

SILENT VOICES, LOUD JUSTICE: ENSURING EQUAL ACCESS TO LEGAL SERVICES FOR DEAF, [D]EAF, AND HARD OF HEARING INDIVIDUALS

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ABSTRACT

Access to justice and the legal system is a cornerstone to American democracy. Ensuring adequate access to the court system entails many things, but this Comment focuses on providing appropriate communication tools to individuals with hearing loss to ensure equal communication access. Many Deaf, deaf, and hard of hearing individuals are too often not provided the appropriate auxiliary aids to meet their communication needs. At the federal level, the Americans with Disabilities Act (ADA) addresses this problem by requiring public entities to provide appropriate auxiliary aids to accommodate for their customer's hearing loss. This Comment specifically focuses on Title II of the ADA, governing legal professionals' obligation to provide accommodations to their clients; however, many fail to comply with this requirement. Providing auxiliary aids is crucial for enabling effective communication, thus ensuring that these individuals have full access and ability to engage in our legal system.

The underlying issue is not an absence of guidelines or requirements to follow but rather the continuous, blissful disregard of the regulations in place, ultimately resulting in the continuous cycle of unequal communication access in a legal setting. To address the reoccurring disregard of federal and state regulations, this Comment suggests a proposed solution of adding legislation to the Texas Government Code. This proposed legislation would be a reactionary addition that would require those who fail to provide the legally required accommodations that ensures equal communication access to undergo a required Continuing Legal Education (CLE) course. The CLE will focus on the legal responsibility to provide equal communication access through an appropriate auxiliary aid. The proposed CLE would be provided

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by the State Bar of Texas, and such education would ensure that legal professionals are fully informed on working with individuals with hearing loss, ultimately providing greater awareness of the required compliance with the federal and state regulations already set in place.

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I. INTRODUCTION

Imagine living in a world of complete and utter silence—no music, no laughter, no rain falling on a window in the middle of the night.¹ Silence is something many of us experience when we are alone, but those who are deaf live in a world completely absent of sound.² They do not know what spoken languages sound like but rather find and have other natural ways of communication that match who they are as a person in a world of silence.³

Approximately 15% of Americans who are over the age of eighteen are reported to have some range of hearing loss.⁴ Whether it be you, a family member, friend, or co-worker, everyone at some point in their life will be directly or indirectly impacted by hearing loss.⁵ Hearing loss is not a uniform disability and does not impact everyone in the same way.⁶ This simple understanding is something our court system has been slow to recognize and accommodate.⁷

This Comment will focus on the problem many Deaf, deaf, and hard of hearing individuals face when they become involved in the court system or when receiving legal services.⁸ This particular group of individuals are legally protected, but the protections are not being utilized as legally required.⁹ Too frequently, people who suffer from hearing loss are discriminated against in a setting that already has legal protections set up for them.¹⁰ This Comment offers a solution to add to the Texas Government Code (TGC) to ensure compliance with the law and to set an example for other states to potentially adopt and follow.¹¹

Part I provides a bird's eye view of the problem that many Deaf, deaf, and hard of hearing individuals face in the legal system due to the lack of access to communication.¹² Part I also introduces the solution to this problem

1. Author's own hypothetical.

2. *Id.*

3. *Id.*; see generally *American Sign Language*, NAT'L INST. ON DEAFNESS & OTHER COMM'C'N DISORDERS, [https://www.nidcd.nih.gov/health/american-sign-language#:~:text=American%20Sign%20Language%20\(ASL\)%20is,of%20the%20hands%20and%20face](https://www.nidcd.nih.gov/health/american-sign-language#:~:text=American%20Sign%20Language%20(ASL)%20is,of%20the%20hands%20and%20face) (last updated Mar. 4, 2024) (discussing that American Sign Language is a natural language) [<https://perma.cc/89UH-KK83>].

4. *Quick Statistics About Hearing, Balance, & Dizziness*, NAT'L INST. ON DEAFNESS & OTHER COMM'C'N DISORDERS, <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> (last updated Mar. 4, 2024) [<https://perma.cc/T44J-663N>].

5. *Id.*

6. Author's original proposal.

7. *Id.*

8. *Id.*

9. Author's original thought.

10. See generally *Hearing Disabilities in the Workplace and the Americans with Disabilities Act*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (Jan. 24, 2023), <https://www.eeoc.gov/laws/guidance/hearing-disabilities-workplace-and-americans-disabilities-act> (discussing examples of how hearing disabilities can take place in a work environment) [<https://perma.cc/R53G-Z26D>].

11. See discussion *infra* Part III.

12. See discussion *infra* Part I.

by briefly describing how an addition to the TGC would act as a model for other states, and potentially the Federal Government, to address the problems these individuals are facing.¹³

Part II discusses various background information to help anyone who encounters a Deaf, deaf, or hard of hearing individual to understand what exactly that entails.¹⁴ It provides historical background information that is important to know, as well as some terminology that is currently used.¹⁵ Part II also explains the Americans with Disabilities Act (ADA), the federal regulations that apply to working with this class of individuals.¹⁶ After explaining the federal regulations, this Part discusses Texas regulations; following that is a discussion regarding funding that Texas legal professionals have access to if they have a client who requires an auxiliary aid.¹⁷

Part III then proposes legislation as an addition to the TGC.¹⁸ This proposed legislation provides a solution to this reoccurring problem by requiring legal professionals who violate federal or state guidelines to attend a required CLE provided by the State Bar of Texas that would educate the professional on how they violated the law and how the problem can be avoided in the future.¹⁹ Part III also discusses how different forms of punishment provide various results.²⁰ Part III proposes a CLE course because the fault in these situations is typically due to a lack of awareness, so providing a resource for education will likely yield better results than other forms of punishment.²¹

Part III then takes a deep dive into various situations and cases in which had an auxiliary aid been provided to the individual, the outcome would have been drastically different.²² The case analysis and examples will provide comprehensive insight into how this situation occurs in a variety of aspects and areas of the law.²³ Individuals with hearing loss are subject to the law in the same manner as everyone else; however, their unique circumstances may require additional accommodations to ensure equal treatment.²⁴

Similarly, those with hearing loss may find themselves on juries, facing criminal charges, or dealing with civil matters just like any other individual.²⁵ These situations highlight the crucial need to provide equal communication

13. See discussion *infra* Part I.

14. See discussion *infra* Part II.

15. See discussion *infra* Part II.

16. See discussion *infra* Part II.

17. See discussion *infra* Part II.

18. See discussion *infra* Part III.

19. See discussion *infra* Part III.

20. See discussion *infra* Part III.

21. See discussion *infra* Part III.

22. See discussion *infra* Part III.

23. See discussion *infra* Part III.

24. See discussion *infra* Part III.

25. See discussion *infra* Sections III.E–G; Author's original thought.

access in legal settings.²⁶ Without proper accommodations, individuals with hearing loss will continue to face significant barriers, preventing them from having an equal opportunity to participate in legal proceedings on the same footing as those who do not require additional accommodations.²⁷ It is essential for legal professionals to recognize their obligation to provide necessary, legally required accommodations, ensuring those with hearing loss have equal access to justice and participation in the legal process.²⁸

Part IV concludes this Comment by discussing the overarching theme of providing equal communication access and the importance of doing so.²⁹ The federal and state governments have done an adequate job at providing laws for legal professionals to follow but have failed at properly punishing those who fail to comply with the laws already set in place.³⁰ A CLE requirement for those who fail to follow the laws that are laid out to protect the individuals with hearing loss would provide a solution and educate those who have failed to provide appropriate auxiliary aids to this specific class of individuals.³¹

II. BACKGROUND

Deafness and hearing loss is often referred to as an “invisible” disability.³² Meaning, this disability is not something someone will know or notice about a person just by looking at them, which can often lead to misunderstandings or unintentional neglect of the individual’s needs.³³ This invisibility extends to the needed accommodations because the specific accommodations an individual may require are often unknown, unless they are inquired about or the individual effectively communicates their needs unprompted.³⁴ Fortunately, there are a plethora of options to accommodate those with hearing loss, such as: hearing aids, interpreters, communication access real-time captioning (CART), Certified Deaf Interpreters (CDI), transliteration, FM systems, and plenty more.³⁵

26. See discussion *infra* Sections III.E–G; Author’s original thought.

27. See discussion *infra* Sections III.E–G; Author’s original thought.

28. See discussion *infra* Sections III.E–G; Author’s original thought.

29. See discussion *infra* Part IV.

30. Author’s original thought.

31. *Id.*

32. *As An Invisible Disability, Hearing Loss Often Goes Ignored*, PAC. NW. AUDIOLOGY, <https://pnw.audiology.com/blog/as-an-invisible-disability-hearing-loss-often-goes-ignored/#:~:text=Hearing%20loss%20loss%20is%20also%20called,loss%20by%20looking%20at%20them> (last visited Mar. 30, 2025) [<https://perma.cc/4QES-G8NY>].

