

# **Providing Effective Communication for Clients who are Deaf, Hard of Hearing, or Deaf/Blind**

---

## **A Handbook for Florida Attorneys**

**Sharon Caserta, Esq., SC:L**  
**Deaf/Hard of Hearing Legal Advocacy Program**  
**Jacksonville Area Legal Aid Inc.**  
**Equal Justice Works Fellow, CI/CT/CSC**

**October, 2008**



This handbook is dedicated to every Deaf, Hard of Hearing and Deaf/Blind citizen who fights daily with pride, determination and grace as to their right for equitable treatment.

The author wishes to acknowledge the contributions of Michael S. Stein, Skadden Fellow, National Association of the Deaf, McCay Vernon, Ph.D., Professor Emeritus of McDaneil College and Former Chair of the Board of The National Deaf Academy, Jean F. Andrews Ph.D., Professor of Deaf Studies/Deaf Education, Lamar University, Texas, Joan Haber, Member and Immediate Past Chair of the Florida Coordinating Council of the Deaf and Hard of Hearing, and Hugh Cotney, Esq., Florida Bar Representative for the Legal System Accessibility Task Force.

Additionally the author wishes to recognize Paul Doyle and Jane Curran of the Florida Bar Foundation, and Michael Figgins, Executive Director of Jacksonville Area Legal Aid Inc., for without their progressive view as to the need for legal representation to those who has been consistently excluded the Deaf/Hard of Hearing Legal Advocacy Program would never have been established.

## Table of Contents

1. <a href="#">Purpose and Introduction of the Manual</a> .....	4
2. <a href="#">Handbook and Community Terminology</a> .....	4
3. <a href="#">Communication Methods used by Deaf, Hard of Hearing and Deaf/Blind Clients</a>	
A. <a href="#">American Sign Language</a> .....	5
B. <a href="#">Signed English</a> .....	5
C. <a href="#">Deaf/Blind clients</a> .....	6
D. <a href="#">Oralism and Associated Communication Techniques</a> .....	6
4. <a href="#">Reading Comprehension in the Deaf Community and its effect on the Attorney-Client Relationship</a> .....	7
5. <a href="#">Legal and Ethical Obligations of Attorneys</a>	
A. <a href="#">Private Attorneys' obligation pursuant to the Americans with Disabilities Act</a> .....	9
B. <a href="#">State or Local Government Attorneys' obligation pursuant to the Americans with Disabilities Act</a> ..	10
C. <a href="#">Legal Aid and Legal Service Corporation Attorneys' obligations pursuant to the ADA</a> .....	11
D. <a href="#">Private, Public and Legal Aid Attorneys' obligation pursuant to Section 504 of the Rehab. Act</a> .....	11
E. <a href="#">Florida Bar Rule of Professional Conduct: Denial of Representation or Inferior Treatment</a> .....	12
F. <a href="#">Additional Consideration for Criminal Attorneys: Ineffective Assistance of Counsel</a> .....	12
6. <a href="#">Five Most Common Myths believed by Florida Bar members which impedes representation</a>	
A. <a href="#">Myth One - Payment for Auxiliary Aids/ Services</a> .....	12
B. <a href="#">Myth Two -Use of family members and companion as Interpreters</a> .....	13
C. <a href="#">Myth Three - Undue Financial Burden</a> .....	14
D. <a href="#">Myth Four - The Lip-reading myth</a> .....	14
E. <a href="#">Myth Five – Ability to speak</a> .....	15
7. <a href="#">Auxiliary Aids/ Services used to Provide Effective Communication: Overview of Legal Obligation</a> .....	15
7. A. <a href="#">Auxiliary Aids/ Services: Interpreters:</a>	
(i) <a href="#">American Sign Language Interpreters</a> .....	16
(ii) <a href="#">Oral Transliterators/Interpreters</a> .....	17
(iii) <a href="#">Certified Deaf Interpreters/ Intermediary Interpreters</a> .....	17
7. B. <a href="#">What is a Certified Interpreter?</a> .....	18
7. C. <a href="#">Securing Qualified Sign Language Interpreters in Florida</a> .....	19
7. D. <a href="#">Verifying the credentials of interpreters</a> .....	19
7. E. <a href="#">Typical voir dire questions used for interpreters</a> .....	20
7. F. <a href="#">Tips for using interpreters in attorney-client meetings</a> .....	20
8. <a href="#">Tips for communicating with Hard of Hearing and Late-deafened clients</a> .....	23
9. <a href="#">Auxiliary Aids/ Services used to Provide Effective Communication: Technological Aids</a>	
A. <a href="#">Communication Access Real-time Translation (CART)</a> .....	23
B. <a href="#">Assistive Listening Systems</a> .....	24
C. <a href="#">Speechreading/ Lip-reading</a> .....	24
10. <a href="#">Tax incentives for the Provision of Auxiliary Aids</a> .....	24
11. <a href="#">Appearances in State Court- Payment for auxiliary aids and services, and how they are obtained</a> .....	24
12. <a href="#">Appearances in Federal Court- Payment for auxiliary aids and services, and how they are obtained</a> .....	25
13. <a href="#">Corresponding with your Deaf, Hard of Hearing, or Deaf/Blind client</a>	
A. <a href="#">By phone</a> .....	26
B. <a href="#">By email</a> .....	28
14. <a href="#">Florida Interpreter Statutes</a> .....	28
15. <a href="#">Additional Resources</a> .....	28

## **1. Purpose and Introduction**

This Handbook is specifically designed to assist Florida attorneys work more effectively with Deaf, Hard of Hearing and Deaf/Blind clients. It does not address the accompanying issues of accessibility rights for Deaf and Hard of hearing people outside of the attorney-client relationship although helpful resources on this topic are provided throughout the material. Should additional assistance be needed contact Sharon Caserta, Esq, Deaf/Hard of Hearing Legal Advocacy Program of Jacksonville Area Legal Aid, Inc. at [sharon.caserta@jaxlegalaid.org](mailto:sharon.caserta@jaxlegalaid.org), or refer to the additional resources section.

There are an estimated 3 million people living in Florida with a diagnosed hearing loss.<sup>1</sup> Florida has the second highest population of people who are Deaf or Hard of hearing in the nation.<sup>2</sup> However, even with that high number the Deaf and Hard of hearing community continues to be under served by the legal profession.

From 2006 – 2007 the Deaf/Hard of Hearing Legal Advocacy Program of Jacksonville Area Legal Aid, Inc (“JALA”) completed a informal trend analysis to help identify accessibility issues experienced by the Deaf and Hard of Hearing community as it engaged in all sections of Florida’s legal system. The trend uncovered an ongoing and pervasive denial or delay in legal representation to the Deaf community by Florida Bar members. However the author of this manual notes that although the focus of the analysis was specific to Florida the issues discussed in this Handbook are not limited to this state, and unfortunately represent a national dilemma. The problem of delayed or denied representation appears to stem from both a misunderstanding of the unique needs of working with Deaf and Hard of Hearing clients accompanied by a misunderstanding of the attorney’s obligation under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.

Hopefully this document will assist Florida Bar members become better informed so to alleviate the disparate treatment of Deaf clients, and buttress the Florida Bar’s long standing core value that all clients deserve competent and complete representation.

## **2. Handbook and Community Terminology**

As with any Cross culture terminology has great importance, and will be viewed by the members of the community in different ways. People with some form of hearing loss will generally will self identify, and use terms to define themselves. The most common terms used are “Deaf”, “Hard of hearing”, “Deaf/Blind” or Late-deafened”. If you are unclear as to your client’s identifier simply ask them. One factor in a good attorney client relationship is to understand how the client wants you and others to perceive them as a person not just a client.

Deaf people who use American Sign Language (ASL) to communicate are proud of their language and cultural norms. Attorneys should be vigilant to respect this pride and avoid using pejorative terms such as “deaf and dumb”, “deaf-mute”, or “hearing impaired” in conversation or in court filings.

“Hard of hearing” individuals do not consider themselves deaf and dislike being referred to as such. The majority of this group does not know ASL. The qualifying identifier of this client base is the desire to utilize their residual hearing by wearing hearing aids, augmenting their hearing aids with assistive listening devices and speechreading.

---

<sup>1</sup> Florida Coordinating Council for the Deaf and Hard of Hearing, 2007 Report to Governor

<sup>2</sup> 1990 Census

Throughout this manual the terms “Deaf and Hard of Hearing”, and or “Deaf” will be used to encompass all individuals with some form of hearing impairment.

### **3. Communication Methods Use by Deaf, Hard of Hearing and Deaf/Blind clients**

Not all Deaf and Hard of Hearing people communicate the same way, even those who use sign language may use different forms of a signing system or signed language. Some deaf people can communicate in many modalities where others may choose to communicate in only one. When meeting with a Deaf or Hard of Hearing client a determination must be made as to the type of auxiliary aid or assistive device needed for effective communication. The easiest way to ascertain the need is to simply ask the client what is most effective. Although Title III of the ADA does not require a private attorney to provide the exact auxiliary aid requested by the client<sup>3</sup>, if a contrary aid is used it **must be effective**, and should be done upon consult with the client. Due to the fact that most attorneys have no training as to effectiveness of communication, linguistic needs, reading ability and other relevant criteria it’s wise for counsel to defer to the Deaf client—who really is the expert on efficacy.

#### **3. A. American Sign Language (ASL)**

Sign Language is a generic term for a plethora of forms of manual communication.<sup>4</sup> American Sign Language (ASL) is the primary language used by the Deaf Community.<sup>5</sup> ASL is not a universal language; it is a living, visual language that is not only a means of communication but also a repository of cultural knowledge and a symbol of social identity.<sup>6</sup> ASL is not English, nor is it based on the characteristics of an audist community. Most attorneys incorrectly think ASL is simply the English language signed on one’s hands. ASL possesses its own grammatical rules, syntax, and includes regional dialects and can convey abstract concepts.<sup>7</sup> ASL is not a written language; thus ASL users must navigate through legal documents in their second language, English, and second-language fluency varies with each client.<sup>8</sup>

The most pervasive misunderstanding found in discussions with Florida attorneys was that ASL is not a written language, and that it differs from English. Ensuring clients can communicate in their native language is critical for client comprehension. An attorney who independently decides that writing will be effective holds a belief which is contrary to published research about ASL, the Deaf Community and the findings of forensic linguistics. For more discussion see Reading Comprehension in the Deaf Community at Section 4, and Myth 4.

