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## **Enhancing Services to Members of the Deaf Community Who Are Survivors of Domestic Violence – *A discussion of the ADA, Section 504, and the Fair Housing Act***

I have written this in hopes that it will serve to enhance services provided to members of the deaf community who are experiencing domestic violence and reach out for help. I hope it helps. Comments, constructive criticisms, and insights are welcomed. – Marc

This Paper is designed to provide guidance to domestic violence shelters, in enhancing services to survivors who are deaf. It is not intended as legal advice, and does not create an attorney-client relationship. Readers are urged to consult with an attorney of their choosing for legal advice.

It should be noted that domestic violence shelters are covered by several federal civil rights laws which prohibit discrimination on the basis of disability. If the shelter receives federal financial assistance, then it is covered by Section 504 of the Rehabilitation Act of 1973. If it is operated by a state or local government, it is covered by title II of the Americans with Disabilities Act (ADA), and if it operated by a nonprofit or for profit business, it is covered by title III of the ADA. Section 504 and the ADA apply at the same time to shelters that receive federal financial assistance. In addition, shelters are covered by the Fair Housing Act. As such, the Fair Housing Act requires to make reasonable accommodations for survivors with disabilities, including allowing them to be accompanied by an emotional support (Assistance) animal. While the ADA limits service animals to dogs (and miniature horses), and requires the dog to be individually trained to assist the individual or perform tasks for the individual, the Fair Housing Act has no such limitations - any animal can serve as an Assistance animal, providing emotional support, even if untrained. See further discussion, below, and <http://www.bazon.org/LinkClick.aspx?fileticket=s7wK-W5a3iM%3d&tabid=375>. Also see [www.ada.gov](http://www.ada.gov), [http://www.ada.gov/regs2010/service\\_animal\\_qa.html](http://www.ada.gov/regs2010/service_animal_qa.html), [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm), and [http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

In this Paper, Alice, a hypothetical survivor of domestic violence, is followed, as she encounters the various systems that exist to help her. It is intended to raise questions and provide resources that address the questions. Training on these issues is available through conference call or Skype, by contacting the author, Marc Dubin, Esq., at [mdubin@pobox.com](mailto:mdubin@pobox.com) or Marc.Dubin on Skype. Also, please visit [www.soflacial.org](http://www.soflacial.org), [www.ADAadvocacyBlog.org](http://www.ADAadvocacyBlog.org), and [www.CAVNET.org](http://www.CAVNET.org). Marc is also available on Twitter, at @ADAexpertise.

### **Information About Alice and Her Husband:**

Alice is deaf, and wants to leave her abusive husband. She uses sign language as her primary means of communication, and reads English at a 4th grade level. Her husband is also deaf, and uses sign language as his primary means of communication. They have a 12 year old daughter, who is hearing and who knows sign language.

Alice has a service dog named Freedom. Freedom has been trained to alert her to sounds, such as a phone ringing, a doorbell, an alarm, and someone calling her name. He is not certified, and does not have a license as a service dog. He does not wear anything that identifies him as a service dog. At all times, he is on a leash.

Alice is recovering from Post Traumatic Stress Disorder (PTSD) and has a cat that serves as an emotional support animal. It is not trained to do anything, but when Alice is near her cat, her anxiety is severely reduced. She has seen a social worker, who recommended that she get the cat for emotional support. See <http://www.bazelon.org/LinkClick.aspx?fileticket=s7wK-W5a3iM%3d&tabid=375>. Both animals are up to date on their vaccinations,

### **Alice Seeks Information About What Help Is Available:**

#### Website:

Alice sees some literature about her local domestic violence shelter, and decides to contact the shelter for information. She wonders if Freedom and her emotional support cat will be allowed to accompany her into the shelter, or if she will have to be separated from them. She goes to the web for information, and then calls the shelter.

#### Questions:

Does your website mention people with disabilities? What does it say? Does it discuss service dogs and emotional support animals? What does it say?

Are there pictures on your website? Are there any pictures of people with evident disabilities?

Do you have videos on your website? Are they captioned so that visitors who are deaf can access the information?