33. *Id.*

34. *Id.*

35. *Assistive Technology*, DEP’T OF HUM. SERVS., <https://mn.gov/deaf-hard-of-hearing/assistive-technology/> (last visited Mar. 30, 2025) [<https://perma.cc/38R2-U9V7>]; see discussion *infra* Section II.D.1.

A. Outdated Vocabulary

As society has evolved and developed a better sense and understanding of disabilities, there has been a notable shift towards more respectful and inclusive language, emphasizing the abilities and dignity of individuals with disabilities rather than focusing solely on their limitations.³⁶ This shift has been driven by a broader societal recognition of the importance of accessibility, representation, and equality, fostering a more supportive and empowering environment for people of all abilities.³⁷ Some Deaf or deaf individuals do not speak or use their voice, so phrases such as “deaf and dumb,” “deaf-mute,” and “hearing-impaired” were once used to label these classes.³⁸

However, modernly, these terms can be very offensive if used to describe an individual with hearing loss because these phrases fail to respect the person’s identity and capabilities.³⁹ Such terms were used in the past because, as a society, many people believed that if you did not use your voice, then you were incapable of developing cognitive thoughts, rendering you incapable of learning.⁴⁰ However, as the years have progressed, society has learned many things from individuals with hearing loss and witnessed an abundance of these individuals achieve remarkable things—ultimately demonstrating that hearing loss does not limit one’s potential or ability to succeed.⁴¹

B. Current Vocabulary

This Comment mentions three main terms throughout: Deaf, deaf, and hard of hearing.⁴² These three terms are often understood as meaning the same thing; however, they all have their own individual denotation and connotation.⁴³ Each term may hold a different meaning to the person being addressed, making it essential to understand and appropriately use each of these words respectfully when working with an individual who has hearing

36. See generally *Community and Culture – Frequently Asked Questions*, NAT’L ASS’N OF THE DEAF, <https://www.nad.org/resources/american-sign-language/community-and-culture-frequently-asked-questions/> (last visited Mar. 30, 2025) (discussing various phrases relating to hearing loss) [<https://perma.cc/D9YW-WJ8H>].

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Famous Deaf People: 14 Deaf and Hard-of-Hearing People Who Changed the World*, AI MEDIA, <https://www.ai-media.tv/knowledge-hub/insights/deaf-people-changed-world/> (last visited Mar. 30, 2025) [<https://perma.cc/4ZPV-DZNN>].

42. Author’s original thought.

43. *How are the terms deaf, deafened, hard of hearing, and hearing impaired typically used?*, UNIV. WASH.: DO-IT, <https://www.washington.edu/doit/how-are-terms-deaf-deafened-hard-hearing-and-hearing-impaired-typically-used> (last visited Mar. 30, 2025) [<https://perma.cc/V2MJ-67PE>].

loss.⁴⁴ Tailoring language to one's preference can help ensure a more respected and successful communication process.⁴⁵

1. Big D Deaf

"Big D Deaf" refers to individuals who identify as culturally deaf.⁴⁶ Standardly, this means the individual's preferred or main way of communicating is through a form of sign language.⁴⁷ There are many "versions" of sign language, but the most common in the United States is American Sign Language (ASL).⁴⁸ Those who identify as Deaf often come from Deaf households or attended a school for Deaf students only.⁴⁹ Culturally Deaf people—much like other cultural groups—have their own unique sets of beliefs, norms, idioms, humor, and history.⁵⁰

One example that many people become accustomed to when they interact with Deaf people includes the "Deaf goodbye."⁵¹ The Deaf goodbye is typically a prolonged goodbye, which allows for a proper and respectful closure to an interaction.⁵² If an individual were to abruptly leave without properly engaging in the Deaf goodbye, it would be considered rude to the Deaf person because it disregards the social norms of the Deaf community.⁵³ Another example, to spotlight the importance of a proper goodbye in Deaf culture, is the cultural norm of announcing where one is going when leaving a room—even if it is just to go to the bathroom.⁵⁴

Even though identifying as culturally Deaf has a rich set of beliefs, the key to being Deaf is embracing your deafness (or hearing loss) as a unique

44. See generally *id.* (discussing the difference between Deaf, deaf, and hard of hearing); Author's original thought.

45. See generally Annie Zhou, *Effective Communication: Tailoring the Message to Each Audience*, MEDIUM (Feb. 22, 2023), <https://medium.com/tech-lead-hub/effective-communication-tailoring-the-message-to-each-audience-31f1cbbc64cc> (discussing how it is critical to adapt to who you are speaking to) [<https://perma.cc/837J-JX2J>].

46. *What Are Big D and Little D?*, DEAF@X, <https://www.deafax.org/news/what-are-big-d-and-little-d/> (last visited Mar. 4, 2025) [<https://perma.cc/P59D-93C9>].

47. *Id.*

48. See generally *Types of Sign Language Used in the United States*, AVANTPAGE EMPATHY BEYOND WORDS (July 19, 2024), <https://avantpage.com/blog/sign-language-types/> (describing the various form of sign language that are used in the United States) [<https://perma.cc/LS99-7CWA>].

49. *Id.*

50. See Anna Sofia Gala, *Deaf Culture: What is it, history, aspects, examples, & facts*, HAND TALK, <https://www.handtalk.me/en/blog/deaf-culture/> (last visited Mar. 4, 2025) [<https://perma.cc/HV9B-2L99>].

51. See generally *Why Deaf Folks Take Their Time Saying Goodbye*, VISUALLY SPEAKING (July 5, 2024), <https://www.visuallyspeaking.info/why-deaf-folks-take-their-time-saying-goodbye/> (discussing what a Deaf goodbye is and how the goodbye tends to play out) [<https://perma.cc/QS69-AVA8>].

52. *Id.*

53. *Id.*

54. See generally Razonda Munyaradzi, *General Communication Etiquette with Deaf Individuals*, THE DEAF BEE (Oct. 30, 2014), <https://deafbee.wordpress.com/2014/10/30/general-communication-etiquette-with-deaf-individuals/> (discussing that when you leave a room that has a Deaf person present, you should tell them where you are going and not just leave the room) [<https://perma.cc/QT65-89JN>].

identity—not as a disability.⁵⁵ Many individuals who have hearing loss find their own identity and group based on who they are around, how their hearing loss makes them feel, and who they feel they most closely identify with.⁵⁶ Those who identify as big D Deaf take pride in their identity and cultural heritage, viewing their deafness not as a disability but as being who they are.⁵⁷

2. [d]eaf/Hard of Hearing

Spelling the word deaf with a lowercase d and the term hard of hearing both refer to the medical term and the dictionary definition of having hearing loss.⁵⁸ The terms “deaf” and “hard of hearing” correspond to the medical definitions that describe the degree of hearing loss a person has in terms of decibels.⁵⁹ A decibel is “a unit for expressing the relative intensity of sounds on a scale”⁶⁰ Typically, those labeled as deaf have profound hearing loss.⁶¹ Having profound hearing loss means a hearing loss range over 91 decibels.⁶² Those who are hard of hearing will have a 26–90 decibel hearing loss.⁶³ This type of hearing loss will regularly be referred to as mild to severe hearing loss.⁶⁴

C. Sign Language Is Not English

A common misconception is that ASL is the same as English, but this is not true.⁶⁵ ASL is its own language with its own set of grammar rules, sentence structure, syntax, and language rules.⁶⁶ For example, in English we would say, “the big, red, firetruck,” but in ASL one would sign, “firetruck red.”⁶⁷ The word “big” could either be signed using the sign for “big” or shown using facial expressions.⁶⁸ This leads to another critical aspect of ASL:

55. Sydney Akers, *Being Deaf Does Not Mean We're Broken*, STARS, <https://starsnashville.org/being-deaf-does-not-mean-were-broken/> (last visited Mar. 4, 2025) [<https://perma.cc/8EGM-XVFF>].

56. See Gala, *supra* note 50.

57. See *What Are Big D and Little D?*, *supra* note 46.

58. See *How are the terms deaf, deafened, hard of hearing, and hearing impaired typically used?*, *supra* note 43.

59. See *generally Degree of Hearing Loss*, ASHA, https://www.asha.org/public/hearing/degree-of-hearing-loss/?srsltid=AfmBOooU-3LulkevcHZqOZHyz6VHs5J8OPEQ7nherl1kpR_sdrGAyKny (last visited Mar. 4, 2025) (explaining the various decibels of hearing loss) [<https://perma.cc/36Y3-X8MR>].

60. *Decibel*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/decibel> (last visited Feb. 23, 2025) [<https://perma.cc/WMR9-YJSK>].

