

Meeting with a Lawyer:

Effective Communication for People Who are Deaf, DeafBlind, or Hard-of-Hearing



A Self-Help Publication
By



**DISABILITY RIGHTS
CONNECTICUT**
Justice. Community. Inclusion.

Rev. 10/19/22

Table of Contents

Introduction3

Purpose.....3

How does someone request an accommodation?5

Who qualifies as an interpreter in Connecticut?10

Are there limitations on the ADA's auxiliary aids and services requirements?13

Where to get auxiliary services?.....15

Resources/References.....18

Introduction

Disability Rights Connecticut, Inc. (DRCT) is an advocacy organization dedicated to identifying and eliminating the barriers that people with disabilities face in exercising their civil, legal and human rights. As Connecticut's designated protection and advocacy system (P&A), DRCT works to improve the quality of life for individuals with disabilities, their families and our community.

Mission Statement

DRCT's mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities to participate equally and fully in all facets of community life in Connecticut.

Purpose

This booklet focuses on the Americans with Disabilities Act (ADA) Title III obligations of lawyers and law offices to clients who are Deaf, DeafBlind, or Hard-of-Hearing. There are other small business obligations under the ADA that pertain to people with different types of disabilities, but those are not addressed in this booklet.

The following questions and answers provide practical information to help lawyers meet their obligations under Title III of the ADA to people who are Deaf, DeafBlind, or Hard-of-Hearing.

Please be advised that the information contained in this publication does not constitute legal advice. It provides basic information and is not intended to substitute for the advice of an attorney.

Real Life Scenario

Mr. Bonham*, a lawyer, represented Ms. Bejarano*, who primarily uses sign language to communicate, in her divorce. The lawyer used one of the client's family members, to provide sign language interpretation for their privileged conversations, which also included matters of domestic violence.

Because of the emotional and personal involvement of the situation between the client and the client's family member, she was not qualified to serve as an interpreter, in addition she was not a trained sign language interpreter specializing in legal terms. Ms. Bejarano filed a complaint against Mr. Bonham under the Americans with Disabilities Act.

In the end, Mr. Bonham agreed that was it his obligation to ensure effective communication for clients who use sign language to communicate, and that he cannot charge them for the cost of the interpreting services.

He also agreed to post the following statement in the local paper in accordance with a settlement agreement reached with the U.S. Department of Justice (DOJ):

"The law office of [Blake Bonham] welcomes clients with disabilities, particularly clients with hearing disabilities. Our firm is in compliance with the Americans with Disabilities Act, and will provide interpreter services when requested to do so. To ensure effective communication, when a client requires a sign language interpreter, this firm will provide a qualified sign language interpreter, The client shall not be charged for the cost of this service. The interpreter will be qualified to interpret legal terms."

DOJ Complaint # 202-53-20.

*This scenario is based on an actual complaint, but the names have been changed.

Does the ADA cover all lawyers?

Title III of the ADA applies to all private lawyer's offices.¹ The location or size of the office, the number of employees, or the nature of a lawyer's practice are irrelevant.

Accommodations may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.² The focus of this booklet is about providing auxiliary aids and services for people who primarily use sign language to communicate, including people who are Deaf, DeafBlind, or Hard-of-Hearing.

How does someone request an accommodation?

A form, or letter, is not required to ask for an accommodation, or by using any "magic" words. The person receiving an accommodation request should respond, even if it is to explain the company's accommodation process. It should be an informal process to clarify what the individual needs and identify the appropriate accommodation including auxiliary aids and services.

It may be helpful to identify the specific problem area and then identify accommodation ideas and resources to resolve the issue as quickly as possible.

The client, who is receiving services from a lawyer, as well as companions of the client, must be provided a reasonable accommodation.³

¹ 42 U.S.C. § 12181(7)(f) Title II applies to state employees and attorneys.

² 28 C.F.R. § 36.303(a)

³ 28 C.F.R. § 36.303(c)

What does “effective” communication mean?

In order to be “effective,” auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with the disability.⁴ Additionally the auxiliary aid must allow the Deaf, DeafBlind, or Hard-of-Hearing individuals to understand audible information and participate in discussions.

