How to Hear Clearly

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2006 National Lawyer Referral Workshop
Albuquerque, New Mexico
ABA Standing Committee on Lawyer Referral and Information Service
“How to Hear Clearly”

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Sec.36.104 Definitions.

PUBLIC ACCOMMODATION: “Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories —

...

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

INTERPRETER: “Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary”Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

UNDUE BURDEN:

“Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include —

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.”
Sec.36.201 General.

(a) Prohibition of discrimination. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.

Sec.36.202 Activities.

(a) Denial of participation. A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) Participation in unequal benefit. A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(c) Separate benefit. A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(d) Individual or class of individuals. For purposes of paragraphs (a) through (c) of this section, the term "individual or class of individuals" refers to the clients or customers of the public accommodation that enters into the contractual, licensing, or other arrangement.

Sec.36.204 Administrative methods.

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

Sec.36.301 Eligibility criteria.

(b) Charges. A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and
reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

Sec.36.302 Modifications in policies, practices, or procedures.

(a) General. A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) Specialties -- (1) General. A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

(2) Illustration -- medical specialties. A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) Service animals -- (1) General. Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) Care or supervision of service animals. Nothing in this part requires a public accommodation to supervise or care for a service animal.

Sec.36.303 Auxiliary aids and services.

(a) General. A public accommodation shall take those steps that 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, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) Examples. The term "auxiliary aids and services" includes --

(1) Qualified 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, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective
methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

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

(d) Telecommunication devices for the deaf (TDD’s). (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations.

(e) Closed caption decoders. Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

(f) Alternatives. If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

Subpart E -- Enforcement

Sec.36.501 Private suits.

(a) General. Any person who is being subjected to discrimination on the basis of disability in violation of the Act or this part or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 of the Act or subpart D of this part may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a
person with a disability to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the Act or this part does not intend to comply with its provisions.

(b) Injunctive relief. In the case of violations of Sec.36.304, Sec.36.308, 36.310(b), 36.401, 36.402, 36.403, and 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

Sec.36.502 Investigations and compliance reviews.

(a) The Attorney General shall investigate alleged violations of the Act or this part.

(b) Any individual who believes that he or she or a specific class of persons has been subjected to discrimination prohibited by the Act or this part may request the Department to institute an investigation.

(c) Where the Attorney General has reason to believe that there may be a violation of this part, he or she may initiate a compliance review.

Sec.36.503 Suit by the Attorney General.

Following a compliance review or investigation under Sec.36.502, or at any other time in his or her discretion, the Attorney General may commence a civil action in any appropriate United States district court if the Attorney General has reasonable cause to believe that --

(a) Any person or group of persons is engaged in a pattern or practice of discrimination in violation of the Act or this part; or

(b) Any person or group of persons has been discriminated against in violation of the Act or this part and the discrimination raises an issue of general public importance.

Sec.36.504 Relief.

(a) Authority of court. In a civil action under Sec.36.503, the court --

(1) May grant any equitable relief that such court considers to be appropriate, including, to the extent required by the Act or this part --

(i) Granting temporary, preliminary, or permanent relief;

(ii) Providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) Making facilities readily accessible to and usable by individuals with disabilities;

(2) May award other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and
(3) May, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) Not exceeding $50,000 for a first violation; and

(ii) Not exceeding $100,000 for any subsequent violation.

(b) Single violation. For purposes of paragraph (a) (3) of this section, in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(c) Punitive damages. For purposes of paragraph (a)(2) of this section, the terms "monetary damages" and "such other relief" do not include punitive damages.

(d) Judicial consideration. In a civil action under Sec.36.503, the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this part by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.
Definitions:

III-4.3200 Effective communication. In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

ILLUSTRATION 1: H, an individual who is deaf, is shopping for film at a camera store. Exchanging written notes with the sales clerk would be adequate to ensure effective communication.

ILLUSTRATION 2: H then stops by a new car showroom to look at the latest models. The car dealer would be able to communicate effectively general information about the models available by providing brochures and exchanging notes by pen and notepad, or perhaps by means of taking turns at a computer terminal keyboard. If H becomes serious about making a purchase, the services of a qualified interpreter may be necessary because of the complicated nature of the communication involved in buying a car.

ILLUSTRATION 3: S, an individual who is blind, visits an electronics store to purchase a clock radio and wishes to inspect the merchandise information cards next to the floor models in order to decide which one to buy. Reading the model information to S should be adequate to ensure effective communication. Of course, if S is unreasonably demanding or is shopping when the store is extremely busy, it may be an undue burden to spend extended periods of time reading price and product information.

ILLUSTRATION 4: S also has tickets to a play. When S arrives at the theater, the usher notices that S is an individual who is blind and guides S to her seat. An usher is also available to guide S to her seat following intermission. With the provision of these services, a Brailled ticket is not necessary for effective communication in seating S.

ILLUSTRATION 5: The same theater provides S with a tape-recorded version of its printed program for the evening’s performance. A Brailled program is not necessary to effectively communicate the contents of the program to S, if an audio cassette and tape player are provided.

Who decides what type of auxiliary aid should be provided? Public accommodations should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication.

ILLUSTRATION: A patient who is deaf brings his own sign language interpreter for an office visit without prior consultation and bills the physician for the cost of the interpreter. The physician is not obligated to comply with the unilateral determination by the patient that an interpreter is necessary. The physician must be given an opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure
effective communication. If the patient believes that the physician's decision will not lead to effective communication, then the patient may challenge that decision under title III by initiating litigation or filing a complaint with the Department of Justice (see III-8.0000).

Who is a qualified interpreter? There are a number of sign language systems in use by persons who use sign language. (The most common systems of sign language are American Sign Language and signed English.) Individuals who use a particular system may not communicate effectively through an interpreter who uses another system. When an interpreter is required, the public accommodation should provide a qualified interpreter, that is, an interpreter who is able to sign to the individual who is deaf what is being said by the hearing person and who can voice to the hearing person what is being signed by the individual who is deaf. This communication must be conveyed effectively, accurately, and impartially, through the use of any necessary specialized vocabulary.

Can a public accommodation use a staff member who signs "pretty well" as an interpreter for meetings with individuals who use sign language to communicate? Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

If a sign language interpreter is required for effective communication, must only a certified interpreter be provided? No. The key question in determining whether effective communication will result is whether the interpreter is "qualified," not whether he or she has been actually certified by an official licensing body. A qualified interpreter is one "who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary." An individual does not have to be certified in order to meet this standard. A certified interpreter may not meet this standard in all situations, e.g., where the interpreter is not familiar with the specialized vocabulary involved in the communication at issue.

III-4.3300 Examples of auxiliary aids and services. Auxiliary aids and services include a wide range of services and devices that promote effective communication. Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

Examples for individuals with vision impairments include qualified readers, taped texts, audio recordings, Brailled materials, large print materials, and assistance in locating items.

Examples for individuals with speech impairments include TDD's, computer terminals, speech synthesizers, and communication boards.

III-4.3400 Telecommunication devices for the deaf (TDD's). In order to ensure effective communication by telephone, a public accommodation is required to provide TDD's in certain circumstances. Because TDD relay systems required by title IV of the ADA (which must be operational by July 26, 1993) will eliminate many telephone system barriers to TDD users, the auxiliary aids requirements relating to TDD's are limited in nature.
III-4.3410 Calls incident to business operations. A public accommodation is not required to have a TDD available for receiving or making telephone calls that are part of its business operations. Even during the interim period between the effective date of title III and the date the TDD relay service becomes available, there is no requirement that public accommodations have TDD’s. Of course, the ADA does not prevent a public accommodation from obtaining a TDD if, for business or other reasons, it chooses to do so.

III-4.3420 Outgoing calls by customers, clients, patients, orparticipants. On the other hand, TDD’s must be provided when customers, clients, patients, or participants are permitted to make outgoing calls on “more than an incidental convenience basis.” For example, TDD’s must be made available on request to hospital patients or hotel guests where in-room phone service is provided. A hospital or hotel front desk should also be equipped with a TDD so that patients or guests using TDD’s in their rooms have the same access to in-house services as other patients or guests.

III-4.1400 Surcharges. Although compliance may result in some additional cost, a public accommodation may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

ILLUSTRATION: The ABC pharmacy is located on the second floor of an older four-story building that does not have an elevator. Because the pharmacy's owner has determined that providing physical access to the pharmacy for those unable to climb stairs would not be readily achievable, she has chosen to provide home delivery as a readily achievable alternative to barrier removal. The pharmacy may not charge an individual who uses a wheelchair for the cost of providing home delivery.

ILLUSTRATION 2: In order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter. The cost of the interpreter's services must be absorbed by the doctor.

ILLUSTRATION 3: A community civic association arranges to provide interpreting services for a deaf individual wishing to attend a business seminar sponsored by the organization in rented space at a local motel. The interpreting service requires the organization to provide payment in full prior to the seminar. Due to a business emergency, the individual is unable to attend. The organization may not charge the deaf individual for the cost of the unused interpreting services.

III-3.4300 Modifications in the regular program. When a public accommodation offers a special program for individuals with a particular disability, but an individual with that disability elects to participate in the regular program rather than in the separate program, the public accommodation may still have obligations to provide an opportunity for that individual to benefit from the regular program. The fact that a separate program is offered may be a factor in determining the extent of the obligations under the regular program, but only if the separate program is appropriate to the needs of the particular individual with a disability.

ILLUSTRATION: If a museum provides a sign language interpreter for one of its regularly scheduled tours, the availability of the signed tour may be a factor in determining whether it would be an undue burden to provide an interpreter for a deaf person who wants to take the tour at a different time.
BUT: The availability of the signed tour would not affect the museum's obligation to provide an interpreter for a different tour, or the museum's obligation to provide a different auxiliary aid, such as an assistive listening device, for an individual with impaired hearing who does not use sign language.

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54. (a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

(b) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Section 12926 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

54.1. (a) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) As used in this section, "telephone facilities" means tariff items and other equipment and services that have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing telephone network provided by the telephone companies.

(3) "Full and equal access," for purposes of this section in its application to transportation, means access that meets the standards of Titles II and III of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those higher standards.

(b) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) "Housing accommodations" means any real property, or portion thereof, that is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any accommodations included within subdivision (a) or any single-family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.
(3) (A) Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises. However, any modifications under this paragraph may be conditioned on the disabled tenant entering into an agreement to restore the interior of the premises to the condition existing prior to the modifications. No additional security may be required on account of an election to make modifications to the rented premises under this paragraph, but the lessor and tenant may negotiate, as part of the agreement to restore the premises, a provision requiring the disabled tenant to pay an amount into an escrow account, not to exceed a reasonable estimate of the cost of restoring the premises.

(B) Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises.

(4) Nothing in this subdivision shall require any person renting, leasing, or providing for compensation real property to modify his or her property in any way or provide a higher degree of care for an individual with a disability than for an individual who is not disabled.

(5) Except as provided in paragraph (6), nothing in this part shall require any person renting, leasing, or providing for compensation real property, if that person refuses to accept tenants who have dogs, to accept as a tenant an individual with a disability who has a dog.

(6) (A) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired on the basis that the individual uses the services of a guide dog, an individual who is deaf or hearing impaired on the basis that the individual uses the services of a signal dog, or to an individual with any other disability on the basis that the individual uses the services of a service dog, or to refuse to permit such an individual who is blind or visually impaired to keep a guide dog, an individual who is deaf or hearing impaired to keep a signal dog, or an individual with any other disability to keep a service dog on the premises.