61. *Degree of Hearing Loss*, *supra* note 59.

62. *Id.*

63. *Id.*

64. *Id.*

65. *American Sign Language*, *supra* note 3.

66. *Id.*

67. Author's original hypothetical.

68. *Id.*

it is a 3D language.⁶⁹ A large portion of communicating what someone wants to say is done through facial and body expressions.⁷⁰

Because of the common misconception that ASL and English are the same, there is also a common belief that all Deaf individuals can read.⁷¹ However, it is normal for many native sign language users to have a limited understanding of the English language because it differs so much from their natural, native language.⁷²

Poor literacy skills have been a common trend for Deaf people for many years.⁷³ Many Deaf students regularly graduate with a literacy level below a fourth grade standard.⁷⁴ Those who are deaf or hard of hearing do not tend to have the same trend of reading level, but because of their hearing loss they have their own set of struggles.⁷⁵ Overall, it is critical to understand that it is more normal, and common, for a Deaf person to *not* be fluent in English than it is for them to *be* fluent in English.⁷⁶ The important fact to remember is that not all Deaf people are fluent in English, so communicating with them via written English is not always received equally.

D. Federal Requirements: The ADA

The ADA was signed into effect in 1990 by President George Bush, ultimately making it illegal to discriminate against someone who has a disability under the statute.⁷⁷ On its face, the ADA appears to be a statute passed to help protect individuals with disabilities, but in reality, the ADA is a broad remedial statute designed to correct imperfections in the law and relieve injured parties.⁷⁸ The most common application of the ADA relates to employment discrimination, but it has a much broader scope than only employment related cases.⁷⁹ For example, the ADA also covers public

69. *Id.*

70. *How a 3D Language Works*, TRUSTED TRANSLATIONS (Apr. 12, 2017), <https://www.trustedtranslations.com/blog/3d-language-works> [<https://perma.cc/6T28-B2ZC>].

71. *See Debunking 7 Misconceptions about Sign Language, Deaf Culture, and Deafness*, DISABILITY RTS. FLA., https://disabilityrightsflorida.org/blog/entry/7_misconception_ASL_Deaf_Culture (last visited Nov. 8, 2024) [<https://perma.cc/ZMY2-MCWP>].

72. *Id.*

73. Amy Lederberg, *Special Education Research and Development Center on Reading Instruction for Deaf and Hard of Hearing Students*, NAT'L CTR. FOR SPECIAL EDUC. RSCH. (2012), <https://ies.ed.gov/ncser/RandD/details.asp?ID=1325> [<https://perma.cc/WB3L-YBVH>].

74. *Id.*

75. *Id.*

76. *Id.*

77. *25th Anniversary of the Americans with Disabilities Act*, NAT'L ARCHIVES (July 26, 2022), <https://www.archives.gov/calendar/ada25#:~:text=Signed%20on%20July%2026%2C%201990,Lawn%20of%20the%20White%20House> [<https://perma.cc/M6SF-9HN5>]; *Introduction to the Americans with Disabilities Act*, U.S. DEP'T OF JUST. CIV. RTS. DIV., <https://www.ada.gov/topics/intro-to-ada/> (last visited Jan. 3, 2025) [<https://perma.cc/3TRT-JFKW>].

78. *Arnold v. UPS*, 136 F.3d 854, 861 (1st Cir. 1998).

79. *Id.*; *see generally* discussion *supra* note 77 (explaining how the ADA protects people with disabilities).

accommodations, public transportation, and telecommunications—just to list a few.⁸⁰

Under Title II, “no qualified individual with a disability shall, by reason of such disability, be excluded from participating in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁸¹ Title II currently governs and applies to all U.S. courts, attorneys, and legal professionals in matters relating to working with individuals who have a hearing loss, ultimately ensuring accessibility in the legal system.⁸² Under Title II, some firms and legal professionals share the common misconception that they are exempt from ADA compliance for providing such services, but this is not true when it comes to providing auxiliary aids to an individual with hearing loss who is involved in a legal setting.⁸³ There are no legal entities that are or will be exempt from complying with Title II of the ADA.⁸⁴

I. Auxiliary Aids

Auxiliary aids are an important part of ADA Title II compliance.⁸⁵ For example, if an English speaker were to be arrested and go to jail, court, or speak with an attorney in a foreign country where the primary language was something other than English, they would likely expect no less than for all written documents and communication to be in English.⁸⁶ They would expect a translator through all proceedings and for any written communication to either be translated by a person who can read it to them in English or have a copy printed in English.⁸⁷ So, why would a legal professional in the U.S. expect someone who does not speak or potentially cannot read in English to navigate any legal situation and communicate in what is a foreign language to them?⁸⁸ This is exactly why, under Title II in the ADA, the Federal Government requires that those with a hearing loss be provided with an auxiliary aid.⁸⁹

80. See generally discussion *supra* note 77 (discussing what all the ADA can and does apply to).

81. 42 U.S.C. § 12132.

82. *Lawyers and Legal Services*, NAT'L ASS'N OF THE DEAF, <https://www.nad.org/resources/justice/lawyers-and-legal-services/> (last visited Nov. 8, 2024) [<https://perma.cc/UWM5-R95E>].

83. Katherine B. Smith, *A Lawyer's Obligation under the ADA when Representing Deaf or Hard of Hearing Clients*, COLLINS EINHORN (Mar. 15, 2023), <https://ceflawyers.com/blog/a-lawyers-obligation-under-the-ada-when-representing-deaf-or-hard-of-hearing-clients/> [<https://perma.cc/Y7HM-S9GD>].

84. *Id.*

85. See ADA Title II Tech. Assistance Man. II-7.1000–7.1100.

86. Author's original hypothetical.

87. *Id.*

88. *Id.*

89. ADA Title II Tech. Assistance Man. II.-7.1000.

Under Title II of the ADA, an auxiliary aid is defined as:

(1) Auxiliary aids and services. The term “auxiliary aids and services” includes—(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.⁹⁰

These auxiliaries can take many forms and should be tailored to meet the client’s specific needs.⁹¹ Some options a client who is covered under Title II of the ADA may request, but are not limited to, include an interpreter, a Certified Deaf Interpreter (CDI), Communication Access Real-Time Captioning (CART), transliteration, and many more.⁹²

Title II also provides that anyone who requires an auxiliary aid is *not* responsible for providing their own access to communication; it is always the entity’s responsibility to provide and fund the means of equal communication access.⁹³ This means that the individual is not responsible for finding, funding, or scheduling, if required, their auxiliary aid.⁹⁴ Similar to if someone were in a foreign non-English speaking country, they would not expect to have to pay to have a right to equal communication access.⁹⁵

2. *Qualified Interpreter (ADA)*

Referring back to the hypothetical of someone involved in a legal setting in a foreign country, they would expect to have a translator who is knowledgeable and held to a higher standard to translate for them.⁹⁶ At minimum they would expect someone who is qualified and has an understanding of American culture, the English language, and the legal proceedings.⁹⁷ Again, why would the American court system have any lower

90. 42 U.S.C.A. § 12103 (Here, the outdated term ‘hearing impaired’ is used, but this is an issue that is not to be addressed in this Comment. At the time the ADA was signed into effect—1990—the term ‘hearing impaired’ was the commonly used term amongst society).

91. *Court Access for Individuals Who Are Deaf and Hard of Hearing: A Guide*, AM. BAR ASS’N COMM’N ON DISABILITY RTS. 1, 11 (Apr. 3, 2020), <https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intracvtv-accsb-rev022317.pdf> [<https://perma.cc/Z2HJ-8698>].

92. See 42 U.S.C.A. § 12103.

93. ADA Title II Tech. Assistance Man. II-7.1200.

94. See generally *5 Myths About Providing Access for the Deaf*, CONVO (Oct. 21, 2022), <https://convorelay.com/5-myths-access/> (explaining how the ADA does not permit requiring a Deaf person to provide their own interpreter) [<https://perma.cc/F23E-J7JY>].

