



Communication Breakdown

Ensuring Access for the Deaf

By David M. Stokes and Mark Cody

Debbie needed to consult an attorney. Her husband had served her with divorce papers that morning. She knew things were rocky, but she wasn't expecting this. Quickly searching the Internet for an attorney, she pulled up the name of a likely candidate: David was local, handled divorce cases, and was hopefully available. A short while later, she contacted David's paralegal, Stacey, using the Michigan Relay Service, because Debbie is profoundly deaf and uses sign language. Fortunately, Stacey was familiar with the service and let Debbie know she had studied sign language while earning her degree as a legal assistant. Stacey arranged a meeting for that afternoon.

Wow, thought Debbie, that's unusual, having someone at a law office that knows a little about being deaf. Maybe this will work out.

"David, we have a divorce appointment at 3 p.m. today," said Stacey. "I wanted to let you know the client is deaf and uses sign language."

"Thanks for letting me know. You studied that in college, didn't you, Stacey?"

"Yes, but it has been years since I used it. I only took a few classes because they were offered and I could use them for credit. I did learn a lot."

"Well, do you think you could handle the intake with me?"

"Sure, I'll give it a try. I'll be the interpreter."

"Great. That will save us the trouble of tracking down someone and paying them. After all, this is just the initial consult."

Doubly good, thought David, since I don't charge clients for the intake anyway.

When Debbie arrived, she was greeted by Stacey, who haltingly signed her name and welcomed her into the office.

Hmm, thought Debbie, I'm not so sure about this. She doesn't seem too good at signing. Maybe she is just adjusting.

Debbie started to sign rapidly to Stacey, who looked like she understood some of what was being said but gradually began to glaze over. Debbie stopped.

I know that look, she thought. She doesn't have a clue what I'm signing. I'll slow way down.

"Do you have a license? Are you a qualified interpreter?" asked Debbie. She was upset about her legal problems, but she also knew she needed to communicate clearly. The deaf community had been talking for years about getting quality interpreters. She didn't think she would be in such a dire situation testing it firsthand. In her work for the state's Division on Deaf and Hard of Hearing, Debbie knew that the law required a qualified interpreter when she met with an attorney.

Fast Facts

The new Deaf Persons' Interpreters Act amendments (DPIAA) make it a misdemeanor to misrepresent oneself as a qualified interpreter at the risk of a fine, 90 days in jail, or both.

If the Americans with Disabilities Act requires an interpreter, the DPIAA apply.

All people working as interpreters in Michigan must have national or state certification.

Businesses who hire unqualified interpreters may face fines as high as \$10,000.

Stacey wasn't quite sure what was being asked, but made a stab at it.

"Yes, I'm the interpreter. I'm his paralegal. We don't have licenses. Come with me and we will meet with David." Debbie followed Stacey to David's office.

David spoke. "Stacey, tell her this: Hi, Debbie. I'm sure this is a tough time for you and I want to help. Tell me what has happened. I have Stacey here with us today to interpret. It will help if I can look at the complaint."

"I got these papers from my husband, Floyd," signed Debbie rapidly. "Is that a complain—I don't know the word? He wants a divorce. I have kids. I'm worried what will happen to them. I'm confused and need help."

Stacey gamely did her best at signing. Was her husband's name Lloyd or Frank or what? I know I signed "complain," she thought, but I figured it's the same as complaint. As the interview went on, Stacey became increasingly uncomfortable.

Debbie had concerns, too. She didn't know every interpreter in Michigan, but she did know many in this area. Stacey was not familiar to her, and she never saw an interpreter license. Besides, she was spelling out too many words and wasn't fluid.

"Wait, wait, wait," signed Debbie impatiently. "I'm not understanding what is being said here. I'm confused. I'm supposed to have a qualified interpreter. I don't think she is."

"I don't know what you mean," said David. "Stacey studied sign language in college. That should be enough."

"Well, it isn't," Debbie signed. "I'm leaving!"

Such scenarios are far too common. Deaf individuals require clear, accurate communication through a qualified interpreter. A number of federal and state laws mandate that attorneys provide "effective communication" when dealing with individuals with diminished hearing characteristics. Often, the hearing person takes the ability to communicate for granted. We expect to be able to converse with our attorneys, doctors, financial advisors, teachers, and others. This is never a given for deaf individuals who use American Sign Language.

When working with individuals with hearing impairments, it is important to learn what form of communication they use. The level of hearing loss, age of onset, education, and age of the in-

dividual will impact whether they use spoken or written English or American Sign Language. Generally, the later in life that a person is affected by hearing loss, the more likely he or she will rely on residual hearing and use English, either spoken or written. This group will also benefit more from the use of hearing aids or amplification. The Michigan Deaf Persons' Interpreters Act (DPIA)¹ does not readily apply to this group. Instead, it is designed for those individuals who are deaf and rely on a visual language, American Sign Language, to communicate. Both groups have different needs. For a more extensive discussion of this, please see a previous article in the *Michigan Bar Journal*, "The Accessible Law Office."²

Because of the unique communication needs of the deaf, the Michigan legislature passed the DPIA in 1982. The law positively impacted the lives of people with hearing impairments by requiring the use of interpreters when a deaf individual needed to interact with governmental systems such as courts or state agencies.

However, the provisions of the law became outdated in scope and terminology and lacked an enforcement mechanism to remedy violations. Recent amendments to the DPIA are designed to address these issues and will affect how Michigan attorneys serve the deaf and hard-of-hearing population of Michigan. These amendments (DPIAA) are the first since the initial passage of the act and reflect a change in the role of interpreters' qualifications, provision of interpreters to the deaf, and a broader application of the law since the passage of the Americans with Disabilities Act (ADA)³ in 1990.