Recommended Resource on web accessibility: Ken Nakata, Esq. ([k.nakata@hisoftware.com](mailto:k.nakata@hisoftware.com)). He is a former Justice Department attorney, and one of the nation's foremost experts on web accessibility.

#### The TTY:

Alice uses a TTY to use a telephone. "TTY stands for Text Telephone. It is also sometimes called a TDD, or Telecommunication Device for the Deaf. TTY is the more widely accepted term, however, as TTYs are used by many people, not just people who are deaf.

A TTY is a special device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening. A TTY is required at both ends of the conversation....

If you don't have a TTY, you can still call a person who is deaf, hard of hearing, or speech-impaired by using the Telecommunications Relay Service (TRS). With TRS, a special operator types whatever you say so that the person you are calling can read your words on his or her TTY display. He or she will type back a response, which the TRS operator will read aloud for you to hear over the phone. Toll free TRS services are available 24 hours a day, 365 days a year." <http://www.abouttty.com>. See also: <https://support.apple.com/en-us/HT201906>.

It should be noted that many members of the deaf community use video to communicate in sign language. That way, they communicate directly in sign language. They can reach your shelter through 711. A Relay operator will be able to communicate with them whether they use a TTY or sign language through video. The Relay operator will then communicate with you by voice. It is important to train your staff how to take a Relay call. Your local Center for Independent Living or Deaf Service Center can provide this training. To locate your local Center for Independent Living, visit <http://www.ilru.org/projects/cil-net/cil-center-and-association-directory>.

Is your shelter required to have a TTY? It depends. If your shelter allows residents to make outgoing calls on more than an incidental basis, then yes, you are required to have a TTY. If not, then you are not required to have a TTY. See [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm#a303](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#a303). In any event, for incoming calls, callers can reach your shelter's main number by dialing 711 anywhere in the country and asking that your shelter number be dialed by the Relay Operator. It is recommended that you post the 711 number next to your voice number, in outreach material and on your website, to alert the deaf community that you are prepared to take their calls. See <https://www.fcc.gov/guides/711-telecommunications-relay-service> and [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-273452A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-273452A1.pdf). Also see <https://www.fcc.gov/guides/711-telecommunications-relay-service>. According to the FCC:

"(d) Telecommunications.

(1) When a public accommodation uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems.

(2) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using the public accommodation's equipment on more than an incidental convenience basis shall make available public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

(4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

(5) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations."

Having reviewed the material on your website, Alice calls your shelter and asks if she can bring Freedom with her.

Does your shelter have a written policy on animals in the shelter? What does it say? How is the public made aware of the policy? Does it distinguish between a service animal and an assistance animal? Does your staff know what a service animal is? Do they know what an assistance animal is? Do they know what they are allowed to ask and what they are not allowed to ask? What does your policy say about pets? Does staff know the difference between a service animal and an assistance animal? How often are staff trained about the policy? Do you ever test staff by calling and asking? Does your shelter accept pets? If not, do you have a relationship with your local Humane Society? What if another shelter resident is afraid of dogs, or is allergic to dogs? Who is responsible for cleaning up after the dog? Are you allowed

to require proof of certification that the dog is a service dog? Are you allowed to require a service dog license? Are you allowed to require proof of a rabies vaccination? Are you allowed to require that the dog wear a sign or some other indicia that it is a service dog? Does the dog have to be on a leash?

If you don't admit men into your shelter, but rather, make alternative arrangements to shelter them with a local hotel, do you know what the hotel's policy is concerning service animals? Do you know what federal law requires? Does it matter whether you receive federal funding? Does it matter whether your shelter is a nonprofit? Does it matter whether your shelter is run by a state or local government?

Here are some online resources:

See <https://adata.org/publication/service-animals-booklet>

[http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)

[http://www.ada.gov/regs2010/service\\_animal\\_qa.html](http://www.ada.gov/regs2010/service_animal_qa.html)

[https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf)

<http://www.bazelon.org/LinkClick.aspx?fileticket=mHg8GV0FI4c%3D&tabid>

<http://m.humanesociety.org/animals/resources/tips/assistance-animals-tenants-rights.html>

Alice is still undecided about what to do. She hopes that the violence will end, but Alice is at home when her husband begins to injure Freedom, and in desperation, Alice calls 911. The police respond, without a sign language interpreter, and find that furniture has been thrown all around the house, and that Alice and her husband (who is not deaf), both have visible injuries. Their 12 year old daughter, who knows sign language, is present. The police want to interview Alice and her husband. What are the responding officers required to do in order to effectively communicate with her? May they use the daughter to interpret?

