

Ensuring Effective Communication with Prospective Jurors Who are Deaf or Hearing Disabled

Introduction

The Americans with Disabilities Act of 1990 (ADA) prohibits public entities, such as the Minnesota Courts, from discriminating against individuals on the basis of disability.¹ The Minnesota Human Rights Act (MHRA) similarly prohibits discrimination based on disability.²

Title II of the ADA requires public entities (courts) to ensure that all individuals have an equal opportunity to participate in the court's programs and services. For an individual who is deaf or has a hearing disability the courts are obliged to ensure that communication with that individual is as effective as communication with others. To this end, courts must furnish appropriate auxiliary aids as necessary to allow the individual to fully participate in the programs or services.³

The ADA further requires that the individual's preference for auxiliary aid should be given primary consideration when determining the type of auxiliary aid the court will provide.⁴ According to the ADA a qualified interpreter must be appointed when requested as the accommodation by the individual called to serve jury duty. The ADA defines qualified interpreter as "an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary."⁵ Rule 8 of the Minnesota General Rules of Practice specifies the required skill and certification level for Minnesota ASL court interpreters.

Procedures for Providing Effective Communication for Prospective Jurors Who are Deaf or Hearing Disabled

The Jury Staff and the Court Interpreter Coordinator shall work cooperatively to procure the necessary auxiliary aid(s). The following sections provide a suggested distribution of responsibilities between the Jury Staff and the Court Interpreter Coordinator, but responsibilities should be assigned between the two in a way that will ensure the most efficient and cost effective process possible.

Jury Staff Duties

Upon receiving notice from a prospective juror that he or she requires an accommodation to fully participate in jury service, the local Jury Staff shall take the following steps:

1. Contact the prospective juror by using the method provided for contact on the juror questionnaire and will inquire about what type of auxiliary aid the individual needs.
2. Contact the local Court Interpreter Coordinator and inform him/her that a juror will require an auxiliary aid(s) to participate in jury duty. The Jury Staff shall provide the following additional information to the Coordinator:
 - Type of auxiliary aid that is needed by the juror to effectively participate in jury service (see next page for list of auxiliary aids); and

¹ 28 C.F.R. § 35.101 (2009)

² Minn. Stat. § 363A.02, subd. 1 (2009)

³ 28 C.F.R. § 35.160, subd. a-b (2009)

⁴ 28 C.F.R. § 35.160, subd. b(2) (2009)

⁵ 28 C.F.R. § 35.104 (2009)

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- The jury service start date and time along with an estimated length of time the auxiliary aid will be used by the juror, including orientation, waiting time, voir dire, trial and trial deliberations
3. In the event that the jury trial is canceled, continued or settled either before or after the prospective juror's service begins, the Jury Staff shall immediately notify the prospective juror and the Coordinator when the jury trial is canceled, continued or settled.

Court Interpreter Coordinator Duties

1. Make necessary arrangements for the required auxiliary aid based on the information provided by the Jury Staff.
2. Cancel the services of the auxiliary aid immediately upon receiving notice from the Jury Staff that the trial is canceled, continued or settled. Ensuring prompt cancellation may save significant costs and fees.

Important Considerations

The auxiliary aid requested must be provided for the entire jury service including juror orientation, voir dire, waiting time and trial proceedings and trial deliberations.

If an interpreter is requested as the auxiliary aid, then two sign language interpreters need to be appointed for the days in which the jury service is anticipated to last more than two hours. Interpreters develop mental and physical fatigue from the intense concentration required to interpret for long periods of time and team interpreting, in which interpreters alternate at regular intervals, reduces fatigue and promotes accurate interpretation. Team interpreting will also contribute to a more efficient and accurate trial.

A court may not charge an individual for the provision of the accommodation.⁶ Compensation for court interpreters or other auxiliary aids shall be paid by the Court Interpreter Program according to the Court Interpreter Payment Policy (reference).

Auxiliary aids may include, but are not limited to:

- Qualified American Sign Language court interpreter;
 - If possible, a Certified Legal Specialist ASL interpreter from the statewide roster kept by the State Court Administrator; or
 - Certified Generalist ASL interpreter from the statewide roster.
 - If neither a certified legal specialist nor a generalist ASL court interpreter can be located, then a non-rostered qualified interpreter may be hired in accordance with Minn. R. of Gen. Pract., Rule 8.01(c).
- Certified Deaf Interpreter (CDI) or Certified Deaf Interpreter Provisional (CDIP) in accordance with Minn. R. of Gen. Pract., Rule 801(c)(iv).
- Real-time court reporter (with a computer-assisted transcript which allows virtually instantaneous transcripts of courtroom argument and testimony to appear on displays.)
- Amplified hearing devices⁷

⁶ 28 C.F.R. § 35.130(f) (2009)

⁷ 28 C.F.R. § 35.104 (2009), 28 C.F.R. § 35.303(b) (2009), and 42 U.S.C. § 12102(1)(a) (2006)