Affording Equal Access to Justice

The lawyer’s responsibility to clients with disabilities

By Andrea C. Farney and Dynah Haubert

A lawyer’s legal duty to provide equal access to services for individuals with disabilities comes from the Americans with Disabilities Act (ADA). The ADA prohibits discrimination against individuals having one or more physical or mental disability in employment, public services and public accommodations and services operated by private entities, aka public accommodations. Under the ADA, a public accommodation explicitly includes law offices. Solo practitioners, small law firms and large law firms are all covered entities under the ADA.

Discrimination under the ADA includes failing to take the steps that may be necessary to afford individuals with disabilities equal access to the services enjoyed by individuals without disabilities. Physical-access or architectural barriers to a lawyer’s services may arise for individuals with mobility-related disabilities. Under the ADA, a lawyer’s duty includes taking steps to remove such barriers or making his or her services available through alternative methods if barrier removal is not readily achievable.

For example, where a law office is not physically accessible because the lawyer’s building lacks an elevator, the lawyers in that firm can meet their obligation by arranging to confer with the client in a space that is accessible, such as at a bar association building or another lawyer’s office.

The Pennsylvania Human Relations Act similarly prohibits discrimination by public accommodations, including law offices, on the basis of disability.
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**Professional Responsibility**

Affording persons with disabilities equal access to the lawyer’s services is not only a matter of federal and state law but also of professional responsibility. For example, to fulfill his or her obligations under Pennsylvania Rule of Professional Conduct 1.4 regarding communication, a lawyer must provide auxiliary aids and services when necessary for effective communication with a client.

While straightforward matters such as scheduling an appointment with a deaf or hard-of-hearing client may be accomplished by passing written notes or exchanging email, the more complex communications that Rule 1.4 requires should be conducted using the client’s preferred method of communication.

**Equal Access for the Deaf or Hard of Hearing**

Ensuring effective communication is the most critical aspect in a lawyer’s meeting his or her legal and ethical duty to afford equal access to representation for potential clients who are deaf or hard of hearing. Many deaf or hard-of-hearing individuals use a video-relay phone service to call lawyers for service. The call comes in just as any other, with the difference being that a third-party interpreter will be on the line as well. There is no additional charge for the phone call. During this initial call, as with other initial contacts, the lawyer (or designated assistant) should find out what type of service the potential client needs and whether there is any conflict of interest and provide information on any consultation fee or other aspects of the lawyer’s regular intake process. All of this can be handled through the initial video-relay call.

Where the potential client’s matter is one the law office normally handles, there is an obligation to ensure that the potential client has the same opportunity to hire the lawyer’s services as an individual who is not deaf or hard of hearing. This typically re-
quires that the lawyer obtain a qualified sign-language interpreter to meet with the disabled person to discuss the case, the representation agreement and the ongoing plan of action.

Because there are different sign-language systems used by persons who sign, asking the disabled person is the best way to determine what type of interpreter will suffice. This should be done during the initial contact, especially where the potential client makes first contact through a video-relay service or via email. Questions to ask the client include the following: Do you use American Sign Language (ASL) or signed English? Do you know of an interpreter service in the community? This is important because not all individuals who are deaf use ASL. In circumstances where an individual who is deaf or hard of hearing walks into the lawyer’s office for first contact, the lawyer should ask immediately about the use of a sign-language interpreter. This can be done in writing.

Finding a Qualified Sign-Language Interpreter

A lawyer should not require a potential client with a disability to bring another individual to interpret for him or her because the companion is likely not qualified. Family members, friends and close associates may have emotional ties, conflicts of interest or personal involvement that can inappropriately affect the accuracy, impartiality and effectiveness of the communication. Confidentiality is also compromised.

The Sign Language Interpreter and Transliterator State Registration Act, 63 P.S. §1725.1 et seq. (Act 57) requires that sign-language interpreters be registered with the commonwealth in certain circumstances. Lawyers can find these certified interpreters by using the website of the Pennsylvania Office for the Deaf and Hard of Hearing (ODHH) at www.odhh.state.pa.us. The ODHH also has a listing of organizations around the commonwealth that can provide resources and technical assistance for locating a qualified sign-language interpreter.