In determining what type of auxiliary aids and services are necessary, the lawyer’s office must consult with the persons who are requesting the accommodation.⁵

Note: Each person varies greatly in the ability to use sign language, read lips, and communicate in written English. Do not assume that an auxiliary aid or service that is effective for one client will be effective for another.

What’s an example of an accommodation for effective communication?

Title III entities are encouraged to have an interactive approach with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person’s method of communicating.

Examples of accommodations for people who primarily use sign language to communicate:

- Qualified sign language interpreters
 - On-site
 - Video Remote Interpreting (VRI)
- Notetakers
- Oral interpreters

⁴ 28 C.F.R. § 36.303(c)(ii)

⁵ 28 C.F.R. § 36.303(c)(1)(ii)

- Cued speech transliterators
- Tactile interpreters for DeafBlind people
- Certified Deaf Interpreters (CDI)
- Text-based services
- Communication Access Realtime Transcription (CART)
- Other effective methods of making aurally delivered information available to individuals who are Deaf, DeafBlind, or Hard-of-Hearing.⁶ The type of auxiliary aid or service to ensure effective communication may vary as each person may need a different method of communication.

Factors to take into consideration for effective communication include:

- Method of communication
- Nature, length, and complexity involved
- Context of the situation.⁷

What is Video Remote Interpreting?

Video Remote Interpreting (VRI) uses a qualified interpreter provided through video conferencing equipment. This is a fee-based service for real-time sign language interpreting. The following criteria must be met if a place of a public accommodation provides qualified interpreters via a VRI service as a method to achieve effective communication:

Requirements for a VRI equipment include:

1. Real-time, full-motion audio and video over high-speed, wide-bandwidth video or wireless connection that delivers high-quality video that does not produce lags, blurry or grainy images, or irregular pauses in communication;
2. A sharply delineated image large enough to display the

⁶ 28 C.F.R. § 36.303(b)

⁷ 28 C.F.R. § 36.303(c)(1)(ii)

- interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of body position;
3. A clear, audible transmission of voices; and
 4. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.⁸

What is "CART?"

"Real-time Captioning," also called "computer-assisted real-time translation (CART) is a service that provides audible information into a written text format. The transcriber types the speaker's words and almost immediately, the words appear in text on a screen. The person with a disability can follow along and "read" what the person is saying. This service is useful for people who can read and understand English.

What is "Tactile Interpreting?"

Tactile interpreting is a way of communication for those who are blind and Deaf/Hard-of-Hearing. When DeafBlind consumers have little to no vision and need to receive linguistic information by feeling the interpreter's hands while the interpreter signs or fingerspells, this is called tactile interpreting.⁹

Who pays for the accommodation?

Lawyer's offices must furnish (that is, obtain and pay for) auxiliary aids and services for people who are Deaf, DeafBlind, or Hard-of-Hearing that is necessary to achieve effective communication.¹⁰ Such aids and services should enable the lawyer to communicate as effectively with people who are Deaf, DeafBlind, or Hard-of-Hearing

⁸ 28 C.F.R. § 36.303(f)(4)

⁹ https://www.westerninterpreting.net/win_defs.cfm

¹⁰ 28 C.F.R. § 36.303(c)

as with people who do not have these disabilities.

Lawyer's offices may not charge the individual requesting the auxiliary aid or service (e.g., the Deaf, DeafBlind, or Hard-of-Hearing client) for the provision of these services, even if the lawyer is representing the client on a contingency fee or pro bono basis.¹¹

- a. The office should view the cost of providing interpreters as part of its overhead. Thus, the lawyer may increase charges for all clients to cover the cost of the interpreter, but may not bill the Deaf, DeafBlind, or Hard-of-Hearing client individually.
- b. The office may **not** require the Deaf, DeafBlind, or Hard-of-Hearing client to bring an interpreter to the appointment.
- c. Paying for an auxiliary aids or service does not constitute making a loan or advancing funds to a Deaf, DeafBlind, or Hard-of-Hearing client, as the client is not responsible for paying for such services.

Can lawyers receive any tax credits for the costs of providing auxiliary aids and services?

