

The Deaf Client

By

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Looking back on growing up in New Hampshire with two deaf parents, I remember cruel taunts of “deaf and dumb.” I remember stupid questions; “if your parents are deaf, how do they drive?” For the record, they drive the same way you and I do; a hand at ten o’clock, a hand at two o’clock, and a cup of coffee in the other hand.

Fortunately, I also remember that my parents, in particular my father, were successful in business despite their handicap, in large part, because of the help from a caring, kind, and *patient* lawyer, the late Honorable Arthur O. Gormley Sr. I haven’t been a lawyer very long, but I’ve been a Child of Deaf Adults, a CODA, a lifetime. So, I hope you’ll follow some of my hard-earned advice for dealing with deaf clients.

The first of which is to be *patient*. Everything with a deaf client takes longer. Part of this is the natural delay caused by a language barrier. Communicating through an interpreter, an interview or hearing takes longer because everything is repeated.

Another cause is the very nature of Deaf Culture and Deafness. Since I was a small child, I’ve noticed my parents and their friends take forever to say “goodbye.” As every conversation was about to close, somebody added one more thing. Deaf people don’t get to communicate as readily as hearing people do. They don’t chat on car phones while commuting from place to place. They don’t pop into the next cubicle to share an anecdote about how their kid scored the winning goal. So, when given an opportunity to communicate with the hearing world-at-large, deaf clients do what all of us would do,

they talk and talk and talk. That next chance to be really understood might be some time away. So, be *patient*.

Everything You've Never Wanted To Know About Interpreters

After allowing for more time on your calendar, the next step, unless you're fluent in American Sign Language, will be arranging for an interpreter. While many lawyers and other professionals, particularly doctors, tend to rely on the deaf client's family to act as interpreters, this is an enormous mistake. Putting aside the legal implications of the Americans with Disabilities Act, imagine asking a rape victim questions through her father or husband. Or the indignity to a parent with an unfaithful spouse (Tiger?) forced to relay the fact through a 13 year old son. Or asking about drug use. Will you get the best, or even good, answers? No.

And, while we're at it, don't let the hearing family member become the deaf client's spokesperson. Often, because of the ease of communication, familiarity and for the sake of speeding things up, the family of deaf people, pushy, but loving people like me, take over. A good lawyer knows that you need the story first hand, you get better information and the client needs to "dump" her problem to get beyond it. Otherwise you're just further marginalizing someone who's presumably already suffered.

The law requires you to use a certified interpreter. *See* RSA 326-I. The most common type of interpreter for the deaf is a sign language interpreter, but check to see exactly what type your client needs, and don't worry about privilege, New Hampshire's interpreter statute, RSA 521-A:11, makes interpreter facilitated communication confidential, if the communication would ordinarily be confidential if an interpreter

wasn't used. The easiest way to get a certified interpreter in NH is to contact Northeast Deaf and Hard of Hearing Services at www.ndhhs.org or (603)224-1850.

Remember, when using an interpreter, don't look at the interpreter. Look at your client. Make the connection with her. This shows respect and common decency. It's also considered good manners in Deaf Culture. More importantly, while the interpreter is translating words, the client is communicating meaning through body language and facial expressions; don't lose those important clues. You'll be drawn toward the interpreter, but try not to fall into the trap or you'll likely lose the client. Sadly, there are few certified sign language interpreters in New Hampshire and fewer still qualified to interpret in court. So, the advice you ordinarily give a client about court delays and the difficulty in getting in front of a judge will be greatly amplified. Also, for longer hearings, anything over an hour, two interpreters will be required.

Oh, and don't forget, you pay for the interpreter and you can not bill it to the client. Both the ADA and Section 504 of the Rehabilitation Act require businesses that accommodate the public, like lawyers, to provide auxiliary aids, interpreters, to facilitate communication unless the transaction isn't very complex or providing an interpreter would be a legitimate undue burden. As for complexity, that out is for simple transactions at cash registers not meetings with lawyers for a small claim. All meetings with lawyers are presumed complex. Also, it would be very difficult to show that hiring an interpreter for an hour was financially impossible for all but the smallest, unprofitable law practices. Typical rates in New Hampshire are \$20 or so for the referral fee and \$30-\$40 per hour, including travel time, for the interpreter. If it's a long meeting, remember,

that means two interpreters. Thankfully as a result of 42 U.S.C. 12131 and RSA 521-A:12, for Court appearances, the State picks up the tab.

Alternative Means of Communication – Good, Bad, and Worse

Because of the cost and delays in getting an interpreter, many lawyers might think of relying on less personal means of communication. Today, there are many ways to communicate; e-mail, texting, traditional TTY (those typewriters with a phone hooked up to them), video phone (think web cam), video phone interpreters, TTY interpreters and even plain, old fashion, handwritten notes. Each of these has limitations. I wouldn't advise relying upon e-mail, notes or other written communication as a primary means of contact, at least not until you're certain of your deaf client's literacy level. Many deaf people, even the best and the brightest, have trouble understanding the written word – remember, it's not a lack of intelligence, ours just isn't their native language.

Video phones are great if you can use sign language. Services like Sorenson Video Relay that use interpreters are also wonderful; you dial a number and an interpreter speaks with you and signs on a video phone to the deaf client. All these communications are confidential per RSA 521-A:12. But, many deaf clients are uncomfortable sharing important, private information through a video phone interpreter. It just doesn't feel very private, so you shouldn't over rely on these helpful technologies.

Here, in our office, many of our staffers have tried to address some of the discomfort caused by these communication problems by taking an American Sign Language Class. For 10 weeks, on their own time and without extra pay, many of our staffers studied, practiced sign language and, even, wrote papers on Deaf Culture so they could help put nervous, deaf clients at ease. The point is that our staff, rather than accept

the problem inherent with having a deaf client, was aware that they could take small steps to ease the comfort level of our deaf clients. If you try to learn a word or two in sign, like “coffee” or “water,” you can help put clients at ease, just as you would with a hearing client. Believe, me, my deaf clients are so happily amazed when our receptionist Jeanne-Marie Lloyd offers a cup of coffee in sign, that they care very little about me or what I have to say. It’s, I suppose, a respect thing.

Practice Pointers

There are lawyers who work with the deaf who believe that most deaf people try to ingratiate themselves with hearing people, particularly people in authority, and because of this any confession of a deaf person should be rigorously challenged. First, shouldn’t every confession be rigorously challenged? More importantly, if an interpreter wasn’t used, whether at a hearing, during an interrogation, or any other event – challenge. Even the best lip reader catches only some 60% of all words spoken, and that’s only of the person whose lips he’s reading. Remember, 80%, or more, of the words we use aren’t important; they are the “ands, buts and such.” So, even if a lip reader catches more than 60%, he isn’t catching the words like “knowingly, voluntarily and constitutional.”

In the end, the key to working with deaf clients is the same as working with hearing clients. You have to know your client. You have to develop trust. And, most importantly, you have to be *patient*.

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