(B) Except in the normal performance of duty as a mobility or signal aid, nothing contained in this paragraph shall be construed to prevent the owner of a housing accommodation from establishing terms in a lease or rental agreement that reasonably regulate the presence of guide dogs, signal dogs, or service dogs on the premises of a housing accommodation, nor shall this paragraph be construed to relieve a tenant from any liability otherwise imposed by law for real and personal property damages caused by such a dog when proof of the same exists.

(C) (i) As used in this subdivision, "guide dog" means any guide dog that was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(ii) As used in this subdivision, "signal dog" means any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds.

(iii) As used in this subdivision, "service dog" means any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.
(7) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired, an individual who is deaf or hearing impaired, or other individual with a disability on the basis that the individual with a disability is partially or wholly dependent upon the income of his or her spouse, if the spouse is a party to the lease or rental agreement. Nothing in this subdivision, however, shall prohibit a lessor or landlord from considering the aggregate financial status of an individual with a disability and his or her spouse.

(c) Visually impaired or blind persons and persons licensed to train guide dogs for individuals who are visually impaired or blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or guide dogs as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and persons who are deaf or hearing impaired and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and other individuals with a disability and persons authorized to train service dogs for individuals with a disability, may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in subdivisions (a) and (b). These persons shall ensure that the dog is on a leash and tagged as a guide dog, signal dog, or service dog by identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Division 14 of the Food and Agricultural Code. In addition, the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

(e) Nothing in this section shall preclude the requirement of the showing of a license plate or disabled placard when required by enforcement units enforcing disabled persons parking violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

This information compiled by:

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PARTIES:

1. The parties to this agreement are the United States of America and Gregg Tirone, Esq.

2. Gregg Tirone is an attorney licensed to practice law in the state of New York, with a concentration in family law, including divorce, custody, and domestic violence.

BACKGROUND:

3. This matter was initiated by a complaint filed by Kathleen Culhane Rozanski received by the United States Department of Justice ("the Department"), in February of 2002, against attorney Gregg Tirone, of Rochester, New York. The complaint was investigated by the Department under the authority granted by section 308 (b) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12188.

4. The Complainant, Kathleen Culhane Rozanski, has a hearing disability and uses sign language and lip reading as her principal means of communicating.

ALLEGATIONS:

5. Mr. Tirone represented Ms. Rozanski in her divorce. The divorce involved allegations of domestic violence, as well as matters of child custody, visitation, and issues relating to a restraining order.

6. It is alleged that Mr. Tirone failed to provide a qualified sign language interpreter during several meetings with his client.

7. When meeting with Ms. Rozanski in court, Mr. Tirone used the services of the court’s interpreter. The Court’s interpreter was provided by the Court at the Court’s expense.

8. At other times, in the absence of a qualified sign language interpreter, Mr. Tirone
communicated with Ms. Rozanski by pen and paper, fax, lipreading, and by use of the National Relay Service when communicating by phone. It is alleged that use of these alternatives took longer than would have occurred had a qualified sign language interpreter been used, resulting in higher costs to Ms. Rozanski. In addition, Ms. Rozanski alleges that due to the absence of a qualified sign language interpreter, she did not understand all that was conveyed. Mr. Tirone asserts that he represented Ms. Rozanski adequately and professionally, and that he effectively communicated with her. He further asserts that he believes that Ms. Rozanski understood him at all times.

JURISDICTION / DISCUSSION OF APPLICABLE LAW:


10. Section 36.303 of the ADA regulation provides that a public accommodation:

(S)hall take those steps that 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, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense. § 36.303(a).

11. Attorneys are considered a public accommodation and must provide sign language interpreters when necessary to provide effective communication, which is the case when the client uses sign language as his or her primary means of communication. The commentary to the title III regulation points out:

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 (emphasis added). Commentary to § 36.303

12. The public accommodation must:

(F)urnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. § 36.303(4)(c).

13. Auxiliary aids and services include but are not limited to “qualified interpreters”. § 36.303(b)(1).

14. A “qualified interpreter” is one who:

(I)s able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. (Emphasis added). §36.104
15. There are several different sign language systems used by persons who use sign language. (The most common systems of sign language are American Sign Language and signed English.) Individuals who use a particular system may not communicate effectively through an interpreter who uses another system. When an interpreter is required, the public accommodation should provide a qualified interpreter, that is, an interpreter who is able to sign to the individual who is deaf what is being said by the hearing person and who can voice to the hearing person what is being signed by the individual who is deaf. This communication must be conveyed effectively, accurately, and impartially, through the use of any necessary specialized vocabulary.

16. Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

17. Family members, friends, and close associates are not qualified interpreters in most cases, and generally should not be used to interpret. The commentary to the Title III regulation makes clear:

...(P)ublic accommodations have at times asked persons who are deaf to provide family members or friends to interpret. In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation 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.” (Emphasis added). Commentary to §36.303.

18. Mr. Tirone acknowledges that as an attorney in private practice, he is covered by Title III of the ADA as a place of public accommodation and is obligated to ensure effective communication with Ms. Rozanski. Mr. Tirone does not deny that Ms. Rozanski is an individual with a disability and as such, is protected from discrimination under the ADA. See 42 U.S.C. §§ 12182(b)(1)(b)(2)(a). He asserts that he effectively communicated with Ms. Rozanski at all times.

FINDINGS:

19. Use of a family member as a sign language interpreter in a matter involving domestic violence was inappropriate. Because of her relationship as Ms. Rozanski's sister, the nature of the communications, and because of her emotional and personal involvement with her sister, she was not qualified to serve as an interpreter in this matter. In addition Ms. Rozanski's sister was not a qualified sign language interpreter, as she has a hearing disability as well, and uses a different sign language than her sister, (signed English), and lipreads. Born with a hearing loss, she has moderate to severe hearing loss in her left ear and severe to profound loss in her right ear. Her doctors have indicated that “with hearing loss of this degree and nature, (she) can be expected to have communication difficulties in all listening situations, especially when competing background noise is present and when speakers are at a distance or not facing her.” She also has had no specialized training in interpreting legal terms.

20. The Department of Justice has investigated the allegation that Mr. Tirone failed to provide
Ms. Rozanski with effective communication and finds the allegation meritorious. Mr. Tirone acknowledges a single violation of the ADA and agrees to the terms set forth below as a resolution of the investigation. In exchange, the United States agrees to terminate its investigation of this matter, without resorting to litigation.

REMEDIAL ACTION:

21. Mr. Tirone agrees that it is his obligation to ensure effective communication with his clients who have hearing disabilities, and that he cannot charge them for the cost of the interpreter services or charge any other surcharge to recover this cost. He agrees to post the following statement in the local paper once a month for 2 months, or in the Bar Association’s newsletter or the local Daily Record once a month for 2 months:

"The law office of Gregg Tirone 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.

He also agrees to post this statement prominently in his office, in a place clearly visible to the public, for the term of this Agreement.

22. Mr. Tirone agrees to compensate Kathleen Culhane Rozanski $2200, and agrees to forego any money due him from Ms. Rozanski.

23. Mr. Tirone shall mail the check by certified mail, return receipt requested, by March 20th, 2004. A copy of the check and the transmittal letter shall be sent to counsel for the government.

24. Under section 308(b)(1)(B) of the ADA, 42 U.S.C. § 12188(b)(1)(B), the Attorney General is authorized to bring a civil action under title III in any situation where a pattern or practice of discrimination is believed to exist or where a matter of general public importance is raised. In consideration of the Agreement as set forth above, the Attorney General agrees to terminate its investigation of this matter. The United States also agrees not to file a civil lawsuit in this matter except pursuant to paragraph 25 below.

25. The Department may review compliance with this Agreement at any time. If the Department believes that this Agreement or any provision thereof has been violated, it may institute a civil action in the Federal District Court for New York, or any other appropriate Federal district court, of the possible violation and provide Mr. Tirone a period of twenty (20) days in which he shall have the opportunity to cure the first alleged violation. The Attorney General is authorized to seek civil penalties pursuant to 42 U.S.C. § 12188(b)(2)(C). For any subsequent alleged violations of this Agreement, the Department may institute a civil action against Gregg Tirone without any waiting period for him to cure the alleged violation.

26. This Agreement is a public document. A copy of this Agreement or any information contained herein may be made available to any person. The Department shall provide a copy of this Agreement to any person upon request.
27. This Agreement shall become effective as of the date of the last signature below, and shall terminate three years from its effective date.

28. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement shall be enforceable. This Agreement is limited to the allegations set forth herein, and it does not purport to remedy any other potential violations of the ADA or any other Federal, State or local law. This Agreement does not affect Mr. Tirone’s continuing responsibility to comply with all aspects of the ADA.

29. Failure by any Party to enforce this entire Settlement Agreement or any provision thereof with regard to any deadline or any other provision contained herein shall not be construed as a waiver of such Party’s right to do so with regard to that or any other provision of the Agreement.

30. A signer of this document, in a representative capacity for a partnership, corporation, or other entity, including a governmental agency, represents that he or she is authorized to bind such partnership, corporation, or other entity or agency to the terms of this Agreement.

For the United States:

R. Alexander Acosta  
Assistant Attorney General for Civil Rights

By: ____________________________
JOHN L. WODATCH, Chief  
RENEE M. WOHLKENHAUS, Deputy Chief  
MARC DUBIN, Senior Trial Attorney  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66738  
Washington, DC 20035-6738

Date 1/5/04

For Greg Tirone, Esq.:

By: ____________________________

Date 12/29/03

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SETTLEMENT AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

LAWYER'S ADVOCATE, INC.

SETTLEMENT

DEPARTMENT OF JUSTICE COMPLAINT NUMBER 202-13-125

Background

1. This matter was initiated by a complaint filed under title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181-89, and the title III regulation, 28 C.F.R. pt. 36, with the United States Department of Justice (Department of Justice) against the Lawyer's Advocate, Inc. The complaint was investigated by the Department under the authority granted by section 308(b) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12188. The complainant, Ms. Jeanine Germanowicz, who is deaf and uses sign language to communicate, alleged that the Lawyers Advocate Inc. failed to provide effective communication with her because it denied her request for an interpreter for a seminar given by Lawyer's Advocate, Inc.

2. Lawyer's Advocate, Inc. denies Complainant's allegations that it failed to provide an interpreter. Lawyer's Advocate alleges that complainant failed to confirm her attendance at the Lawyer's Advocate, Inc.'s seminar and, accordingly, sign language interpretative services were canceled.

3. The parties to this Agreement are the United States of America and the Lawyer's Advocate, Inc. This Agreement is not an admission of violation and should not be construed as an admission by the Lawyer's Advocate, Inc. of any violation.

4. In order to avoid litigation, the parties have agreed to resolve this matter as indicated below.

5. The subject of this settlement agreement is the provision by the Lawyer's Advocate, Inc. without charge, of auxiliary aids and services to individuals with disabilities when necessary to afford effective communication to allow individuals with disabilities to participate in programs, services or activities conducted by the Lawyer's Advocate, Inc.

Jurisdiction

6. The ADA applies to the Lawyer's Advocate, Inc. because it operates a place of public accommodation as defined by the ADA, 42 U.S.C. § 12181 and 28 C.F.R. § 36.104.