**For ASL users generally effective communication is achieved** by the provision of a qualified, nationally certified and legally trained ASL interpreter. See Section 7.A. (i) Interpreters.

#### **3. B. Signed English**

---

<sup>3</sup> 28 CFR § 36.303

<sup>4</sup> John Fallahay, The Right to a Full Hearing, Improving Access to the Courts for People who are Deaf or Hard of Hearing, 2000,pg 33

<sup>5</sup> The term “Deaf Community” is generally known to mean that segment of the deaf population who uses ASL as their primary language. There is a distinction made by the members of the Deaf and hard of hearing community as to “(d)eaf” people--who do not communicate in ASL, and those “(D)eaf” people who do.

<sup>6</sup> Harlan Lane, The Mask of Benevolence, Disabling the Deaf Community, 1993, pg 45

<sup>7</sup> Jack R. Gannon, Deaf Heritage, A History of Deaf America, 1981, pg 365 ( edited)

<sup>8</sup> Similar to Spanish or Italian, ASL is taught and accepted as a foreign language by universities and colleges in the United States.

Whereas ASL is a language, the American signing methods which are dependent upon knowledge of English are known as *sign systems*.<sup>9</sup> There is a section of the deaf and hard of hearing population who use a signing system known as **Signed Exact English (SEE)** or **Pidgin Signed English (PSE)**. Signed English is a system that attempts, with varied degrees of success, to replicate the English language manually.<sup>10</sup> PSE is in essence a blend of ASL and Signed English. For clients using these systems English may be their primary language, and they may have less difficulty with written communication than ASL users.

**For the Signed English, or Pidgin Signed English user generally effective communication is achieved** by the provision of a qualified, nationally certified, and legally trained ASL interpreter or transliterator.<sup>11</sup>

### **3. C. Deaf/Blind Clients**

A smaller section of the Deaf community is those individuals who are **Deaf/Blind**. These individuals have both a form of hearing impairment and vision impairment. Persons who are Deaf/Blind typically do not have total deafness or total blindness but rather have their functionality significantly affected due to an impairment of both hearing and vision.<sup>12</sup> Some Deaf/Blind clients use sign language and others do not.

**For Deaf/Blind clients effective communication** needs vary widely please consult with the client directly for the appropriate accommodation.

### **3. D. Oralism and Associated Communication Techniques**<sup>13</sup>

There is a segment of the deaf and hard of hearing population that does not use ASL or any form of a signed system, and communicate **orally**. This client base often refers to itself as or “**hard of hearing**”. These individuals will speak and attempt to speechread (lip-read) when communicating, and English is typically their primary language, therefore require different accommodations than members of the Deaf Community.

Not all deaf and hard of hearing people can **speechread**, and those who can have widely varying levels of proficiency. The task of speech reading is very difficult to master, and the ability or inability to lip-read is in no way related to a deaf or hard of hearing person’s intelligence. Some deaf and hard of hearing people use speech reading, typically augmented with hearing aids or other devices, as one part of their communication method but not as a stand alone technique. Each client should be asked which mode of communication they prefer and be provided the appropriate accommodation.

Hard of hearing individuals face a very difficult quandary because their hearing loss comes in many forms and degrees. There are times when they can hear well and other times when they cannot. The ability to

---

<sup>9</sup> John Fallahay, *The Right to a Full Hearing, Improving Access to the Courts for People who are Deaf or Hard of Hearing*, 2000, pg 34

<sup>10</sup> Sharon Caserta, *Jacksonville Area Legal Aid: Handbook on the Use of ASL Interpreters*, 2005

<sup>11</sup> A transliterator is one who does not sign in ASL, but conveys a message from spoken English into a manual code for English such as PSE or Signed English. This task contrasts with *interpreting* because interpreting requires working between two languages e.g. spoken English and ASL.

<sup>12</sup> *Accessibility Needs of Deaf, Hard of Hearing, and Late Deafened Persons in Florida: A Report on Requirements, Current Status and Recommendations. Glossary of Terms*, Florida Coordinating Council of the Deaf and Hard of Hearing, January, 2005

<sup>13</sup> Section heading taken generally from John Fallahay, *The Right to a Full Hearing, Improving Access to the Courts for People who are Deaf or Hard of Hearing*, 2000, pg 35

communicate effectively is dependent on the environment, the speaker's voice, the level of anxiety the situation imparts and other factors which the hard of hearing person cannot control. As a result hard of hearing clients often report that people think they are faking their hearing loss, or failing to try hard enough to hear. Many hard of hearing individuals will *nod their head* and appear to understand what is said when in fact they do not. This behavior is common because they do not want to appear "difficult" or "uncooperative" or are ashamed of their deficient hearing. Attorneys should note that many of these clients constantly struggle to hear, and are often left out of conversations. As result they may miss large sections of dialogue without always reporting that they could not "hear" what was relayed. Constantly trying to hear, and participate in conversations can often lead to fatigue or frustration which can lead to misunderstandings. Phone conversations or group dialogue may be especially difficult for these clients, and they must constantly remind others to speak louder, clearer or at a slower pace. To learn more about the extreme communication difficulties encountered by those who are Hard of Hearing refer to resources available by Hearing Loss of America.<sup>14</sup>

**Late-deafened Adults (LDA)** are individuals who lost their hearing any time after the development of speech and language; often it means after the age of adolescence.<sup>15</sup> Usually a late-deafened adult has identified with the non deaf society through schooling and social connections.<sup>16</sup> Generally the techniques used for Hard of Hearing clients (as listed above) will be effective when meeting with Late-deafened adults, however its always best to ask the client what works most effectively for them.

When working with Late-deafened adults or Hard of hearing clients it is common that they may be unfamiliar with assistive devices or strategies available to help them communicate more readily. Should your late-deafened client need further assistance as to technology contact Hearing Loss of America,<sup>17</sup> a local Florida Independent Living Center<sup>18</sup>, and or Florida Telecommunication Relay Inc.<sup>19</sup>

**For Hard of Hearing or Late-deafened clients generally effective communication is achieved by** Assistive Listening Systems, Communication Access Real-time Translation (CART), oral interpreters, slowing the pace, or improving the acoustic dynamics of the room. See sections 8, and 9. A –C for more information.

#### **4. Reading Comprehension in the Deaf Community and its effect on the Attorney-Client Relationship**

A critical companion matter for the attorney to consider with communication styles of the client is English literacy. The frozen legal discourse used in pleadings, vernacular and colloquy is specific to the legal field and not readily available in layman's terms. This is evidenced in many ways, most overtly by the existence of Blacks Law Dictionary, in a sense a separate dictionary for the legal professions' own special words. Even when an attorney makes a valiant effort to explain legal concepts and advise as to proper meaning the verbose nature of legal correspondence is still well beyond the reading level, and comprehension of many clients, regardless if they can or can't hear.

---

<sup>14</sup> [www.hearingloss.org](http://www.hearingloss.org)

<sup>15</sup> [www.fcdhh.org](http://www.fcdhh.org)

<sup>16</sup> *Id.*

<sup>17</sup> [www.hearingloss.org](http://www.hearingloss.org)

<sup>18</sup> Listing of Independent Living Centers in Florida can be found at [http://www.flailc.org/contact\\_list.htm](http://www.flailc.org/contact_list.htm)

<sup>19</sup> [www.ftri.org](http://www.ftri.org)

Extensive research has been performed as to the reading level of members of the Deaf community who communicate in a different language – ASL. For clients whose native language is not English their ability to navigate through dialogue and court documents will vary due to their fluency in English. It does not infer they are illiterate or less intelligence just because they do not communicate in English. Just as a Spanish speaking client is deemed a linguistic minority so too is an ASL user. Many Deaf people can't "hear" English and are unable to learn English through overhearing conversations on the street, listening to the radio or other audible avenues. This auditory barrier is a marked distinction from other linguistic minorities who are not Deaf. The problem arises when an attorney attempts to communicate with the Deaf client in English, either by writing, asking clients to read pleadings in English, and or typing on a computer. In those instances the Deaf client is being forced to communicate in their second language, and second language proficiency level varies widely.

It is important to point out that not all Deaf individuals are low literacy achievers *when reading English*.<sup>20</sup> About 10% of the deaf school age population grows up to be literate adults reading at the tenth grade or above<sup>21</sup>. These successful literate Deaf adults go on to professional careers as teachers, school administrators, lawyers, CEOs of businesses, social workers, psychologists, computer programmers etc.<sup>22</sup> These individuals have mastered the difficult task of attaining some degree of fluency in two languages, one visual and one auditory and as a result *may* navigate through the monolingual English system more easily.

However, this is not the case for the majority of Deaf and Hard of Hearing population of whom thirty percent leave school at age 18 or above, are functionally illiterate reading at the 2.8 grade level or below.<sup>23</sup> Sixty percent are reading at the third to fourth grade level.<sup>24</sup> Again, please note these individuals were evaluated as to the use of English, the language of the courts and of counsel, not ASL their native language.

An in-depth analysis was performed on the readability, and the reading level required to understand critical legal documents designed to inform individuals of their rights and obligations.<sup>25</sup> The results generally showed the following required reading level:

<u>Document</u>	<u>Required Grade Reading Level</u>
The Miranda Warning	7.0
Guilty plea questioner/waiver of right (Texas)	9.7
Waiver for Search (Texas)	13.6
Polygraph Test document (Texas)	13.2
Blood and Breath Test (Texas)	13.5
Statutory Warning for the Blood and Urine test (Texas)	13.5 <sup>26</sup>

<sup>20</sup> Andrews, J., Vernon, M., and LaVigne, M., *The Bill of Rights, Due Process and the Deaf Suspect/Defendant*, Journal of Interpretation, Summer 2007, pp 9-38 ( Italicized information added)

<sup>21</sup> LaVigne, M. & Vernon, M. *An Interpreter is Not Enough: Deafness, Language, and Due Process*. 2003 Wisc. L. Rev., 844-902

<sup>22</sup> Andrews, J. & Karlin, A., Reading Behaviors of Deaf Bilingual College Students. JADARA, 36(1), 28-44. (2002)

<sup>23</sup> Andrews, J., Vernon, M., and Lavigne, M, *The Bill of Rights, Due Process and the Deaf Suspect/Defendant*, Journal of Interpretation, Summer 2007, pp 9-38.