95. Author’s original hypothetical.

96. See *supra* text accompanying notes 86–88.

97. *Id.*

standard for someone who cannot hear and needs language assistance in legal settings?⁹⁸

Under the ADA, a qualified interpreter is defined as “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 said by the individual who is deaf.”⁹⁹ Another crucial requirement, described in more detail later in this Comment, is the ability to remain impartial.¹⁰⁰ This element is critical to the definition of a qualified interpreter because the typical experience is that businesses are hesitant to hire interpreters not only because of the hefty cost but also out of concern that if an unqualified interpreter is hired then they may not adhere to any standard of professional responsibility or codes of conduct because there is nothing forcing them to follow a set standard.¹⁰¹ Without a standard holding an interpreter accountable, there is a risk that they may be impartial and a higher risk that there may be an inaccurate conveyance of the message.¹⁰²

3. Filing a Complaint (ADA)

The ADA does provide an avenue for those who have been unlawfully discriminated against under Title II.¹⁰³ If an individual experiences unlawful discrimination, they have the option and ability to file a complaint with the Department of Justice (DOJ).¹⁰⁴ As a victim of ADA discrimination, an individual has two options for filing a DOJ complaint: (1) complete and file the form online or (2) fill out the paperwork and mail it to the office.¹⁰⁵ These options provide an avenue for individuals who believe they were discriminated against based on their qualifying disability under Title II of the ADA.¹⁰⁶

Once a complaint is filed and accepted for processing, an investigation then takes place.¹⁰⁷ The DOJ then decides whether to bring disciplinary

98. *Id.*

99. ADA Title II Tech. Assistance Man. II-7.1200.

100. See discussion *infra* Section III.A.

101. See *Court Access for Individuals Who Are Deaf and Hard of Hearing: A Guide*, *supra* note 91, at 37.

102. *Id.* at 21.

103. *How can I file an ADA complaint with the U.S. Department of Justice?*, ADA NAT'L NETWORK, <https://adata.org/faq/how-can-i-file-ada-complaint-us-department-justice> (last visited Nov. 8, 2024) [<https://perma.cc/5FRH-6FCE>].

104. *Id.*

105. *File a Complaint*, ADA.GOV, <https://www.ada.gov/file-a-complaint/> (last visited Nov. 8, 2024) [<https://perma.cc/G25F-K5KL>].

106. *Id.*

107. *Complaint Processing*, U.S. DEP'T OF JUST., <https://www.justice.gov/jmd/complaint-process> (last visited Nov. 8, 2024) [<https://perma.cc/7JZF-CEZU>].

actions against the alleged discriminatory actors.¹⁰⁸ The disciplinary action could include—but is not limited to—possible litigation or mediation.¹⁰⁹

Many complainants assume that the DOJ decides whether there was an ADA violation when in reality they decide if there is a pattern or practice of discrimination or if the complaint raises a general public concern.¹¹⁰ Overall, the goal behind the ability to file a complaint is to “enforce[] the ADA through lawsuits and settlement agreements to achieve greater access, inclusion, and equal opportunity for people with disabilities.”¹¹¹

The cases that deal with individuals with hearing loss are rare in form but do occur.¹¹² For example, in September of 2024, the DOJ found a pattern at Wisconsin’s Department of Corrections of not providing equal communication access to inmates with hearing loss.¹¹³ This provides an example of the importance for those who are not given equal communication access to continue to file DOJ complaints because they can cause an effective change, not only for themselves but for others who will be in similar situations in the future.¹¹⁴ Situations such as the one that occurred in Wisconsin can also provide an example for other states in what could happen to them if they also fail with provide appropriate auxiliary aids in various legal settings.¹¹⁵

E. Texas Requirements: the TGC Chapter 57

Under the TGC, the ADA is reinforced, but there are also a few additional requirements that Texas has added.¹¹⁶ These additional requirements allow for a stricter standard on the interpreters and allow for a better quality of access.¹¹⁷ One of the significant differences is that Texas mandates access to a court certified interpreter—in any legal setting—for people who use sign language as their mode of communication.¹¹⁸ This is important for people to comply with because if an interpreter happens to

108. *How to File a Complaint Under Titles II and III of the ADA*, DISABILITY RTS. TEX. (Aug. 13, 2018), <https://disabilityrightstx.org/en/handout/how-to-file-ada-complaint-title-ii-title-iii/> [https://perma.cc/M5M3-68AC].

109. *Id.*

110. *Id.*

111. *Enforcement*, U.S. DEP’T OF JUST. CIV. RTS. DIV., <https://www.justice.gov/crt/disability-rights-section> (last visited Mar. 4, 2025) [https://perma.cc/KR9A-U787].

112. *See generally Disability Rights Cases*, U.S. DEP’T OF JUST. CIV. RTS. DIV., <https://www.justice.gov/crt/disability-rights-cases> (last visited Nov. 8, 2024) [https://perma.cc/5Z62-932A] (listing all the cases that have been filed under the DOJ).

113. *Wisconsin Department of Corrections*, U.S. DEP’T OF JUST. CIV. RTS. DIV., <https://www.justice.gov/crt/case/wisconsin-department-corrections> (Oct. 11, 2024) [https://perma.cc/TW32-GKM8].

114. *See generally id.* (demonstrating a case that has been filed in the past with the DOJ); Author’s original thought.

115. Author’s original thought.

116. TEX. GOV’T CODE ANN. § 57.002.

117. *See id.*; Author’s original thought.

118. *See* TEX. GOV’T CODE ANN. § 57.002.

interpret in a legal setting without the appropriate certification they could potentially face criminal charges or have their certification revoked.¹¹⁹

The TGC also lays out the requirements for an interpreter's court certification.¹²⁰ It is important for someone who might need to hire an interpreter in Texas to know that, in Texas, an individual does not have to have a certification to be an ASL interpreter.¹²¹ In Texas, anyone can "claim" to be an interpreter and can interpret without a certification, but if they are not certified, then they are not held to any code of professional conduct standard; there is also no threat or fear of their certification being revoked.¹²²

Those looking to hire an ASL interpreter must be cautious about who they hire because, technically, anyone can be an interpreter in Texas due to the lack of licensure.¹²³ In the interpreting community, there is a push for the certification to be changed to a licensure so that interpreters can be held to a higher standard, but this issue will not be discussed any further in this Comment.¹²⁴ However, the Texas Human Resource Code lays out the steps for an interested individual to take to become certified.¹²⁵

1. Certified Interpreters (TGC)

The standard process that a potential ASL interpreter will go through includes attending a higher education facility with rules set out by the executive commissioner of the Texas Health and Human Services Commission.¹²⁶ They will then have to take and pass the Texas English Proficiency (TEP) exam.¹²⁷ The TEP exam is a test similar to a high school Scholastic Aptitude Test (SAT), and it tests future interpreters on their English knowledge.¹²⁸ Upon the completion and receipt of a passing TEP score, the ASL interpreter applicant will then have to take and pass a performance exam called the Board for Evaluation of Interpreters (BEI)

119. *Id.* §§ 57.025, 57.027.

120. *Id.* § 57.021.

121. *See id.*; Author's original thought.

122. *See generally Licensed Court Interpreters: Code of Ethics and Professional Responsibility*, TEX. JUD. BRANCH 1, 1–2, <https://www.txcourts.gov/media/958068/Code-of-Ethics-CI-approved-for-pub-comm-050115.pdf> (last visited Mar. 5, 2025) (outlining the code of professional conduct for interpreters) [<https://perma.cc/2PV9-ZHPU>].

123. *See* TEX. GOV'T CODE ANN. § 57.021; Author's original thought.

124. *See generally* Lisa Hendrickson & Susan Swancey, *ASL Interpreting: State Requiring ASL Interpreter Licensure*, NATIONWIDE INTERPRETER RES., INC. (July 25, 2024), <https://interpreterresource.com/interpreter-education/asl-interpreting-states-requiring-asl-interpreter-licensure/> (listing the states that require an ASL interpreter to have a license rather than only a certification) [<https://perma.cc/D2JH-944M>].

125. TEX. HUM. RES. CODE ANN. § 81.007.

126. TEX. GOV'T CODE ANN. § 57.022.

127. *BEI Testing*, TEX. HEALTH & HUM. SERVS., <https://www.hhs.texas.gov/providers/assistive-services-providers/board-evaluation-interpreters-certification-program/bei-testing> (last visited Nov. 8, 2024) [<https://perma.cc/X4HM-BKNY>].

128. *Id.*

Performance Exam.¹²⁹ This exam will test the future interpreter's ability to sign in ASL, Signed Exact English, sight translation, and their receptive skills.¹³⁰ The entirety of this process is overseen by the executive commissioner of the Texas Health and Human Services Commission.¹³¹

Once an interpreter has completed the entire process and received their certification, they are eligible to receive higher compensation for their skills but, more importantly, are now officially held to the Interpreter's Code of Professional Conduct.¹³² This is standard for those who attend a higher education facility and then take the BEI Performance Exam to get the basic certification.¹³³

In Texas, for an interpreter to have the appropriate credentials and be allowed to interpret in a legal setting, they must have taken and passed the Master Level BEI exam and passed their court certification exam.¹³⁴ Also, it is important to know that BEI hosts a list of all certified interpreters in Texas, listing their names and certification levels.¹³⁵ Utilizing this source ensures that whoever is hired is qualified in their legal setting.¹³⁶ So, no matter who hires an interpreter, in Texas, there is no valid reason to not know whether the interpreter provided was uncertified or unqualified.¹³⁷

2. Texas Communication Access Fund

The Communication Access Fund (CAF) is a program only offered in Texas, Maine, and Pennsylvania.¹³⁸ In Texas, this fund was set up and developed by the State Bar of Texas to discourage discrimination against individuals who require auxiliary aids to communicate and encourage more auxiliary aids being provided.¹³⁹ The CAF's function is to reimburse lawyers

129. *Id.*

130. *Id.*

131. See TEX. GOV'T CODE ANN. § 57.021.

132. *Code of Professional Conduct*, REGISTRY OF INTERPRETERS FOR THE DEAF, INC., <https://rid.org/programs/ethics/code-of-professional-conduct/> (last visited Mar. 4, 2025) [<https://perma.cc/9WLE-XXTV>].

