

Blind Justice: On Access to Mediation

By Gary C. Norman

Like the able-bodied public that has found mediation to be a positive process, more and more people with disabilities have found (or will find) mediation a worthwhile effort for resolving disputes. The enactment of such panoplies as the Rehabilitation Act of 1973, as amended, (Rehabilitation Act) and the Americans with Disabilities Act of 1990 (ADA), have resulted, and are resulting, in the slow, if fuller, inclusion of people with disabilities in the public, both as laypersons and as professionals. As more and more people with disabilities enjoy enhanced access to gainful employment (including the legal profession), social and recreation opportunities because of these panoplies, these persons will seek to participate in the proven benefits of mediation to resolve disputes that may arise concerning their full inclusion and access to goods, programs and services of places of public entities and public accommodations. This means that, as a practical manner of ensuring fairness to the process, removing barriers to the full inclusion of people with disabilities in mediation has become, and is becoming, critical. As such, this article discusses ensuring accessibility to the mediation process.

In 2005, the National Council on Disability, the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice jointly published a technical-assistance document entitled *Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act*. The guide indicates that legal obligations to provide accommodations fall under §§501 of the Rehabilitation Act and Titles I and II of the ADA (public entities), and §504 of the Rehabilitation Act and Title III of the ADA (places of public accommodations), respectively. For instance, the Maryland Commission on Human Relations constitutes a public entity, whereas a community mediation center comprises a place of public accommodation. Unless a fundamental alteration and/or undue burden can be demonstrated to the contrary, these panoplies and their implementing regulations and interpretative guidance require providers to ensure accessibility to the mediation process by providing reasonable accommodations to their services and programs. Illustratively, some practice tips for providers of mediation services, include the following.

1. Anticipate that accommodations or auxiliary aids and services will be periodically requested, and take this into account in annual budget planning, if possible.
 - a. In doing this, develop a standardized method for addressing costs associated with providing accommodations for mediation, such as establishing a central fund or cost center from which to draw for such costs.
 - b. For private providers, tax incentives are available to defray the cost of providing accommodations.

2. Have clear procedures and program guidelines in place that regard –
 - a. Relaying any accommodation request information obtained by the intake personnel or referral source and/or at the convening phase
 - b. Processing such requests, including, identifying resources for accommodations
 - c. A method for tracking information regarding accommodations that have been provided, and
 - d. Communicating about and training on these procedures and guidelines with staff and volunteers.
3. As a best practice and as a matter of legal compliance, ensure the accessibility of the process, which may demand providing auxiliary aids or services, such as, offering a qualified interpreter for hearing-impaired persons, adapting procedures, modifying policies, such as taking more breaks or changing locations and other methods of removing barriers to full and informed participation in the process.
4. Through either a standardized intake form or standardized verbal inquiry, always communicate with all parties during the intake procedure and/or during the convening phase what accommodations or modifications, if any, they will need to facilitate participation in mediation. As part of this, do not engage in assumptions, but rather, be candid and specific with the person with a disability as to what information is required in order to furnish accommodations.
5. Although typically a qualified individual with a disability must first request an accommodation to be eligible to receive its benefits, the guide emphasizes using a broad definition of disability and otherwise addressing the issue of access proactively.
 - a. Thus, providers should be proactive regarding accessibility concerns, whether or not requested, such as conducting mediations in physically accessible locations and ensuring that mediation staff understand basic ADA accessibility provisions, such as the right to enter with a service animal like Langer.
 - b. In instances in which accommodations are not requested until the mediation session, such as the provision of materials in an alternative format, providers should determine what accommodations, if any, can be provided.
6. Together with the person with a disability, who has tendered a request for accommodations, determine how to implement such request, including, any preferences or contacts on their part as to auxiliary services, such as the American Council of the Blind for Braille.

Examples of accommodations for mediation for people with sight disabilities include:

1. Furnishing materials, either in advance via e-mail, preferably in Word or in an RTF format, or through alternative means, such as in Braille.

2. Providing sighted guide or orientation on request

3. Modifying “no pets” policies to allow the entrance of a guide dog

Section C.3. of the 2000 ADA Guidelines states that mediation providers should have a diverse pool of mediators, including mediators with disabilities. Although this may mean providing accommodations and possibly incurring costs to do so, it is demonstrated that concrete benefits inure to the public’s benefit by fully including people with disabilities.

Retired University of Tennessee professor and mediator John Buckley stated, “...Vision is not usually a subtext.” Instead of requiring many accommodations, he perceives that his blindness – that is, his experience in relying on auditory information – and his lovely guide dog benefit (rather than hamper) the process. He stated that “a good guide dog is mellow and can lower the temperature of a mediation session,” and that, “working with a sighted co-mediator with whom he is familiar can nicely match expertise in two forms of overlapping communication, the verbal and the non-verbal...”

Gary C. Norman, Esq., is a mediator with the Federal Sharing Neutrals program and the Maryland Commission on Human Relations.