Remedial Action
7. The Lawyer's Advocate, Inc. shall offer to Ms. Germanowicz, free of charge and at her convenience, the opportunity to participate in a training seminar with a qualified interpreter to be provided by Lawyer's Advocate, Inc.

8. In order to ensure that individuals with disabilities are not excluded or otherwise denied participation in Lawyer's Advocate, Inc.'s programs and services and in order to ensure effective communication with members of the public who are deaf or hard of hearing, the Lawyer's Advocate, Inc. agrees:

   a. To take those steps necessary to ensure that no individual with a disability is excluded or denied services because of the absence of auxiliary aids or services as required by the ADA. This requirement shall include, but is not limited to, providing sign language interpreters for individuals who are deaf or have hearing impairments. See 42 U.S.C. § 12182(B)(2)(A)(iii), and other relevant provisions.

   b. Lawyer's Advocate, Inc. shall adopt and maintain a written procedure to receive and process the requests of individuals with disabilities for auxiliary aids and services and to consult promptly with individuals regarding their requests and needs.

9. Lawyer's Advocate, Inc. shall train all staff who deal with the public about the procedure for providing auxiliary aids and services. Lawyer's Advocate, Inc. shall inform members of the public about its procedure for the provision of auxiliary aids and services to individuals with disabilities by distributing information about this procedure in Seminar Brochures, pamphlets, posters or other appropriate means.

10. Within 30 days of the effective date of this Agreement, the Lawyer's Advocate, Inc. shall submit a report to the Department of Justice detailing the actions it has taken to comply with the preceding provisions.

11. This agreement is a public document. A copy of this document or any information contained in it may be made available to any person.

12. The Department of Justice may review compliance with this Agreement at any time. If the Department of Justice believes that this Agreement or any requirement thereof has been violated, it may institute civil action seeking specific performance of the provisions of this Agreement or seeking enforcement of the requirement of title III of the ADA in an appropriate Federal court.

13. Failure by the Department of Justice to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

14. The effective date of this Agreement is the date of the last signature below.

15. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, will be enforceable under its provisions.

For the United States:
Bill Lann Lee
Acting Assistant Attorney General
for Civil Rights

By:
JOHN L. WODATCH, Chief
Alison Nichol, Deputy Director
Eve Hill, Supervising Attorney
Celeste A. Simmons, Investigator
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738
For Lawyer's Advocate, Inc.:

Stuart W. Hubbard
President
Lawyers Advocate, Inc
1050 East Third Street
Broomfield, Colorado 80020
Obligations of Lawyers to Provide Effective Communication to Deaf and Hard of Hearing People.

Q. Attorney’s offices are private businesses, are they required to provide interpreters and other aids to deaf and hard of hearing members of the public?

A: Even though a business is private, if it opens itself for the public to come in and do business, it is considered a “place of public accommodation”. The ADA provides a list of the kinds of businesses that are covered by the ADA including service businesses such as beauty parlors, dry cleaners, medical offices, lawyer’s offices, etc. (28 CFR 36.104). However, this list is not meant to be final. If a business owns or rents a place for the public to enter, they must follow the ADA.

Under the ADA, the deaf or hard of hearing person requesting the accommodation does not need to be a formally accepted “client”. The ADA makes it clear that all public accommodations make all of their services accessible to disabled members of the public, whether or not any formal relationship of customer or client has been established.

Q. What must an attorney’s office do to comply with the ADA?

A: In the case of a client who is deaf or hard of hearing, a business must prevent unequal or discriminatory service by providing that client with “effective communication.” (28 CFR 36.303(c)). The business must provide an “auxiliary aid” so that the client will be able to effectively communicate. (28 CFR 36.303(a)). This auxiliary aid can be any number of things, and a qualified ASL interpreter is one of the listed auxiliary aids. The ADA does not require that any one, specific, auxiliary aid be used. It only requires that what is used results in “effective communication” (28 CFR 36.302(c)). Effective Communication is defined by the client.

Although certain provisions of the ADA do not apply to businesses under a certain size, the California Unruh Act, Civil Codes 51, et seq., apply ADA standards to all California Businesses, regardless of size. Therefore, all attorneys in California, whether they are part of a firm or run a solo practice,
must comply with ADA requirements.

Q. What are the legal standards for effective communication?

A: What matters the most is that the communication is effective for the client. If the client communicates in American Sign Language, then an interpreter may be required for effective communication. The business has the option to offer other aids, but if these aids do not work for the client, the client must be provided with a different aid, like an ASL interpreter, that provides effective communication for them. (See ADA Title III Technical Manual 4-3200).

Complexity of the interaction is also a guideline to knowing which services must be provided. If the client is requesting a very simple service, (the examples of a simple service given by the Department of Justice Manual include buying camera film or placing an order in a restaurant), writing notes back and forth may be sufficient. However, whenever the client and a business have an interaction involving complex communication or important information (for example when a client buys a car or a house, when a medical procedure is being done, or when any complex information is being discussed), an interpreter may be needed. Again, whatever method of auxiliary aid is chosen, is must result in effective communication for the client. (See ADA Title III Technical Manual at 4-3200). Given the complexity of legal advice, and the need for perfect clarity in discussing details and evidence of cases, legal consultation (like medical consultation) falls in the category of complex communication.

Q. When would an attorney be excused from providing effective communication?

A: The only time that a public accommodation is not required by the ADA to provide auxiliary aids is if the cost would present an “undue burden” (28 CFR 36.303(a)). This term is defined as an undue financial burden such that the requested accommodation is a “significant difficulty or expense” when compared to the entire budget or resources of the business. Courts have been strict in construing this to be a very high standard.

Additionally, an attorney cannot refuse a client, or refer the client out, based on their disability, or on accommodation requests under the ADA. (28 CFR 36.302(b)).
Q. Can I bill the interpreter time as a “client cost”?

A: No. The ADA Title III specifically prohibits any public accommodation from imposing any surcharges on a particular individual with a disability to cover the costs of measures that are required to provide that individual with non-discriminatory treatment. (28 CFR §36.301(c)). Therefore, billing the cost of interpreters to the client would specifically violate the ADA, as would charging a higher rate, or any other additional fees.

Q. Is there any assistance for small businesses to help them provide reasonable accommodations?

A: If you are a small business, your office is entitled to significant tax benefits in complying with the ADA. You could be eligible for state and federal income tax credits that together equal 50% of any costs you may incur providing accommodations. The state form is FTB3548 (50% credit for annual costs up to $250) and the federal form is 8826 (50% credit for costs between $250 and $10,250.

Q. What are the consequences of failing to provide reasonable accommodations under the ADA?

A: The ADA is enforced by the Federal Department of Justice. A disabled person who feels they have been discriminated against may file a complaint free of charge through the Department of Justice, without an attorney. The Department of Justice is authorized by the ADA to investigate, and negotiate a settlement or bring suit on the complainant’s behalf. Upon a finding of discrimination, a court can fine the offending business entity up to $50,000. Additionally, the ADA authorizes a private right of action for violations.

Disabled persons are also protected from discrimination by California Civil Code §51-54 (the Unruh Act). A person may complain free of charge to the California Department of Fair Employment and Housing (DFEH) regarding discriminatory acts. DFEH is authorized to investigate, and has the power to negotiate settlements, initiate suits, or request a court fine the business up to $4,000. If DFEH declines to investigate, or fails to find sufficient evidence for a fine, they can still issue a right-to-sue letter, again triggering a right to private action.

IMPORTANT INFORMATION: This fact sheet is a summary of your rights or
obligations. It is not meant to be legal advice. Many of the laws referred to are limited in scope, coverage, and requirements. Deadlines for filing either administrative or court complaint vary widely for violations of different laws. What is needed for “effective communication” and what is “reasonable accommodation” or “undue hardship” is very different for each particular situation. If you believe you have been discriminated against or your access rights have been violated, we encourage you to seek help or advice from your nearest deaf services agency, legal aid, or a lawyer. You may also contact us by phone, e-mail, or letter. This information has been compiled by:

California Center for Law and the Deaf
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www.deaflaw.org
People who are deaf and hard of hearing experience wide degrees of hearing loss. Although somewhat arbitrary and for ease of understanding, we will describe three groups: deaf, hard of hearing and late deafened. Each group's communication needs are different; what works for one does not necessarily work for the other. There is one communication tip common to all, regardless of their degree of hearing loss: Be sure to face the person with whom you are communicating and do not cover your mouth or look away while you are talking. This cannot be emphasized strongly enough. Deaf and hard of hearing people “hear” through their eyes. Many speech read and all take cues from your facial expressions and body language.

- **People who are deaf:** Deafness is the inability to hear and understand speech. Audiologically, those who have greater than 90 dB (decibel) loss -- cannot hear a airplane roaring overhead -- have a profound hearing loss and are considered to be deaf. "Congenitally" deaf people can make little, if any, sense of sounds that hearing people experience. Also in this category are people who are pre-lingually deaf, meaning they lost their hearing before they learned to speak. For many deaf people, American Sign language (ASL) is their first language, not English, and is often their most effective means of communication. Many adults in this group have attended schools for the deaf and consider themselves members of the Deaf Community – a recognized socio-linguistic minority.

- **People who are hard of hearing:** These people have some degree of residual hearing and their hearing loss can be from "moderate" to "severe". Members of this group are the most difficult to identify since often their hearing loss has been progressive and gradual, they are linguistically and socially adept, and will sometimes intentionally or unintentionally camouflage their hearing loss. People who are hard of hearing tend to depend on spoken or written English. Few know sign language. They generally function quite well in the hearing world; their friends are hearing and they work in a hearing environment. Many use hearing aids. Vanity or expense is often the explanation for not using them. Hearing aids, although improving with advances in technology, are not the panacea that hearing people assume they are -- background noise distorts sounds, sometimes to the point where turning off or removing the hearing aid is less intrusive and more effective. Hearing aids only amplify sound; they do not clarify or differentiate between sounds. An increasing number of people have cochlear implants and are functionally hard of hearing. This group of people typically will benefit most from assistive listening devices.

- **People who are late-deafened:** These are people who have lost their hearing post-lingually -- after acquiring language and speech -- perhaps because of age (most
common), an accident, sickness or other health-related reasons (sometimes referred to as adventitiously deaf). Their hearing loss is usually severe to profound. Their first language is English and they usually identify with the hearing world. They are most likely to use hearing aids but are unable to understand speech without visual aids, such as speech reading, sign language or computer assisted realtime transcription (CART).

Subcategories -- The oral deaf, deaf-blind, foreign-born deaf and minimal- language-skilled deaf:

- **Oral deaf** people have been taught and have learned to speak and typically express themselves orally. They have learned to speech read and are less likely to identify with the Deaf Community. Their first language is English, although many use ASL or some other sign system, for example, Signed English (SE, sometimes called Pidgeon-Signed English or PSE), Signed Exact English (SEE), or Manually Cued English (MCE). Often they may sign and speak simultaneously, which is known as SimCom, simultaneous communication. The most effective auxiliary services in court for the orally deaf will likely be CART, computer assisted real-time transcription, since these individuals are usually more proficient in reading and writing English and less likely to know sign language.

- People who are deaf-blind present a unique challenge. The majority of deaf-blind are born deaf and lose their sight later in life. One cause of vision loss later in life is Usher’s Syndrome, a genetic disorder that causes a person’s peripheral vision to gradually decrease. They are a very diverse group of individuals as the degrees of hearing and visual loss vary enormously. ASL is often the first language of people who are deaf-blind and some know Braille. The most effective means of communication with many deaf-blind people is tactile signing, where an interpreter signs into the hands of the deaf-blind person.