133. See *BEI Certificates Awarded*, TEX. HEALTH & HUMAN SERVS., <https://www.hhs.texas.gov/providers/assistive-services-providers/board-evaluation-interpreters-certification-program/bei-certificates-awarded> (last visited Mar. 4, 2025) (listing the types of certifications an interpreter can test for and receive) [<https://perma.cc/Q25C-Q4H4>].

134. *Id.*

135. *Board for Evaluation of Interpreters (BEI) Registry*, TEXAS HEALTH & HUM. SERVS., <https://bei.hhsc.state.tx.us/g/01bb5adffb664bcb938e3c54f9b954c2/PublicInterpreterSearch/Search> (last visited Mar. 4, 2025) [<https://perma.cc/Q84Z-BZ5F>].

136. Author's original thought.

137. *Id.*

138. *Communication Access Funds for Legal Services*, NAT'L ASS'N OF THE DEAF, <https://www.nad.org/resources/justice/lawyers-and-legal-services/communication-access-funds-for-legalservices/#:~:text=The%20CAF%20should%20cover%20any,individuals%20use%20American%20Sign%20Language> (last visited Nov. 8, 2024) [<http://perma.cc/2JYN-VZWM>].

139. *Id.*

who have provided auxiliary aids to their clients.¹⁴⁰ This will only be approved and money distributed when other funding or avenues for funding have been exhausted.¹⁴¹ The attorney who provided the appropriate auxiliary aid for their client to have equal communication access will have to fill out an online form and email it to the appropriate person within thirty days of when the auxiliary aid(s) or service(s) were provided.¹⁴²

Overall, this fund was established to help alleviate discrimination of Deaf, deaf, or hard of hearing individuals who were not being taken on as clients because of the high cost of providing the appropriate, legally required auxiliary aids.¹⁴³

3. Filing a Complaint (TGC)

In Texas, there is not a blanket complaint form for an overall disability discrimination allegation like with the ADA, but there is a way to file a grievance against a Texas legal professional who has not properly followed the legal requirements to provide the appropriate auxiliary aids.¹⁴⁴ A grievance in Texas can be filed for a wide variety of reasons, but this Section only focuses on how and why an individual would file a grievance for inadequate communication.¹⁴⁵

A grievance can be electronically filed, mailed, or faxed into the State Bar of Texas' office.¹⁴⁶ Once the grievance has been filed, the Chief Disciplinary Counsel will review the complaint—for purposes of this Comment, it would be an alleged discrimination—and within thirty days will determine whether the alleged conduct constitutes professional misconduct.¹⁴⁷ At this point, the grievance is now labeled as a formal complaint, and the attorney in question will be notified and must respond to the allegation(s) within thirty days.¹⁴⁸

If the complaint moves on to the next stage, then the matter will either be presented before a grievance panel for dismissal, or it will proceed onward to litigation.¹⁴⁹ If the lawyer is found liable for the alleged complaint, then the matter will be opened to the public and will no longer be held as a private complaint.¹⁵⁰

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *File a Grievance*, STATE BAR OF TEX., https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemwithanAttorney/GrievanceEthicsInfo1/File_a_Grievance.htm (last visited Nov. 8, 2024) [<https://perma.cc/NZ2A-PMY8>].

145. Author's original thought.

146. *File a Grievance*, *supra* note 144.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

III. ARGUMENT

The federal and state government have set out guidelines for all public and private entities to follow, yet many continually fail to follow and neglect to pay attention to these legal requirements.¹⁵¹ While many lay people may have an excuse for their ignorance of the law, legal professionals do not.¹⁵² Legal professionals are not exempt from any part of Title II of the ADA and must comply with all requirements that have already been laid out.¹⁵³ The lack of repercussions for the legal professionals who fail to provide equal access to communication must be fixed and this can be done through an addition to the TGC.¹⁵⁴ With the addition to the TGC, Texas legal professionals will be held accountable for their mistakes and for their neglectful behavior.¹⁵⁵

A. Inadequate Access to Communication Leads to Poor Legal Services

Receiving legal services will almost—if not always—require filling out, signing, and reading legal forms.¹⁵⁶ The State Bar of Texas recommends that attorneys have an intake form for new clients to fill out and read when they are first seeking their services.¹⁵⁷ When involved in any sort of legal services or settings, it is crucial for the individual receiving the services to understand what they are involved in, being told, signing, reading, and agreeing to.¹⁵⁸

Deaf individuals are at a higher risk for reading at a lower level than their hearing peers because most Deaf or deaf people do not have the true ability to communicate with those around them until they are placed into primary school.¹⁵⁹ The given statistic for deaf and hard of hearing children is that 30% of them will leave school functionally illiterate.¹⁶⁰ This is important

151. See ADA Title II Tech. Assistance Man. (addressing “the requirements of title II of the Americans with Disabilities Act, which applies to the operations of State and local governments.”).

152. Author’s original thought.

153. See discussion *supra* Section II.D.

154. Author’s original thought.

155. *Id.*

156. Author’s original thought.

157. Joan Jenkins, *Effective law practice management for small to mid-size firms*, STATE BAR OF TEX., <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=35843> (last visited Mar. 4, 2025) [<https://perma.cc/W4AB-SQAJ>].

158. See generally Bill Mitchell, *Ignorance Of Law Is Not An Excuse, Unless You Are A Police Officer*, CRUSER MITCHELL, <https://cmlawfirm.com/ignorance-of-law-is-not-an-excuse-unless-you-are-a-police-officer-by-bill-mitchell/#:~:text=It%20is%20axiomatic%20that%20ignorance,incorrect%20understanding%20of%20the%20law> (last visited Mar. 4, 2025) (discussing how ignorance of the law is no excuse) [<https://perma.cc/2EET-5TST>].

159. Micheal M. McKeen et. al., *Assessing Health Literacy in Deaf American Sign Language Users*, NAT’L LIBR. OF MED. (Jan. 15, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4714330/> [<https://perma.cc/JD9B-RXHK>].

160. Leeanne Seaver, *We Are Hands & Voices*, HANDS & VOICES, https://handsandvoices.org/articles/education/advocacy/weare_hv.html (last visited Nov. 8, 2024) [<https://perma.cc/VG7V-T2C4>].

to understand because once they go out into the “real world,” they average about a third-grade reading level.¹⁶¹

Now place a third-grader into a legal setting: would they know how to read well enough to understand a legal document someone told them to sign or be able to understand anything a judge would tell them?¹⁶² The answer is, probably not.¹⁶³ The difference between placing a Deaf, deaf, or hard of hearing individual into a legal setting versus a third-grader is that when talking to a third-grader we collectively, as a society, understand that we need to speak in a different manner to a third-grader than we would an adult.¹⁶⁴

Providing equal communication access to those who have a hearing loss is vital to their understanding of what is being told to them, asked of them, or both.¹⁶⁵ As a hearing individual, we tend to take for granted our ability to hear, and how, just by being able to hear, we are able to progress our English linguistic skills every day.¹⁶⁶ Deaf, deaf, and hard of hearing individuals who lack the typical understanding of English often do something that is referred to as the deaf nod.¹⁶⁷ Many individuals with a hearing loss who did not hear or did not understand what was said might deem the situation as one in which they should just nod their head so the conversation will continue.¹⁶⁸

Now, imagine an English-speaking American client sitting down with an attorney who also speaks English, but the attorney is from a foreign country with an accent.¹⁶⁹ The client might know the general idea of the conversation and potentially what they are talking about but not every word they are saying.¹⁷⁰ The American may ask the attorney to repeat themselves a few times, but eventually the client will grow tired of doing so and simply start nodding in response.¹⁷¹ Once they recognize that nodding allows the conversation to progress, they may continue to do so even if they do not fully understand what the attorney is saying.¹⁷² This is analogous to the deaf nod.¹⁷³ Those who cannot hear may find they can navigate many conversations

161. *Id.*

162. Author's original hypothetical.

163. *Id.*

164. *Id.*

165. *Effective Communication for Persons Who Are Deaf or Hard of Hearing*, U.S. DEPT. OF HEALTH & HUM. SERV. (June 16, 2017), <https://www.hhs.gov/civil-rights/for-individuals/disability/effective-communication/index.html> [<https://perma.cc/8UCA-2L8D>].