See [http://www.ada.gov/q&a\\_law.htm](http://www.ada.gov/q&a_law.htm):

"Q: Do police departments have to arrange for a sign language interpreter every time an officer interacts with a person who is deaf?

A: No. Police officers are required by the ADA to ensure effective communication with individuals who are deaf or hard of hearing. Whether a qualified sign language interpreter or other communication aid is required will depend on the nature of the communication and the needs of the requesting individual. For example, some people who are deaf do not use sign language for communication and may need to use a different communication aid or rely on lipreading. In one-on-one communication with an individual who lipreads, an officer should face the individual directly, and should ensure that the communication takes place in a well-lighted area.

Examples of other communication aids, called "auxiliary aids and services" in the ADA, that assist people who are deaf or hard of hearing include the exchange of written notes, telecommunications devices for the deaf (TDD's) (also called text telephones (TT's) or teletypewriters (TTY's)), telephone handset amplifiers, assistive listening systems, and videotext displays.

The ADA requires that the expressed choice of the individual with the disability, who is in the best position to know her or his needs, should be given primary consideration in determining which communication aid to provide. The ultimate decision is made by the police department. The department should honor the individual's choice unless it can demonstrate that another effective method of communication exists.

Police officers should generally not rely on family members, who are frequently emotionally involved, to provide sign language interpreting.

Example: A deaf mother calls police to report a crime in which her hearing child was abused by the child's father. Because it is not in the best interests of the mother or the child for the child to hear all of the details of a very sensitive, emotional situation, the mother specifically requests that the police officers procure a qualified sign language interpreter to facilitate taking the report. Officers ignore her request and do not secure the services of an interpreter. They instead communicate with the hearing child, who then signs to the mother. The police department in this example has violated the ADA because it ignored the mother's request and inappropriately relied on a family member to interpret.

In some limited circumstances a family member may be relied upon to interpret.

Example: A family member may interpret in an emergency, when the safety or welfare of the public or the person with the disability is of paramount importance. For example, emergency personnel responding to a car accident may need to rely on a family member to interpret in order to evaluate the physical condition of an individual who is deaf. Likewise, it may be appropriate to rely on a family member to interpret when a deaf individual has been robbed and an officer in hot pursuit needs information about the suspect.

Example: A family member may interpret for the sake of convenience in circumstances where an interpreter is not required by the ADA, such as in situations where exchanging written notes would be effective. For example, it would be appropriate to rely on a passenger who is a family member to interpret when an individual who is deaf is asking an officer for traffic directions, or is stopped for a traffic violation.

Q: If the person uses sign language, what kinds of communication will require an interpreter?

A: The length, importance, or complexity of the communication will help determine whether an interpreter is necessary for effective communication.

In a simple encounter, such as checking a driver's license or giving street directions, a notepad and pencil normally will be sufficient.

During interrogations and arrests, a sign language interpreter will often be necessary to effectively communicate with an individual who uses sign language.

If the legality of a conversation will be questioned in court, such as where Miranda warnings are issued, a sign language interpreter may be necessary. Police officers should be careful about miscommunication in the absence of a qualified interpreter – a nod of the head may be an attempt to appear cooperative in the midst of misunderstanding, rather than consent or a confession of wrongdoing.

In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken.

Example: An officer clocks a car on the highway driving 15 miles above the speed limit. The driver, who is deaf, is pulled over and issued a noncriminal citation. The individual is able to understand the reasons for the citation, because the officer exchanges written notes with the individual and points to information on the citation. In this case, a sign language interpreter is not needed.

Example: An officer responds to an aggravated battery call and upon arriving at the scene observes a bleeding victim and an individual holding a weapon. Eyewitnesses observed the individual strike the victim. The individual with the weapon is deaf, but the officer has probable cause to make a felony arrest without an interrogation. In this case, an interpreter is not necessary to carry out the arrest.

