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Home

LRIS Feature

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Americans with Disabilities Act Requirements for LRIS Programs and Panel Attorneys: An Update on Serving Deaf and Hard of Hearing Clients

LRIS

ADA Requirements for LRIS Programs

By Clara Schwabe

In 1991, the Americans with Disabilities Act (ADA) became law. Almost 20 years later, many solo practitioners and small firms, the bulk of the LRIS community of panel members, are unaware of the requirements of that law with respect to deaf and hard-of-hearing clients.

From the Chair

It is clear that law firms and legal referral services are public accommodations within the meaning of the law and are required to meet the requirements of the ADA. Many LRIS programs have established policies and, in some cases, Communications Access Funds (CAFs) in order to be prepared when there is a request for services.

Delivery

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It is important to recognize that the obligation to provide services is an "interactive process," guiding the extent of the service's or lawyer's obligation. In other words, because of the wide spectrum of communication problems experienced by the deaf, hard-of-hearing and deaf-blind community, the deaf client needs to request the specific type of accommodation necessary to ensure effective communication. This usually means hiring an American Sign Language interpreter.

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In [*ADA Requirements for LRIS Programs and Panel Attorneys: Accommodations for the Deaf and Hard of Hearing*](#), (*Dialogue* Summer 2007, Vol. 11, No. 3), Jennifer Pesek of the California Center for Law and the Deaf recommended that LRIS programs:

"...Plan ahead by budgeting some funds for ADA accommodations. Codify your intention to follow the interactive process of the ADA by designating a staff member to respond to ADA requests. Educate your front-line staff to recognize an ADA request, as a refusal to provide accommodations, even in ignorance of the ADA, is still considered a violation. Find service providers, interpreters and

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captioners of your choice so that a system is in place when the request comes. Finally make sure your policy reflects the interactive process required by the ADA which will allow for the individual to receive effective communication.”

At the 2009 LRIS Conference in Baltimore, Marc Charmatz of the National Association of the Deaf Law and Advocacy Center enlightened participants on recent developments for referral services and panel members. Two cases in particular bring home the wisdom of planning ahead.

The first case was initiated by a deaf woman in Rochester, New York. According to the 2004 [settlement agreement](#) with the Justice Department, the complainant used sign language and lip reading as her principal means of communication. The attorney, Gregg Tirone, represented her in a divorce proceeding involving domestic violence, custody and visitation and restraining orders. In court Mr. Tirone used the services of the court’s interpreter; otherwise, he relied on pen and paper, fax, lip reading and use of the National Relay Service when communicating by phone. The complainant stated she did not always understand him. The attorney asserted that he believes she did understand him. The settlement stated that lawyers are a public accommodation and must provide sign language interpreters when necessary to provide effective communication and that family members, friends and close associates are not considered qualified interpreters and generally should not be used. To end the Department of Justice investigation and avoid civil suit, Mr. Tirone agreed to:

1. Post a statement in the local newspaper that his office welcomes clients with disabilities particularly clients with hearing disabilities, that he will provide an interpreter qualified to interpret legal terms when requested to do so and the client will not be charged for this service;
2. Post a similar notice in his office;
3. Pay the complainant \$2,200 and forego any fees due him; and
4. For any subsequent violations the Department of Justice, without any waiting period for Mr. Tirone to cure a subsequent violation, may institute a civil action against him for alleged violations.

In August 2007 the Justice Department settled another matter involving attorney Joseph David Comacho in Albuquerque, New Mexico. That case was filed by the National Association of the Deaf Law and Advocacy Center on behalf of a deaf woman and alleged that the attorney failed to secure a qualified sign language interpreter when necessary to ensure effective communication. According to the [settlement agreement](#), the deaf woman was suing a hospital for failing to provide a sign language interpreter. In representing her, Mr. Comacho failed to provide the client with an interpreter and wrote to her as follows:

“...It is my understanding that you refuse to cooperate [answer interrogatories and other disclosure requests] unless I

provide you with an interpreter, which will cost me approximately eighty dollars an hour. I have never had to pay to converse with my own client. It would be different if you did not have anyone to translate for you. However, you have a very intelligent son who can do it for you. It appears that we are not able to work together. I believe you should find another attorney as I am going to withdraw from this case.”