166. Suzanne Irujo, *What Does Research Tell Us About Teaching Reading to English Language Learners*, READING ROCKETS, <https://www.readingrockets.org/topics/about-reading/articles/what-does-research-tell-us-about-teaching-reading-english-language> (last visited Nov. 8, 2024) [<https://perma.cc/7KZZ-A55U>].

167. *Never Mind vs Deaf Nod*, SAY WHAT CLUB (Nov. 11, 2011), <https://www.saywhatclub.org/never-mind-vs-deaf-nod/> [<https://perma.cc/K4BG-FZKB>].

168. *Id.*

169. Author's original hypothetical.

170. *Id.*

171. *Id.*

172. *Id.*

173. See *Effective Communication for Persons Who Are Deaf or Hard of Hearing*, *supra* note 165.

without constantly asking for repeats, thus allowing the conversation to continue.¹⁷⁴

Providing an auxiliary aid can be difficult and expensive to acquire, but we do not want any clients to fall into the category where they just nod to get through the conversation.¹⁷⁵ The first time interacting with a Deaf, deaf, or hard of hearing client might be intimidating because it is a new experience that many people might find to be scary, yet the ADA has everything laid out for legal professionals to follow.¹⁷⁶ As someone providing legal services, attorneys invite new and potentially challenging experiences because it is what allows one to grow and be better equipped for future challenges.¹⁷⁷

B. Proposed Texas Solution

The Texas legislature should enact legislation that specifically allows for individuals who have not been provided with means to reach equal communication access based on their hearing ability to file a complaint, thus prompting the failing entity, individual, or legal professional to have a duty to complete the required training.¹⁷⁸ If an individual has a grievance against an attorney, they should file it with The State Bar of Texas, and if the grievance is then classified as a “complaint” then the entity, individual, or legal professional must be required to take a course educating them on the issue.¹⁷⁹

1. Addition to Chapter 57 of the TGC

Proposed Legislation:

Chapter D. Repercussions for Those Who Fail to Provide Equal Communication Access to Individuals with a Hearing Deficit.

A. This act shall be known as the “Equal Access to Justice for Deaf Individuals Act.”

B. Definitions

- a. “Appropriate means” includes, but is not limited to, a certified court interpreter, a certified Deaf interpreter (CDI), communication access real-time captioning (CART), assistive technologies, etc. provided in real time, without undue delay.

174. *Id.*

175. Author’s original thought.

176. *Id.*; see ADA Title II Tech. Assistance Man. (addressing “the requirements of title II of the Americans with Disabilities Act, which applies to the operations of State and local governments.”).

177. Author’s original thought.

178. *Id.*

179. See *File a Grievance*, *supra* note 144.

- b. "Attorney" refers to any individual who is licensed to practice law in the state of Texas.
- c. "Continuing Legal Education (CLE)" refers to mandatory trainings or programs for legal entities, attorneys, or legal personnel to attend to remain competent in their ability to serve those who have a hearing deficit.
- d. "Discrimination" is the unfair treatment of individuals or groups based on a characteristic either in an intentional or unintentional manner.
- e. "Equal Communication Access" means providing the appropriate means of communication to individuals who have a hearing deficit in legal settings, including, but not limited to, trials, hearings, meetings with attorneys or legal personnel, voir dire, or etc.
- f. "Legal personnel" includes, but is not limited to, attorneys, lawyers, judges, court employees, law enforcement, bailiffs, or etc.
- g. "State Bar of Texas" is the state organization who regulates the legal profession.

C. Requirements:

- a. Mandatory CLE attendance:
 - i. Any attorney, legal entity, judge, or legal professional who receives a complaint regarding their failure to provide equal communication access to a Deaf, deaf, or hard of hearing individual shall be required to attend a CLE program focused on the legal requirements of providing equal communication access them.

D. Program Development:

- a. The State Bar of Texas shall create, provide, and approve the required CLE. The State Bar of Texas shall ensure the CLE includes:
 - i. An overview of the Americans with Disabilities Act;
 - ii. An overview of the Texas Government Code Chapter 57;
 - iii. Best practices for effective communication when working with individuals who are Deaf, deaf, or hard of hearing;
 - iv. Resources for obtaining appropriate resources for the protected class of individuals;
 - v. An overview of Deaf culture and the Deaf community; and
 - vi. The State Bar of Texas shall be responsible for updating and maintaining the CLE course they will provide.

E. Reporting:

- a. If an individual has experienced this type of discrimination, the individual shall file a grievance with the State Bar of Texas and allow for the Chief Disciplinary Counsel to then handle the case from there.
 - i. Once a grievance has been filed, the State Bar of Texas shall give an update within 30 days of the filing and every two weeks after the original update until they decide no further action needs to be taken or provide a detailed outline of the course of actions they plan to take.

F. Accountability:

- a. If the State Bar of Texas plans to investigate the grievance they must decide to do so within two months of receiving the grievance and must decide whether to take disciplinary actions within six months of when they received the grievance.
- b. If the State Bar of Texas decides to enforce disciplinary actions, thus enforcing the mandatory CLE, they shall provide a detailed outline of what their course of action will be to the individual who filed the grievance.
- c. The legal professional(s) who the Chief of Disciplinary Counsel find to have failed to provide equal communication access must complete the CLE the State Bar of Texas has provided within three months of being found liable from the original grievance.
- d. Failure to comply will result in further disciplinary action in accordance with the State Bar of Texas.

G. Implementation:

- a. The State Bar of Texas shall submit an annual report on January first of each year to the legislature that aggregates the overall impact on access to legal services for individuals who are Deaf, deaf, and hard of hearing and report the number of legal professionals who have completed the required CLE.
 - i. Within the annual report the State Bar of Texas shall include the following:
 1. The number of grievances filed;
 2. The number of grievances resulting in disciplinary action;
 3. The number of legal professionals who attended the CLE course; and
 4. The names of all the legal professionals who have completed the course.¹⁸⁰

Overall, the proposed legislation would be an important step toward ensuring equal communication access within the Texas legal system.¹⁸¹ The goal for the proposed legislation is for Texas to adopt it and then for it bleed out into other states and eventually into the ADA.¹⁸² It will not only serve as a way to increase accessibility in Texas but for Texas to continue to be a role model in accessibility for those with a hearing loss.¹⁸³ This proposal creates an avenue for those who are Deaf, deaf, and hard of hearing to help those who are like them in the future by starting the butterfly effect of educating

180. Author's original thought.

181. *Id.*

182. *Id.*

183. *Id.*

the legal professional(s) who did not know how to work with those with a hearing disability.¹⁸⁴

2. Positive Impacts of the Proposal

This proposed legislation would be a tremendous addition to the TGC, and its effects could potentially bleed into the ADA.¹⁸⁵ Previously passed legislation has laid some stepping stones to help disabled individuals receive the assistance they need, but the problem lies with those who do not provide the required assistance.¹⁸⁶ Many people, not only in the legal profession but all around, do not follow the proper guidelines to allow people with hearing loss equal access.¹⁸⁷ This proposed legislation allows individuals who are still being discriminated against to take action and also allows for further education, so legal professionals do not make the same mistake twice.¹⁸⁸

As discussed earlier in Section II.D.3 and Section II.E.3, there are already ways to file a complaint about a legal entity or person who does not provide equal access, but again, the problem is that there is a lack of education and enforcement of these laws.¹⁸⁹ If an educational tool is provided to those who make these common mistakes, the likelihood of the mistake repeating will heavily decline.¹⁹⁰ The proposed legislation is a way to facilitate the educational tools that should be provided to those who are not following the ADA and TGC guidelines.¹⁹¹

3. Combating Potential Issues

With any amendment, change, or program implementation, there will always be concerns and issues that may arise; however, when analyzing a solution to a problem, the pros must outweigh the cons.¹⁹² If the pros or the impact are heavily significant in a positive way, then the cons must be dealt with on a case by case basis and know that the impact is much larger than any potential issue that could arise.¹⁹³

Issues for the proposed legislation would include finding a source of funding.¹⁹⁴ However, a funding issue would not outweigh the positive impacts the proposal would have.¹⁹⁵ Allowing access to justice and our legal

184. *Id.*

185. *Id.*

186. *See* discussion *supra* Section II.E.3.

187. *See* discussion *supra* Section II.E.3.

188. *See supra* text accompanying note 181.

189. *See* discussion *supra* Sections II.D.3, II.E.3.