The law ensures that deaf and hard-of-hearing people are provided effective communication with the hearing world. According to the State of Michigan Division on Deaf and Hard of Hearing (DODHH), there are more than 90,000 deaf people in Michigan.⁴ While not every deaf person needs an interpreter, a sizable population does require the service.

Major substantive changes to the law include new requirements for interpreter qualification and certification, the complaint process, new criminal provisions affecting both individuals holding themselves out as interpreters as well as entities using the service, and the broadened scope of the law to encompass ADA Title III entities. The new provisions impose significant sanctions, including jail time and fines, making provision of an interpreter a serious consideration for the legal profession.

Among the flaws of the previous law was the omission of a significant population of individuals who are deaf-blind. These individuals require tactile signing, which is profoundly different from the visual language of American Sign Language. It requires the interpreter to translate the spoken word into sign while the deaf-blind individual lightly holds the interpreter's hands and follows the sweep and arc of the signs. Signed responses are then voiced by the interpreter. The new amendments broaden the scope of individuals protected by the act to include individuals who are deaf-blind, and require that interpreters are qualified for this specialized type of interpreting.⁵

Interpreter qualification is an ongoing process fraught with debate within the interpreter community. Standards have been

proposed, debated, rejected, and adopted many times over the course of many years. The new law creates a clear definition of interpreter qualifications predicated on certification by a national board or meeting state standards. All people working as interpreters in Michigan must have national or state certification. While not a new provision, it is significant that a statutory privilege is established for interpreters, rendering communications confidential.

MCL 393.503a significantly expands the range of individuals who are required to adhere to the law. Previously, the DPIA applied only to state entities such as courts, agencies, boards, and departments. A provision was added to expand coverage to “an entity that is required to provide a qualified interpreter in circumstances described under section 3a.”⁶ Section 3a goes on to state, “If an interpreter is required as an accommodation for a deaf or deaf-blind person under state or federal law, the interpreter shall be a qualified interpreter.”⁷ Many federal and state laws could also apply—the Rehabilitation Act (commonly known as Section 504),⁸ the ADA,⁹ or the Persons with Disabilities Civil Rights Act.¹⁰ One rule of thumb: if the ADA requires an interpreter, the DPIAA apply. These various civil rights statutes are written broadly enough to encompass interpreters. Attorneys and law offices will be governed by these laws and, hence, by the new DPIAA, requiring attorneys to hire qualified interpreters when serving deaf clients.

By far, the most comprehensive changes are in the section addressing interpreter qualification and impose sanctions on interpreters as well as institutions using interpreters.¹¹ The new DPIAA make it a misdemeanor to misrepresent oneself as a qualified interpreter at the risk of a fine, 90 days in jail, or both. This provision is currently in effect. Additionally, an interpreter or applicant for certification who violates these provisions can also face sanctions by the DODHH, including an application for interpreter certification being rejected or certification being revoked, suspended, or limited. The DODHH is charged with oversight in the qualification process and will maintain lists of qualified interpreters.

Many businesses are now affected because of the expansion under MCL 393.503a. Subsequently, care must be taken to employ qualified interpreters. Businesses who hire unqualified interpreters may face fines as high as \$10,000.¹² These provisions are not currently in effect, pending promulgation of regulations. At the time of this writing, the rules promulgation process was incomplete.

The imposition of criminal sanctions sends a clear message regarding the seriousness of the problem. Tragic results can occur when unqualified interpreters are used, as evidenced by a case in Virginia. Under Virginia law, a qualified interpreter is required. A deaf rape victim was interviewed with an unqualified

interpreter present. During the course of a preliminary examination, the victim signed “forced intercourse,” but the interpreter erroneously translated that to “make love.” Fortunately for the victim, an experienced, qualified interpreter was provided for later proceedings. Obviously, competence can be crucial in a case.¹³

Communication is the life blood of the legal trade. Fair and equal access to the legal system should be afforded to all individuals. The provisions of the DPIAA ensure that a deaf client will have equal access. ■

David Stokes is a cum laude graduate of the University of Detroit Mercy School of Law and a graduate of Michigan State University and Madonna University. He currently is the advisor for students with disabilities and an adjunct professor in sign language studies at Madonna University.

A 1979 graduate of the University of Iowa College of Law, Mark Cody is legal director at Michigan Protection and Advocacy Service, Inc., where he represents clients with disabilities in systemic litigation, primarily in federal court. His areas of practice focus on civil rights, healthcare, education, housing, and employment.

FOOTNOTES

1. MCL 393.501 *et seq.*
2. Stokes & McGlenn, *The Accessible Law Office*, 75 Mich B J 390 (May 1996).
3. 42 USC 12101 *et seq.*
4. Michigan Department of Labor and Economic Growth, Division on Deaf and Hard of Hearing, *Estimated Deaf/Hard of Hearing Populations by Michigan Counties* <http://www.michigan.gov/documents/Estimate_Report__02-05_119430_7.pdf> (accessed July 5, 2010).
5. MCL 393.502(c).
6. *Id.*
7. MCL 393.503a.
8. 29 USC 791.
9. 42 USC 12101 *et seq.*
10. MCL 37.1101 *et seq.*
11. MCL 393.508a.
12. MCL 393.508b(3).
13. National Association of the Deaf, *Legal Rights, 5th Ed.: The Guide for Deaf and Hard of Hearing People* (Gallaudet University Press, 2000), p. 174.

A number of federal and state laws mandate that attorneys provide “effective communication” when dealing with individuals with diminished hearing characteristics.

