

Attorneys, Deaf Clients, and the Americans with Disabilities Act

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**Attorneys have responsibilities
to provide deaf clients with sign language interpreters
and other accommodations that they may need to communicate.**

A lawyer who fails to communicate effectively with a client is not meeting his or her duty of competent and zealous representation under the Canons of Ethics. 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 January 26, 1991. Title III of the ADA, 42 U.S.C. §§ 12181-12183, 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 pursuant to 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.

Under Title III, public accommodations are required to provide auxiliary aids and services to ensure effective communication with deaf and hard of hearing people:

A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

28 C.F.R. § 36.303(c). Lipreading and writing notes back and forth are seldom effective methods of communication with sign language users. An attorney who relies on these methods cannot be assured of communicating effectively or accurately with his or her client.

A comprehensive list of auxiliary aids and services required by the ADA is set forth in this regulation, and includes, for deaf and hard of hearing individuals:

[q]ualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

28 C.F.R. § 36.303(b)(1).

The term qualified interpreter is defined in the regulation to mean "an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 36.104.

The Department of Justice states in its Analysis:

It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication. 56 Fed.Reg. at 35567. The Department of Justice has also noted in its Analysis:

The Department wishes to emphasize that public accommodations must take steps necessary to ensure that an individual with a disability will not be excluded, denied services, segregated or otherwise treated differently from other individuals because of the use of inappropriate or ineffective auxiliary aids. In those situations requiring an interpreter, the public accommodations must secure the services of a qualified interpreter, unless an undue burden would result. 56 Fed. Reg. at 35567

The responsibility to provide effective communications with clients applies to attorneys regardless of the fee arrangements with the client, and regardless of whether a case is being handled for a flat rate, hourly rate, contingency, pro bono, as part of a legal insurance package or other arrangement. 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. If the public accommodation is able to demonstrate that there is a fundamental alteration or an undue burden in the provision of a particular auxiliary aid it must nevertheless be prepared to provide an alternative auxiliary aid, where one exists. 28 C.F.R. § 36.303(f).

Whether or not providing a particular auxiliary aid would constitute an "undue burden" is difficult to ascertain. Undue burden is defined as significant difficulty or expense when considered in light of a variety of factors including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business. 28 C.F.R. § 36.104. The undue burden standard is applied on a case-by-case basis. Undue burden is not measured by the amount of income the lawyer or other private business is receiving from a deaf client, patient or customer. Instead, undue burden is measured by the financial impact on the entity as a whole. Therefore, it is possible for a lawyer to be responsible for providing auxiliary aids even for pro bono clients, if the cost of the aid would not be an undue burden on the operation of the firm. Furthermore, it may be necessary for a lawyer to provide an interpreter when communicating with non-clients (e.g., estate beneficiaries, witnesses, an audience for a legal seminar).

The Department of Justice does not permit an attorney or other place of public accommodation to charge a person with a disability for the cost of the auxiliary aid provided. Therefore, billing the deaf client for interpreter services as a "client cost" is not permissible:

A public accommodation may not impose a surcharge on a particular individual with a disability . . . to cover the costs of measures, such as the provision of auxiliary aids . . . that are required to provide that individual . . . with the nondiscriminatory treatment required by the Act or this part. 28 C.F.R. § 36.301(c).

Congress has amended the Internal Revenue Code to provide tax incentives for businesses that incur expenses in increasing accessibility for people with disabilities. The "Tax Deduction to Remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals" (Title 26, I.R.C. Section 190) allows a deduction for barrier removal expenses not to exceed \$1,500 for any taxable year. The "Disabled Access Tax Credit" (Title 26, I.R.C. Section 44) is available to small businesses. It provides a tax credit of 50 per cent of eligible access expenditures that exceed \$250 but do not exceed \$10,250 made for the purpose of complying with the ADA. For more information on these tax provisions, contact the IRS, Office of the Chief Counsel, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 622-3110.

It is clear from the Act, the Regulation and its Analysis, that important communications such as those with an attorney will require provision of a qualified sign language interpreter to ensure effective communication with the deaf individual. This cost cannot be passed on to the client.

Courts and public defender offices are "public entities" which have comparable responsibilities under Title II of the ADA. Federal courts are subject to separate accessibility rules.