190. Author's original thought.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

system cannot be limited by a price tag.¹⁹⁶ However, if the State Bar of Texas finds that cost is a barrier to adding the proposed legislation then this problem could be combated by adding on to the legislation and requiring those who are found liable of the offense to pay a fee to attend the CLE.¹⁹⁷ If the addition of the fee is necessary, the fee should be minimal—just enough for the State Bar of Texas to maintain the ability to provide the CLE.¹⁹⁸

Another potential issue could be the amount of time it takes for legislation to pass and to be effective.¹⁹⁹ Here, legislation is the appropriate means to combat the issue of legal professionals not following the legal requirement of providing the appropriate auxiliary aids because the problem lies with legal professionals' failure to follow the law and the lack of repercussions set in place.²⁰⁰ However, since legislation can be slow and time-consuming, the proposed legislation could be implemented as a form of punishment that would occur if the legal professional is found liable.²⁰¹

Additionally, some individuals may argue that those with hearing loss should go to attorneys who also have a hearing loss and can communicate with them in their native language, but there are a couple of problems with that argument.²⁰² First, if a Deaf individual can only go to an attorney who is also Deaf then they will not have many options and will likely not have any options near where they live.²⁰³ Second, the United States has an open market, meaning consumers have the option of choosing where they spend their money.²⁰⁴ If there are restrictions placed on individuals with hearing loss—restricting who they can hire for legal representation—then they will then be limited on their ability to choose how they spend their money—going against the American open-market concept.²⁰⁵ It is unreasonable for hearing people to expect those with hearing loss to find an attorney who also has hearing loss when there are only around 250 attorneys who could be labeled

196. *Id.*

197. *Id.*

198. *Id.*

199. See generally Lieutenant Governor Dan Patrick et al., *The Texas Legislative Process*, TEX. LEGIS. COUNCIL 1, 9–12, <https://tlc.texas.gov/docs/legref/legislativeprocess.pdf> (last updated Nov. 2024) (explaining the process of how Texas Legislation is passed) [<https://perma.cc/R245-L8Y8>].

200. Author's original thought.

201. *Id.*

202. *Id.*

203. Lawrence Hurley, *U.S. chief justice uses sign language as deaf lawyer sworn in*, REUTERS (Apr. 19, 2016), <https://www.reuters.com/article/world/us-us-chief-justice-uses-sign-language-as-deaf-lawyers-sworn-in-idUSKCN0XG2TE/> [<https://perma.cc/PP9A-7HGR>]; *Demographics*, AM. BAR ASS'N., <https://www.americanbar.org/news/profile-legal-profession/demographics/> (last visited Jan. 10, 2025) [<https://perma.cc/Z8JW-S57J>].

204. CFI Team, *Open Market*, CFI EDUC. INC., <https://corporatefinanceinstitute.com/resources/economics/open-market/#:~:text=Summary,shifts%20in%20supply%20and%20demand> (last visited Jan. 10, 2025) [<https://perma.cc/HSF4-MBXC>].

205. Author's original thought.

as such, compared to the approximately 1.3 million attorneys in the United States.²⁰⁶

C. Responsibility

Every state in the United States has adopted their own version of a Code of Professional Conduct.²⁰⁷ Texas has adopted the Texas Disciplinary Rules of Professional Conduct, and under Rule 1.03 titled “Communication,” it states:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment:

1. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued to the extent the client is willing and able to do so. . . .

3. Ordinarily, a lawyer should provide to the client information that would be appropriate for a comprehending and responsible adult.²⁰⁸

In general, attorneys are both ethically and legally required to provide effective communication to their clients.²⁰⁹ Under the Texas Disciplinary Rules of Professional Conduct, attorneys are also required to reasonably inform their clients of their legal matters.²¹⁰ For an attorney to ensure that their Deaf, deaf, or hard of hearing client is reasonably informed and that matters are explained in a way for a client to make informed decisions, the attorney must provide adequate means of communication; thus, an auxiliary aid is required under the Texas Rules of Professional Conduct.²¹¹

Legal professionals who choose not to comply with their ethical or legal obligations potentially open themselves up to consequences that could

206. See Hurley, *supra* note 203.

207. *Professionalism Codes*, AM. BAR. ASS’N (MAR. 08, 2021), https://www.americanbar.org/group/professional_responsibility/resources/professionalism_codes/ [<https://perma.cc/FR2W-XB4R>].

208. TEX. DISCIPLINARY RULES OF PROF’L CONDUCT R. 1.03 & cmt. 1, 3, *reprinted in* TEX. GOV’T CODE ANN., tit. 2., subtit. G., app. (A).

209. *Id.*

210. *Alphabetical List of Jurisdictions Adopting Model Rules*, AM. BAR. ASS’N, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/ (last updated Mar. 28, 2018) [<https://perma.cc/4BNW-QQQ4>].

211. See discussion *supra* Section II.D.1; Author’s original thought.

include lawsuits and reputational damage.²¹² Legal professionals, as a group, thrive on a positive reputation, and like in many professions, word of mouth is gold.²¹³ So, if they wisely comply with their ethical and legal obligations, they are likely to continue to have a positive business experience.²¹⁴

1. Enhanced Representation

Effective communication is essential in any relationship, including a relationship between a service provider and a client.²¹⁵ Having effective communication between an attorney and their client is critical for the two (or more) to have a relationship built upon trust.²¹⁶ Once trust is established and they are able to openly communicate, the attorney is able to truly assist their client.²¹⁷ When an attorney provides the appropriate auxiliary aid(s) to an individual with hearing loss, they provide the ability for their client to openly communicate with them.²¹⁸ Providing a means of communication to someone with a language barrier means opening the door for them to fully and openly discuss everything they need.²¹⁹

Effective and equal communication not only empowers clients but also attorneys.²²⁰ Equal access to communication equips an attorney to understand their clients' wants, needs, concerns, and goals more effectively.²²¹ If an attorney appropriately uses an auxiliary aid, such as assistive technology or an interpreter, they can minimize communication barriers and ensure they hear their clients clearly.²²² Auxiliary aids provide the utmost clarity, which in turn allows for the feeling of doubt to be effectively removed when discussing important matters.²²³

Alongside clarity comes more in-depth conversations about the client's case, their legal rights, and the upcoming steps that will be taken.²²⁴

212. See discussion *supra* Sections II.D.3, II.E.3.

213. See generally *Does Your Reputation Matter? A Smart Business Guide for Lawyers*, PRINCETON LEGAL SEARCH GRP. LLC (June 16, 2024), <https://www.princetonlegal.com/blog/does-your-reputation-matter-a-smart-business-guide-for-lawyers/#:~:text=In%20the%20legal%20profession%2C%20reputation,referral%20rates%2C%20and%20career%20trajectory> [https://perma.cc/S2PM-M9PV].

214. *Id.*

215. Evan Kordakis, *Communication with Clients: Key Elements and Strategies to Improve Client Communication*, FISHTANK (Feb. 2, 2024), <https://www.getfishtank.com/insights/key-elements-and-strategies-to-improve-client-communication> [https://perma.cc/MG46-W3BR].

216. *Id.*

217. *Id.*

218. Author's original thought.

219. *Id.*

220. *Id.*; Kordakis, *supra* note 215.

221. Kordakis, *supra* note 215.

222. *Auxiliary Aids and Services*, OUTREACH CTR. FOR DEAFNESS & BLINDNESS, <https://deafandblindoutreach.org/Communication-Planning-Guide-for-Students-Who-Are-Deaf-or-Hard-of-Hearing/Auxiliary-Aids-and-Services> (last visited Dec. 6, 2024) [https://perma.cc/TE85-U8C8].

223. See generally *id.* (explaining the impact of the use of an auxiliary aid).

224. See generally Kordakis, *supra* note 215 (discussing how increasing understanding of what is being communicated will allow a person to know more about the conversation happening around them).

Ultimately, when anyone—whether it be a client or just a person on the street—has the ability to easily and freely express themselves and communicate, it leads to more informed discussions and decisions.²²⁵ In an attorney-client relationship, this communication leads to better legal representation and a higher likelihood of a satisfactory outcome.²²⁶

D. CLEs Are Beneficial

Those providing legal services who fail to supply the legally required auxiliary aids, and who are violating the law, should be punished but also educated.²²⁷ Punishment is a great deterrent against poor behavior, but education can really make an impact.²²⁸ Over the course of history, there has been a theory studied and tested called the deterrence theory.²²⁹ This theory was first introduced in the 1700's but has since resurfaced.²³⁰ This theory shows that deterrence and punishment may work for more serious crimes, whereas educating one on why their behavior was poor and how to improve it may decrease the chance of the poor behavior occurring again.²³¹ If one is properly educated on how to interact with and provide services to a Deaf, deaf, or hard of hearing individual, they will likely know how to approach the situation the next time they encounter it.²³²

Adding an additional training requirement for those who have violated the ADA or TGC allows for an opportunity to avoid the problem altogether.²³³ Most people freeze, feel uncomfortable, and do not know what to do when they encounter an unfamiliar situation.²³⁴ This often occurs when interacting with someone who cannot hear.²³⁵ Many hearing people do not know how to interact with someone who cannot hear because they have never experienced it before.²³⁶ If someone does not know how to work with an individual who cannot hear, they should not be punished but rather be

225. *Id.*

226. *Id.*

227. Author's original thought.

228. See generally Kelli D. Tomlinson, *An Examination of Deterrence Theory: Where Do We Stand?*, 80 FED. PROB. 33, 33 (2016) (discussing deterrence theory).