<sup>24</sup> LaVigne & Vernon, (2003); Traxler, C. The Stanford Achievement Test, 9<sup>th</sup> Edition: National Norming and Performance Standards for Deaf and Hard of Hearing Students. Journal of Deaf Studies and Deaf Education, 5(4), 337-348. (2000)

<sup>25</sup> Andrews, Vernon and LaVigne, *The Bill of Rights, Due Process and the Deaf Suspect/Defendant*, Journal of Interpretation, Summer 2007. ( Italicized information added)

<sup>26</sup> For a complete discussion on the context of this testing see *The Bill of Rights, Due Process and the Deaf Suspect/Defendant*, Andrews, Vernon and Lavigne, Journal of Interpretation, Summer 2007.

Complaint for Equitable Relief and/or an Action to Collect Debt (Florida)	13.8 <sup>27</sup>
Credit Card Account Agreement	11.1 <sup>28</sup>
Notice to Appear (Florida)	11.8 <sup>29</sup>

When clients, who may read at a 3rd grade level, are required to review legal documents written well above that level, or when attorneys write to clients, in a reading level which is unknown, effective communication is not achieved.

Attorneys should be mindful that reading levels and reading comprehension are two different measurements. One may read at a 7<sup>th</sup> grade level but comprehend the vocabulary used at a lower level. To analogize this point consider a Shakespearean play although one may be able to *read* the words the meaning can be beyond the reader's *comprehension* level. Legal discourse can be equated to the writing of Shakespeare because its true meaning is known only to those who have studied it, use its vernacular regularly and recognize that the common meaning of a word may be incorrect.<sup>30</sup>

## **5. Legal and Ethical Obligations of Attorneys**

### **5. A. Private Attorneys' Obligations pursuant to the Americans with Disabilities Act (ADA)**

Pursuant to Title III of the Americans with Disabilities Act (ADA), 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.<sup>31</sup> This includes the office of an attorney.<sup>32</sup> Attorneys must make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless they can demonstrate that making the modifications would fundamentally alter the nature of the above as allowed by 28 C.F.R. § 36.302.

Attorneys must 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 they 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 as per 42 U.S.C. § 12182(b)(2)(A).<sup>33</sup> Auxiliary aids and services are designed to provide effective communication, which is mandated by the ADA.<sup>34</sup>

<sup>27</sup> Taken from Wells Fargo Financial Florida, Inc v. Lewis (#16-2006-SC-009603). Note only a section of each pleading was analyzed not the full document.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> The author does not use this example to equate our profession to that of a macabre tragic play although some days our conversations seem that way.

<sup>31</sup> 42 U.S.C. 12182, C.F.R. §36.201 (emphasis added)

<sup>32</sup> 28 C.F.R. § 36.104

<sup>33</sup> See also 28 C.F.R. §36.303 (emphasis added)

<sup>34</sup> 42 U.S.C. §§ 12131-12134

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the client, the nature, length, and complexity of the communication involved and the context in which the communication is taking place. The preamble to the regulation lists “communications involving *legal matters* as an example of a type of communication that can be *sufficiently lengthy or complex to require an interpreter for effective communication.*”<sup>35</sup>

The ADA allows pursuit of many avenues to ensure compliance with its terms. An aggrieved party may file a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, and attorney’s fees.<sup>36</sup> Additionally, non compliance can invoke a federal investigation, compliance reviews or a law suit conducted by the attorney general’s office.<sup>37</sup> Relief provided through means of a suit by the Attorney General’s office can include monetary damages, civil penalties, and any equitable relief found to be appropriate.<sup>38</sup> *See also* DOJ Settlement with Joseph David Camacho, Esq. <http://ada.gov/albuquerque.htm> DOJ Settlement with the Law Office of Cohen and Jaffee LLC <http://ada.gov/cohenjaffe.htm> , DOJ Settlement with Gregg Tirone, Esq <http://ada.gov/tirone.htm>., DOJ Settlement with Clifford B. Hearn & Clifford B. Hearn, Jr, P.A. <http://www.ada.gov/hearn.htm>.

## **5. B. State or Local Government Attorneys’ Obligations pursuant to the ADA**

State or local government attorneys’ obligations are outlined under Title II of the ADA,<sup>39</sup> and are similar to those of private attorneys with some additional mandates. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities, including any investigation of any complaint communicated to it alleging its noncompliance.<sup>40</sup> The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated to perform this task.<sup>41</sup> This designated individual is commonly known as the ADA Coordinator. Additionally the public entity shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited.<sup>42</sup>

The JALA trend analysis discovered that state employed attorneys, along with the Deaf and Hard of hearing clients, did not know who to contact in the organization to obtain needed accommodations. This lack of knowledge not only lead to delay in services, but even more unfortunate was that state employed attorneys and staff were advising clients, deaf victims or witnesses there was no mandate to provide services. Numerous examples were found in the State Attorneys Office, Office of the Public Defender and the Office of the Attorney General. The trend analysis also uncovered the lack of an internal grievance system or a designated ADA Coordinator in which a deaf or hard of hearing client could contact to obtain accurate legal advice, and or the required auxiliary aids. A properly established internal grievance system acts as a helpful tool to catalyze services, avoid possible litigation for the state entity and even more importantly provide equitable services. For

---

<sup>35</sup> 28 C.F.R. pt. 36, App. B at 703 (2005) (emphasis added).

<sup>36</sup> 28 C.F.R. § 36.501, 28 C.F.R. § 36.505

<sup>37</sup> 28 C.F.R. § 36.503

<sup>38</sup> 28 C.F.R. § 36.504

<sup>39</sup> 42 USC § 12131 (1)

<sup>40</sup> 28 C.F.R. § 35.107 ( a)

<sup>41</sup> Id.

<sup>42</sup> 28 C.F.R. § 35.107 (b)

proper promulgation the ADA Coordinator and the grievance system should be posted prominently on the agency web page.<sup>43</sup>

The other main difference with a private attorney's obligation is that in determining what type of auxiliary aid and service is necessary, a public entity shall give *primary consideration* to the requests of the individual with a disability.<sup>44</sup> Private attorneys are not obligated to defer to the primary consideration of the client however the mandate to ensure the auxiliary aid provided is **effective** still remains.<sup>45</sup>

Remedies for violation of Title II include private law suits as well as federal investigations, compliance reviews and lawsuits conducted by the attorney general's office.<sup>46</sup> Relief provided through means of a private suit or suit filed by the attorneys general office can include monetary damages, civil penalties, attorneys' fees and any equitable relief found to be appropriate.<sup>47</sup>

### **5. C. Legal Aid and Legal Services Corporation Attorneys' obligation pursuant to the ADA**

Attorneys employed by Florida Legal Aid and or Legal Services who are not employees of the state must follow the mandates of Title III of the ADA, which are provided in the section above for private attorneys. If the attorney is an employee of a county, as in Dade County, the obligation is pursuant to Title II of the ADA.

### **5. D. Private, Public and Legal Aid Attorneys' obligations pursuant to Section 504 of the Rehabilitation Act of 1973**

Section 504 states "No otherwise qualified individual with a disability in the United States,... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service".<sup>48</sup>

This means that state employed attorneys covered by Title II, and Legal Aid offices that receive federal grants are subject to the Rehabilitation Act upon receiving assistance from the federal government.<sup>49</sup>

Remedies for violation of Section 504 are similar to Title II of the ADA, and include private law suits as well as federal investigations, compliance reviews and law suits conducted by the attorney general's office.<sup>50</sup> Relief provided through means of a private suit or suit filed by the attorneys general office can include **monetary damages**, civil penalties, attorneys' fees and any equitable relief found to be appropriate.<sup>51</sup>

### **5. E. Florida Bar Rules of Professional Conduct: Denial of Representation or Inferior Treatment:**

---

<sup>43</sup> The Department of Justice provides helpful checklists which state entities can use to evaluate compliance with the ADA, along with the provision of template ADA promulgations. These resources can be found at [www.doj.gov](http://www.doj.gov) .

<sup>44</sup> 28 C.F.R. § 35.160 (emphasis added)

<sup>45</sup> 28 C.F.R. § 36.303 (b) (1) and (c)

<sup>46</sup> See generally 42 USC 12188

<sup>47</sup> *Id.* See also 28 C.F.R. § 35.175

<sup>48</sup> 29 USC 794

<sup>49</sup> Shawna L. Parks, *Ideas for Accommodation: Ensuring Equal; Access to Legal Services for Clients with Disabilities*, Clearinghouse Review, Journal of Poverty Law and Policy, March-April 2008

<sup>50</sup> 29 USC § 794a

<sup>51</sup> See also 28 C.F.R. § 35.175

Pursuant to the Florida rules of Professional Conduct, Rule 4-8.4 Misconduct.

A lawyer shall not:

d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, **disability**, marital status, sexual orientation, age, socioeconomic status, employment, or **physical characteristic**; (emphasis added).

Attorneys who refuse representation based on a client's hearing loss, or refuse to accommodate such clients could face bar complaints.

### **5. F. Additional Considerations for Criminal Attorneys: Ineffective Assistance of Counsel**

There is a body of case in law in which ineffective assistance of counsel claims were raised due to the absence of an interpreter, the provision of an unqualified interpreter, or an attorney's improper use of an interpreter. For a good discussion of such case law please refer to *Ineffective Assistance of Counsel: use or non use of interpreters at prosecution of foreign language speaking defendant*, Gregory D. Sarno, 79 A.L.R. 4<sup>th</sup> 1102.