- There is a small but relatively fast growing population of deaf immigrants or foreign-born deaf in The United States. Although many are learning English to some extent, their first language is typically their native spoken or sign language. ASL is culturally-specific to the American Deaf Community and not a universal language. It does not have any correlation to foreign sign languages, such as Mexican Sign Language. A foreign sign language interpreter who may himself be deaf, as well as translated written materials may be necessary for such individuals.

- Deaf people who are semi-lingual or a-lingual, are not fluent in *any* language, spoken or signed. Their education is typically minimal and their ability to communicate is very limited, either due to social isolation and poverty or to a developmental disability. There are interpreters who have expertise interpreting for these individuals, such as Certified Deaf Interpreters, but communication is basic and the interpreting process is necessarily consecutive, which is not the case when interpreting for individuals otherwise fluent in
American Sign Language. On rare occasions, it may be appropriate or necessary to use a family member who is familiar with the individual’s “home” signs or gesturing.

This information compiled by:

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Accommodations and technology information on deaf and hard of hearing issues in a Legal Setting

Attitudinal barriers are perhaps the most difficult barriers to overcome. From our experience, it is common to see a lack of awareness regarding the diversity and degrees of hearing loss; mistaken assumptions that lead to stereotypic opinions about intelligence and ability; seeing an individual who is deaf or hard of hearing as a burden and inconvenience to the court or lawyer. Attitudinal change is the key that will bring equal communication access to the legal setting for the deaf and hard of hearing. An informed staff and a willingness to make needed accommodations will ensure success.

A key step in the accommodation process is to inform individuals that accommodations can be provided and give them the opportunity to identify what type of accommodation they need in order to fully participate. The ADA requires that private businesses (such as lawyer's offices) and courts give "primary consideration" to the individual's choice of auxiliary aid or service. The law is clear that the private business or government agency has not fulfilled its ADA obligations until effective communication is provided. If both the lawyer and the individual with the hearing loss work together, meaningful and effective communication will be more readily achieved.

The different types of accommodations that can be utilized include:

1. **Sign language and oral interpreters:** A sign language interpreter is a skilled professional who should be qualified and fluent if interpreting in a less formalized setting (such as a consultation). If in a formal setting (such as a courtroom, deposition, or negotiation), serious consideration should be given to finding an interpreter who is trained and certified for legal interpretation. The interpreter simultaneously interprets the meaning of spoken words into sign language and from sign language into spoken English. Sign language interpreters are used by people who are deaf and whose first language is ASL.

   An oral interpreter is someone who silently "enunciates" the speaker's words and uses facial expressions, natural gestures and clear articulation to help people who speech read understand the proceedings. Oral interpreters might be needed by a person who depends on speech reading rather than sign language.

   [IN CALIFORNIA] Evidence Code Section 754 requires the use of court certified interpreters. When this is not possible, an interpreter that is functionally otherwise qualified should be used with the parties' documented consent. As recognized in Section 754, in some cases intermediary interpreters for foreign born or MLS deaf individuals may be necessary. Courts are increasing their use of intermediary interpreters, or Certified Deaf Interpreters (CDI's). CDI's are not certified for court interpreting and the Court should voir dire such an
interpreter regarding his or her qualifications and obtain the parties’ consent just as it should before using any non-court (or non-legal) certified interpreter. Other legal mandates for using interpreters, such as providing separate interpreters for open court communications and attorney-client communications, must also be followed. For cases where both parties are deaf, which happens more often in Family Court, three or more interpreters should be appointed and present, one to interpret for the court and the other two for each of the parties.

In appropriate cases, particularly when interpreters will be used for witnesses who are deaf, the legal parties should consider videotaping the proceedings in order to keep a complete record of the sign language interpreting.

**Video Remote Interpreting (VRI):** Video remote interpreting (VRI) is done through a computer with an internet connection, a webcam, and a telephone line. The deaf person stands in front of the computer (in sight of the webcam) and can be seen by the remote interpreter through the webcam over the internet connection. The remote interpreter appears on the computer screen, also being viewed through a webcam. The hearing staff person or lawyer speaks into the phone to the remote interpreter. The remote interpreter then interprets as an “in person” or “live” interpreter would: he or she translates the spoken words into sign, watches the reply in sign, and speaks the English translation of the ASL.

VRI has advantages and disadvantages to use. Because of the size of the screen (usually pretty small, and the newness of the video technology, there is not always a clear picture, good connection, or reasonable rate of speed so that communication is smooth and flowing. For some deaf clients, VRI may not provide effective communication, if the quality of picture or quality of interpretation is not high enough. For this reason, VRI is not guaranteed to meet the ADA’s “effective communications” standard for all circumstances. Communication is generally better, faster, and smoother with a live, or “in person” interpreter.

However, VRI can be less expensive in some cases than a live interpreter. If a lawyer or organization is coming across a situation where the undue burden of interpreting costs makes providing a live interpreter impossible, VRI can be used as a limited substitute, as it is usually better than attempting to communicate via pen and paper for ASL users.

The decision to whether or not to use VRI, or when to use VRI, will involve the same criteria as other decisions regarding effective communication. That is to say, effective communication is determined by each individual. If VRI is effective in a particular situation, and it is effective for the deaf client making the request, then the business has the right to choose VRI as its provided accommodation. However, if for any reason the VRI does not provide full and effective communication for the deaf client making the request, the business may only offer a substitute (non-effective) means of communication after the undue burden standard has been met.

2. **Computer Assisted Realtime Translation (CART):** CART is a system using a court reporter or CART specialist who uses a stenotype machine and specialized software together
with a computer to produce instant speech-to-text translation to a computer monitor or other display that enables an individual to read the transcript of the proceedings as it occurs. CART can be effective for individuals who are deaf or late-deafened and use speech to communicate, and for people who are hard of hearing. Although many CART transcribers are also used in the courtroom setting, the CART system is portable, and can be used in any setting, including a lawyer’s office. CART is an appropriate accommodation where the client’s hearing loss does not allow for them to fully understand spoken conversation, but they do not use ASL.

Providing CART is not the same as making the official record. Clarity and understanding of all courtroom communication for the deaf litigant, witness or juror is the goal of the CART provider. The CART provider will, for example, continue transcribing what is said whether it is on or off the record. The CART provider may also include other information, such as laughter, an alarm ringing, or anything that detracts attention from the proceedings.

The standards for CART reporters are designated by the National Court Reporters Association, NCRA. The certification of Registered Professional Reporter, RPR, is considered a prerequisite for qualified CART providers. Attainment of the Certified Real-time Reporter, CRR, is recommended.

3. **Assistive Listening Systems/Devices (ALS/ALD):** These are devices that transmit amplified speech by a variety of methods that differ in their transmission mode and installation. The following is a brief description of three assistive listening systems.

   (a) **Audio loop:** This is a permanently-installed wireless technology that can be used with certain types of hearing aids (those with a "T" switch) that allow a person who is hard of hearing to pick up the amplified sound that is created by the electromagnetic signal within this loop. That sound is sent through a cable (the “loop”), which is placed around the perimeter of the room.

   (b) **Wireless FM system:** This system requires the speaker to wear or hold a microphone and a transmitter unit that sends sound directly to the hard-of-hearing individual who wears a headset or a hearing aid with a "T" switch and wearing a receiver with either a neck loop or headphones.

   (c) **Infrared transmitter and receiver:** This system transmits audio signals via invisible light waves. The IR receiver contains a photo diode that detects the IR light wave and the audio signal is transmitted to the user wearing a headset or neck loop. Since light waves are contained within the boundaries of the room, there is less chance for interference and for that reason may be considered more effective. Bright, incandescent light may cause interference.
4. **Telecommunication Devices for the Deaf (TTYs/TDDs):** Sometimes called teletypewriters, these are special telephones with keyboards and LED displays used by people who are deaf and/or speech impaired.

Without a dedicated TTY line, TTY callers will need to rely on the California Relay Service (CRS), a "go-between" using the intervention of a third party operator who reads aloud what is typed by the deaf person and types what is being said by the hearing person. The prevalent reliance on automated menu systems for telephone access presents difficulties for relay users. To minimize problems, every menu system should provide an initial option to select an operator or other representative.

5. **Signal/hearing dogs:** Service dogs are usually associated with people who are blind or have a visual loss. However, many people who are deaf have "hearing dogs" that alert them to important auditory signals that most hearing people take for granted – a knock at the door, the buzz of a smoke alarm or fire detector. The ADA (and some state laws) require the businesses to allow them to accompany their deaf owners into the office, courthouse, and courtroom.

This information compiled by:

California Center for Law and the Deaf  
14895 E. 14th Street, Suite 220  
San Leandro, CA 94578  
(510) 483-0922 TTY/ Voice and (510) 483-0967 Fax  
E-mail: calclad@deaflaw.org  
www.deaflaw.org
To find out more about ADA or State disability law or legal obligations:

On Legal Issues Specific to the Deaf and Hard of Hearing:

1. The California Center for Law and the Deaf (CaICLAD): www.deaflaw.org
2. The National Association for the Deaf (NAD): www.nad.org
3. The Midwest Center on Law and the Deaf (MCLD): http://www.mcld.org

For Legal Information on Any Disability:

1. Disability Rights Legal Center (Los Angeles): http://www.disabilityrightslegalcenter.org/
   (some NDRN affiliates have only limited services, but many have very comprehensive services, such as the Arkansas Disability Rights Center: http://www.arkdisabilityrights.org/index.html)
   The US DOJ is the Federal Agency charged with enforcing the ADA. There home page has a large library of regulations, technical manuals, advisory guides, settlement agreements, links, and other helpful information. Additionally, you can always consult with a DOJ staff person free and confidentially on any questions pertaining to the ADA at the DOJ ADA Hotline, 1-800-514-0301.
For Assistance in Finding ASL Interpreters in your area:

- Registry of Interpreters for the Deaf (RID): www.rid.org

Almost all American Sign Language (ASL) interpreters are provided by private businesses (either through a professional agency, or through individual freelance interpreters). You can check your local directory for “interpreters”, “translators”, or “sign language”.

Some interpreters are provided (for a fee), through local non-profit social services organizations for the deaf and hard of hearing. Many states fund social services and advocacy agencies specifically for deaf and hard of hearing citizens. If you are looking for a state-funded or local non-profit social services agency, try contacting your state Health and Human Services Department for more information. These agencies are usually also hubs for the deaf and hard of hearing community. Some examples in California of non-profit advocacy organizations which are partially funded through HHS grants (as well as local grants, etc) are:

Deaf Counseling Advocacy and Referral Agency (DCARA): www.dcara.org

You can see what kinds of services and resources such organizations provide.

For Assistance finding CART (English based captioning) in your area:

- National Court Reporters Association (NCRA): www.ncraonline.org (To locate CART Reporters in your area: Click on ‘CART Interest Area’. Go to ‘Professional Services Locator’. To familiarize yourself with the professional skills required of CART providers, click on the ‘CART Provider’s Manual’.)

You can sometimes find CART through local interpreting agencies as well, as some businesses provide both.

