

## Americans with Disabilities Act – Communication Accommodation Project

### *A Resource for Voluntary Compliance with the ADA*

#### A JOINT PROGRAM OF

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### **EFFECTIVE COMMUNICATION FOR DEAF INDIVIDUALS IN STATE AND LOCAL COURTS; OBLIGATIONS UNDER THE AMERICANS WITH DISABILITIES ACT**

State and local courts are subject to Title II of the ADA, 42 U.S.C. Sections 12131-12134, which applies to "public entities." The U.S. Department of Justice has issued regulations explaining the requirements of that Act, 28 C.F.R. Part 35, 56 Fed. Reg. 35694 (July 26, 1991) (U.S. Department of Justice Final Rule: Nondiscrimination on the Basis of Disability in State and Local Government Services).

Title II of the ADA requires local and state courts to provide qualified sign language interpreters, and other auxiliary aids such as transcription or assistive listening systems, to ensure effective communication with deaf and hard of hearing individuals. 28 C.F.R. Section 35.160. Deference must be given to the deaf or hard of hearing individual's choice of what auxiliary aid he or she needs:

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 disabilities.

28 C.F.R. 35.160(b)(2). In its Analysis of this section of the regulation, the Justice Department has explained that it is important to defer to the request of the individual because there is so large a variety of auxiliary aids and services and circumstances which will require effective communication. It gave as an example, the different ways in which effective communication can be achieved in the courtroom:

[S]ome courtrooms are now equipped for "computer-assisted transcripts," which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays. Such a system might be an effective auxiliary aid or service for a person who is deaf or has a hearing loss who uses speech to communicate, but may be useless for someone who uses sign language. Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient.

56 Fed. Reg. 35711-12 (July 26, 1991).

The Department of Justice further explained that a qualified interpreter may be necessary when the information being exchanged "is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, the importance of the communication." *Id.*

The Title II regulation defines a qualified interpreter as one who is able "to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. Section 35.104. In its Analysis, the Justice Department cautions that this definition does not limit or invalidate state-imposed interpreter standards that are more stringent than

the ADA's definition. Thus, if a state requires its court interpreters to be certified, such requirement is not superseded by the ADA.

The Analysis to the Title II regulations also cautions against using family members and friends to interpret. Often these individuals do not have sufficient skills to interpret. Even where they are skilled, "emotional or personal involvement or considerations of confidentiality . . . may adversely affect the ability to interpret" effectively, accurately, and impartially" according to the Department of Justice. 56 Fed. Reg. at 35701 (July 26, 1991).

Interpreter fees in court may not be included in the "court costs" which are typically assessed to one of the parties of a lawsuit. Court systems are not equally accessible to deaf litigants if the deaf party must bear the additional burden of paying for a sign language interpreter. In recognition of this fact, the federal government has placed an obligation on state and local courts to provide sign language interpreters at no cost to the deaf individual:

The Department has already recognized that imposition of the cost of courtroom interpreter services is impermissible under section 504 [of the Rehabilitation Act of 1973, 29 U.S.C. 794]. . . [W]here a court system has an obligation to provide qualified interpreters, it has the corresponding responsibility to pay for the services for the interpreters' [45 Fed. Reg. 37630 (June 3, 1980)]. Accordingly, recouping the costs of interpreter services by assessing them as part of court costs would also be prohibited.

56 Fed. Reg. 35705-06 (July 26, 1991).

We anticipate that most states will need to review their existing interpreter laws to see if they conform to the new requirements of the Americans with Disabilities Act. Any state laws which do not effectively eliminate communication barriers should be amended. State laws which permit the imposition of interpreter fees as an element of court costs, or which make appointment of interpreters a matter of judicial discretion, are inconsistent with the requirements of the ADA, and should be revised