### **6. Five Common Myths Believed by Florida Bar Members which Impede Representation**

To assist in comprehending the application of the ADA to an attorney's office we use the 5 most common myths held by Florida Bar members discovered during Jacksonville Area Legal Aid's (JALA) trend analysis.<sup>52</sup>

#### **6. A. Myth One: The Deaf or Hard of Hearing client must pay for the interpreter, or the auxiliary aid needed to meet with an attorney.**

**The cost of auxiliary aids and services or other measures mandated by the ADA cannot be charged to the client.**<sup>53</sup> Attorneys must ensure their services are accessible to the public and that effective communication is provided to clients or potential clients.<sup>54</sup> An attorney 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 ADA.<sup>55</sup> If an interpreter or CART provider is required to ensure effective communication between the attorney and the client, or potential client, one must be provided.

---

<sup>52</sup> Cites provided in the Myth section reference Title III of the ADA, however all myths explained are false regardless of which statute the attorney is covered under.

<sup>53</sup> 28 C.F.R. §36.301

<sup>54</sup> 28 C.F.R. §36.104

<sup>55</sup> 28 C.F.R. § 36.301 (c)

Unfortunately during the trend analysis and contemporaneous to the production of this Handbook it was discovered that many Florida attorneys are debiting client's retainer accounts, and or billing client's for the cost of auxiliary aids namely interpreters. This trend appears to be a combination of a misunderstanding of the undue burden defense of the ADA augmented by a misunderstanding of whose obligation it is to ensure an attorney-client meeting, deposition or other event is accessible.

Just as an attorney would not charge a client who uses a wheelchair a fee to use the ramp to the building, or require them to bring their own ramp they cannot charge a Deaf client for interpreter services or require deaf clients to "bring their own". Like the ramp, the interpreter (or other aid used to provide effective communication) makes the attorney's services accessible. The ramp is a *physical modification* mandated by the ADA, and the interpreter is an *effective communication* requirement mandated by the ADA.

Please read Section 10 to learn more about tax incentives for making attorney's services accessible to Deaf, Hard of Hearing and Deaf/Blind clients.

**6.B. Myth Two: The ADA allows client's family members or companions to be used as interpreters.**

**It is inappropriate to use family members or companions as interpreters because they likely do not satisfy the definition of a qualified interpreter pursuant to the ADA.**<sup>56</sup> Using family members or companions is problematic on many levels. First, the ADA defines a qualified interpreter as ". . . an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary."<sup>57</sup> Most family members and companions do not satisfy the definition of *qualified* because they cannot remain impartial, and have no legal training to properly interpret specialized legal vocabulary effectively.

Second, the conversation between an attorney and the client is confidential, and should encourage an uninhibited exchange of the legal matter at hand. There is no guarantee that a family member will respect confidentiality, and the use of untrained and bias parties in essence automatically waives the client's right to confidentiality. There is no redress for an attorney, or an unknowing client, when the family member divulges confidential information. Third, the abdication of responsibility to untrained parties provides no assurance that legal advice is not being censored. Fourth, due to a family member or companion's limited knowledge of the legal underpinnings of the conversation blatant misinterpretations of advice will likely occur. Should such errors or omissions happen with professionally trained and certified interpreters the attorney, and or client, could seek redress from the professional interpreter. However, that ability is lost when an attorney permits a family member or friend to act in that role.<sup>58</sup>

In essence the attorney who utilizes untrained individuals as interpreters, to save on costs, when needed to ensure effective communication does so at their own peril.

**6. C. Myth 3: Providing an interpreter, or another auxiliary aid qualifies as a statutory financial undue burden comparative to the fees I am collecting from the Deaf or Hard of Hearing client.**

---

<sup>56</sup> 28 C.F.R. § 36.104

<sup>57</sup> 28 C.F.R. § 36.104. (emphasis added)

<sup>58</sup> See DOJ Settlement with Joseph David Camacho, Esq. <http://ada.gov/albuquerque.htm>, DOJ Settlement with the Law Office of Cohen and Jaffee LLC <http://ada.gov/cohenjaffe.htm>.

**Undue burden is not measured by the amount of income the attorney receives from that one deaf or hard of hearing client.**<sup>59</sup> Instead, undue burden is measured by the financial impact on the firm as a whole.<sup>60</sup> Undue burden is defined as significant difficulty or expense when considered in light of a variety of factors including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business.<sup>61</sup> The undue burden standard is applied on a case-by-case basis.<sup>62</sup> The approximate cost of a qualified interpreter for a one hour attorney client meeting in Florida ranges from \$55.00 – \$95.00 per hour, at a two hour minimum plus possible travel costs.<sup>63</sup> Therefore an attorney must successfully opine that spending \$110.00 - \$190.00 is an undue burden relative to the overall operational revenues of the firm. As of the dissemination of this Handbook the author is not aware of any cases in which a court has held that the cost of providing interpreting services was an undue burden.<sup>64</sup> Moreover it is possible for an attorney to be responsible for providing auxiliary aids for pro bono clients, if the cost of the aid would not be an undue burden on the entire operation of the firm.<sup>65</sup> Furthermore, the obligation to provide an interpreter or auxiliary aid may be extended to communicating with non-clients (e.g., estate beneficiaries, deponents, and an audience for a legal seminar).<sup>66</sup>

During the trend analysis, and contemporaneous to the production of this Handbook Deaf and Hard of Hearing clients reported that when they asserted their right to effective communication some Florida attorneys threatened to withdraw from their case, yelled at the client or referred to them as stubborn and uncooperative. Retaliation for invoking one's rights under the ADA is in itself a violation of the ADA.<sup>67</sup> Attorneys must avoid a myopic view on finances, and see things from the client's perspective while understanding the requirements of the law. Deaf clients, like all clients want to understand their legal issues, participate in their cases and develop levels of trust and rapport with their attorneys. When a client can't effectively communicate with their attorney those goals quickly erode and leads to deficient representation.

**6. D. Myth 4: Most Deaf and hard of hearing people can lip-read, and or read proficiently so as to preclude the need for an auxiliary aid.**

**Attorneys wrongly believe that speaking slowly, or writing to Deaf or Hard of hearing clients is a reasonable accommodation which provides effective communication.** The trend analysis uncovered that many attorneys believe all people with some form of hearing impairment can Speechread (lip-read) well enough to understand without additional auxiliary aids. Speechreading is a very difficult task to master, and half of the

---

<sup>59</sup> 28 C.F.R. § 36.104, Undue Burden (1) – (5)

<sup>60</sup> Id.

<sup>61</sup> Legal Services: Attorneys, Deaf Clients, and the Americans with Disabilities Act, National Association of the Deaf, <http://www.nad.org/legalservices>. See also 28 C.F.R. § 36.104

<sup>62</sup> Id.

<sup>63</sup> Note some interpreter agencies charge travel costs and mileage. Attorneys are encouraged to negotiate rates with interpreters, and often discounts are provided for those attorneys who use interpreters regularly.

<sup>64</sup> Please advise the author if you are aware of any such successful published claims and she will personally pay for the interpreting services for your next attorney client meeting with a deaf or hard of hearing client.

<sup>65</sup> Legal Services: Attorneys, Deaf Clients, and the Americans with Disabilities Act, National Association of the Deaf, <http://www.nad.org/legalservices>

<sup>66</sup> Id.

<sup>67</sup> 28 C.F.R. § 36.206

42 sounds which make up English look just like some other sounds on the lips.<sup>68</sup> The speech reading ability of clients vary widely, and the success rate depend upon the content of the dialogue, speed, vocal accents, presence of beards and mustaches, client fatigue, residual hearing etc. Additionally, clients report that speech reading itself is a very fatiguing way to communicate, and fatigue leads to misunderstanding. Even if the client can effectively speechread for a period of time speechreading is only part of the diade for communicating. If the client does not use his or her voice to speak there is no mechanism for client to respond to the attorney's inquiries except by being force to the arduous task of writing back and forth.

Speechreading and communication in general is heavily impacted by a cultural attribute of ASL users which is known as the **"head nod"**. When an ASL user or a hard of hearing client communicates often a *head nod* will accompany the receptive part of the conversation. This *head nod* is commonly mistaken as an affirmative response when instead it is a linguistic feature of processing visual information.

Writing is an inferior alternative for communicating through a more natural form. Not only does it require more time, but clients report it stilts conversation, limits the interactive process and impedes the creation of trusting bonds with their attorneys. Clients also report increased anxiety, tension and frustration as they arduously try to understand what is being said. If writing is an ineffective way for the Deaf client to communicate forcing them to write instead of hiring an interpreter is a violation of the ADA. There is also the additional ethical quandary of billing for longer attorney-client meetings because writing takes longer than using an interpreter or CART. Therefore the client pays a higher billable fee for a less accessible meeting. See Section 7, Auxiliary aids, and Reading Comprehension of Deaf Clients found at Section 4.

**6. E. Myth 5: Deaf people who can speak are more intelligent than those who only communicate in sign language.**

Not true, period. If you lost your voice tomorrow, and were unable to speak would that make you less intelligent?

**7. Auxiliary Aids/ Services used to provide Effective Communication: Overview of the Obligation**

The ADA defines the term "auxiliary aids and services" to include--

Qualified interpreters, notetakers, computer aided transcription services (CART), 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;<sup>69</sup>

Deaf, Hard-of-hearing, and Deaf/Blind people use varying modes of communication, therefore the auxiliary aid supplied must be determined on a case-by-case basis because one size does not fit all. Attorneys should implement and maintain procedures for obtaining auxiliary aids when requested by clients and should budget accordingly.

---

<sup>68</sup> Vernon, M. & Andrews, J., *The Psychology of Deafness: Understanding Deaf and Hard-of-hearing People*, Longman Press pp 3-21, 1990.