Eligible small businesses may claim a tax credit which may include the costs of providing interpreters, purchasing TDDs and providing other auxiliary aids and services.¹²

Lawyers are encouraged to consult a tax advisor regarding available tax credits and other tax consequences of providing auxiliary aids and services. More information can be found at

<https://www.irs.gov/forms-pubs/about-form-8826>.

¹¹ 28 C.F.R. § 36.301(c)

¹² 26 U.S.C.A. § 44

Who qualifies as an interpreter in Connecticut?

Under the ADA an interpreter provided must also be qualified, but does not need to hold a particular certification to be “qualified,” but must be able to “interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.”¹³

Connecticut

In Connecticut, no person shall provide interpreting services unless such person is registered with the Connecticut Department of Rehabilitation Services, and has met at least one of the following qualifications:

1. (A) Has passed the National Registry of Interpreters for the Deaf written generalist test or the National Association of the Deaf National Registry of Interpreters for the Deaf certification knowledge exam
(B) holds a level three certification provided by the National Association of the Deaf, and
(C) (i) documents the achievement of two continuing education units per year for a maximum of five years of training approved by the Commissioner of Rehabilitation Services, and
(ii) on or before the fifth anniversary of having passed the National Registry of Interpreters for the Deaf written generalist test or the National Association of the Deaf-National Registry of Interpreters for the Deaf certification knowledge examination, has passed the National Registry of Interpreters for the Deaf performance examination or the National Association of the Deaf-National Registry of Interpreters for the Deaf national interpreter certification examination;

2. (A) Has passed the National Registry of Interpreters for the

¹³ 28 C.F.R. § 36.104

Deaf written generalist test or the National Association of the Deaf National Registry of Interpreters for the Deaf certification knowledge examination,

(B) is a graduate of an accredited interpreter training program and documents the achievement of two continuing education units per year for a maximum of five years of training approved by the commissioner, and

(C) on or before the fifth anniversary of having passed the National Registry of Interpreters for the Deaf written generalist test or the National Association of the Deaf National Registry of Interpreters for the Deaf certification knowledge examination, has passed the National Registry of Interpreters for the Deaf performance examination or the National Association of the Deaf-National Registry of Interpreters for the Deaf national interpreter certification examination;

3. Holds a level four or higher certification from the National Association of the Deaf;
4. Holds certification by the National Registry of Interpreters for the Deaf;
5. For situations requiring an oral interpreter only, holds oral certification from the National Registry of Interpreters for the Deaf;
6. For situations requiring a cued speech transliterator only, holds certification from the National Training, Evaluation and Certification Unit and has passed the National Registry of Interpreters for the Deaf written generalist test;
7. Holds a reverse skills certificate or is a certified deaf interpreter under the National Registry of Interpreters for the Deaf; or
8. Holds the credential of Approved Deaf Interpreter, Approved American Sign language-English Interpreter, or Approved Sign

Language Transliterators by the Massachusetts Commission on the Deaf and Hard of Hearing.¹⁴

The requirements apply to persons who receive compensation for the provision of interpreting services and include those who provide interpreting services as part of their job duties.

The following individuals are not “qualified interpreters”:

1. An office employee or staff member who knows basic sign language.
2. Family members, adult companions, and minor children of the client or service recipient, except in certain cases of emergency.¹⁵
3. Any interpreter who does not communicate proficiently with the Deaf, DeafBlind, or Hard-of-Hearing individual (i.e. the interpreter cannot understand the individual, or the individual cannot understand the interpreter).

Can I require clients to bring their own interpreter?

No. You cannot require a client to bring an interpreter. If a client prefers to bring an interpreter, then the ADA permits you to accept the arrangement, if agreed upon in advance. In a case like this, the lawyer is still responsible for paying the interpreter’s fees. If a client shows up, with an interpreter, unarranged, the lawyer is not obligated to use or pay for the interpreter’s services. The client may request to use a different interpreter than the one provided.¹⁶

¹⁴ Conn. Gen. Stat. § 46a-33a

¹⁵ 28 C.F.R. § 36.303(c)(3)

¹⁶ Conn. Gen. Stat. § 46a-33a(g)

Are there limitations on the ADA's auxiliary aids and services requirements?