Mr. Comacho’s motion to withdraw was granted and the client’s case was subsequently dismissed for failure to respond to discovery. In the settlement agreement with the Department of Justice, Mr. Comacho agreed to pay \$1,000 in compensatory damages and to post in his office and on his website his willingness to comply with the requirements of the Americans with Disabilities Act.

Clearly, panel members need to be made aware of their obligations under the ADA. Prospective and existing panel members should be advised in writing of their obligations and LRIS policy regarding the ADA.

The National Association of the Deaf, in an April, 2008 [advocacy statement](#) prepared by it’s Board of Directors, has called for the creation of Communications Access Funds (CAFs) by bar associations in each state. The statement enunciates five goals for these funds:

1. CAFs should cover 100% of the expenses for the provision of auxiliary aids and services;
2. CAFs should be administered by the fee collecting agency in each state. Statewide coverage ensures that every private attorney licensed in the state contributes to and has access to the fund;
3. To ensure the longevity of the fund, the fee collecting agency should require each licensed attorney to pay a nominal amount of dues to generate revenues for the CAF, Alternatively, the state may enact state legislation requiring a state funded CAF, as in the state of Maine;
4. CAFs should cover all the auxiliary aids and services necessary to meet the diverse needs of the deaf community; and
5. The administering agency should couple the CAF with information educating attorneys about the ADA requirements and how to work with people who are deaf.

In [Tips for More Effective Advocacy](#), the National Association of the Deaf recommends that the deaf person be specific about the accommodation needed. There is a wide spectrum of need in the deaf community. In some extreme cases two interpreters may be needed. If the deaf person does not use American Sign Language and does not lip read, it may be necessary to have an additional interpreter from the deaf community to interpret “home” signs to the American Sign Language interpreter. It is often hard for a hearing person to conceptualize the communications gap. American Sign Language is not English, and “home” signs developed by a deaf person to

communicate with family members are not American Sign Language.

Further, the deaf person may not be literate in English. Add to this the complex legal vocabulary and concepts and the emotional issues in litigation and there is an extraordinary problem of providing - or rather, "ensuring" - equal access to legal services for the deaf community.

Federal Communications Commission regulations require telephone companies to provide telephone relay services, which involve the deaf person typing and a telephone operator speaking to the person called. LRIS programs nationwide are familiar with this service. Now there is a video relay service, which involves a deaf person using a [video monitor](#) to sign to an American Sign Language interpreter. The interpreter then speaks to the person called. These technologies have increased the ability of deaf and hard of hearing individuals to communicate with family, friends and service providers.

What do these technological developments mean for LRIS programs and panel attorneys? In conversations with a representative of the New York Society for the Deaf, it was clear to this author that relay services and the new video technology, while expanding the ability of the deaf and hard of hearing to communicate with the hearing world cannot be used to bridge the gap in communicating confidentially in the privacy of the attorney's office.

In New York City, the LRIS of the New York City Bar Association and the New York County Lawyers Association will provide a sign language interpreter for the initial consultation. Many other programs provide an interpreter or reimburse costs for the initial consultation in order to meet the legal obligation of the LRIS. However, this is only one step in implementing the goals of the statute and without further advocacy and information, panel members may unintentionally fail to comply with provisions of the ADA.

This past year, our service received numerous calls for assistance via video relay services. For the first time, we also received a request for a referral to sue two non-panel attorneys for failure to provide sign language interpreters when requested.

It is time for the legal community to become proactive in providing individual attorneys with the means of complying with their obligations under the Americans with Disabilities Act and that LRIS programs take the lead in informing their bar executives and panel members of the obligations and liabilities that exist.

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