<sup>69</sup> 28 C.F.R. § 36.303

The ADA mandates that private attorneys consult with the client as to what auxiliary aid will be provided, and that aid **must be effective**. Contrary to what most attorneys believe the attorney is not the final arbiter of what is effective. All Deaf and Hard of hearing people communicate, engage and read at different levels therefore **their input is critical to determine efficacy**. Should an ADA claim be filed against an attorney the court must perform an independent evaluation as to whether the communication was effective. If you are not an expert in communication approaches employed by the Deaf community it is prudent to refer to the expertise of the client who will know what is most effective for them, as this is the same exercise the Court will use. When attorneys choose auxiliary aids based on the cost, and not on the effectiveness, the illusive costs savings dwindle when defending against an ADA claim.

To determine what is best for your client, please ask the client directly.

### **7. A. (i) Auxiliary Aids: American Sign Language Interpreters**

Sign language interpreting is a highly specialized field; simply knowing both sign language and English does not qualify a person as an interpreter.<sup>70</sup> A professional interpreter is able to adjust to a broad range of deaf consumer preferences and/or needs for interpretation, and develops their skills through extensive training over a long period of time.<sup>71</sup> Moreover interpreters must adhere to a professional code of conduct that includes requirements for maintaining confidentiality, disclosing conflicts of interest and a continued commitment to upgrade skills. In the United States ASL interpreter training programs range from two to six years in duration, and are complete with instruction on all facets of generalist interpreting. Someone who has taken one or two sign language classes or signs at a local church would not possess the requisite skills to interpret meetings with clients.

Contrary to what most people believe a person who provides interpreting services in *legal matters* must possess more than simply the ability to *interpret*. Interpreters working in legal settings require the linguistic and culturally abilities to convey legal information, along with a full understanding of the ramifications their presence creates e.g. attorney-client privilege concerns, disclosure of conflict of interests, protocol requirements.

ASL interpreter training in the United States is geared mostly to prepare interpreters to provide *generalist services* for community type settings; doctors appointment, job interviews, school meetings etc. Therefore the mainstreamed generalist interpreter preparation is not sufficient for handling attorney-client meetings, depositions, or court matters. The interpreter's lack of legal training could be detrimental to a client's ability to receive effective communication during all stages of the legal process. It is recommended that interpreters used by attorneys be not only certified by the National Registry of Interpreters for the Deaf (RID) and or the National Association for the Deaf (NAD), preferably holding a certificate known as the Specialist Certificate Legal (SC:L), but also have completed some form of legal interpreting training.

The need for competent interpreting services for your client is not limited to your attorney client interaction but extends to services received at other agencies or authorities that affect client's cases. If a Deaf client is denied interpreting services, or receives inadequate services at the Department of Children and Families, in court hearings, evaluations, or during initial conversations with the opposing side the

---

<sup>70</sup> Standard Practice paper: Professional Sign Language Interpreting. Registry of Interpreters for the Deaf, 1997

<sup>71</sup> Id.

misunderstanding can unnecessarily compound problems for the client.<sup>72</sup> Unfortunately, even though the ADA was passed in 1990 many facets of the legal system in Florida are still not accessible to the Deaf and Hard of hearing community. If a client seems to be misunderstanding, or misdirected it is likely due to inadequate or lack of interpreting services along the way and not due to lower intelligence or obstinance on the part of the client.

### **7.B. (ii) Oral Transliterators/ Interpreters**

Qualified Oral Transliterators have knowledge and abilities in the process of speech reading, speech production and the communication needs of speech readers.<sup>73</sup> Transliterators know how to manipulate and adapt environmental and other factors for successful communication, and do more than re-mouth the words so that they can be read on the lips. They have developed articulation skills and techniques that allow for easy understanding by speechreaders and have become skilled in employing verbal and non-verbal support techniques, thus assuring that the message is transmitted accurately.<sup>74</sup> They also possess the stamina to deliver continuous, accurate reception and expression of the spoken message and the mental concentration to work for an extended period of time.<sup>75</sup> The knowledge, techniques and skills of *oral transliterators* are markedly different from those needed by *sign language interpreters*, however, both groups of professionals commonly must possess a: knowledge of and adherence to the Code of Professional Conduct, Professional standards of service and behavior, and awareness of the communication needs of deaf and hard of hearing consumers.<sup>76</sup>

### **7. B. (iii) Auxiliary Aid : Certified Deaf Interpreters/ Intermediary Interpreters**

A Certified Deaf Interpreter (CDI), also known as a relay or intermediary interpreter, can be used in tandem with an ASL interpreter. CDIs are deaf or hard of hearing individuals who are certified to interpret as part of a team to facilitate communication. CDIs are most commonly used for individuals with limited language fluency, high visual orientation, international sign language users and/or those who rely on signs recognized by only those who communicate with her regularly—known as “home signs.”<sup>77</sup> However, the use of CDIs should not be limited to the above situations for they are a very helpful resource to an attorney when working with deaf children, victims of sexual assault, or with clients who are having trouble understanding their legal matter at the requisite level to proceed. As discussed previously in this Handbook the language used in the legal system is problematic for the layman, although one can read or hear the words they may not necessary know what is meant. CDIs have an innate ability to connect with Deaf clients and reach a deeper level of understanding, to which a regular, non deaf interpreter, regardless of their skill, may be unable to achieve. Not only can a CDI often reach a threshold to effectively communicate with your client, but commonly that level is achieved with much less effort on the part of your client, resulting in a reduction of client stress and anxiety.

The use of a CDI does not imply your client is less intelligent or incapable of fully assisting counsel. Maintain an open mind when interacting with clients, and remember that a qualified CDI provides an invaluable service which allows you to truly connect with a client, who others may have ignored or mistreated.

---

<sup>72</sup> Sharon Caserta, Jacksonville Area Legal Aid, Handbook on the Use of Interpreters, 2005

<sup>73</sup> Standard Practice Paper, Oral Transliteration, National Registry of Interpreters for the Deaf ,2007

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Communication Access in State and Local Courts Advocacy Statement, National Association of the Deaf, 2008

For more information about the use of CDIs, or Relay interpreter see *The Standard Practice Paper of The National Registry of Interpreters for the Deaf: Use of Certified Deaf Interpreters* found at [www.rid.org](http://www.rid.org) .

### **7. B. What is a “certified” interpreter?**

A **nationally certified interpreter** is one who has obtained certification from either the National Registry of Interpreters for the Deaf (RID) or the National Association of the Deaf (NAD), or both. For the most part certified interpreters have taken and passed a written and a performance examination which measures their interpreting abilities in different settings against a minimum national standard.<sup>78</sup> These certifications are awarded to ASL interpreters, Oral Transliterators and Certified Deaf Interpreters. The certificates are recognized in every state and generally, **but not always**, the higher the level of certification the higher the probability of a qualified interpreter.

Due to the unique demand of interpreting in legal settings the RID developed the Specialist Certificate: Legal (SC:L), which is awarded to those interpreters who demonstrate a proficiency not only in generalist interpreting skills, *but have also completed training and obtained proficiency in legal settings*. Although there are not many SC: L holders in Florida, the number continues to grow, and when savvy attorneys demand such standards for their clients the number will increase so to provide more protection to the Deaf community and the legal profession.

In Florida there is also a **state screening evaluation** in which an interpreter may take a locally administered test to allow them to interpret in very limited settings with varying degrees of supervision.<sup>79</sup> This credentialing is provided from the Florida Registry of Interpreters for the Deaf (FRID) and these locally screened interpreters **are not considered certified**. Moreover they are specifically instructed by FRID to refrain from interpreting in any legal matters to include attorney-client meetings, even for preliminary intake meetings.<sup>80</sup> Their infancy in the profession and their lack of a national certificate is widely recognized as an avenue for potential harm to the Deaf community, **and therefore should not be working in legal settings**.

Although neither the ADA nor Florida law<sup>81</sup> requires the interpreter be nationally certified it is recommended that meetings with attorneys, court appearances, or conversations with law enforcement be interpreted by nationally certified *and legally trained interpreters*. This helps assure the client, the attorney, law enforcement and the court are obtaining optimal services. An informed attorney can begin preserving their client’s rights, and acting in their client’s best interest as early as the initial meeting by securing an appropriate interpreter.<sup>82</sup> Moreover, in Florida most agencies that provide interpreters do NOT lower the rate they charge attorneys even when they send a less qualified individual to provide services. As an attorney you must act as the

---

<sup>78</sup> For more information on interpreter certification visit the Registry of Interpreters for the Deaf at [www.rid.org](http://www.rid.org)

<sup>79</sup> The Florida Registry of Interpreters for the Deaf provides a local “Quality Assurance” (QA) test for interpreters working in Florida. The goal of the QA is to provide a stepping stone for newer and less experienced interpreters as they strive for a higher level of competence.

<sup>80</sup> Florida Registry of the Deaf, Quality Assurance Study Packet, FRID, page 8

<sup>81</sup> Interpreter Services for Deaf Persons (Courtroom Settings) Fla. Stat. 90.6063, Interpreter Services for Deaf persons (Arrest/Custody Situations) Fla. Stat. 901.245.

<sup>82</sup> If at any time an attorney questions the qualifications of an interpreter being used outside of court they should be replaced. In a court proceeding the Court Interpreter should be voir dired prior to the hearing to determine if they have the requisite training to interpret the matter at hand.

gatekeeper and should ensure the interpreters being provided to you are certified, legally trained and qualified to interpret for your meetings. See section 7E as to the proper Voir Dire of interpreters.

For more information about protocol and practices of legal interpreters please review the *Registry of Interpreters for the Deaf, Standard Practice Paper, Interpreting in Legal Settings* found at [www.rid.org](http://www.rid.org).

### **7. C. Securing Qualified Interpreters in Florida**

Most referral agencies and interpreters are currently listed either on the FRID web page at [www.frid.org](http://www.frid.org) or the National Registry of Interpreters for the Deaf web page at [www.rid.org](http://www.rid.org). Sources can also be found in your local phone book. Be cautious of agencies which primarily provide foreign spoken language interpreters, such as Spanish. Unfortunately many of these agencies have simply added the referral of ASL interpreters and do not possess the requisite skills to determine if the interpreters are actually qualified for assignments.