Paying for a Sign-Language Interpreter

One of the many benefits of PBA membership is access to the Sign Language Interpreter/CART Fund, providing reimbursement of up to $150 for an interpreter used to meet with a client.

Duty to Individuals with Mobility Disabilities

Clients with mobility impairments may have a variety of access needs that must be accommodated in order to afford equal access to a lawyer’s services. Many of these accommodations are simple and needn’t be costly. For example, rearranging office fur-
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niture may allow a wheelchair-using client to enter easily. Other accommodations require a bit more out-of-the-box thinking but needn’t be difficult — such as arranging for a place to meet outside of the lawyer’s office if the office cannot be made accessible or visiting a client at his or her home. Even structural changes to a lawyer’s building to improve access may not be prohibitively costly, thanks in part to federal tax incentives, and will improve access for many future clients.

To determine what accommodations clients or potential clients need, communication about their access needs is key. Nondisabled lawyers may fear that asking clients about their disability-related needs is intrusive or uncomfortable for their clients. While disability-related inquiries that are not relevant to the representation must be avoided, ascertaining what a client needs in order to work effectively with his or her lawyer is of utmost importance.

Knowing how best to adapt to a client’s needs before the meeting takes place is the best way to ensure prompt, effective service and a comfortable atmosphere for the client. Clients with disabilities are the experts on their needs and what accommodations are effective for them. Asking them how the lawyer can best meet their access needs is the best way for the lawyer to afford equal access. Ask if the client needs any disability-related accommodations to meet and communicate with you and your staff. Identify barriers and communicate about them to clients. For example, if the office has no dedicated parking close to the office, ask if this will pose a barrier. Be prepared to suggest alternatives or brainstorm with the client on how to meet a need or remove a barrier.

Resources

Information and reimbursement forms for the PBA Sign Language Interpreter/CART Fund can be found on the PBA website at www.pabar.org/public/committees/disability/Sign%20Lang.pdf or by contacting Louann Bell, staff liaison for the PBA Legal Services to Persons with Disabilities Committee, at 800-932-0311, ext. 2276.

The Disability Rights Network of Pennsylvania (DRN) is a statewide, nonprofit corporation designated as the federally mandated organization to advance and protect the civil rights of adults and children with disabilities. DRN can provide technical assistance to lawyers who have questions about serving clients with disabilities. DRN can be reached at 800-692-7443 (voice) or 877-375-7139 (Telephone Device for the Deaf or TDD). The email address is intake@drnpa.org.

Information on federal tax incentives that can help cover costs of accessibility improvements is available at www.ada.gov/taxincent.htm.
It is also important to be flexible. No matter how carefully a lawyer has discussed accommodations with a client before a meeting, last-minute challenges may arise. A doorway that didn’t seem to be a problem may be too narrow for a wheelchair-user to get through; an elevator might be out of service; or the weather may have made the sidewalk too slippery for someone unsteady on his or her feet. Being flexible with how and where a lawyer meets with clients, including having an alternative meeting location prearranged, can allow a lawyer to serve disabled clients with minimal delay, even when unexpected barriers arise.

Many barriers to access have simple remedies. For example, removing a guest chair in a lawyer’s office may allow a client in a wheelchair to enter the office or helping a client who may need assistance opening doors to get into the office. Other barriers might not be so easily removed. In this case, arranging to meet a client at an accessible location allows a lawyer to provide equal access to his or her services. Possible locations may include offices of other lawyers, the PBA, county bar association offices, community spaces such as libraries or community centers, even the client’s home.

Networking with other lawyers and reaching out to identify other local spaces that are accessible meeting places allow lawyers to have alternatives at the ready when scheduling a consultation. Of course, communication with the client is key to ensure that the alternative space will be accessible. ☞

Andrea C. Farney is a partner at Triquetra Law, a boutique law firm representing and counseling individuals in employment and civil-rights matters. She focuses on diversity issues and improving representation for individuals with disabilities. She is chair of the PBA Legal Services to Persons with Disabilities Committee and a member of the PBA Minority Bar Committee and Commission on Women in the Profession. She can be reached at farney@triquetralaw.com.

Dynah Haubert is a staff attorney in the Harrisburg office of the Disability Rights Network of Pennsylvania, a statewide, nonprofit corporation designated as the federally mandated organization to advance and protect the civil rights of adults and children with disabilities.

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