You can also use Remote (over an internet connection) Captioning, using a computer with an internet connection and a phone (no webcam required for remote captioning). Here are four national businesses that contract for Remote Captioning Services:

- Accommodating Ideas, (800) 257-1783 : http://www.ai-ada.com/
- Captions Online (877) 322-7299 : http://www.captions-online.com/pages/1/index.htm
- Communications Access Network of America (843) 763-3890: http://www.caninterpreters.com/
For information on other kinds of accommodations and technology:

- 1. Hearing Loss Association (HLA) (Formerly known as Self-Help for Hard of Hearing People) a non-profit advocacy organization, with a lot of information on technology and Assistive listening devices:  www.shhh.org

For consultation on technology and best practices, again, consider your local non-profit advocacy agency or community group. They can provide information specific to the kind of disability you are being requested to accommodate.

Some Community Advocacy Groups for Other Disabilities:

- Lighthouse International for the Blind. (National group with chapters in most large cities):  http://www.lighthouse.org/
- Disability Rights Advocates. (National Advocacy and Expertise, located in California), all disabilities, including Mobility Issues, Visual Impairment, and Mental Health Issues: http://www.dralegal.org/about/index.php

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Checklist for Existing Facilities version 2.1

To obtain additional copies of this checklist, contact your Disability and Business Technical Assistance Center. To be automatically connected to your regional center, call 1-800-949-4ADA. This checklist may be copied as many times as desired by the Disability and Business Technical Assistance Centers for distribution to small businesses but may not be reproduced in whole or in part and sold by any other entity without written permission of Adaptive Environments, the author.

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Barrier Free Environments, Inc.

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Checklist for Existing Facilities version 2.1

Introduction

Title III of the Americans with Disabilities Act requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The goal is to afford every individual the opportunity to benefit from our country’s businesses and services, and to afford our businesses and services the opportunity to benefit from the patronage of all Americans.

The regulations require that architectural and communication barriers that are structural must be removed in public areas of existing facilities when their removal is readily achievable—in other words, easily accomplished and able to be carried out without much difficulty or expense. Public accommodations that must meet the barrier removal requirement include a broad range of establishments (both for-profit and nonprofit)—such as hotels, restaurants, theaters, museums, retail stores, private schools, banks, doctors’ offices, and other places that serve the public. People who own, lease, lease out, or operate places of public accommodation in existing buildings are responsible for complying with the barrier removal requirement.

The removal of barriers can often be achieved by making simple changes to the physical environment. However, the regulations do not define exactly how much effort and expense are required for a facility to meet its obligation. This judgment must be made on a case-by-case basis, taking into consideration such factors as the size, type, and overall financial resources of the facility, and the nature and cost of the access improvements needed. These factors are described in more detail in the ADA regulations issued by the Department of Justice.

The process of determining what changes are readily achievable is not a one-time effort; access should be re-evaluated annually. Barrier removal that might be difficult to carry out now may be readily achievable later. Tax incentives are available to help absorb costs over several years.

Purpose of This Checklist

This checklist will help you identify accessibility problems and solutions in existing facilities in order to meet your obligations under the ADA.

The goal of the survey process is to plan how to make an existing facility more usable for people with disabilities. The Department of Justice (DOJ) recommends the development of an Implementation Plan, specifying what improvements you will make to remove barriers and when each solution will be carried out: “...Such a plan...could serve as evidence of a good faith effort to comply....”

Technical Requirements

This checklist details some of the requirements found in the ADA Standards for Accessible Design (Standards). The ADA Accessibility Guidelines (ADAAG), when adopted by DOJ, became the Standards. The Standards are part of the Department of Justice Title III Regulations, 28 CFR Part 36 (Nondiscrimination on the basis of disability... Final Rule). Section 36.304 of this regulation, which covers barrier removal, should be reviewed before this survey is conducted.

However, keep in mind that full compliance with the Standards is required only for new construction and alterations. The requirements are presented here as a guide to help you determine what may be readily achievable barrier removal for existing facilities. The Standards should be followed for all barrier removal unless doing so is not readily achievable. If complying with the Standards is not readily achievable, you may undertake a modification that does not fully comply, as long as it poses no health or safety risk.

In addition to the technical specifications, each item has a scoping provision, which can be found under Section 4.1 in the Standards. This section clarifies when access is required and what the exceptions may be.

Each state has its own regulations regarding accessibility. To ensure compliance with all codes, know your state and local codes and use the more stringent technical requirement for every modification you make; that is, the requirement that provides greater access for individuals with disabilities. The barrier removal requirement for existing facilities is new under the ADA and supersedes less stringent local or state codes.
What This Checklist is Not

This checklist does not cover all of the requirements of the Standards; therefore, it is not for facilities undergoing new construction or alterations. In addition, it does not attempt to illustrate all possible barriers or propose all possible barrier removal solutions. The Standards should be consulted for guidance in situations not covered here.

The Title III regulation covers more than barrier removal, but this checklist does not cover Title III’s requirements for nondiscriminatory policies and practices and for the provision of auxiliary communication aids and services. The communication features covered are those that are structural in nature.

Priorities

This checklist is based on the four priorities recommended by the Title III regulations for planning readily achievable barrier removal projects:

**Priority 1:** Accessible approach and entrance
**Priority 2:** Access to goods and services
**Priority 3:** Access to rest rooms
**Priority 4:** Any other measures necessary

Note that the references to ADAAG throughout the checklist refer to the Standards for Accessible Design.

How to Use This Checklist

- Get Organized: Establish a time frame for completing the survey. Determine how many copies of the checklist you will need to survey the whole facility. Decide who will conduct the survey. It is strongly recommended that you invite two or three additional people, including people with various disabilities and accessibility expertise, to assist in identifying barriers, developing solutions for removing these barriers, and setting priorities for implementing improvements.

- Obtain Floor Plans: It is very helpful to have the building floor plans with you while you survey. If plans are not available, use graph paper to sketch the layout of all interior and exterior spaces used by your organization. Make notes on the sketch or plan while you are surveying.

- Conduct the Survey: Bring copies of this checklist, a clipboard, a pencil or pen, and a flexible steel tape measure. With three people surveying, one person numbers key items on the floor plan to match with the field notes, taken by a second person, while the third takes measurements. Be sure to record all dimensions! As a reminder, questions that require a dimension to be measured and recorded are marked with the ruler symbol. Think about each space from the perspective of people with physical, hearing, visual, and cognitive disabilities, noting areas that need improvement.

- Summarize Barriers and Solutions: List barriers found and ideas for their removal. Consider the solutions listed beside each question, and add your own ideas. Consult with building contractors and equipment suppliers to estimate the costs for making the proposed modifications.

- Make Decisions and Set Priorities: Review the summary with decision makers and advisors. Decide which solutions will best eliminate barriers at a reasonable cost. Prioritize the items you decide upon and make a timeline for carrying them out. Where the removal of barriers is not readily achievable, you must consider whether there are alternative methods for providing access that are readily achievable.


- Make Changes: Implement changes as planned. Always refer directly to the Standards and your state and local codes for complete technical requirements before making any access improvement. References to the applicable sections of the Standards are listed at the beginning of each group of questions. If you need help understanding the federal, state, or local requirements, contact your Disability and Business Technical Assistance Center.

- Follow Up: Review your Implementation Plan each year to re-evaluate whether more improvements have become readily achievable.

To obtain a copy of the Title III regulations and the Standards or other technical information, call the U.S. Dept. of Justice ADA Information Line at (800) 514-0301 Voice, (202) 514-0381 TDD, or (800) 514-0383 TDD. For questions about ADAAG, contact the Architectural and Transportation Barriers Compliance Board at (800) USA-ABLE.
### QUESTIONS

**Priority**

**1. Accessible Approach/Entrance**

People with disabilities should be able to arrive on the site, approach the building, and enter as freely as everyone else. At least one route of travel should be safe and accessible for everyone, including people with disabilities.

**Route of Travel (ADAAG 4.3, 4.4, 4.5, 4.7)**

- Is there a route of travel that does not require the use of stairs?
- Is the route of travel stable, firm and slip-resistant?
- Is the route at least 36 inches wide?
- Can all objects protruding into the circulation paths be detected by a person with a visual disability using a cane?

**Ramps (ADAAG 4.8)**

- Are the slopes of ramps no greater than 1:12?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**POSSIBLE SOLUTIONS**

- Add a ramp if the route of travel is interrupted by stairs.
- Add an alternative route on level ground.
- Repair uneven paving.
- Fill small bumps and breaks with beveled patches.
- Replace gravel with hard top.
- Change or move landscaping, furnishings, or other features that narrow the route of travel.
- Widen route.
- Move or remove protruding objects.
- Add a cane-detectable base that extends to the ground.
- Place a cane-detectable object on the ground underneath as a warning barrier.
- Install curb cut.
- Add small ramp up to curb.
- Lengthen ramp to decrease slope.
- Relocate ramp.
- If available space is limited, reconfigure ramp to include switchbacks.

---

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### Questions Possible Solutions

<table>
<thead>
<tr>
<th>Ramps, continued</th>
<th>Yes No</th>
<th>Possible Solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do all ramps longer than 6 feet have railings on both sides?</td>
<td></td>
<td>□ Add railings.</td>
</tr>
<tr>
<td>Are railings sturdy, and between 34 and 38 inches high?</td>
<td></td>
<td>□ Adjust height of railing if not between 30 and 38 inches.</td>
</tr>
<tr>
<td>Is the width between railings or curbs at least 36 inches?</td>
<td></td>
<td>□ Secure handrails in fixtures.</td>
</tr>
<tr>
<td>Are ramps non-slip?</td>
<td></td>
<td>□ Relocate the railings.</td>
</tr>
<tr>
<td>Is there a 5-foot-long level landing at every 30-foot horizontal length of ramp, at the top and bottom of ramps and at switchbacks?</td>
<td></td>
<td>□ Widen the ramp.</td>
</tr>
<tr>
<td>Does the ramp rise no more than 30 inches between landings?</td>
<td></td>
<td>□ Add non-slip surface material.</td>
</tr>
</tbody>
</table>

**Parking and Drop-Off Areas (ADAAG 4.6)**

Are an adequate number of accessible parking spaces available (8 feet wide for car plus 5-foot access aisle)? For guidance in determining the appropriate number to designate, the table below gives the ADAAG requirements for new construction and alterations (for lots with more than 100 spaces, refer to ADAAG):

<table>
<thead>
<tr>
<th>Total spaces</th>
<th>Accessible spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 25</td>
<td>1 space</td>
</tr>
<tr>
<td>26 to 50</td>
<td>2 spaces</td>
</tr>
<tr>
<td>51 to 75</td>
<td>3 spaces</td>
</tr>
<tr>
<td>76 to 100</td>
<td>4 spaces</td>
</tr>
</tbody>
</table>

Are 8-foot-wide spaces, with minimum 8-foot-wide access aisles, and 98 inches of vertical clearance, available for lift-equipped vans?

At least one of every 8 accessible spaces must be van-accessible (with a minimum of one van-accessible space in all cases).