Interpreters can also be provided through the use of **Video Relay Interpreting (VRI)** in which the interpreter appears remotely through the use of videoconferencing equipment. In areas where interpreters are difficult to secure VRI may be a viable option. However, it is critical to note that this new technology has **not** been fully embraced by the Deaf and Hard of Hearing Community because its use, and the qualification of the interpreters provided have been problematic in some areas. Prior to utilizing VRI attorneys should discuss this option with the client and verify the qualifications of the VRI interpreter.<sup>83</sup> VRI interpreting is not recommended in court.

### **7. D. Verifying the Credentials of Interpreters**

It is wise to always verify credentials of all interpreters prior to using their services. Usually if an interpreter is secured through an interpreter referral agency the agency can supply such data. Attorneys can also use the following resources.

Current sources for locating credentialed interpreters in Florida:

1. [www.rid.org](http://www.rid.org) “find a member” tab on left side of main page
2. [www.fccdhh.org](http://www.fccdhh.org) “find an interpreter” tab on left side of main page
3. [www.fridcentral.com](http://www.fridcentral.com) “Member directory” tab on left side of main page
4. FRID For an electronic list of members with state and national credentials email membership Chair, Charlene McCarthy, [RIDmembership@VisComOffice.com](mailto:RIDmembership@VisComOffice.com). A hard copy is also available at a minimal cost for copies and postage.

---

<sup>83</sup> Currently there is no master listing of VRI providers in Florida. Attorneys should inquire with local interpreter referral services to ascertain if VRI is provided. For additional information on VRI, please refer to *Video Remote Interpreting Services in Hospitals, Position Paper of the National Association of the Deaf*, although this paper focuses on VRI use in a hospital, the information will be helpful to the attorney, found at <http://www.nad.org/site/pp.asp?c=foINKQMBF&b=4423525>

## **7.E. Typical Questions to Consider when Qualifying Sign Language Interpreters<sup>84</sup>**

1. State your full name and address.
2. Where are you presently employed?
3. What is your educational background?
4. How long have you known sign language?
5. Where did you learn American Sign Language?
6. Can you communicate fluently in American Sign Language (ASL)?
7. Are you certified? By whom? What is your certification called?
8. Please explain the certification process.
9. What formal interpreter training have you undertaken?
10. What formal legal interpreter training have you undertaken?
11. What knowledge and skill areas did you study?
12. How many times have you interpreted in court and in what kinds of situations have you interpreted?
13. Please explain the difference between interpreting and transliterating, and between interpreting and translation.
14. Are you active in any professional organizations?
15. What is the RID?
16. What is meant by minimal language skills?
17. How do you determine the language used by a person who is deaf?
18. Have you met the person who is deaf in this matter?
19. Were you able to establish communication?
20. How could you determine that you were being understood and that communication was established?
21. What language does the person who is deaf use?
22. How long will it take you to determine the language the person uses?
23. Would you consider this person to be ASL-English bilingual?
24. Is it possible to sign in ASL at the same time you are speaking in English?
25. As an interpreter, what are significant issues that affect your interpreting in court?
26. Will the interpretation you provide today be verbatim?
27. What process would you use to inform the Court of any errors in your interpretation?
28. Can you explain the difference between simultaneous and consecutive interpretation?
29. Please explain the major tenets of the Model Code of Professional Responsibility for Interpreters in the Judiciary.
30. What does the term relay interpreter mean and what function does that person serve?
31. Why might a Certified Deaf Interpreter be more qualified to communicate with this person than you are?
32. Please explain to the Court how you will work with the relay interpreter

## **7. F. Tips for using Sign Language Interpreters in an Attorney-Client meeting<sup>85</sup>**

---

<sup>84</sup> Adapted from: A Meaningful Opportunity to Participate, A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities, Georgia Commission on Access and Fairness in the Courts, December, 2004

<sup>85</sup> The tips provided in this section are applicable to interpreters hired for attorney-client meetings. Communication and contact with a Court Interpreter, the interpreter assigned by the court to interpret “on the record”, involve different considerations for the attorney which is explained in Section 7.F Section 4b.

Interpreters are trained professionals, and attorneys should work collaboratively and share proper information to promote an accurate interpretation. Generally the more prepared the interpreter is the higher the quality of interpreting services provided. Interpreting services can be provided in person, or remotely by Video Relay Interpreting Services.<sup>86</sup>

1. ***Meet or speak with the interpreter for the attorney-client meeting before the meeting:***

- a. The interpreter should contact you directly to properly prepare for the interpreting assignment, if that does not occur then you should contact the interpreter. Provide the interpreter with an overview of the content of the meeting and allow them to review any written material that may be discussed. Interpreters need to have a context and a basic understanding of the goal of the meeting.
- b. Ascertain if the interpreter has any conflict of interest that you should be aware. The fact that the interpreter knows the deaf client or has worked with them before could pose ethical issues that could be problematic. How does the interpreter know the deaf person? Do they go to the same church? Has the interpreter interpreted another event in this deaf client's life that poses a conflict for working with you? The issue of whether there is a conflict is for the attorney to decide not the interpreter.<sup>87</sup>
- c. Remind the interpreter of the attorney-client privilege and their need to ensure the information remains confidential, and to avoid discussing the case with the deaf client outside of your presence.
- d. Ask the interpreter about their qualifications and legal training. The fact that they have been interpreting legally related matters for many years does *not* necessarily mean they are qualified. They should have some legal *training*, and if they don't meet that threshold you may ask to have another more qualified interpreter present.<sup>88</sup>

2. ***Office Logistics***

- a. Arrange seating to allow the deaf client to sit directly across from you. Have the interpreter sit off to your side, slightly behind you but in the deaf person line of sight.
- b. Make sure there are no bright lights behind you, or the interpreter, and reduce office noise or visual distractions as much as possible.

3. ***During the Meeting***

---

<sup>86</sup> VRI is an emerging way to secure interpreting services without requiring the interpreter to physically appear at the location. There are many benefits and deficits to consider with a VRI service. To learn more please see footnote # 83.

<sup>87</sup>The interpreting community is small, and it is common for highly skilled interpreters to have interpreted several events in a deaf person's life. Attorneys should cull out real conflicts as opposed to perceived ones. Verify specifically if the interpreter has interpreted in any other "privileged" events as defined by Florida Statutes e.g. Fla. Stat 90.5035 Victim privilege, Meetings with Sexual Assault counselors, Fla. Stat 90.5036 -Victim privilege, Meetings with Domestic Violence advocates or other applicable statutes.

<sup>88</sup> In Florida attorneys will typically be charged the same rate regardless if the interpreter has extensive training, or just recently graduated from an interpreter training program, therefore inquire as to skills and negotiate rates.

- a. Speak directly to the deaf person (do not say “tell him” or tell her”) and speak at a normal pace. If you are talking too fast the interpreter will let you know.
- b. Look directly at the deaf person not at the interpreter.
- c. Avoid engaging the interpreter in the conversation; do not ask for the interpreter’s opinion on matters unless it relates to the interpretation. The interpreter’s role is to be a conduit for communication and not an active participant in the meeting, engaging them in ways which forces them to become involved causes ethical quagmires for interpreters.
- d. If something is said by the deaf client that does not make sense ask the deaf person to repeat. It could be a misinterpretation by the interpreter, or a misunderstanding by the deaf client. Clarify complex legal terms if an important legal concept is being discussed, and use examples to augment clarification.
- e. Interpretation cannot happen completely simultaneously, it is common and recommended that the interpreter be a few words or phrases behind the speaker (the attorney or the deaf client) to provide an accurate interpretation. The fact that the interpreter will ask for clarification, or additional time does not mean the interpreter is incompetent it normally means more time is needed for a complete clear interpretation.
- f. Remember everything you say will be interpreted. Interpreters follow a code of conduct that prohibits censoring of information of any party, and this includes incoming and outgoing phone calls you receive during the meeting.
- g. If you provide the deaf person with something to read, do not talk while the client is reading-- they cannot watch the interpreter and read at the same time.
- h. Provide ample breaks. Interpreting is fatiguing, an approximate 10 minute break should be provided each hour, be sure to allow the interpreter to rest during the break.
- i. Relax.

#### **4. After the Meeting**

- a. If a subsequent meeting is required with the Deaf or Hard of hearing client **do not automatically request the same interpreter.** It is wise to speak with the client directly, either by writing a short note or calling them after the meeting, and inquiring if they understood the interpreter and wish for the same interpreter to appear again. For continuity of service it is best to use the same interpreter for all meetings. However, if the services provided are inadequate a continuously bad interpreter will not enhance the situation.
- b. Should the Deaf client’s case proceed to court, it is not appropriate to use the interpreter used at the attorney client meetings in court. The official “Court Interpreter” is an Officer of the Court and should not have been engaged by either side prior to the hearing due to conflict issues, possible bias, and a tainting of their neutrality. It is appropriate to use the interpreter from your office as “Counsel Interpreter” (also known as Table Interpreter) and have them seated with you, and your Deaf client at counsel table. The role of Counsel Interpreter is to interpret private conversations between you and your client during the court proceedings. The role of the Court Interpreter is to interpret all matters on the record.<sup>89</sup> Be advised that the cost of the Court Interpreter or auxiliary aid used in court is paid for by the court.

---

<sup>89</sup> During the trend analysis we uncovered many instances in which the Court Interpreter was being used as Table Interpreter. This dual role arrangement is highly discouraged, because it is often over used and leads to due process violations. Additionally, the pragmatics of sharing one interpreter for the Court and the attorney is unworkable, and contrary to case law. When the client wishes to speak to their attorney the proceedings would need to stop so to

## **8. Tips for communicating with Hard of Hearing or Late-deafened clients who do not use sign language.**

Hard of hearing or late-deafened people use a variety of techniques to communicate. Prior to meeting ask the client what auxiliary aid or modification is most effective for them. Some clients will require the services of a CART reporter or an assistive listening device for effective communication whereas other may require modifications or minor changes in the way the meeting is held. For those who communicate orally logistics are important. The following tips are helpful; the room should be as quiet as possible (no loud fans or a/c units), when speaking face the person and speak slowly, do not yell, avoid chewing gum or covering your mouth while speaking, don't speak too quickly and if a term is difficult to get across rephrase instead of repeating. Avoid having any lights sources behind you. During the meeting check in with the client to make sure they are understanding and inquire if a break may be needed. If you are concerned about comprehension ask questions that require more than a yes or no answer to assess understanding. If you are unfamiliar with the assistive devices used by the client, ask for an explanation.

