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## Ideas for Accommodation:

# Ensuring Equal Access to Legal Services for Clients with Disabilities

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**A**s legal advocates for underserved population groups, we have an ethical obligation to ensure that our services are accessible to all people, including those with disabilities. Nonprofit, federally funded, and state or locally run legal aid organizations have obligations under Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 to ensure that they provide full and equal access to their services and programs.

Here I identify basic disability nondiscrimination statutes and their corresponding obligations for legal providers; I identify common types of accommodations and access in legal settings and outline best practices for ensuring equal access to legal aid organizations.<sup>1</sup> With forethought, planning, and training, such organizations can ensure that they comply with the law and their services are accessible to all.

### I. Protection Under the ADA and Rehabilitation Act

One is protected under the ADA and Section 504 of the Rehabilitation Act if one has a physical or mental impairment that substantially limits a major life activity.<sup>2</sup> This includes alcoholism and former drug addiction.<sup>3</sup> To determine whether one is considered a person with a disability, federal law takes mitigating measures into account.<sup>4</sup>

The law protects two additional categories of persons: those who are regarded as having a disability and those with a record of disability.<sup>5</sup> As with most civil rights statutes, the law protects such persons from retaliation after they make a complaint.<sup>6</sup>

<sup>1</sup>Here I am not giving an exhaustive list of all obligations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act—only those obligations that frequently arise in the context of lawyers' services to their clients. Organizations can and should read further to develop a fuller understanding of legal requirements.

<sup>2</sup>42 U.S.C. § 12102(2)(A) (2005); 28 C.F.R. § 35.104 (2007) (definition of "physical impairment" and "mental impairment").

<sup>3</sup>The definition of "disability" does not include current use of illegal substances. 28 C.F.R. § 35.104.

<sup>4</sup>Some state laws' definition of "disability" is more expansive. See, e.g., Unruh Civil Rights Act, CAL. CIV. CODE § 51 (2007) (condition must only "limit" a major life activity, rather than "substantially limit," and mitigating measures are not taken into account).

<sup>5</sup>42 U.S.C. § 12102(2)(B); 28 C.F.R. § 35.104.

<sup>6</sup>28 C.F.R. § 35.134, 36.206.

## II. Basic Coverage and Legal Requirements

The ADA's different sections apply to different types of entities. Most relevant here are Titles II and III. Title II covers public entities, defined as state or local governments.<sup>7</sup> This means that the ADA covers any government-run law offices, such as the offices of public defenders, district attorneys, and city attorneys, as well as agencies with which clients interact, such as state courts, jails, prisons, public housing authorities, and schools.

Title II's basic prohibition states that "[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity."<sup>8</sup>

Title III of the ADA covers public accommodations, which are private entities whose operations affect commerce.<sup>9</sup> These include private or nonprofit law offices.<sup>10</sup> Title III states that "[n]o 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 person who owns, leases (or leases to), or operates a place of public accommodation."<sup>11</sup>

Section 504 of the Rehabilitation Act goes even further and covers *any* recipient of federal financial assistance.<sup>12</sup> This means that many private entities and or-

ganizations are subject to the Rehabilitation Act's prohibition upon receiving assistance from the federal government. The requirements under the Rehabilitation Act are analogous to those under Title II of the ADA.<sup>13</sup>

## III. Affirmative Obligations

Beyond the basic nondiscrimination mandate identified above, the ADA and Rehabilitation Act impose affirmative obligations on covered entities in order to avoid discrimination. These obligations are particularly important in the context of legal aid.

### A. Policies, Procedures, and Reasonable Accommodations

The obligation to modify policies and procedures and provide reasonable accommodations is a touchstone of disability rights law. The law requires such modifications whenever necessary to allow the participation of qualified individuals with disabilities.<sup>14</sup> Organizations must make such modifications unless the organizations can demonstrate that the requested modifications or accommodations would result in an undue financial or administrative burden or would fundamentally alter the services provided.<sup>15</sup>

This requirement arises in a variety of ways in the legal setting. For example, clients frequently request flexibility in the time or length of meetings. Some disabilities make certain times of the day more difficult for clients or may make it difficult for clients to concentrate for long periods of time. Medication may

<sup>7</sup>42 U.S.C. § 12131(1).

