

Lawyers Must Accommodate ADA Disabilities

BY LAZAR EMANUEL

Did you know that your law office is a place of public accommodation under Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12181? Or that you are required to accommodate without compensation the disability of a client covered by the Act?

Gregg Tirone is a lawyer practicing in Rochester, New York. Tirone represented Kathleen Rosanski in a divorce. The matter apparently involved allegations of domestic violence. Kathleen had a hearing disability requiring the use of sign language and lip reading as a principal means of communication.

Tirone conducted several meetings with his client, some in court and some in his office or by phone. When meeting with her in court, he used the court's interpreter, who was provided at the court's expense. But during the other meetings, he did not use a qualified sign language interpreter. Instead, he used Kathleen's sister or communicated with Kathleen by pen and paper, through lip reading, or, during phone conversations, by using the National Relay Service.

Kathleen filed a complaint with the Department of Justice. She alleged that communication with her had taken longer than would have occurred by using a qualified sign interpreter, that this resulted in higher costs to her, and that she was unable to understanding everything that was conveyed to her. Lawyer Tirone argued that Kathleen had understood him at all times, that he had communicated with her effectively, and that he had represented her adequately and professionally.

The outcome was that Lawyer Tirone entered into a stipulation of settlement with the DOJ. The stipulation recites the following principles governing these facts:

1. Title III and its implementing regulation prohibit discrimination by places of public accommodation on the basis of disability.

2. 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).

Lawyers Are Public Accommodation

3. Lawyers are considered a public accommodation and must provide sign language interpreters when necessary to effective communication. This is the case when the client uses sign language as her primary means of communication. The commentary to the ADA regulation says:

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.

4. 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).

5. Auxiliary aids and services include but are not limited to "qualified interpreters." §36.303(b)(1).

6. 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

7. 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.

8. 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 finger spelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

9. 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.

The DOJ determined that the use of Kathleen's sister 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 lip reads. 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.

In the stipulation of settlement, Lawyer Tirone agreed to a number of remedial steps:

1. He agreed to ensure effective communication with clients with hearing disabilities.
2. He agreed not to charge clients for the cost of interpreter services or to impose any surcharge to recover this cost.
3. He agreed to place the following advertisement in a local paper, or in the Bar Association's newsletter, once a month for two 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 agreed to post the ad in a prominent place in his office.

4. He agreed to compensate his client the sum of \$2,200 and to waive any sums due him by the client. For its part, the DOJ agreed not to file a civil lawsuit against Tirone unless he violated the stipulation.

Lazar Emanuel is the publisher of NYPRR.