## **9. Auxiliary Aids/Services Used to Provide Effective Communication: Technological Aids<sup>90</sup>**

### **9. A. Auxiliary Aid: Communication Access Real-time Translation (CART)**

Communication Access Real-time Translation (CART) is a verbatim, word-for-word, instant translation of the spoken word into written text.<sup>91</sup> The text appears instantly on a computer screen so that deaf or hard-of-hearing consumers may read what is being said.<sup>92</sup> CART services are performed by specially trained stenographers many of them are former court reporters. Whenever possible, a Certified CART Provider (CCP) should perform CART services.<sup>93</sup>

To locate CART reporters in your area contact:

- The Florida Coordinating Council for the Deaf and Hard of Hearing web page located at [www.fccdhh.org](http://www.fccdhh.org)
- Obtain a referral from The National Court Reporters Association at <http://www.ncraonline.org> or the Florida Court Reporters Association at <http://www.fcraonline.org>
- Contact the Deaf Service Center in your area and inquire as to local providers<sup>94</sup>

---

allow the one interpreter to interpret the dialogue between the attorney and the client. This stopping and acting in dual roles blurs the line of demarcation as to where the Court Interpreter's role ends and the Table Interpreter's role begins. Role morphing has a detrimental effect on the client's access to counsel and due process rights. There is also case law identifying the chilling effects of having an inadequate number of interpreters in court. See *People v. Aguilar*, 35 Cal.3d 785 (1984) (holding defendant was deprived of his constitutional right to a proceedings interpreter when the trial court borrowed the interpreter to translate testimony of two state witnesses.); *People v. Resendes*, 210 Cal Rptr 609 (1985) (holding that sharing of one interpreter with his codefendant under procedure which inhibited effective communication was a reversible error).

<sup>90</sup> This heading taken generally from John Fallahay, *The Right to a Full Hearing, Improving Access to the Courts for People who are Deaf or Hard of Hearing*, 2000, pg 41

<sup>91</sup> Cart Providers, Florida Coordinating Council for the Deaf and Hard of Hearing, found at [www.fccdhh.org](http://www.fccdhh.org)

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> A listing of Deaf Service Centers can be found at [www.fldsca.org](http://www.fldsca.org)

Typical questions used when qualifying a CART reporter are: Are they a Certified CART provider? Can they provide references of Deaf or Hard of hearing consumers they've worked with in the past? What is their level of CART experience and CART ethics training?

### **9. B. Auxiliary Aid: Assistive Listening Systems (ALS)**

Assistive Listening Systems are generally devices which can be used to improve and increase the sound and quality of conversations between parties. ALS includes induction loops, FM systems, Infrared and a number of other devices. These systems are generally used with Hard of hearing or late-deafened clients, and their efficacy will depend on a number of factors to include client's residual hearing, type of hearing aid used and personal preference. Although most hard of hearing clients who use ALS will typically supply their own for a meeting like an attorney-client meeting the ADA defines an ALS as an auxiliary aid, and if needed to provide effective communication must be provided by the attorney. Samples of such systems can be found at <http://www.hearingloss.org/learn/assistivetech.asp>. These devices can be secured by vendors locally and nationally. Confer with your client as to which system or device is most effective.

### **9. C. Speechreading**

Forcing clients to speech read if the client is unable to do so effectively does not satisfy the obligation to provide an auxiliary aid pursuant to the ADA. Not all deaf and hard of hearing people can lip-read, and those who can have different levels of proficiency. The task of speech reading is very difficult to master, and the ability or inability to lip-read is in no way related to a deaf or hard of hearing person's intelligence. Some hard of hearing people use speech reading as an effective mode of communication but not all, each client should be asked which mode of communication they prefer and be provided the appropriate auxiliary aid. If the hard of hearing client *affirmatively requests* you accommodate their need to speechreading, then fostering effective speech reading can satisfy the effective communication requirement. Please refer to Myth 4, and Oralism and Associated Communication Techniques at Section 3D.

### **10. Tax Incentives for the Provision of Auxiliary Aids**<sup>95</sup>

To assist businesses with complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses. The tax credit is available to businesses that have total revenues of \$1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of the eligible access expenditures in a year up to \$10,250 (maximum credit of \$5000). The tax credit can be used to offset the cost of undertaking barrier removal and alterations to improve accessibility, which includes providing sign language interpreters, and for purchasing certain adaptive equipment. The tax deduction is available to all businesses with a maximum deduction of \$15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations. To learn more about the tax credit and tax deduction provisions, contact the DOJ ADA Information Line.<sup>96</sup>

### **11. Appearances in Florida State Courts : Payment for auxiliary aids and services, and how they are obtained.**

---

<sup>95</sup> Entire section taken from "ADA Guide for Small Business", US Department of Justice, Office of Civil Rights, found at [www.ada.gov](http://www.ada.gov)

<sup>96</sup> ADA Information line # 800 - 514 - 0301 (voice), # 800 - 514 - 0383 (TTY)

For state court appearances of any kind, the court must ensure effective communication with each party and must pay for the provision of auxiliary aids and services for qualified deaf and hard of hearing parties upon request.<sup>97</sup> The court must give *primary consideration* to the person's expressed choice of the auxiliary aid provided.<sup>98</sup> This requirement means that if your client is an ASL user and prefers the use of a qualified interpreter to communicate effectively, the court may not provide a scribe in lieu of an interpreter if note taking would not be effective for the client.

The courts are obligated to provide auxiliary aids and services for all court or court related events to include but not limited to appearances, hearings, jury duty, court sponsored clinics etc. However, the Court's obligation does not include depositions or evaluations (psychological, etc) as requested by counsel in relation to a court matter. Those obligations would fall upon the person providing the evaluation e.g. the psychologist and or the attorney calling the deposition.

To obtain an auxiliary aid for your client the attorney, or the client, must make an affirmative request for the accommodation to the Court ADA Coordinator. It is wise to make the request for an accommodation as soon as the need is known, and to consult with your client as to the specific auxiliary aid needed. Typically the court requires approximately 3-5 business days to secure services. For the listing of the Florida State Court ADA Coordinators in your jurisdiction see [www.flcourts.org](http://www.flcourts.org) (ADA Information Section). The Florida state courts have also instituted an internal grievance procedure which can be utilized when clients requested an accommodation and then denied services by the court. The Grievance Procedure and submission forms can be found at [www.flcourts.org](http://www.flcourts.org) (ADA information section).

## **12. Appearances in Federal Court: Payment for auxiliary aids and services, and how they are obtained.**

Federal courts are not covered by the Americans with Disabilities Act, or Section 504 of the Rehabilitation Act of 1973. In 1995, federal courts adopted an overall policy of providing auxiliary aids and services to ensure effective communication with individuals who are deaf or hard of hearing. Refer to the US District Court web page in your jurisdiction to locate the Access Coordinator assigned to secure such services.<sup>99</sup>

However, The Court Interpreters Act of 1978 requires the provision of interpreters for judicial proceedings instituted by the United States.<sup>100</sup> The term "judicial proceedings instituted by the United States" refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court.<sup>101</sup> The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter,<sup>102</sup> or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on

---

<sup>97</sup> 28 C.F.R. § 35.160(b) (1).

<sup>98</sup> 28 C.F.R. § 35.160(b)(2) (emphasis added)

<sup>99</sup> For an example see the Florida Middle District Court's policy at [www.flmd.uscourts.gov](http://www.flmd.uscourts.gov)

<sup>100</sup> 28 U.S.C. § 1827

<sup>101</sup> 28 U.S.C. § 1827 (j)

<sup>102</sup> Please note the term "certified" in this context refers to both sign language interpreters and spoken language interpreters who receive certification through an entirely different certifying body. For a helpful resource on the role of spoken language interpreters in court and their certification process refer to The Bilingual Courtroom, Susan Berk-Segilson, University of Chicago Press, (1990)

such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) **suffers from a hearing impairment** (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.<sup>103</sup>

### **13. Corresponding with Deaf, Hard of Hearing or Deaf/Blind clients by phone or electronically.**

#### **13. A Contact by Phone**

As with any client it is important to maintain direct contact to ensure case comprehension. Occasionally Deaf or Hard of Hearing clients will provide a surrogate for communication. This is usually done because deaf or hard of hearing clients have historically experienced resistance and impatience when they ask others to communicate with them through special technology. Clients also become concerned that their request for assistance will not be answered if attorneys view direct contact as too time consuming. Attorneys should be contacting clients directly, to provide equitable legal services, even if it takes a bit longer.<sup>104</sup> With the advancement of assistive technology contacting Deaf and Hard of Hearing clients is easy. The first step is to ask the client for their preferred mode of correspondence.

Corresponding with clients by phone occurs in a number of ways; TTY, Video Relay Service, IP Relay, and Cap-Tel, to learn more about telecommunication devices and options listed below please refer to the Florida Telecommunications Relay Inc. web page at [www.ftri.com](http://www.ftri.com).

Phone communication with clients will depend upon their preferred technology. Formerly the **Teletypewriter/ Telecommunication Device for the Deaf (TTY/TDD)** was predominantly used by the Deaf community. **TTYs/TDDs** are devices that the deaf, hard-of-hearing, and the deaf/blind community use to communicate though standard telephone lines.<sup>105</sup> To speak directly to a TTY user, the receiver of the call also must have a TTY. Otherwise the caller must go through a *telecommunication relay service* (TRS) to facilitate the call between the two parties.<sup>106</sup> Relay services are provided in each state without charge under Title IV of the ADA.<sup>107</sup> If your client uses a TTY you can reach a relay service by dialing 711 on a telephone anywhere in the country, and then provide the TTY number of your client. Although TRS makes telephone services accessible

---

<sup>103</sup> 28 U.S.C. § 1827 (d) (1) ( emphasis added)

<sup>104</sup> The author notes that it is extremely rare that direct client contact cannot be achieved effectively. Often the Deaf client's family members have either historically controlled the communication of the client, or have assisted them for so long that the family members believe it is in the client's best interest to maintain that pattern. The fact that a client is deaf does not mean they can't communicate with their attorney, and the attorney should attempt to make an independent evaluation as to if the surrogate is truly needed. Without a properly executed guardianship or other extreme limitation direct communication with the client should occur. However in those extremely rare situations in which a surrogate must be used it is wise to have the client sign an authorization for augmentive communication, and even with this authorization the surrogate should be used in tandem with the client and not to their exclusion.

