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## **Lawyer Settles Interpreter Case**

**April 9, 2004**

A local lawyer has admitted violating the Americans with Disabilities Act by failing to provide a sign language interpreter to a deaf client.

In a settlement reached prior to a civil lawsuit, Gregg Tirone, 42, of Penfield agreed to pay Kathleen Culhane Rozanski \$2,200 and place a notice in legal publications saying that he is in compliance with the Americans with Disabilities Act.

The U.S. Department of Justice received a complaint from Rozanski two years ago after she sought Tirone's services for a divorce. Other issues, including domestic violence, child custody, visitation and a restraining order were also to be discussed.

A court-appointed interpreter was used when Rozanski was in court, but in private meetings with Tirone, communication was done by writing down notes or asking a family member to help.

"Ms. Rozanski alleges that due to the absence of a qualified sign language interpreter, she did not understand all that was conveyed," according to the settlement. Tirone said he represented her adequately and professionally and he believes she always understood him.

Rozanski wrote letters to the Justice Department and the Monroe County Bar Association complaining about Tirone's lack of willingness to hire an interpreter.

"The Bar Association was not sympathetic to anything Kathleen made them know about," said her father, Jim Rozanski, of North Carolina. "There was a total lack of communications and arrogance."

Rozanski, 34, of Pittsford sometimes had her sister, who also has a hearing loss but uses another form of sign language, to help interpret.

"She was just so frustrated," her father said. "It built a wedge between them. They were both crying and everything else."

Tirone did not return phone calls about the settlement. Rozanski said she has not received his payment, even though the settlement was reached in January.

As stated in the settlement, lawyers are considered a public accommodation and must provide sign language interpreters when necessary to provide effective communication in legal matters and finances that would be sufficiently lengthy or complex.

The settlement also noted that signing and interpreting is not the same thing. Family members and friends are usually not qualified interpreters and should not be used in such cases.

“Use of a family member as a sign language interpreter in a matter involving domestic violence was inappropriate,” the settlement said.

Spencer Phillips, a lawyer with the Public Interest Law Office of Rochester, is familiar with the case and agreed with the finding against Tirone.

“Federal regulations provide that a qualified interpreter is warranted any time important, complex, or lengthy communications take place between a lawyer and a deaf client,” Phillips said. “If the deaf client is making a quick stop by the lawyer’s office to drop off a paper, no interpreter is required. However, in most other situations, an interpreter should be provided.” And the lawyer is responsible for paying for the interpreter, he said.

So how does a lawyer know when to schedule an interpreter?

“If a matter is important enough to require a meeting with a client, it is also important enough to require an interpreter,” Phillips said.

<http://www.ada.gov/tirone.htm>

SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
GREGG TIRONE, ESQ.

DEPARTMENT OF JUSTICE COMPLAINT NUMBER 202-53-20

PARTIES:

1. The parties to this agreement are the United States of America and Gregg Tirone, Esq.
2. Gregg Tirone is an attorney licensed to practice law in the state of New York, with a concentration in family law, including divorce, custody, and domestic violence.

BACKGROUND:

3. This matter was initiated by a complaint filed by Kathleen Culhane Rozanski received by the United States Department of Justice (“the Department”), in February of 2002, against attorney Gregg Tirone, of Rochester, New York. The complaint was investigated

by the Department under the authority granted by section 308 (b) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12188.

4. The Complainant, Kathleen Culhane Rozanski, has a hearing disability and uses sign language and lip reading as her principal means of communicating.

#### ALLEGATIONS:

5. Mr. Tirone represented Ms. Rozanski in her divorce. The divorce involved allegations of domestic violence, as well as matters of child custody, visitation, and issues relating to a restraining order.

6. It is alleged that Mr. Tirone failed to provide a qualified sign language interpreter during several meetings with his client.

7. When meeting with Ms. Rozanski in court, Mr. Tirone used the services of the court’s interpreter. The Court’s interpreter was provided by the Court at the Court’s expense.

8. At other times, in the absence of a qualified sign language interpreter, Mr. Tirone communicated with Ms. Rozanski by pen and paper, fax, lipreading, and by use of the National Relay Service when communicating by phone. It is alleged that use of these alternatives took longer than would have occurred had a qualified sign language interpreter been used, resulting in higher costs to Ms. Rozanski. In addition, Ms. Rozanski alleges that due to the absence of a qualified sign language interpreter, she did not understand all that was conveyed. Mr. Tirone asserts that he represented Ms. Rozanski adequately and professionally, and that he effectively communicated with her. He further asserts that he believes that Ms. Rozanski understood him at all times.

#### JURISDICTION / DISCUSSION OF APPLICABLE LAW:

9. Title III of the ADA and its implementing regulation prohibit discrimination on the basis of disability by places of public accommodation. 42 U.S.C. § 12182 ; 28 C.F.R. § 36.201.

10. Section 36.303 of the ADA regulation provides that a public accommodation:

(S)hall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.  
§ 36.303(a).

11. Attorneys are considered a public accommodation and must provide sign language interpreters when necessary to provide effective communication, which is the case when

the client uses sign language as his or her primary means of communication. The commentary to the title III regulation points out:

It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication (emphasis added).

Commentary to § 36.303

12. The public accommodation must:

(F)urnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

§ 36.303(4)(c).

13. Auxiliary aids and services include but are not limited to “qualified interpreters”. § 36.303(b)(1).

14. A “qualified interpreter” is one who:

(I)s able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. (Emphasis added). §36.104

15. There are several different sign language systems used by persons who use sign language. (The most common systems of sign language are American Sign Language and signed English.) Individuals who use a particular system may not communicate effectively through an interpreter who uses another system. When an interpreter is required, the public accommodation should provide a qualified interpreter, that is, an interpreter who is able to sign to the individual who is deaf what is being said by the hearing person and who can voice to the hearing person what is being signed by the individual who is deaf. This communication must be conveyed effectively, accurately, and impartially, through the use of any necessary specialized vocabulary.

16. Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

17. Family members, friends, and close associates are not qualified interpreters in most cases, and generally should not be used to interpret. The commentary to the Title III regulation makes clear:

...(P)ublic accommodations have at times asked persons who are deaf to provide family members or friends to interpret. In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such

as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret “effectively, accurately, and impartially.” (Emphasis added). Commentary to §36.303.

18. Mr. Tirone acknowledges that as an attorney in private practice, he is covered by Title III of the ADA as a place of public accommodation and is obligated to ensure effective communication with Ms. Rozanski. Mr. Tirone does not deny that Ms. Rozanski is an individual with a disability and as such, is protected from discrimination under the ADA. See 42 U.S.C. §§ 12182(b)(1)(b)(2)(a). He asserts that he effectively communicated with Ms. Rozanski at all times.

#### FINDINGS:

19. Use of a family member as a sign language interpreter in a matter involving domestic violence was inappropriate. Because of her relationship as Ms. Rozanski’s sister, the nature of the communications, and because of her emotional and personal involvement with her sister, she was not qualified to serve as an interpreter in this matter. In addition Ms. Rozanski’s sister was not a qualified sign language interpreter, as she has a hearing disability as well, and uses a different sign language than her sister, (signed English), and lipreads. Born with a hearing loss, she has moderate to severe hearing loss in her left ear and severe to profound loss in her right ear. Her doctors have indicated that “with hearing loss of this degree and nature, (she) can be expected to have communication difficulties in all listening situations, especially when competing background noise is present and when speakers are at a distance or not facing her.” She also has had no specialized training in interpreting legal terms.

20. The Department of Justice has investigated the allegation that Mr. Tirone failed to provide Ms. Rozanski with effective communication and finds the allegation meritorious. Mr. Tirone acknowledges a single violation of the ADA and agrees to the terms set forth below as a resolution of the investigation. In exchange, the United States agrees to terminate its investigation of this matter, without resorting to litigation.

#### REMEDIAL ACTION:

21. Mr. Tirone agrees that it is his obligation to ensure effective communication with his clients who have hearing disabilities, and that he cannot charge them for the cost of the interpreter services or charge any other surcharge to recover this cost. He agrees to post the following statement in the local paper once a month for 2 months, or in the Bar Association’s newsletter or the local Daily Record once a month for 2 months:

“The law office of Gregg Tirone welcomes clients with disabilities, particularly clients with hearing disabilities. Our firm is in compliance with the Americans with Disabilities Act, and will provide interpreter services when requested to do so. To ensure effective communication, when a client requires a sign language interpreter, this firm will provide a qualified sign language interpreter. The client shall not be charged for the cost of this service. The interpreter will be qualified to interpret legal terms.

He also agrees to post this statement prominently in his office, in a place clearly visible to the public, for the term of this Agreement.

22. Mr. Tirone agrees to compensate Kathleen Culhane Rozanski \$2200, and agrees to forego any money due him from Ms. Rozanski.

23. Mr. Tirone shall mail the check by certified mail, return receipt requested, by March 20th, 2004. A copy of the check and the transmittal letter shall be sent to counsel for the government.

24. Under section 308(b)(1)(B) of the ADA, 42 U.S.C. § 12188(b)(1)(B), the Attorney General is authorized to bring a civil action under title III in any situation where a pattern or practice of discrimination is believed to exist or where a matter of general public importance is raised. In consideration of the Agreement as set forth above, the Attorney General agrees to terminate its investigation of this matter. The United States also agrees not to file a civil lawsuit in this matter except pursuant to paragraph 25 below.

25. The Department may review compliance with this Agreement at any time. If the Department believes that this Agreement or any provision thereof has been violated, it may institute a civil action in the Federal District Court for New York, or any other appropriate Federal district court, of the possible violation and provide Mr. Tirone a period of twenty (20) days in which he shall have the opportunity to cure the first alleged violation. The Attorney General is authorized to seek civil penalties pursuant to 42 U.S.C. § 12188(b)(2)(C). For any subsequent alleged violations of this Agreement, the Department may institute a civil action against Gregg Tirone without any waiting period for him to cure the alleged violation.

26. This Agreement is a public document. A copy of this Agreement or any information contained herein may be made available to any person. The Department shall provide a copy of this Agreement to any person upon request.

27. This Agreement shall become effective as of the date of the last signature below, and shall terminate three years from its effective date.

28. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement shall be enforceable. This Agreement is limited to the allegations set forth herein, and it does not purport to remedy any other potential violations of the ADA or any other Federal, State or local law. This Agreement does not affect Mr. Tirone's continuing responsibility to comply with all aspects of the ADA.

29. Failure by any Party to enforce this entire Settlement Agreement or any provision thereof with regard to any deadline or any other provision contained herein shall not be construed as a waiver of such Party's right to do so with regard to that or any other provision of the Agreement.

30. A signer of this document, in a representative capacity for a partnership, corporation, or other entity, including a governmental agency, represents that he or she is authorized to bind such partnership, corporation, or other entity or agency to the terms of this Agreement.

For the United States:

For Greg Tirone, Esq.:

By: \_\_\_\_\_

R. Alexander Acosta  
Assistant Attorney General for Civil Rights

By: \_\_\_\_\_  
JOHN L. WODATCH, Chief  
RENEE M. WOHLNHAUS, Deputy Chief  
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Date 1/5/04  
Date 12/29/03

Thanks to: CAVNET - The Online Think Tank and Database of the Violence Against Women Movement [www.cavnet.org](http://www.cavnet.org).

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