<sup>8</sup>*Id.* § 12132.

<sup>9</sup>*Id.* § 12181(7).

<sup>10</sup>*Id.* § 12181(7)(F).

<sup>11</sup>*Id.* § 12182(a).

<sup>12</sup>29 U.S.C. § 794 (2005) ("No otherwise qualified individual with a disability ... 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 ....").

<sup>13</sup>Here I focus on Title II of the ADA. However, obligations under Title II also apply to the Rehabilitation Act. See *Zukle v. Regents of University of California*, 166 F.3d 1041, 1045 (9th Cir. 1999) (Clearinghouse No. 52,100) (Title II of the ADA was expressly modeled after Section 504 of the Rehabilitation Act, and obligations are the same).

<sup>14</sup>42 U.S.C. § 12182 (b)(2)(A)(ii) (Title III); 28 C.F.R. § 36.302 (Title III), 35.130(b)(7) (Title II).

<sup>15</sup>42 U.S.C. § 12182(b)(2)(A)(ii) (Title III); 28 C.F.R. § 35.130(b)(7) (Title II).

exacerbate this condition. Offices should accommodate requests for changes in the time or length of meetings.

Another frequent challenge arises from complicated phone trees or voicemail systems. These systems can be difficult for clients with mental health conditions, developmental disabilities, or manual dexterity problems. Lawyers may need to give a direct number to a live telephone operator who can either take a message or forward the number to appropriate staff.

Service animals are another frequent accommodation. Many legal aid providers have clients with service animals. The law requires offices to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.<sup>16</sup> Even if a legal aid office has a “no animals” or “no pets” policy, it must modify that policy to allow for a person with a disability to bring a service animal to the office.

## B. Auxiliary Aids and Services and Effective Communication

Legal aid offices have obligations to provide necessary auxiliary aids and services to persons with disabilities.<sup>17</sup> Auxiliary aids and services include (1) qualified interpreters, qualified readers, and taped texts for making aurally delivered materials available to individuals with hearing impairments or for making visually delivered materials available to individuals with visual impairments and (2) equipment, such as a teletypewriter (TTY) or telecommunications device for the deaf (TDD) or captioning, to ensure effective communication.<sup>18</sup>

Offices must provide auxiliary aids and services to make communication with people with disabilities as effective as communication with nondisabled people.<sup>19</sup> Organizations are not permitted to surcharge for cost of compliance. However, an organization is not required to provide auxiliary aids and services if the organization can show that the provision of such aids and services is a fundamental alteration of services or imposes an undue burden.<sup>20</sup>

For example, standard written materials may be inaccessible to people with vision impairments. Clients may require alternate-format materials in order to access information. This may mean anything from converting Adobe Acrobat documents into text or Microsoft Word documents, if sending them electronically, to providing large-print or Braille materials. All legal aid offices should be mindful of the typeface and type size used to ensure that all standard materials are accessible and that any individualized materials, such as client letters, can be read by the client.<sup>21</sup>

Another common problem arises when communicating with people who are deaf or hard of hearing. Written notes are of very limited use in legal settings because of the complexity of the information being exchanged. However, lawyers and staff can use other methods to communicate with people who are deaf and hard of hearing. In-person methods include use of sign-language interpreters, video remote interpreting, and real-time captioning.<sup>22</sup> Phone methods include TTY and TDD communication, e-mail, and video relay service. Staff should be fa-

<sup>16</sup>28 C.F.R. § 36.302(c) (Title III), 35.130(b)(7) (Title II).

<sup>17</sup>42 U.S.C. § 12182(b)(2)(A)(iii) (Title III); 28 C.F.R. § 36.160, .130 (Title II).

<sup>18</sup>42 U.S.C. § 12102(1); see also 28 C.F.R. § 35.104 (further defining term); 28 C.F.R. § 36.303 (Title III), 35.160(a) (Title II).

<sup>19</sup>28 C.F.R. §§ 36.303(c) (Title III), 35.160(b)(1) (Title II).

<sup>20</sup>42 U.S.C. § 12182(b)(2)(A)(iii) (Title III); 28 C.F.R. § 35.150(a)(3).