- □ Reconfigure a reasonable number of spaces by repainting stripes.
- □ Reconfigure to provide van-accessible space(s).
<table>
<thead>
<tr>
<th>QUESTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parking and Drop-Off Areas, continued</strong></td>
</tr>
<tr>
<td>Are the access aisles part of the accessible route to the accessible entrance?</td>
</tr>
<tr>
<td>Are the accessible spaces closest to the accessible entrance?</td>
</tr>
<tr>
<td>Are accessible spaces marked with the International Symbol of Accessibility? Are there signs reading “Van Accessible” at van spaces?</td>
</tr>
<tr>
<td>Is there an enforcement procedure to ensure that accessible parking is used only by those who need it?</td>
</tr>
<tr>
<td><strong>Entrance (ADAAG4.13, 4.14, 4.5)</strong></td>
</tr>
<tr>
<td>If there are stairs at the main entrance, is there also a ramp or lift, or is there an alternative accessible entrance?</td>
</tr>
<tr>
<td>Do not use a service entrance as the accessible entrance unless there is no other option.</td>
</tr>
<tr>
<td>Does the entrance door have at least 32 inches clear opening (for a double door, at least one 32-inch leaf)?</td>
</tr>
<tr>
<td>Is there at least 18 inches of clear wall space on the pull side of the door, next to the handle?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>POSSIBLE SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Add curb ramps.</td>
</tr>
<tr>
<td>□ Reconstruct sidewalk.</td>
</tr>
<tr>
<td>□ Reconfigure spaces.</td>
</tr>
<tr>
<td>□ Add signs, placed so that they are not obstructed by cars.</td>
</tr>
<tr>
<td>□ Implement a policy to check periodically for violators and report them to the proper authorities.</td>
</tr>
<tr>
<td>□ If it is not possible to make the main entrance accessible, create a dignified alternate accessible entrance. If parking is provided, make sure there is accessible parking near all accessible entrances.</td>
</tr>
<tr>
<td>□ Install signs before inaccessible entrances so that people do not have to retrace the approach.</td>
</tr>
<tr>
<td>□ Eliminate as much as possible the need for assistance—to answer a doorbell, to operate a lift, or to put down a temporary ramp, for example.</td>
</tr>
<tr>
<td>□ Widen the door to 32 inches clear.</td>
</tr>
<tr>
<td>□ If technically infeasible, widen to 31-3/8 inches minimum.</td>
</tr>
<tr>
<td>□ Install offset (swing-clear) hinges.</td>
</tr>
<tr>
<td>□ Remove or relocate furnishings, partitions, or other obstructions.</td>
</tr>
<tr>
<td>□ Move door.</td>
</tr>
<tr>
<td>□ Add power-assisted or automatic door opener.</td>
</tr>
</tbody>
</table>

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### Questions

<table>
<thead>
<tr>
<th>Entrance, continued</th>
<th>Possible Solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the threshold edge 1/4-inch high or less, or if beveled edge, no more than 3/4-inch high?</td>
<td>Yes No</td>
</tr>
<tr>
<td>If provided, are carpeting or mats a maximum of 1/2-inch high?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Are edges securely installed to minimize tripping hazards?</td>
<td></td>
</tr>
<tr>
<td>Is the door handle no higher than 48 inches and operable with a closed fist?</td>
<td>Yes No</td>
</tr>
<tr>
<td>The “closed fist” test for handles and controls: Try opening the door or operating the control using only one hand, held in a fist. If you can do it, so can a person who has limited use of his or her hands.</td>
<td>□ □ □</td>
</tr>
<tr>
<td>Can doors be opened without too much force (exterior doors reserved; maximum is 5 lbf for interior doors)?</td>
<td>Yes No</td>
</tr>
<tr>
<td>You can use an inexpensive force meter or a fish scale to measure the force required to open a door. Attach the hook end to the doorknob or handle. Pull on the ring end until the door opens, and read off the amount of force required. If you do not have a force meter or a fish scale, you will need to judge subjectively whether the door is easy enough to open.</td>
<td>□ □</td>
</tr>
<tr>
<td>If the door has a closer, does it take at least 3 seconds to close?</td>
<td>Yes No</td>
</tr>
</tbody>
</table>

- If there is a single step with a rise of 6 inches or less, add a short ramp.
- If there is a threshold greater than 3/4-inch high, remove it or modify it to be a ramp.
- Replace or remove mats.
- Secure carpeting or mats at edges.
- Lower handle.
- Replace inaccessible knob with a lever or loop handle.
- Retrofit with an add-on lever extension.
- Adjust the door closers and oil the hinges.
- Install power-assisted or automatic door openers.
- Install lighter doors.
- Adjust door closer.
### QUESTIONS

<table>
<thead>
<tr>
<th>Priority</th>
<th>Access to Goods and Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ideally, the layout of the building should allow people with disabilities to obtain materials or services without assistance.</td>
</tr>
</tbody>
</table>

#### Horizontal Circulation (ADAAG4.3)

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the accessible entrance provide direct access to the main floor, lobby, or elevator?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Are all public spaces on an accessible route of travel?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Is the accessible route to all public spaces at least 36 inches wide?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Is there a 5-foot circle or a T-shaped space for a person using a wheelchair to reverse direction?</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

#### Doors (ADAAG4.13)

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do doors into public spaces have at least a 32-inch clear opening?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>On the pull side of doors, next to the handle, is there at least 18 inches of clear wall space so that a person using a wheelchair or crutches can get near to open the door?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Can doors be opened without too much force (5 lbf maximum for interior doors)?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Are door handles 48 inches high or less and operable with a closed fist?</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Are all threshold edges 1/4-inch high or less, or if beveled edge, no more than 3/4-inch high?</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

#### Possible Solutions

- Add ramps or lifts.
- Make another entrance accessible.
- Provide access to all public spaces along an accessible route of travel.
- Move furnishings such as tables, chairs, display racks, vending machines, and counters to make more room.
- Rearrange furnishings, displays, and equipment.
- Install offset (swing-clear) hinges.
- Widen doors.
- Reverse the door swing if it is safe to do so.
- Move or remove obstructing partitions.
- Adjust or replace closers.
- Install lighter doors.
- Install power-assisted or automatic door openers.
- Lower handles.
- Replace inaccessible knobs or latches with lever or loop handles.
- Retrofit with add-on levers.
- Install power-assisted or automatic door openers.
- If there is a threshold greater than 3/4-inch high, remove it or modify it to be a ramp.
- If between 1/4- and 3/4-inch high, add bevels to both sides.
### QUESTIONS

<table>
<thead>
<tr>
<th>Rooms and Spaces (ADAAG 4.2, 4.4, 4.5)</th>
<th>Yes</th>
<th>No</th>
<th>POSSIBLE SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are all aisles and pathways to materials and services at least 36 inches wide?</td>
<td>☐</td>
<td>☐</td>
<td>□ Rearrange furnishings and fixtures to clear aisles.</td>
</tr>
<tr>
<td>Is there a 5-foot circle or T-shaped space for turning a wheelchair completely?</td>
<td>☐</td>
<td>☐</td>
<td>□ Rearrange furnishings to clear more room.</td>
</tr>
<tr>
<td>Is carpeting low-pile, tightly woven, and securely attached along edges?</td>
<td>☐</td>
<td>☐</td>
<td>□ Secure edges on all sides. □ Replace carpeting.</td>
</tr>
<tr>
<td>In circulation paths through public areas, are all obstacles cane-detectable (located within 27 inches of the floor or higher than 80 inches, or protruding less than 4 inches from the wall)?</td>
<td>☐</td>
<td>☐</td>
<td>□ Remove obstacles. □ Install furnishings, planters, or other cane-detectable barriers underneath.</td>
</tr>
</tbody>
</table>

### Emergency Egress (ADAAG 4.28)

If emergency systems are provided, do they have both flashing lights and audible signals?

- Yes ☐ No ☐

- □ Install visible and audible alarms. □ Provide portable devices.

### Signage for Goods and Services (ADAAG 4.30)

Different requirements apply to different types of signs.

If provided, do signs and room numbers designating permanent rooms and spaces where goods and services are provided comply with the appropriate requirements for such signage?

- Yes ☐ No ☐

- □ Provide signs that have raised letters. Grade II Braille, and that meet all other requirements for permanent room or space signage. (See ADAAG 4.1.3(16) and 4.30.)

- Signs mounted with centerline 60 inches from floor. ☐ ☐

- □ Mounted on wall adjacent to latch side of door, or as close as possible.

- □ Raised characters, sized between 5/8 and 2 inches high, with high contrast (for room numbers, rest rooms, exits).

- □ Brailled text of the same information. ☐ ☐

- If pictogram is used, it must be accompanied by raised characters and braille. ☐ ☐

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<table>
<thead>
<tr>
<th>QUESTIONS</th>
<th>POSSIBLE SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Directional and Informational Signage</strong>&lt;br&gt;The following questions apply to directional and informational signs that fall under Priority 2.</td>
<td><strong>Yes No</strong></td>
</tr>
<tr>
<td>If mounted above 80 inches, do they have letters at least 3 inches high, with high contrast, and non-glare finish?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Do directional and informational signs comply with legibility requirements? (Building directories or temporary signs need not comply.)</td>
<td>Yes No</td>
</tr>
<tr>
<td><strong>Controls</strong> (ADAAG4.27)&lt;br&gt;Are all controls that are available for use by the public (including electrical, mechanical, cabinet, game, and self-service controls) located at an accessible height?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Reach ranges: The maximum height for a side reach is 54 inches; for a forward reach, 48 inches. The minimum reachable height is 15 inches for a front approach and 9 inches for a side approach.</td>
<td>Yes No</td>
</tr>
<tr>
<td>Are they operable with a closed fist?</td>
<td>Yes No</td>
</tr>
<tr>
<td><strong>Seats, Tables, and Counters</strong> (ADAAG4.2,4.32,7.2)&lt;br&gt;Are the aisles between fixed seating (other than assembly area seating) at least 36 inches wide?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Are the spaces for wheelchair seating distributed throughout?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Are the tops of tables or counters between 28 and 34 inches high?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Are knee spaces at accessible tables at least 27 inches high, 30 inches wide, and 19 inches deep?</td>
<td>Yes No</td>
</tr>
<tr>
<td>QUESTIONS</td>
<td>YES</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Seats, Tables, and Counters, continued</td>
<td></td>
</tr>
<tr>
<td>At each type of cashier counter, is there a portion of the main counter</td>
<td></td>
</tr>
<tr>
<td>that is no more than 36 inches high?</td>
<td></td>
</tr>
<tr>
<td>Is there a portion of food-ordering counters</td>
<td></td>
</tr>
<tr>
<td>that is no more than 36 inches high; or is there space at the side for</td>
<td></td>
</tr>
<tr>
<td>passing items to customers who have difficulty reaching over a high</td>
<td></td>
</tr>
<tr>
<td>counter?</td>
<td></td>
</tr>
<tr>
<td>Vertical Circulation (ADAAG4.1.3(5), 4.3)</td>
<td></td>
</tr>
<tr>
<td>Are there ramps, lifts, or elevators to all public levels?</td>
<td></td>
</tr>
<tr>
<td>On each level, if there are stairs between the entrance and/or elevator</td>
<td></td>
</tr>
<tr>
<td>and essential public areas, is there an accessible alternate route?</td>
<td></td>
</tr>
<tr>
<td>Stairs (ADAAG4.9)</td>
<td></td>
</tr>
<tr>
<td>The following questions apply to stairs connecting levels not serviced</td>
<td></td>
</tr>
<tr>
<td>by an elevator, ramp, or lift.</td>
<td></td>
</tr>
<tr>
<td>Do treads have a non-slip surface?</td>
<td></td>
</tr>
<tr>
<td>Do stairs have continuous rails on both sides, with extensions beyond the</td>
<td></td>
</tr>
<tr>
<td>top and bottom stairs?</td>
<td></td>
</tr>
<tr>
<td>Elevators (ADAAG4.10)</td>
<td></td>
</tr>
<tr>
<td>Are there both visible and verbal or audible door opening/closing and</td>
<td></td>
</tr>
<tr>
<td>floor indicators (one tone = up, two tones = down)?</td>
<td></td>
</tr>
<tr>
<td>Are the call buttons in the hallway no higher than 42 inches?</td>
<td></td>
</tr>
<tr>
<td>Do the controls inside the cab have raised and braille lettering?</td>
<td></td>
</tr>
</tbody>
</table>

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## QUESTIONS

**Elevators, continued**

- Is there a sign on both door jambs at every floor identifying the floor in raised and braille letters?  
  - Yes No  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Install tactile signs to identify floor numbers, at a height of 60 inches from floor.
  - Modify communication system.
  - Add tactile identification.

