

## **Representing clients who are deaf or hearing impaired: Attorneys' obligations to provide auxiliary aids and services**

*Editor's Note: The Louisiana State Bar Association's Legal Services for Persons with Disabilities Committee received a letter from an individual with a hearing impairment who claimed that he was unable to effectively communicate with his attorney because he was not provided with a sign language interpreter. As a result, the committee determined that an appropriate response to this letter would be to research the issue of an attorney's obligation under the Americans with Disabilities Act and the Louisiana Rules of Professional Conduct to a client who is deaf or hearing impaired. The committee then drafted the following informational article to assist attorneys in determining their legal obligation and professional responsibility in this situation.*

Attorneys have responsibilities to provide deaf clients with sign language interpreters and other accommodations that they may need to effectively communicate. A lawyer who fails to communicate effectively with a client is not meeting his or her duty of competent representation under the Louisiana Rules of Professional Conduct.<sup>1</sup> Furthermore, attorneys have a statutory duty to provide effective communication to deaf clients under the Americans with Disabilities Act (ADA), which went into effect on Jan. 26, 1991. Title III of the ADA, 42 U.S.C. §§ 2181-2183, provides people with disabilities the right to equal access to public accommodations. Both Title III of the ADA and the U.S. Department of Justice regulation implementing Title III, 28 C.F.R. Part 36, specifically include the offices of lawyers in the definition of public accommodations. 42 U.S.C. § 12181; 28 C.F.R. § 36.104.

Title III of the ADA requires public accommodations to provide auxiliary aids and services to ensure effective communication with deaf and hard-of-hearing people. Most often, a qualified sign language interpreter is necessary to ensure effective communication with an individual who has a hearing impairment. Lip-reading and writing notes back and forth are seldom effective methods of communication with individuals who use sign language. In addition, a family member or friend may not be qualified or the appropriate person to render interpreter services because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret effectively, accurately and impartially. 28 C.F.R. Pt. 35, App. B § 36.104. A list of appropriate auxiliary aids and services required by the ADA is set forth in its implementing regulations at 28 C.F.R. § 36.303(b)(1).

### **No Charges Allowed for Services**

An attorney may not charge an individual with a disability the cost of the auxiliary aid or service provided. Therefore, billing the deaf client for interpreter services as a "client cost" is not permissible. 28 C.F.R. § 36.301. A public accommodation may avoid provision of an auxiliary aid or service only if it can demonstrate that providing the aid or service would fundamentally alter the nature of the service, or would constitute an undue burden or expense. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a).

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<sup>1</sup> See Rule 1.1 (requiring lawyer to provide competent representation) and Rule 1.4 (requiring lawyer to keep client informed and to provide client sufficient information to participate intelligently in decisions concerning representation).

## **State and Local Courts' Responsibilities**

In addition, Title II of the ADA requires state and local courts to provide appropriate auxiliary aids and services to individuals who are deaf or who have a hearing impairment.<sup>2</sup> Because of the importance of effective communication in state and local court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings. Qualified interpreters will usually be necessary to ensure effective communication with parties, jurors and witnesses who have hearing impairments and use sign language. For individuals with hearing impairments who do not use sign language, other types of auxiliary aids or services, such as assistive listening devices or computer-assisted transcription services, which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays, may be required.

## **Interpreting Services and Referrals**

For sign language interpreting services and referrals, contact the Louisiana Commission for the Deaf at 8225 Florida Blvd., Baton Rouge, LA 70806, (800) 256-1523 (voice)/(800) 543-2099 (TDD). For additional information concerning the provision of auxiliary aids and services to individuals who are deaf or hard of hearing, go to the National Association of the Deaf's Web site at [www.nad.org](http://www.nad.org). General information about federal laws that protect the rights of individuals with disabilities may be found at the U.S. Department of Justice, Civil Rights Division, Disability Rights Section's Web site at [www.usdoj.gov/crt/drs/drshome.htm](http://www.usdoj.gov/crt/drs/drshome.htm), or call the Disability Rights Section's ADA Information Line at (800) 514-0301 (voice)/(800) 514-0383 (TDD).

If any bar member has any issues or concerns regarding this topic, contact Charles Davoli, chair, Legal Services for Persons with Disabilities Committee, at (225) 766-1100, or Monte T. Mollere, director, Access to Justice Program, at (504) 619-0146.

## **FOOTNOTES**

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<sup>2</sup> Section 201 of Title II defines a "public entity" as "any State or local government" and "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(A) and (B); 28 C.F.R. § 35.104. A public entity must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. 28 C.F.R. § 35.160(b).