<sup>21</sup>For an example of guidelines on printed materials, see ARIES ARDITI, LIGHTHOUSE INTERNATIONAL, MAKING TEXT LEGIBLE: DESIGNING FOR PEOPLE WITH PARTIAL SIGHT, [www.lighthouse.org/accessibility/legible](http://www.lighthouse.org/accessibility/legible). See also Laurence Paradis, *The ADA and the Internet: How Accessible Must Your Nonprofit Organization's Website Be?*, 41 CLEARINGHOUSE REVIEW 399 (Sept.–Oct. 2007) (information on making websites accessible to people with disabilities).

<sup>22</sup>See Sharon Caserta, *Deaf, Hard-of-Hearing, and Deaf-Blind Clients: A Quick Reference for Legal Aid Offices*, 41 CLEARINGHOUSE REVIEW 403 (Sept.–Oct. 2007) (information on the use of sign-language interpreters in legal settings).

miliar with the use of these alternative communication methods and make them available to clients when necessary.

### C. Removal of Physical Access Barriers

The ADA and Rehabilitation Act require legal aid offices to provide services in a manner that is physically accessible for persons with disabilities. However, what these statutes require depends on the context and age of the facility.

Any newly constructed facility must be accessible to persons with disabilities.<sup>23</sup> Altered areas must be fully accessible.<sup>24</sup> An “accessible” facility meets the requirements of the ADA Accessibility Guidelines.<sup>25</sup>

Buildings and public accommodations under Title III of the ADA must remove barriers to the extent that removal is readily achievable.<sup>26</sup> “Readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.”<sup>27</sup> However, if removal of such barriers is not readily achievable, public accommodations must use alternatives to barrier removal to provide services and goods to customers with disabilities.<sup>28</sup>

Organizations that fall within Title II of the ADA or Section 504 of the Rehabilitation Act must ensure that their

programs, services, and activities are accessible—the “program access” standard.<sup>29</sup> An organization is not required to remove barriers if removal would result in an undue financial or administrative burden.<sup>30</sup> However, even if barriers cannot be removed, the organization must provide access to its programs and activities at alternate accessible sites and through other means.<sup>31</sup>

The bottom line is that offices should be as accessible as the law requires and as accessible as possible beyond that. Organizations not in newly constructed facilities should conduct an analysis of the physical accessibility of offered services. If barriers are detected, alternate means of providing these services should be identified.<sup>32</sup> For example, if a legal clinic is held in an inaccessible location, alternate locations (such as an accessible library meeting room) should be identified for conducting the clinic’s services, or the clinic should identify other means of equivalent service. This might mean, in appropriate circumstances, conducting a clinic over the phone for someone who cannot physically access the clinic, even if the clinic usually operates only on a walk-in basis.

Even after the architectural barriers have been removed or overcome by alternate means, organizations must continue to ensure that their facilities are accessible.

<sup>23</sup>“Newly constructed” is defined as any building constructed for occupancy after January 26, 1993. 42 U.S.C. § 12183(a) (Title III); 28 C.F.R. § 35.151 (Title II).

<sup>24</sup>This applies to any alterations made after January 26, 1992. 42 U.S.C. § 12183(a).

<sup>25</sup>These requirements are in 28 C.F.R. pt. 36, app. A. Buildings under Title II of the ADA or Section 504 of the Rehabilitation Act follow the Uniform Federal Accessibility Standards. *Id.* Finalizing a new version of the Accessibility Guidelines is under way. See U.S. Access Board, [www.access-board.gov](http://www.access-board.gov) (last visited Jan. 28, 2008).

<sup>26</sup>“Existing buildings” are those built before January 26, 1993. 42 U.S.C. § 12182(b)(2)(A).

<sup>27</sup>*Id.* § 12181(9) (also, factors to be considered in evaluating whether removal is readily achievable).

<sup>28</sup>*Id.* § 12182(b)(2)(A)(5).

<sup>29</sup>28 C.F.R. § 35.149 (no person with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity).

<sup>30</sup>*Id.* § 35.150(a)(3).

<sup>31</sup>*Id.* § 35.150(b).