Q: Do I have to take a sign language interpreter to a call about a violent crime in progress or a similar urgent situation involving a person who is deaf?

A: No. An officer's immediate priority is to stabilize the situation. If the person being arrested is deaf, the officer can make an arrest and call for an interpreter to be available later at the booking station.

Q: When a sign language interpreter is needed, where do I find one?

A: Your department should have one or more interpreters available on call. This is generally accomplished through a contract with a sign language interpreter service. Communicating through sign language will not be effective unless the interpreter is familiar with the vocabulary and terminology of law enforcement, so your department should ensure that the interpreters it uses are familiar with law enforcement terms.

Also see <http://nad.org/issues/justice/police-and-law-enforcement> and [http://www.ada.gov/humboldt\\_pca/humboldtattD.htm](http://www.ada.gov/humboldt_pca/humboldtattD.htm):

DO NOT ask a family member or friend to interpret for a deaf individual unless it is urgent to communicate immediately and that is the only option. If the deaf person requests that arrangement and the other person agrees, however, you can proceed.

How do you know when you are communicating clearly to an individual who is deaf or hard of hearing? Ask the person to summarize what you are saying. Test his or her understanding.

If the person uses sign language, what kinds of communication require an interpreter? Consider the length, importance, and complexity of the communication, as well as the context.

In a simple encounter, such as checking a driver's license or giving directions, a notepad and pencil or perhaps gestures will normally be sufficient. During interrogations and arrests, a sign language interpreter will often be necessary. If the legality of a conversation will be questioned in court, such as where Miranda warnings are issued, a sign language interpreter may be necessary. You should be careful about misunderstandings in the absence of a qualified interpreter. A nod of the head may be an attempt to appear cooperative in the midst of misunderstanding, rather than consent or a confession of wrongdoing.

In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken....

Example: An officer responds to the scene of a domestic disturbance. The husband says the wife has been beating their children and he has been trying to restrain her. The wife, who is deaf, requests an interpreter. The officer begins by exchanging notes but the woman's responses indicate a lack of comprehension and poor grammar. An interpreter is necessary to carry out any arrest. In this situation, it would be inappropriate to use a family member to assist with communication, even if it is offered.

Do you have to take a sign language interpreter to a call about a violent crime in progress or a similar urgent situation involving a person who is deaf? No. An officer's immediate priority is to stabilize the situation. If the person being arrested is deaf, the officer can make an arrest and call for an interpreter to be available later at the booking station."

For helpful Justice Department settlements on point:

See: <http://www.ada.gov/new-haven/new-haven-atta.htm> (Police Department)

[http://www.ada.gov/muskegon\\_pca/muskegon\\_attc.htm](http://www.ada.gov/muskegon_pca/muskegon_attc.htm) (Police Department)

<http://www.ada.gov/west-columbia-pca/west-columbia-pca-attc.htm> (Police Department)

[http://www.ada.gov/elk\\_grove.htm](http://www.ada.gov/elk_grove.htm) (Police Department)

During the investigation, the officers are frustrated at not being able to converse with Alice and her husband. They turn to the 12 year old daughter for help in interpreting. The parents refuse to let her serve as the interpreter. The officers pass notes back and forth to try to communicate. Alice and her husband try to lip read what the officers are saying, and both have difficulty reading the notes. They ask to have a sign language interpreter provided, but the officers do not call for one to come to the scene.

By talking to the daughter, the officers determine that the husband started the fight, and hit his wife first. They determine that the wife acted in self-defense.

Alice is upset, and does not want her husband arrested, and does not want her husband to blame her for his being arrested. In an effort to communicate with the officers, she taps one of the officers on the shoulder, to get his attention, and to see his lips as she tries to communicate.

Alice's husband is arrested, and charged with misdemeanor domestic violence. The officers arrest Alice for felony Battery on a Law Enforcement Officer.

Both are taken to jail. Alice's service dog and emotional support cat are left at home, in the care and custody of their 12 year old daughter.

Both are locked up for the night, and both appear in court the next morning. Alice is temporarily assigned the Public Defender. Her husband is temporarily appointed an attorney in private practice.

Does the Public Defender have to provide a sign language interpreter? Does the Court? Does the private attorney? Can Alice and her husband be charged for the cost of the sign language interpreter? What law(s) apply?