<sup>105</sup> Sharon Caserta , *Deaf, Hard of Hearing, and Deaf/Blind clients: A quick reference for Legal Aid offices*, Clearinghouse Review, Shriver Center, Sept-October 2007 edition

<sup>106</sup> Id.

<sup>107</sup> 47 U.S.C. § 225 (1990)

for individuals who are deaf or hard of hearing, the calls take longer than regular phone calls, and attorneys should plan accordingly when contacting deaf or hard of hearing clients.<sup>108</sup>

Many clients have a **TTY/TDD which is equipped with a printer, which means your phone conversation will be printed out and can be preserved by the client.** However, the TRS does not retain the content of the conversation between callers, and automatically deletes all information upon termination of the call.

However, TTYs are now becoming obsolete and newer technology such as videophones, sidekicks (a handheld texting device), personal device assistants (PDAs) and other more portable devices are in vogue. **Videophones (VPs)** allow Deaf people to sign in ASL through their television or computer to another person who has a videophone or through a video relay service (VRS) to a caller without a videophone.<sup>109</sup> VPs make it possible for Deaf people to use their native language (ASL), as opposed to having to use the TTY, which forces the Deaf person to type in English, which is often a second language.<sup>110</sup> Each VP user has their own 10 digit VP number similar to a regular phone number. Clients can be called directly with this number without the use of any special equipment by the attorney. When a call is placed to a client's VP number a video relay interpreter answers automatically which allows you to engage in a video relay call through the interpreter with your client. There are several VRS providers in the state of Florida, and clients choose the service they prefer, just like one would select their phone company. VRS providers have different standards for the interpreters used to relay phone calls. If for some reason you question the quality of the interpreter provided on the phone call with your client please advise your client of the problem, and or ask for a different interpreter on the phone.

**The Florida Relay Service** provides a number of options for deaf and hard of hearing people to communicate by phone. Some hard of hearing clients may use a feature known as **Voice Carry Over (VCO)** which allows a hard of hearing caller to speak for themselves and read incoming speech using the Relay Service. A hard of hearing client who hears well can also use the **Hearing Carry Over (HCO)** feature which allows the client to hear for themselves, but allows them to type their responses due to their inability to speak.

Some clients also use a service called **Internet Protocol Relay (IP Relay)**, which is accessed using a computer and the Internet rather than a TTY and a telephone. You can call your client, or your client can call you through their handheld device or computer.<sup>111</sup> To make these calls ask your client which IP relay service they prefer, and place the call to that number. The IP relay operator will answer and type what you say to the client, and the client will type back while the relay operator vocalizes what the deaf client says.<sup>112</sup> Be advised that since the conversation is occurring through a computer **your phone conversation can be printed out, or preserved on the computer by the client.** However, the IP relay service does not retain the content of the conversation between callers, and automatically deletes all information upon termination of the call.

**The Captioned Telephone (CapTel)** is another device used by Hard of hearing or Late-deafened clients in which their phone displays every word a caller says throughout the conversation. CapTel phone users can

---

<sup>108</sup> Sharon Caserta , *Deaf, Hard of Hearing, and Deaf/Blind clients: A quick reference for Legal Aid offices*, Clearinghouse Review, Shriver Center, Sept-October 2007 edition

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> IP Relay services are provided without charge to the attorney or the client pursuant to Title IV of the ADA.

<sup>112</sup> Sharon Caserta , *Deaf, Hard of Hearing, and Deaf/Blind clients: A quick reference for Legal Aid offices*, Clearinghouse Review, Shriver Center, Sept-October 2007 edition

*listen* to the caller, and *read* the written captions in the CapTel's display window.<sup>113</sup> To call clients who use CapTel, your client must provide you with the specific number for the service, then you provide the client's phone number.<sup>114</sup> Your client will read what you say across their screen, be advised these devices are not equipped with printers, and these phone calls take longer than regular calls. For more information on the CapTel phone and the various applications available, please see [www.ultratec.com](http://www.ultratec.com).

### **13. B. Contact by email**

**Email, instant messaging and texting** are effective ways to communicate with clients for short non-technical matters. The length and complexity of this written communication will depend upon the native language of your client, ASL or English. Email can be very effective for the Deaf/Blind client who will likely have the requisite technology at home to modify the print, contrast or size, so to access the information more readily.

Attorneys should be mindful to avoid long email correspondence without the proper interactive explanation provided by a meeting or a phone call.

### **14. Florida Interpreter Statutes**

**Interpreter Services - Courtroom Settings: Fla. Stat. § 90.6063.** Outlines requirements for the provision of qualified interpreters in court; defines "qualified interpreters".

**Interpreter Services - Arrest/Custody Situations: Fla. Stat. § 901.245.** Provides that in the event a deaf person is arrested and taken into custody, the services of a qualified interpreter shall be sought prior to interrogation.

**Jury Services of Persons Who are Deaf: Fla. Stat. § 40.013.** Provides that no one shall be excused from jury duty solely on the basis of being deaf or hearing impaired, if that person wishes to serve, unless the presiding judge makes a finding that consideration of the evidence to be presented requires auditory discrimination or that the timely progression of the trial will be considerably affected.

### **15. Additional Resources**

#### **1. National Association of the Deaf (NAD): [www.nad.org](http://www.nad.org)**

NAD is the oldest and largest constituency organization safeguarding the accessibility and civil rights of 36 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The association provides information, referral, advocacy, administers a caption media program and has recently partnered with RID to nationally certify interpreters.

#### **2. Hearing Loss of America (HLAA): [www.hearingloss.org](http://www.hearingloss.org)**

HLAA is the largest consumer organization representing people with hearing loss. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a

---

<sup>113</sup> <http://www.captionedtelephone.com/about-captel.php>

<sup>114</sup> The number used depends upon if your client is using a 1-Line CapTel or a 2-Line CapTel.

national and global level. HLAA is located in the Washington DC area and has over 200 chapters nationwide and 14 State Affiliates. The Hearing Loss Association of Florida (HLA-FL) website is located at [www.hla-fl.com](http://www.hla-fl.com).

**3. Florida Coordinating Council for the Deaf and Hard of Hearing (FCCDHH): [www.fccdhh.org](http://www.fccdhh.org)**

Provides a forum for public input and outreach resulting in technical assistance, advocacy, education, and improved communication access among public and private entities to meet the needs of deaf, hard of hearing, late-deafened and deaf-blind persons. FCCDHH provides helpful links to locate a number of service providers and resources use by the deaf, hard of hearing and deaf/blind community.

**4. Jacksonville Area Legal Aid, Inc., Deaf/Hard of Hearing Legal Advocacy Program: [www.jaxlegalaid.org](http://www.jaxlegalaid.org)**

Provides confidential or non confidential information, referral and consultation to members of the Florida Bar in regard to ensuring access to the court, ADA, 504 and other relevant civil rights legislation to preserve and protect the rights of deaf, hard of hearing and Deaf/Blind citizens of Florida.

**5. National Registry of Interpreters for the Deaf (RID): [www.rid.org](http://www.rid.org)**

RID is a national membership organization which provides information, referral, training for new and professional interpreters and, continued certification through NAD-RID's National Testing System (NIC), along with self-regulation through a national Ethical Practices System (EPS).

**6. Florida Registry of Interpreters for the Deaf (FRID): [www.fridcentral.com](http://www.fridcentral.com)**

FRID is a local affiliate of the National Registry of Interpreters for the Deaf which primarily is a resource for interpreters, but also provides information and referral to consumers of interpreting services.

**7. Florida Association of the Deaf (FAD): [www.fadcentral.org](http://www.fadcentral.org)**

FAD is affiliated with the National Association of the Deaf, and seeks to promote accessibility and the fair treatment of deaf and hard of hearing people by supporting an accessible educational system, promoting awareness of communication difficulties, and acting as a watch dog for pertinent legislation affecting the community and supporting organizations working with deaf or hard of hearing people.

**8. National Consortium on Deaf-Blindness (NCDB): [www.nationaldb.org](http://www.nationaldb.org)**

The National Consortium on Deaf-Blindness (NCDB) is a national technical assistance and dissemination center for children and youth who are deaf-blind. NCDB brings together the resources of three agencies with long histories of expertise in the field of deaf-blindness, The Teaching Research Institute (TRI) at Western Oregon University, the Helen Keller National Center (HKNC), and the Hilton/Perkins Program at Perkins School for the Blind. NCDB works collaboratively with families, federal, state and local agencies to provide technical assistance, information and personnel training.

**9. National Association of Late-Deafened Adults (ALDA): [www.alda.org](http://www.alda.org)**

The mission of the Association of Late-Deafened Adults (ALDA) is to support the empowerment of late-deafened people. ALDA provides a support network and a sense of belonging by sharing unique experiences, challenges and coping strategies, helping others find practical solutions and emotional support, and working together with other organizations and service providers for the common good of those with hearing loss.

**10. The National Court Reporters Association (NCRA): [www.ncraonline.org](http://www.ncraonline.org)**

The National Court Reporters Association (NCRA) is committed to being the leader in advancing the profession of those who capture and integrate the spoken word into a comprehensive and accurate information base for the benefit of the public and private sectors. NCRA is internationally recognized as the leading organization working on behalf of its members. Through its large, active and involved membership, the Association has substantial impact on legislative issues and the global marketplace. The Florida Court Reporters Association is found at [www.fcraonline.org](http://www.fcraonline.org)