

The Americans with Disabilities Act (ADA) prohibits attorneys from discriminating against people with disabilities, including people who are deaf.<sup>1</sup> In addition to prohibiting direct discrimination, the ADA requires that attorneys provide auxiliary aids and/or services necessary to ensure effective communication with clients who are deaf.<sup>2</sup> Sign language interpreters are one type of auxiliary aid/service.<sup>3</sup> Generally, the ADA requires attorneys to provide and pay for qualified sign language interpreters for deaf clients when it is necessary to provide effective communication.<sup>4</sup> 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 which occur during a meeting with their attorney or in a court proceeding.

## **FREQUENTLY ASKED QUESTIONS**

### **What is effective communication?**

Some people with disabilities use different ways to communicate. For example, people who are deaf generally communicate through sign language. When effective communication is provided, everyone involved can understand and convey relevant information. This is achieved through auxiliary aids/services that make communication possible between all parties.

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

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.

### **What 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 help communicate with them.

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<sup>1</sup> See, 42 U.S.C. § 12101 et seq; 42 USC § 12181(7)

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

<sup>3</sup> See, 28 C.F.R. § 36.303(c).

<sup>4</sup> See, 28 C.F.R. § 36.301(c)

**When is an attorney generally required to provide a sign language interpreter to a client or potential client<sup>5</sup> who 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.

**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.

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

No. Attorneys are not required to fundamentally alter the services they provide in order to serve individuals with disabilities. Therefore, an attorney who only practices bankruptcy law would not be required to meet with a deaf individual to discuss that individual's housing discrimination issue.

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

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 for the majority of people who were born deaf or became deaf as children, American Sign Language (ASL) is their primary first language and English is their second language. Most individuals who are deaf need the services of a qualified sign language interpreter in order to understand complex or lengthy communications.

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

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<sup>5</sup> 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.

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.

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

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) online at [www.ada.gov](http://www.ada.gov) or by calling (800) 514-0301.

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

Potentially, yes. There is a Tennessee law that specifically requires state courts to provide sign language interpreters to parties and witnesses who are deaf.<sup>6</sup> 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>

*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.*

**Can attorneys ask courts to provide a sign language interpreter for court proceedings?**

Yes. Both Tennessee and federal courts are required to provide qualified health 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.

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<sup>6</sup> See, T.C.A. § 24-1-211.

## **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:

Tennessee Centers for the Deaf and Hard of Hearing

[http://www.tn.gov/assets/entities/humanservices/attachments/TCDDDBHH\\_Community\\_Center\\_Locations.pdf](http://www.tn.gov/assets/entities/humanservices/attachments/TCDDDBHH_Community_Center_Locations.pdf)

Visual Communication Interpreting

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

Registry of Interpreters for the Deaf

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

## **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.

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