<sup>32</sup>Survey tools can identify barriers in buildings. See U.S. Department of Justice, Americans with Disabilities Act Checklist for Readily Achievable Barrier Removal, [www.usdoj.gov/crt/ada/checkweb.htm](http://www.usdoj.gov/crt/ada/checkweb.htm) (last visited Jan. 28, 2008) (guidelines for a Title III building). Using these survey methods with some simple tools (tape measure, smart level, pen and paper), most lay people can conduct a basic review of accessibility. For a more sophisticated review, organizations can hire access experts who can survey the site and identify barriers and a remedial plan.

This means making sure that pathways are clear and that accessibility features are maintained in working condition. This requires ensuring that boxes and chairs, for example, do not obstruct pathways. Organizations should put up written signs directing staff and volunteers to push chairs in after use at a desk or table and to replace any boxes or files no longer in use.

Even after determining your legal compliance, be mindful of the level of access in your office. Be honest with clients and staff regarding that level of accessibility. Do not tell a client that your office is accessible if it is not fully accessible. Otherwise you may find yourself having even greater problems than admitting inaccessibility in the first place.

#### **D. Third Parties' Obligations that Affect Representation**

Like legal aid offices, other law-related entities have obligations under the ADA and Rehabilitation Act, and such third-party entities' failure to comply can affect legal aid lawyers' representation of their clients.

Legal aid lawyers must ensure that clients are receiving the accommodations and access required from other entities in the legal system. Lawyers must ensure that their clients with disabilities fully and completely participate in the legal process. This means that clients must be able to access and utilize the courts, other lawyers' offices, and organizations run by public entities, such as schools, jails, and city, state, and county offices.

For example, state courts are subject to the ADA and are required to meet all of the obligations under the Act, including effective communication and physical access.<sup>33</sup> For their clients, lawyers can and should request accommodations, including ensuring that there is effective communication and that the court is physically accessible to clients.

Jails, prisons, and schools are subject to the ADA and the Rehabilitation Act and should accommodate your client. For example, police departments should ensure that people who are deaf or hard of hearing receive effective communication and that people with mobility disabilities can access secure attorney meeting rooms. Lawyers of clients with such disabilities should ensure that they can access and communicate with their clients in the same manner as other attorneys.

#### **IV. Best Practices for Equal Access to People with Disabilities**

The best way to ensure equal access is through advanced planning, development of policies and procedures, and training. When developing policies, organizations should utilize the substantial expertise in the field about providing accommodations. What organizations should do to ensure equal access:

- Talk to the disability community. The key to developing policies that work, as well as dealing with discrete situations, is to talk to disability organizations in your community. Contact local organizations (e.g., independent living centers, disability-specific organizations, and mental-health organizations) that are familiar with access problems and have local resources.
- Talk to clients with disabilities about access problems. Conversations, particularly at the beginning of representation, can go a long way toward effectively providing accommodations to clients. Lawyers should talk to their clients about the best way to communicate with them, the best time to communicate with them, any limitations or problems their clients have experienced in accessing their offices or other entities (e.g., courts). Ask your clients about accommodations that they may have used in similar settings and whether the accommodations worked.

<sup>33</sup>See, e.g., IMPEDIMENTS COMMITTEE, WASHINGTON STATE ACCESS TO JUSTICE BOARD, ENSURING EQUAL ACCESS FOR PEOPLE WITH DISABILITIES: A GUIDE FOR WASHINGTON COURTS (2006), [www.wsba.org/atj/ensuringaccessguidebook.pdf](http://www.wsba.org/atj/ensuringaccessguidebook.pdf).

This information should be noted in the case file for all staff's access to the information.

- Develop accommodation policies and procedures ahead of time. However, in developing these policies, note that one size does not fit all. Accommodations should be evaluated case by case, and policies should be flexible enough for staff to provide accommodations that work for clients.
- Train staff, *including support staff*, about obligations related to clients with disabilities. Accommodations may be needed before a lawyer ever

meets with a client, so everyone at the office—including those whose tasks are answering the phones, moving boxes and supplies around, and scheduling meetings—must understand policies, procedures, and approaches to accommodation.

■ ■ ■

Legal organizations should keep in mind the basic principles discussed here, talk to the disability community about effective accommodations, and engage in proactive policymaking and training. Thus legal aid organizations can ensure that their services really are accessible to all.

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