Yes. The ADA does not require the provision of any auxiliary aid or service that would result in an undue burden or a fundamental alteration in the nature of the goods or services provided by a lawyer.¹⁷ An undue burden is a significant difficulty or expense; a fundamental alteration is a significant change in the basic nature of a service or goods.

Under some circumstances, multiple entities may have the obligation to provide auxiliary aids and services. When the law does not specify which entity has the sole obligation to provide auxiliary aids and services, any covered entity may be held liable if they are not provided.

- a. The nature of the burden is measured in the context of the business's overall resources.
- b. Lawyers providing services on a contingency fee, pro bono, or reduced fee basis must still provide auxiliary aids and services.
- c. A lack of advance notice of the need for an auxiliary aid does not excuse the lawyer from making best efforts to secure the aid or service.

Do businesses have to accept TTY or video relay calls?

Yes. Many people use a video relay service to make calls through an interpreter. People who are not used to receiving these calls may initially think they are talking to a telemarketer, and hang up. This

¹⁷ 28 C.F.R. § 36.303(a)

is frustrating for people who are using the relay service to make calls. A public accommodation, such as a lawyer's office, must respond to telephone calls from a telecommunications relay service in the same manner that it responds to other telephone calls.¹⁸

What is a Video Relay Service (VRS) call?

Video Remote Interpreting (VRI) as described in a previous section, is different from the Video Relay Service (VRS). VRS is a means of giving persons with hearing disabilities access to the telephone system. A VRS call flows back and forth similar to a telephone conversation between two hearing persons. VRS offers several features:

- Allows people to make phone calls using their primary signed language.
- Callers are able to more fully express themselves through facial expressions and body language as part of the sign language, which cannot be expressed in text.
- Provides a natural conversational arena for interrupting, a quicker pace of the conversation
- VRS calls have trilingual capabilities with signed languages, spoken English, and Spanish.
- VRS offers 24/7 access.

Is it appropriate for a lawyer to use VRS to meet with a client?

No. VRS should not be used during face-to-face meetings with a lawyer. Any improper use of VRS as a means to gain free "in-person" interpreting services may be reported to the Federal Communication Commission (FCC) in order to ensure that the Interstate TRS Fund is compensating only legitimate phone calls.¹⁹

¹⁸ 28 C.F.R. § 36.303(d)(4)

¹⁹ 20 FCC Rcd 14528 (Sept. 7, 2005)

Is lip reading an effective form of communicating?

Not often. Some individuals with residual hearing rely on lip reading for communication. For these individuals, an oral interpreter may be the best means of ensuring effective communication. A common misconception is that if a person who is Deaf, DeafBlind, or Hard-of-Hearing can speak clearly then the person can lip read effectively. Regardless of how well a person lip reads, there is still some guesswork. Very few individuals with hearing impairments or deafness rely completely on lip reading for important instructions. According to one source, professional lip readers err at a rate of 93%, especially with no given context.²⁰ Lip reading can be particularly difficult in the legal setting when the vocabulary used might not be familiar.

May written notes be considered an effective means of communication?

This will depend on the reading level of the individual and the complexity of the information to be communicated. Written communication is slow and requires a higher-level of English reading comprehension. For many Deaf, DeafBlind, or Hard-of-Hearing individuals, a sign language interpreter offers the only effective method of communication.

For people who are able to read, written notes are appropriate for communicating minor matters and simple information, such as scheduling an appointment.

Where Can I Hire an Interpreter?

There are a number of interpreting agencies, as well as individual freelance interpreters. The more advance notice the better. For a smoother request process, be sure to have ready:

- Client's name

²⁰ <https://www.sciencemag.org/news/2018/07/lip-reading-artificial-intelligence-could-help-deaf-or-spies>

- Client’s preferred mode of communication
- Time (length)
- Location
- Date
- Type of appointment

***These resources are provided for informational purposes only. DRCT does not guarantee the quality of services you may receive from these resources. We encourage you to look into each of these resources and make your own decision.**

State of Connecticut Registered Interpreters List; all sign language interpreters must register with state of Connecticut
DORS.Interpreting@ct.gov
<https://www.dhoh.ct.gov/dhoh/cwp/view.asp?a=2684&q=334506>

Find an interpreter listed on the National Registry of Interpreters for the Deaf

<https://myaccount.rid.org/Public/Search/Member.aspx>

Sign Language Interpreting Agencies Serving CT

ABC Language Services

(860) 833-0102 voice

office@abclangs.com

<https://www.abclanguageservices.com/asl/>

CODA Link-Conn, Inc.