- If an emergency intercom is provided, is it usable without voice communication?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - At each stopping level, post clear instructions for use of the lift.
  - Provide a call button.
  - Rearrange furnishings and equipment to clear more space.

- Is the emergency intercom identified by braille and raised letters?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Move controls.

## Lifts (ADAAG 4.2.4.11)

- Can the lift be used without assistance? If not, is a call button provided?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Provide a call button.

- Is there at least 30 by 48 inches of clear space for a person in a wheelchair to approach to reach the controls and use the lift?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Rearrange furnishings and equipment to clear more space.

- Are controls between 15 and 48 inches high (up to 54 inches if a side approach is possible)?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Move controls.

### Usability of Rest Rooms

When rest rooms are open to the public, they should be accessible to people with disabilities.

**Getting to the Rest Rooms (ADAAG 4.1)**

- If rest rooms are available to the public, is at least one rest room (either one for each sex, or unisex) fully accessible?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Reconfigure rest room.
  - Combine rest rooms to create one unisex accessible rest room.
  - Install accessible signs.

- Are there signs at inaccessible rest rooms that give directions to accessible ones?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Install accessible signs.

**Doorways and Passages (ADAAG 4.2.4.13.4.30)**

- Is there tactile signage identifying rest rooms?  
  - ![ ] ![ ]  
  - **Possible Solutions**  
  - Add accessible signage, placed to the side of the door, 60 inches to centerline (not on the door itself).

- Mount signs on the wall, on the latch side of the door, complying with the requirements for permanent signage.
<table>
<thead>
<tr>
<th>QUESTIONS</th>
<th>POSSIBLE SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Doorways and Passages, continued</strong></td>
<td><strong>Yes</strong></td>
</tr>
<tr>
<td>Are pictograms or symbols used to identify rest rooms, and, if used, are raised characters and braille included below them?</td>
<td></td>
</tr>
<tr>
<td>Is the doorway at least 32 inches clear?</td>
<td></td>
</tr>
<tr>
<td>Are doors equipped with accessible handles (operable with a closed fist), 48 inches high or less?</td>
<td></td>
</tr>
<tr>
<td>Can doors be opened easily (5 lbf maximum force)?</td>
<td></td>
</tr>
<tr>
<td>Does the entry configuration provide adequate maneuvering space for a person using a wheelchair?</td>
<td></td>
</tr>
<tr>
<td>A person in a wheelchair needs 36 inches of clear width for forward movement, and a 5-foot diameter or T-shaped clear space to make turns. A minimum distance of 48 inches clear of the door swing is needed between the two doors of an entry vestibule.</td>
<td></td>
</tr>
<tr>
<td>Is there a 36-inch-wide path to all fixtures?</td>
<td></td>
</tr>
<tr>
<td><strong>Stalls (ADAAG 4.17)</strong></td>
<td><strong>Yes</strong></td>
</tr>
<tr>
<td>Is the stall door operable with a closed fist, inside and out?</td>
<td></td>
</tr>
<tr>
<td>Is there a wheelchair-accessible stall that has an area of at least 5 feet by 5 feet, clear of the door swing. OR is there a stall that is less accessible but that provides greater access than a typical stall (either 36 by 69 inches or 48 by 69 inches)?</td>
<td></td>
</tr>
</tbody>
</table>

☐ If symbols are used, add supplementary verbal signage with raised characters and braille below pictogram symbol.

☐ Install offset (swing-clear) hinges.

☐ Widen the doorway.

☐ Lower handles.

☐ Replace knobs or latches with lever or loop handles.

☐ Add lever extensions.

☐ Install power-assisted or automatic door openers.

☐ Adjust or replace closers.

☐ Install lighter doors.

☐ Install power-assisted or automatic door openers.

☐ Rearrange furnishings such as chairs and trash cans.

☐ Remove inner door if there is a vestibule with two doors.

☐ Move or remove obstructing partitions.

☐ Remove obstructions.

☐ Replace inaccessible knobs with lever or loop handles.

☐ Add lever extensions.

☐ Move or remove partitions.

☐ Reverse the door swing if it is safe to do so.

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### QUESTIONS

**Stalls, continued**  
In the accessible stall, are there grab bars behind and on the side wall nearest to the toilet?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Add grab bars.

Is the toilet seat 17 to 19 inches high?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Add raised seat.

### Lavatories (ADAAG 4.19, 4.24)

Does one lavatory have a 30-inch-wide by 48-inch-deep clear space in front?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Rearrange furnishings.
  - Replace lavatory.
  - Remove or alter cabinetry to provide space underneath.
  - Make sure hot pipes are covered.
  - Move a partition or wall.

A maximum of 19 inches of the required depth may be under the lavatory.  
- **Possible Solutions**  
  - Add grab bars.
  - Add raised seat.

Is the lavatory rim no higher than 34 inches?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Adjust or replace lavatory.

Is there at least 29 inches from the floor to the bottom of the lavatory apron (excluding pipes)?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Adjust or replace lavatory.

Can the faucet be operated with one closed fist?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Replace with paddle handles.
  - Lower dispensers.
  - Replace with or provide additional accessible dispensers.

Are soap and other dispensers and hand dryers within reach ranges (see page 7) and usable with one closed fist?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Lower or tilt down the mirror.
  - Add a larger mirror anywhere in the room.

Is the mirror mounted with the bottom edge of the reflecting surface 40 inches high or lower?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Lower or tilt down the mirror.
  - Add a larger mirror anywhere in the room.

### Priority 4: Additional Access

*Note that this priority is for items not required for basic access in the first three priorities.*

When amenities such as drinking fountains and public telephones are provided, they should also be accessible to people with disabilities.

### Drinking Fountains (ADAAG 4.15)

Is there at least one fountain with clear floor space of at least 30 by 48 inches in front?  
- [ ] Yes  
- [ ] No  
- **Possible Solutions**  
  - Clear more room by rearranging or removing furnishings.

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### QUESTIONS POSSIBLE SOLUTIONS

#### Drinking Fountains, continued

**Is there one fountain with its spout no higher than 36 inches from the ground, and another with a standard height spout (or a single “hi-lo" fountain)?**

- **Yes** No

  - □ Provide cup dispensers for fountains with spouts that are too high.
  - □ Provide accessible cooler.

- □ Replace the controls.

- □ Place a planter or other cane-detectable barrier on each side at floor level.

**Are controls mounted on the front or on the side near the front edge, and operable with one closed fist?**

- □

**Is each water fountain cane-detectable (located within 27 inches of the floor or protruding into the circulation space less than 4 inches from the wall)?**

- □

#### Telephones (ADAAG 4.31)

**If pay or public use phones are provided, is there clear floor space of at least 30 by 48 inches in front of at least one?**

- □

**Is the highest operable part of the phone no higher than 48 inches (up to 54 inches if a side approach is possible)?**

- □

**Does the phone protrude no more than 4 inches into the circulation space?**

- □

**Does the phone have push-button controls?**

- □

**Is the phone hearing-aid compatible?**

- □

**Is the phone adapted with volume control?**

- □

**Is the phone with volume control identified with appropriate signage?**

- □

**If there are four or more public phones in the building, is one of the phones equipped with a text telephone (TT or TDD)?**

- □

**Is the location of the text telephone identified by accessible signage bearing the International TDD Symbol?**

- □
Attached is an article that was submitted for publication in the Cleveland Bar Journal by Sindy Warren which addresses ADA requirements for small businesses, including small law firms and solo practitioners.

In a nutshell, there are 2 instances when a small business does not have to provide an accommodation:

1. If it fundamentally alters the service; or
2. If it places an undue burden on the provider.

In discussing these exceptions with a representative from the ADA, neither of these scenarios applies to lawyers in providing interpreters to clients. However, the presence of an interpreter would not be necessary for simple matters (e.g. dropping off documents) but an interpreter is absolutely required for complex communications (consultations, court appearances).

A lawyer can "shop around" for a cheaper interpreter even if the client prefers a higher priced translator. There are tax incentives for providing this service but lawyers would need to consult with an accountant.

More information is available at [www.ada.gov/smbus.txt.htm](http://www.ada.gov/smbus.txt.htm) or lawyers can call the ADA hotline at 1-800-514-0301 to speak with a specialist.

Specific questions about the cost benefits of the video relay method would need to be directed to the agencies that provide this service.
Title III of the ADA: Are You In Compliance?

Many lawyers do not know that Title III of the Americans with Disabilities Act applies to them. Even solo practitioners must comply with Title III's requirements for "places of public accommodation." This article provides an overview of Title III, so that attorneys who may not even be aware of the law's applicability to them can ensure that they are in compliance.

Title III of the ADA requires public accommodations to provide goods and services to individuals with disabilities on an equal basis with the rest of the general public. It is intended to afford all individuals the opportunity to benefit from this country's businesses and services. To effectuate this goal of inclusion, Title III contains specific requirements for "public accommodations," which are broadly defined to include over five million private establishments, regardless of size and of profit or non-profit status. Large law firms, small firms, and even solo practitioners are subject to Title III's provisions. Title III also sets forth requirements for "commercial facilities," which are nonresidential facilities such as office buildings, factories, and warehouses, whose operations affect commerce. Commercial facilities are only subject to requirements for new construction and alterations.

An individual with a disability is someone who (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. The definition of an individual with a disability under Title III is the same as that under Title I of the ADA, which prohibits discrimination in employment. Like Title I, Title III also prohibits public accommodations from discriminating against an individual on the basis of his or her association with an individual with a disability. The regulations provide the following non-exhaustive list of examples of physical or mental impairments: orthopedic, visual, speech, and hearing impairments; cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, mental retardation, emotional illness, HIV disease, drug addiction, and alcoholism. Title III defines "major life activity" to include such activities as caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, speaking, learning, and working. Temporary impairments can also be covered by Title III, though the determination of whether a particular impairment is covered will be decided on a case-by-case basis.

The Technical Assistance Manual defines a person who has a "record of a physical or mental impairment" as falling into one of two categories. First, this prong of the definition protects individuals with a history of a substantially limiting impairment, but who have recovered. Second, persons who have been misclassified as having an impairment are also protected. This would include someone who has been erroneously diagnosed as mentally ill.
With respect to the "regarded as" prong of the definition, the Manual describes three typical situations. First, Title III protection extends to an individual who has an impairment that does not substantially limit a major life activity, but who is treated as if the impairment is substantially limiting. For example, if an individual with a mild case of diabetes is barred from participation in sports by the staff of a private camp, she would be protected. Second, Title III protects an individual who has an impairment that substantially limits a major life activity only due to the attitudes of others towards the impairment. For example, if an individual with severe facial disfigurement is rejected from a day care program on the grounds that the disfigurement would upset other children, she would be protected. Third, Title III protects an individual who has no impairment but who is treated as if she does. This category would apply, for example, to an individual who is rumored to have HIV, but does not.

