

Disabilities Project Newsletter

Meeting the Legal Needs of Deaf Individuals **by Elizabeth Lyon and Carrie Sharlow,** **SBM Governmental Relations**

Special thanks to Senator John J. Gleason; Representative Dudley Spade; Janet Jirus, State of Michigan interpreter; Michigan Department of Labor and Economic Growth, Commission on Disability Concerns and Division on Deaf and Hard of Hearing.

Courtrooms can be confusing places. Legalese, Latin, and unfamiliar procedures can make it hard to understand your rights and make good decisions under circumstances that can have life-changing consequences. Navigating the legal system can be hard for anyone, but for an individual who is deaf, deaf-blind, or hard of hearing, communicating in this world can mean extra challenges. Imagine if you couldn't hear what your lawyer or the judge was saying, or couldn't see, or both. And imagine what misunderstandings could arise and what those could cost you. Lawyers play an essential role in protecting the interests of their clients and acting as an interpreter of the law. But what if the lawyer needs an interpreter to interpret what's being said in the courtroom? Or to fully understand the client's needs?

The Michigan Interpreter Law

A new law puts Michigan on the forefront nationally for guaranteeing civil rights of deaf, deaf-blind, and hard of hearing individuals by mandating access to superior quality communication services. Senator John J. Gleason and Representative Dudley Spade introduced and championed SB 25 (2007) and HB 4208 (2007) through the legislative process. Governor Jennifer Granholm signed the legislation on June 28, 2007, enacting it as Public Acts 23 and 24 of 2007. The new Michigan Interpreter Law means that the more than 1.4 million Michigan residents who are deaf or deaf-blind will have access to qualified interpreters.

In the court system, interpreters have been provided to deaf individuals by statute since 1982, when Michigan enacted the Deaf Persons Interpreter Act (PA 204 of 1982). The Act was an important first statutory requirement to provide interpreters in administrative and judicial proceedings. The Americans with Disabilities Act followed eight years later and provided a federal mandate to further guarantee important rights. The 2007 amendments to the Deaf Persons Interpreter Act mark a significant improvement by requiring the use of a qualified interpreter in all instances outlined in state and federal law and by defining "qualified interpreter." The Act also extended its provisions to individuals who are deaf-blind.

A qualified interpreter is now defined as a person who is certified through the National Registry of Interpreters for the Deaf or through the Michigan Division on Deaf and Hard of Hearing. This

certification ensures that interpreters have the appropriate level of training and have been tested on their skills to communicate as a neutral professional according to established standards. Previously, interpreters who did not meet this threshold could nevertheless be used and still meet legal requirements. Without the protection of a strong definition and regulation of qualified interpreters, there were many instances of ineffective and inadequate interpreter services. Errors in communication caused terrible consequences for individuals in medical, legal, financial, and education settings.

Now, qualified interpreters must be appointed in any action before a court or a grand jury where a deaf or deaf-blind person is a plaintiff, defendant, or witness. Qualified interpreters are also appointed to interpret proceedings to the deaf or deaf-blind individual or to interpret their testimony or statements and to assist in preparation of the action with the attorney. An interpreter can only be waived by a request for a waiver by the deaf or deaf-blind individual, subject to approval by counsel and the appointing authority. Before a qualified interpreter can be provided, a preliminary determination must be made to ensure the interpreter is readily able to communicate with the deaf or deaf-blind individual and is able to interpret the proceedings accurately. An intermediary interpreter may be provided if the qualified interpreter is not able to satisfactorily interpret. (Please see PA 23 of 2007).

The legislation introduced by Senator Gleason and Representative Spade also requires that any person who is entitled to a qualified interpreter provide reasonable notice to the appointing authority. Appointing authority is defined as a court or a department, board, commission, agency, or licensing authority of this state or a political subdivision of this state or an entity that is required to provide a qualified interpreter in circumstances mandated under state or federal law. An interpreter will be paid out of funds from the appointing authority. If a court is the appointing authority, the interpreter's fee paid is determined by the court, including actual expenses for travel, meals, and lodging. The Division on Deaf and Hard of Hearing of the Michigan Department of Labor and Economic Growth (DODHH-DLEG) will maintain a list of qualified interpreters that will be updated annually. Appointing authorities are required to channel requests for interpreters through the Division.

The legislation also provides for the certification and examination of qualified interpreters, including examination fees. It authorizes the DODHH-DLEG, with input from the Michigan Department of Education, to promulgate rules on certain procedures. Penalties are assigned for violators of this act, including appointing authorities failing to act (these penalties take effect after the promulgation of rules) and individuals misrepresenting themselves as qualified interpreters (these penalties took effect October 1, 2007).

The State Bar of Michigan is proud to have been a part of a large coalition supporting this important legislative improvement. The State Bar has long been a proponent of adequate interpreter services in the court system as an integral part of ensuring full participation of all individuals.

A Case Up for Interpretation

A pending case in Michigan shows what a difference the quality of interpretation can make. Currently pending before the Michigan Supreme Court is the case of Mary Ann McBride, a deaf woman from Roseville, who was charged with the stabbing death of her boyfriend, Robert Adelsburg, in April 2005. The case hinges on whether Ms. McBride received adequate interpreter services, including communication of Miranda rights and the interpretation of Ms. McBride's confession. Whether Ms. McBride's interpreter services are determined to have been sufficient will be the difference between a conviction for second-degree murder or first-degree murder, punishable by life in prison and no chance of parole.