are physically present in the same room as a deaf or hard of hearing person.

VRI Interpreters

A VRI interpreter is an off-site, computer-based interpreter. A VRI interpreter can be accessed using a laptop or tablet that connects to a VRI service. If a VRI is used, there are stringent federal guidelines for its usage.⁷ For example, a VRI must provide:

⁷ See 28 C.F.R. § 36.303(f).

- Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images free of lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; and
- A clear, audible transmission of voices.

It is important to note that VRI is not appropriate for all deaf clients. If a deaf client is deaf and has low vision or if there is more than one deaf person in the room, then VRI may not be an appropriate auxiliary aid to use and an on-site interpreter may be needed for effective communication.

When is an attorney generally required to provide a sign language interpreter to a client or potential client ⁸who is deaf?

When the client or potential client asks for a sign language interpreter in order to participate in a meeting with the attorney, then the attorney is required to provide an interpreter unless the attorney can demonstrate that he or she can provide another auxiliary aid or service for communication that is just as effective as an interpreter.⁹ The attorney should consult with the deaf client to determine what type of auxiliary aid is needed to ensure effective communication.

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

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 to the advantage of both the attorney and the client to ensure that communication is clear. If a deaf client waives an attorney's offer of a sign language interpreter, the attorney should get the waiver in writing.

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

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.

⁸ 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.

⁹ See 28 C.F.R. § 36.303(c)(1)(ii).

Are there resources available to help attorneys provide sign language interpreters to clients with disabilities?

Meetings with Clients

Potentially, yes. There is a Tennessee law that specifically requires state courts to provide sign language interpreters to parties and witnesses who are deaf. That law makes clear that the court should provide interpreters to deaf parties and witnesses both during court proceedings (see below) 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's 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>.; See Tenn. Code Ann. 24-1-211(b)(1).

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.

Tax Incentives

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) online at www.ada.gov or by calling (800) 514-0301.

How can you ensure your deaf client gets an interpreter for court proceedings?

Both Tennessee and federal courts are required to provide qualified sign language interpreters when needed for court proceedings. The ADA and Section 504 of the Rehabilitation Act of 1973 (RA) applies to state courts. The RA applies to federal courts.

Tennessee State Court Proceedings: Contact the local ADA coordinator for the court where the proceeding will be held or the State AD Coordinator for the Courts. Contact information is online at <http://www.tncourts.gov/administration/human-resources/ada-policy>.

Federal Court Proceeding: Contact the Clerk of the Court and/or submit the request to magistrate or judge who is handling case management for your matter.

Eastern District of Tennessee

<https://www.tned.uscourts.gov/>

Middle District of Tennessee

<https://www.tnmd.uscourts.gov/>

Western District of Tennessee

<https://www.tnwd.uscourts.gov/>

Can Disability Rights Tennessee (DRT) provide attorneys with legal advice regarding the ADA requirements related to a specific deaf client who has requested a sign language interpreter?

No. DRT only provides advocacy and legal services to individuals with disabilities. DRT 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 DRT at (800) 342-1660. It may also be helpful to contact the U.S. Department of Justice (DOJ) ADA Information Line at (800) 514-0301.

Where can attorneys obtain sign language interpreters?

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

General

Registry of Interpreters for the Deaf

<http://rid.org/about-interpreting/hiring-an-interpreter/>

Tennessee Centers for the Deaf and Hard of Hearing

<https://www.tn.gov/humanservices/ds/councils-and-committees/tcddbhh.html>

East Tennessee

Visual Communication Interpreting

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

Knoxville Center for the Deaf

<https://www.kcdtn.org/>

Partnership for Families, Children, & Adults

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

Middle Tennessee

Bridges for the Deaf and Hard of Hearing
<https://www.bridgesfordeafandhh.org/>

Gate Communications
<https://www.gatecommunications.org/>

West Tennessee

Bridges West
<https://www.bridgesfordeafandhh.org/>

Deaf Connect
<https://deafconnectmidsouth.org/>

***ABOUT DISABILITY RIGHTS TENNESSEE (DRT)**

Disability Rights Tennessee is a nonprofit legal services organization dedicated to protecting the rights of people with disabilities. DRT is the federally mandated Protection & Advocacy (P&A) System for Tennessee.

DRT is primarily 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. Alternative formats available upon request.

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