During plea negotiations, Alice and her husband both plead no contest. Her husband pleads no contest to domestic violence, and Alice pleads no contest to Battery on a Law Enforcement Officer. Both pleas mandate that they attend and successfully complete a counseling program as a condition of probation. They must each report to a probation officer as well. Her husband is put on probation for a year. Alice is put on probation for five years.

Alice decides that she wants help from the local domestic violence shelter. She goes to the shelter, and receives counseling and sheltering. She stays for a month, and then returns home, and again resides with her husband and daughter. While at the shelter, she asks to be able to bring her service dog and her cat.

The shelter explains to her that the shelter is a no-pets setting, that the women in the shelter live in a communal setting, and that some of the other women are afraid of dogs. Others are allergic to dogs. Others are allergic to cats. The shelter asks her to leave her dog and cat at home.

Alice insists that she be allowed to bring her dog and cat into the shelter with her. The shelter asks her for documents proving that the dog is trained, is registered as a service dog, and is licensed as a service dog. Alice does not do so, but agrees to provide the shelter with a letter from her social worker concerning the emotional support provided by her cat. They also insist that she can only have the dog and cat go to certain areas of the shelter. In addition, the shelter insists that the dog wear a cape identifying it as a service dog, so that the other women will know it is not a pet. Alice refuses, and comes into the shelter without her dog and cat. The shelter provides a sign language interpreter at counseling sessions, and provides her with access to a TTY, as other residents are allowed to make outgoing calls on more than an incidental basis. They warn her not to call her husband or reveal the location of the shelter, and she complies with these instructions. After a month of help, she leaves.

Upon returning home, her husband serves her with divorce papers, and informs her that he will be seeking full custody of their daughter. He points out that while he committed a misdemeanor, she had admitted to having attacked a police officer, and that she had better behave or he will call the police and have her arrested again.

Alice asks the shelter for help in finding a lawyer with expertise in the dynamics of domestic violence to represent her in the divorce proceeding and custody proceeding. They refer her to Legal Aid. A mediator is assigned, and finds that while the husband is calm and interacts well with his daughter, Alice appears to be emotionally fragile, suffers from PTSD, and has anger issues with her husband. The mediator tells her that there is no need to bring her dog or cat with her to the mediation meetings.

The mediator also notes that she was on felony probation for having hit a police officer. The mediator has no training in the dynamics of domestic violence, and recommends that the husband have custody of their daughter. The mediator communicates with her at meetings by passing notes back and forth, and uses a sign language interpreter only when they are in court. The interpreter in court is paid for by the court.

The Court reviews the mediator's report, and interviews Alice and her husband through a sign language interpreter. The court expresses the belief that Alice has been saying bad things to her daughter about her husband, cites Parental Alienation Syndrome, notes that she is on felony probation for a violent

felony against a police officer, and sides with Alice's husband.

(See articles about custody and domestic violence located at [www.cavnet.org](http://www.cavnet.org)).

IF YOU ARE INTERESTED IN A DISCUSSION ABOUT THIS PAPER, PLEASE CONTACT MARC DUBIN, ESQ.

Responses, comments, and insights are welcomed. For information about how the ADA applies to shelters generally, including other disabilities, please visit

[http://www.njcbw.org/documents/DVSheltersADA\\_000.pdf](http://www.njcbw.org/documents/DVSheltersADA_000.pdf).

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Marc serves as President of ADA Expertise Consulting, LLC ([www.ADAexpertise.com](http://www.ADAexpertise.com)) and serves as Director of CAVNET (Communities Against Violence Network – [www.cavnet.org](http://www.cavnet.org)). He previously served as Special Counsel to the Office on Violence Against Women at the Justice Department, under Bonnie Campbell, from 1994-1995. In addition, served as a prosecutor for ten years, and as a Senior Trial Attorney at the Disability Rights Section of the Civil Rights Division at the Justice Department from 1993-2005. In that capacity, he was responsible for nationwide enforcement of the ADA and Section 504 on behalf of the United States. He may be reached at 305-896-3000 or by email at [mdubin@ADAexpertise.com](mailto:mdubin@ADAexpertise.com).