(860) 538-8958 voice

codalinkincct@gmail.com

www.codalinkinc.com

CoSignCT

(860) 969-0646 voice

inquire@cosignct.com

www.cosignct.com

Disabilities Network of Eastern CT, Inc. (New London County)

(860) 823-1898 ext. 121 voice

(860) 237-4515 videophone

interpreter@dnec.org

www.dnec.org

Interpreters & Translators, Inc.

(800) 648-0686 toll-free

(860) 647-0686 voice

inquiry@ititranslates.com

www.ititranslates.com

LifeBridge Sign Language Services

(888) 676-8554 voice

csls@LifeBridgeCT.org

www.LifeBridgeCT.org

Partners Interpreting

(508) 699-1477 voice, press 3 for scheduling

(508) 809-4894 videophone

services@partnersinterpreting.com

www.partnersinterpreting.com

Sign Talk, LLC

(718) 382-2020 voice

(347) 916-3223 videophone

sigtalk@comprehensivenet.com

www.sigtalk.org

Sorenson Community Interpreting Services

(800) 659-4783 voice

(844) 720-1891 Videophone

Communityinterpreting@sorenson.com

www.sorenson.com/interpreting

Source Interpreting
(860) 570-1829 voice
(860) 264-6810 videophone
source@asd-1817.org
www.sourceinterpreting.com

- Both on-site and Video Remote Interpreting Services

Resources/References

Advocacy Letter for Lawyer offices by the National Association of the Deaf <https://www.nad.org/resources/advocacy-letters/>

National Association of the Deaf

Resources on Americans with Disabilities Act (ADA) legal questions for providing accommodations such as auxiliary aids and services for effective communication.

(301) 328-1443 (videophone/voice)

(301) 587-1789 (TTY)

Email: Nad.info@nad.org

Website: www.nad.org

New England ADA Center

Have a request for an auxiliary aid or service such as sign language interpreter and want to know who pays for that?

Phone: (800) 949-4232 (voice)

Email: Stacy Hart shart@ihcdesign.org

Website: <https://www.newenglandada.org/>

Public Notice: Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot be Used as a Substitute for “In-Person” Interpreting Services or Video Remote Interpreting (VRI)

Federal Communications Commission (2005).

Registry of Interpreters for the Deaf

Resources about the types of interpreters, roles of interpreters, and qualifications.

(703) 838-0030 (voice)

(571) 257-3957 (videophone)

Email: RIDinfo@rid.org

Website: www.rid.org

Telecommunications Relay Services

Federal Communications Commission

(888) 225-5322 (voice)

Website: <https://www.fcc.gov/general/disability-rights-office>

United States Department of Justice Civil Rights Division

For technical assistance for businesses and individuals about the ADA.

(800) 514-0301 (voice)

(800) 514-0383 (TTY)

Website: www.ADA.gov

Disability Rights Connecticut's Services

If you have been denied an accommodation by a lawyer's office please contact DRCT for information about your rights.

Disability Rights Connecticut

846 Wethersfield Ave. Hartford, Connecticut 06114

(860) 297- 4300 (Voice)

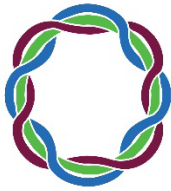
(800) 842-7303 (Toll-free CT)

(860) 509-4992 (Videophone)

(860) 296-0055 (fax)

Email: info@DisRightsCT.org

Website: www.DisRightsCT.org



DISABILITY RIGHTS CONNECTICUT

Justice. Community. Inclusion.

846 Wethersfield Avenue, Hartford, CT 06114

(860) 297- 4300 (Voice)

(800) 842-7303 (Toll-free CT)

(860) 509-4992 (Videophone)

Email: info@DisRightsCT.org

Website: <https://www.DisRightsCT.org/>

*This publication is available in
alternate format upon request.*



@DisRightsCT



@DisabilityRightsConnecticut