One of Title III's primary requirements for public accommodations is the removal of architectural and communication barriers that are structural in nature, when it is readily achievable to do so. Obvious examples of architectural barriers include steps and curbs, which can block access for individuals in wheelchairs. In addition, telephones, drinking fountains, and paper towel dispensers that are mounted too high for individuals in wheelchairs to reach are architectural barriers. Conventional doorknobs may impede access by people with limited manual dexterity. Impediments caused by the location of movable structures, such as furniture or equipment, are also considered architectural barriers. Even an ornamental plant in an elevator lobby can impede access, if it blocks the approach to the elevator call buttons. Examples of communication barriers that are structural in nature include signs, which are inaccessible to people with vision impairments, and audible alarm systems, which are inaccessible to people with hearing impairments. Possible solutions to these communication barriers are signs that have raised letters or Braille, and the installation of visual as well as audio alarms.

Public accommodations are only required to remove structural barriers when it is "readily achievable" to do so. In other words, the changes must be easily accomplished and able to be carried out without much difficulty or expense. The determination of whether barrier removal is readily achievable is made on a case-by-case basis, and considers factors such as the cost of the action and the overall financial resources of the site involved, or of the parent entity involved. The regulations contain a list of examples of modifications that may be readily achievable, including installing ramps, making curb cuts in sidewalks, repositioning shelves, adding raised marking on elevator control buttons, installing flashing alarm lights, installing grab bars in toilet stalls, and creating designated accessible parking spaces. The obligation to engage in readily achievable barrier removal is a continuing one. Over time, changes that were once not readily achievable may become so, due to changed circumstances (such as increased profitability).
Because public accommodations may not have the resources to remove all barriers simultaneously, the regulations recommend four priorities for planning readily achievable barrier removal. A public accommodation's first priority should be to enable individuals to enter its facility (for example, via accessible sidewalks). The next priority is for access to goods and services within the facility (for example, by providing access to conference rooms in a law firm). The third priority should be providing access to restrooms, if restrooms are provided for use by others. The last priority is to remove any remaining barriers by, for example, lowering telephones. Public accommodations may not charge individuals with disabilities higher fees for goods or services to compensate for the extra cost of barrier removal.

Title III provides that where barrier removal is not readily achievable, public accommodations must take alternative steps to make goods and services accessible. For example, if a retail store determines that it is not readily achievable to rearrange display racks to make every aisle accessible, it could instruct a clerk to retrieve inaccessible merchandise for individuals with disabilities. Or, if a pharmacy determines that it is not readily achievable to provide a ramp to an entrance, it could offer curbside or home delivery. However, a public accommodation may not charge customers for special services that are alternatives to barrier removal. Thus, an attorney who determines that it is not readily achievable to make her office accessible could make a "house call" as an alternative, but could not charge her client for the travel time to the client's home.

Another of Title III's principal requirements is the provision of auxiliary aids and services to individuals with disabilities. The purpose of auxiliary aids and services is to ensure effective communication. Thus, the particular aid required will depend on the nature of the communication. For example, a deaf individual who is shopping for film at a camera store might only require the exchange of handwritten notes with an employee. If that same individual visits an attorney to discuss a complex legal matter, he would likely require the help of a qualified interpreter. Regardless of the aid or service provided, though, the public accommodation may not charge the individual with a disability for the costs associated with the aid or service. Thus, the attorney must provide the services of a qualified interpreter free of charge.

Additional examples of auxiliary aids include note takers, telephone handset amplifiers, open and closed captioning, telecommunications devices for deaf persons (TDD), Braille materials, qualified readers, and large print materials. Public accommodations are not required to provide individuals with disabilities with personal devices, such as wheelchairs, and also are not required to provide services that are personal in nature, such as assistance in eating or dressing.
In addition to the above requirements, public accommodations must comply with Title III requirements regarding new construction and alterations. These requirements also apply to commercial facilities (and, in fact, are the only requirements pertaining to commercial facilities). All newly constructed places of public accommodation and commercial facilities must be readily accessible and usable to the extent that it is not structurally impractical. "Readily accessible and usable" means that facilities must be built in strict compliance with the ADA Accessibility Guidelines (ADAAG), regardless of cost. Alterations include remodeling and rearrangements in structural parts. For example, the installation of new flooring in an office is an alteration, as it can affect whether an individual in a wheelchair can travel in the office. Normal maintenance, painting, and changes to electrical systems are not "alterations" unless they affect usability.

As this article demonstrates, Title III of the ADA is a highly detailed statute containing specific requirements for places of public accommodation. For specific questions about Title III’s requirements, visit the ADA Home Page, at www.ada.gov, or call the ADA hotline at 1.800.514.0301.
Memo

To: All LRS Panelists
From: Alex Macdonald
CC: David B. Gallup, Chair
Date: 07/10/2006
Re: Memo Regarding ADA Requirements for Attorneys

Title III of the Americans with Disabilities Act (ADA) requirements for small businesses applies to attorneys, including small law firms and solo practitioners. Title III requires businesses to provide goods and services to people with disabilities on an equal basis with the rest of the general public. To ensure equal access, attorneys must take affirmative steps to remove barriers to their services when it is “readily achievable” to do so.

In addition to the removal of architectural barriers, attorneys must also provide auxiliary aids and services to individuals with disabilities to remove barriers to effective communication. The attorney may not charge disabled individuals higher fees to compensate for the costs of such aids and services.

Although there are costs associated with barrier removal or alternative steps to making services accessible, refusing a potential client because of those costs would constitute discrimination on the basis of handicap and a potential violation of the ADA.

The ADA’s requirement that attorneys take “readily achievable” measures to accommodate disabled individuals includes for example the provision of interpreters for hearing-impaired clients or house calls with no extra charge to mobility-impaired clients. There are two instances when a small business does not have to provide an accommodation:

1. If it fundamentally alters the service; or
2. If it places an undue burden on the provider.

In discussing these exceptions with a representative from the ADA, neither of these scenarios applies to lawyers in providing interpreters to clients. The presence of an interpreter would not be necessary for simple matters (e.g. dropping off documents), but an interpreter is absolutely required for complex communications (consultations, court appearances).

Attorneys may “shop around” for a cheaper interpreter even if the client prefers a higher priced translator. According to the ADA Hotline, attorneys may use less expensive methods of communication, as long as the methods are as effective as the client’s preferred method at removing barriers. There are tax incentives for providing interpreter services, but lawyers would need to consult with an accountant.

More information is available at www.ada.gov/smbustxt.htm, or lawyers can call the ADA hotline at (800) 514-0301 to speak with a specialist. Specific questions about the cost benefits of the video relay method of phone communication would need to be directed to the agencies that provide this service.
Memo

To: Alex Macdonald
From: Jessica Paine
Date: 07/07/2006
Re: LRS & Panelist Obligation under ADA

The best way to understand ADA requirements as they pertain to accommodations for clients and potential clients with disabilities is to remember this basic concept: the ADA requires that individuals with disabilities have the same access to goods and services as non-disabled individuals, at no additional cost to the disabled. For example, this means providing ramps in consumer-goods stores for wheelchair accessibility; the legal corollary would be providing an interpreter for hearing-impaired clients to discuss their legal concerns. Both aids to accessibility are necessary to ensure the same access to goods and services as non-disabled consumers enjoy. Just as a store may not charge its wheelchair-bound customers for the cost of the ramp, attorneys may not charge their hearing-disabled clients for the cost of equal access through an interpreter. This applies to attorneys regardless of firm size, even to solo practitioners.

At the CBA, we encountered a situation where at least one of our attorney panelists refused outright to pay for an interpreter, a violation of the ADA. It seems clear as well that refusal to form an attorney/client relationship based on the individual's disability and the subsequent costs of accommodation would be discriminatory as well. The ADA appears to consider such expenses a part of the cost of doing business. Our duty as referral services would seem to be satisfied by using video relay services for the hearing impaired, however, equal accessibility appears to be determined on an ad hoc basis: our affirmative duty may change according to callers' individual disabilities.

Attorneys are not required to hire the disabled individual's choice of interpreters if s/he has an equally effective, less costly alternative. There is no firm rule as to what alternative auxiliary aids would satisfy the ADA's equal access requirement; however, opinions from ADA representatives indicate that interpreters are absolutely necessary for any complex communications. There are also some tax incentives for providing interpreter services, but lawyers would need to consult with an accountant.

More information is available at www.ada.gov/smbustxt.htm, or lawyers can call the ADA hotline at (800) 514-0301 to speak with a specialist.

Jessica Paine
Cleveland Bar Association
The Bar Association of San Francisco’s (BASF) Lawyer Referral and Information Service (LRIS) is committed to making our services as widely available to all members of the public as possible. As part of this commitment, we pledge to make every effort to ensure the accessibility of our services to hearing-impaired members of the public seeking legal assistance.

Hearing-impaired clients may contact the LRIS through a variety of methods. These include telephone calls, electronic communications, fax and post. The LRIS has a Telephone Device for the Deaf, which allows for communication to occur with those who wish to call. We also receive calls from hearing-impaired clients through the California Relay Service, through which we inform the caller about our TDD line, if they would prefer to use this resource. The TDD phone number is published in our Yellow Pages advertisement, and on our brochure, which is distributed to the courts and to other agencies. BASF’s website, www.sfbar.org, provides individuals with the ability to submit a request for a referral via an encrypted Internet form.

Once a hearing-impaired client makes contact with our Service, an intake worker will determine whether to refer him or her to an appropriately qualified attorney, or to another social service or governmental agency. If a referral is made to one of the attorneys participating in the LRIS, our staff will arrange for an initial consultation, as would be the case with non-hearing-impaired clients.
Different arrangements are possible for effective communication to take place between a hearing-impaired client and the panel attorney. The possible arrangements for the initial consultation would include one or more of the following:

- Pre-arranged sign language interpretation from a professional service for the initial consultation
- Consultation via email exchanges
- Lip reading and/or writing back and forth with the attorney in person
- Referral to an attorney who offers sign language interpretation in their office; Interpretation provided by a family member or friend of the client, if this is the client's preference

In addition, the LRIS intake staff is trained in how to conduct an initial interview with a hearing-impaired client, via the California Relay Service and through the TDD machine. They are also instructed to inform the attorney about the client's preferred method of communication for purposes of the consultation.

In the event that the client is interested in having sign language interpretation made available to them during the initial consultation, the LRIS interviewer informs the panel attorney that they may make arrangements directly with a local ASL interpretation service, so that an interpreter is available to attend the first meeting. The LRIS assumes the cost for the interpreter for this consultation, and is involved in helping to confirm the appointment with the client directly. This is helpful to all parties, including the ASL interpretation service, and ensures that all parties have the relevant appointment information in a timely manner.

As part of our efforts to ensure the accessibility of our services, we maintain information about any panel member who has the ability to use ASL, or who have staff members with this capability, whether the attorney's office has a TTD, as well as whether the office is accessible to clients using wheelchairs.