This material was prepared by the National Association of the Deaf Law Center. It is intended solely as informal guidance. This material is not legal advice. For technical assistance and additional information about how laws against discrimination apply to you, contact the NAD Law Center, a local attorney, or an enforcement agency.

**FACTS ABOUT
DISABILITY-RELATED TAX PROVISIONS**
(by US Equal Employment Opportunity Commission)

The Internal Revenue Code has three disability-related provisions of particular interest to businesses as well as people with disabilities.

DISABLED ACCESS TAX CREDIT
(Title 26, Internal Revenue Code, Section 44)

This new tax credit is available to “eligible small businesses” in the amount of 50 percent of “eligible access expenditures” that exceed \$250 but do not exceed \$10,250 for a taxable year. A business may take the credit each year that it makes an eligible access expenditure.

Eligible small businesses are those businesses with either:

- ?? \$1million or less in gross receipts for the preceding tax year; or
- ?? 30 or fewer full-time employees during the preceding tax year

Eligible access expenditures are amounts paid or incurred by an eligible small business for the purpose of enabling the business to comply with the applicable requirements of the Americans with Disabilities Act (ADA). These include amounts paid or incurred to:

- ?? remove architectural, communication, physical, or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities;
- ?? provide qualified readers, taped texts, and other effective methods of making materials accessible to people with visual impairments;
- ?? provide qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;
- ?? acquire or modify equipment or devices for individuals with disabilities; or
- ?? provide other similar services, modifications, materials or equipment.

Expenditures that are not necessary to accomplish the above purposes are not eligible. Expenses in connection with new construction are not eligible. “Disability” has the same meaning as it does in the ADA. To be eligible for the tax credit, barrier removals or the provision of services, modifications, materials or equipment must meet technical standards of the ADA Accessibility Guidelines were applicable. These standards are incorporated in Department of Justice regulations implementing Title III of the ADA (28 CFR Part 36; 56 CFR 35544, July 26, 1991).

Example: Company A purchases equipment to meet its reasonable accommodation obligation under the ADA for \$8,000. The amount by which \$8,000 exceeds \$250 is \$7,750. Fifty percent of \$7,750 is \$3,875. Company A may take a tax credit in the amount of \$3,875 on its next tax return.

Example: Company B removes a physical barrier in accordance with its reasonable accommodation obligation under the ADA. The barrier removal meets the ADA Accessibility Guidelines. The company spends \$12,000 on this modification. The amount by which \$12,000 exceeds \$250 but not \$10,250 is \$10,000. Fifty percent of \$10,000 is \$5,000. Company B is eligible for a \$5,000 tax credit on its next tax return.

**TAX DEDUCTION TO REMOVE
ARCHITECTURAL AND TRANSPORTATION
BARRIERS TO PEOPLE WITH DISABILITIES
AND ELDERLY INDIVIDUALS**

(Title 26, Internal Revenue Code, section 190)

The IRS allows a deduction up to \$15,000 per year for “qualified architectural and transportation barrier removal expenses” Expenditures to make a facility or public transportation vehicle owned or leased on connection with a trade or business more accessible to, and usable by, individuals who are handicapped or elderly are eligible for the deduction. The definition of a “handicapped individual” is similar to the ADA definition of an “individual with a disability.” To be eligible for this deduction, modifications must meet the requirements of standards established by IRS regulations implementing section 190.

TARGETED JOBS TAX CREDIT

(Title 26, Internal Revenue Code, section 51)

Employers are eligible to receive a tax credit up to 40 percent of the first \$6,000 of first-year wages of a new employee with a disability who is referred by state or local vocational rehabilitation agencies, a State Commission on the Blind, or the U.S. Department of Veterans Affairs, and certified by a State Employment Service. There is no credit after the first year of employment. For an employer to qualify for the credit, a worker must have been employed for at least 90 days or have completed at least 120 hours of work for the employer. The tax Extension Act of 1991, Public law 102-227, extended this tax credit through June 30, 1992.

IRS Publication No. 907, providing information on these provisions, may be obtained by calling 1-800-829-2676. For further information, contact the Internal Revenue Service, Office of the Chief Counsel, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566-3292 (voice only).