

LAWYERS AND THE ADA

By Dennis Steinman*

Mary Jane needed a lawyer to help with her divorce and contacted the Oregon State Bar Lawyer Referral Service. Mary Jane was given three lawyers' names and she contacted all of them. Each one refused to represent her. It wasn't because of her legal issue. It wasn't because of the initial consultation fee of \$35 required by the Referral Service. Each lawyer refused to represent Mary Jane because she was deaf and had asked the lawyer to hire a sign language interpreter for the appointment. The lawyers didn't want to pay for that expense. Each lawyer violated the Americans with Disabilities Act (ADA) and Oregon law.

Title III of the ADA, 42 U.S.C. § 12181 *et. seq.*, requires that places of public accommodation “may not discriminate on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.” Oregon law is substantially similar in ORS 659A.142(3). The ADA specifically defines a place of public accommodation to include the “office of an accountant or lawyer.” 42 U.S.C. § 12181(7)(F). Title III makes it discriminatory for private businesses to deny services to a disabled individual because of the absence of auxiliary aids. The federal regulations define “auxiliary aids” to include “qualified interpreters.” 28 C.F.R. § 36.303(b).

In other words, a lawyer must provide a way for a deaf client to have access to the lawyer's services. Sometimes that means providing an interpreter. Sometimes it may mean writing notes. The ADA requires “effective communication” to persons with disabilities. Therefore, the situation determines the type of accommodation that is provided. If a deaf client comes to the office to sign documents and the meeting takes

just a few minutes, exchanging notes would generally be sufficient. But, a qualified interpreter may be necessary when the information being communicated is complex or is exchanged for a lengthy period of time. The concept of providing an auxiliary aid for effective communication with a deaf client is no different than having a ramp that allows physical access into the lawyer's office for a mobility impaired client.

The question of who pays for the interpreter is determined by who is providing the service and where the primary service is being provided. When a lawyer meets with a deaf client, the lawyer pays for the interpreter. If an opposing counsel deposes your deaf client, the opposing counsel pays for the interpreter. When the court is involved, the court arranges and pays for the interpreter. In mediations or arbitrations, the mediator or arbitrator pays for the interpreter.

Congress intended the ADA to require private businesses to absorb the cost of providing access to the disabled as a cost of doing business, as long as it was not an undue burden on the business. Providing reasonable accommodation to a deaf client is not giving special treatment; it provides equal access.

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