229. See generally Ben Johnson, *Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice Policy: A Primer*, MN HOUSE RSCH. 1, 2–4 (Jan. 2019), <https://www.house.mn.gov/hrd/pubs/deterrence.pdf> (explaining what the deterrence theory is and the history behind it) [<https://perma.cc/5YDC-GNSX>].

230. *Id.*

231. *Id.*

232. Author's original thought.

233. *Id.*

234. *Id.*

235. *Id.*

236. See generally *Tips for Effective Communication*, DEAF-HEARING COMMUN. CTR., <https://dhcc.org/resources/communication-tips> (last visited Nov. 8, 2024) (discussing how to interact with a deaf person) [<https://perma.cc/B8MB-T464>].

educated.²³⁷ By providing education to those who acted improperly with a Deaf, deaf, or hard of hearing person, they are likely to not repeat their mistakes and can help those around them who might also work with a similar individual.²³⁸

E. Guilty But “Incompetent”

In many situations regarding Deaf, deaf, and hard of hearing clients, the goal is to prevent discrimination; however, this does not mean lowering standards or the level of accountability we have for any given individual.²³⁹ Just because someone cannot explain their actions in the same language as others does not mean that they should be able to escape liability for their actions.²⁴⁰

I. Virginia v. Martinez

Imagine your 16-year-old daughter, full of hopes and dreams with her whole life ahead of her, has been raped and killed.²⁴¹ The police find and arrest the one who committed this heinous crime but in turn let him walk free.²⁴² You are left in a haze wondering how our criminal justice system could let such an individual walk.²⁴³ The overall population and the family and friends of the innocent child would be utterly disturbed at such a ruling; however, this is exactly what occurred in *Virginia v. Martinez*.²⁴⁴

In this case, Martinez—a deaf, mute man—was accused of raping and killing a 16-year-old girl, but even after being in custody for over a decade, the court continued to rule him to be incompetent.²⁴⁵ All of the evidence and proof pointed directly at Martinez but because the courts could not figure out a way to adequately communicate with him, they simply could not move on with the case.²⁴⁶

This case is an extreme but real-life example of how providing equal communication access is critical to all parties involved in the legal system, not only those who are needing legal help.²⁴⁷ It also shows that by not

237. Author’s original thought.

238. See generally Tomlinson, *supra* note 228, at 33 (explaining how educating someone can sometimes be more effective than a punishment).

239. Author’s original thought.

240. *Id.*

241. See Paul Duggan, *He’s deaf, mute, can’t read and charged with murder. He might go free but doesn’t know it*, MIA. HERALD (Mar. 14, 2017), <https://www.miamiherald.com/news/nation-world/national/article138436993.html> [<https://perma.cc/AM4H-42KQ>].

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. See Duggan, *supra* note 241.

providing equal communication access, parties who can hear can also be impacted.²⁴⁸ This true story provides a vivid picture of how not providing adequate, equal communication access can hurt many parties in the process.²⁴⁹

This case is also important because the justice system was not sure what to do with Martinez when they could not formally charge him without being able to communicate with him.²⁵⁰ The court was unsure whether to release him because, while they found it hard to legally justify keeping him when he could not really be charge, they did not want to release someone that could endanger society.²⁵¹

2. Bill of Rights Violations

Overall, the Martinez case is an extreme example of what could and has occurred when the legal system cannot adequately communicate with individuals who have hearing loss.²⁵² This case not only showcases non-compliance with the ADA but also how holding Martinez because of lack of adequate communication access can violate the Fifth and Sixth Amendment.²⁵³ A person's due process rights under the Fifth Amendment could potentially be violated because being held in jail cannot be tried due to a communication barrier.²⁵⁴ Doing so would deprive them of their life and liberty without any due process of law because they are being held without any sort of trial to either prove their innocence or guilt.²⁵⁵ Next, they are also in violation of an individual's Sixth Amendment right to a speedy trial.²⁵⁶ Holding someone in custody simply because the court is unable to find a way to communicate prolongs the individual's ability to have a speedy trial.²⁵⁷

3. Moving Forward

As a society, we collectively allow individuals to evade accountability for their crimes simply because we do not know how or want to provide them with an effective means of communication.²⁵⁸ It is important that we do not allow these types of acts to continue, and we need to educate those in these

248. *See id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *See id.*

253. U.S. CONST. amend. V, IV.

254. *See* U.S. CONST. amend. V; Author's original thought.

255. *See* U.S. CONST. amend. V; Author's original thought.

256. *See* U.S. CONST. amend. V; Author's original thought.

257. *See* U.S. CONST. amend. IV; Author's original thought.

258. Author's original thought.

situations on how to properly provide a way to communicate so we do not continue the trend of allowing those to get off free.²⁵⁹

With the implementation of the proposed legislation, the hearing family and deaf inmate would have the opportunity to file a grievance against the court, attorneys, and any other legal professional who was involved.²⁶⁰ With a grievance filed and the likelihood of the involved parties being found liable of not providing the appropriate means of communication, the liable parties would then be required to complete the required CLE course.²⁶¹ The required CLE would educate the parties at fault and would have the potential of furthering the case because they would know the legally required resources they are to provide.²⁶² The CLE would lay out the education for the lack of knowledge of what to do in these types of cases and situations.²⁶³

F. Innocent But Guilty Due to Lack of Understanding

While the courts may allow many to be free because they do not know how to communicate with various individuals, they also run into the problem of putting people away who are not guilty.²⁶⁴ A case involving a Deaf individual that was denied equal communication access and subsequently placed in jail illustrates how an innocent person can be wrongly accused in situations that could be avoided had the appropriate communication accommodations been provided.²⁶⁵

1. Quindale Holmes

In Quindale Holmes's case, police were called out for a domestic violence.²⁶⁶ The caller informed law enforcement that both parties were Deaf, so the police were properly notified of who they were to interact with.²⁶⁷ Mr. Holmes, the Deaf man testified that he was not able to understand the police.²⁶⁸ He stated that he was read his Miranda rights but did not understand

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. Rachel Weiner, *This deaf immigrant was ignored in jail. Now he will get \$250,000*, THE WASH. POST (Nov. 19, 2016), https://www.washingtonpost.com/local/public-safety/deaf-man-wins-250000-settlement-from-arlington-jail/2016/11/18/f44f6fce-adc9-11e6-8b45-f8e493f06fed_story.html [https://perma.cc/HUB9-PLZS].

265. See Don Pumphrey, *Deaf Man Found Guilty After Being Questioned with No Interpreter*, LINKEDIN (Mar. 29, 2022), pumphreylawfirm.com/blog/deaf-man-found-guilty-after-being-questioned-with-no-interpreter/ [https://perma.cc/G85A-QM9D]; Author's original thought.

266. *Id.*

267. *Id.*

268. *Id.*

them because they were written down in English.²⁶⁹ The Miranda warning was established to inform an individual about their right to avoid self-incrimination and their right to an attorney.²⁷⁰ The Miranda warning, in summary, is:

that a defendant cannot be questioned by police in the context of a custodial interrogation until the defendant [is] made aware of:

- The right to remain silent
- The right to consult with an attorney and have the attorney present during questioning, and
- The right to have an attorney appointed if indigent.²⁷¹

After Mr. Holmes was “read” his Miranda rights and there was no indication that they were understood, the interrogation should have stopped because he was not properly informed about his constitutional right to remain silent.²⁷² When writing back and forth with the police, his message was misunderstood and construed as him stating he had hit the woman with the baby, but he meant to say that he tapped the woman to get her attention.²⁷³

In this situation, the issues that arose out of the miscommunication could have been easily avoided.²⁷⁴ If an interpreter—likely the appropriate auxiliary aid—had been present, then there would not have been the difficulty of writing back and forth with a man whose primary language is not English.²⁷⁵ This would have avoided the inaccurate meaning of the English words that were written down.²⁷⁶

Additionally, if an interpreter had been present, then the interpreter would have had knowledge of the cultural norm of tapping someone on their shoulder to get their attention.²⁷⁷ In Deaf culture, because they cannot hear, individuals tend to tap others on the shoulder to get their attention just as hearing individuals would call someone’s name to get their attention.²⁷⁸

Mr. Holmes’s case is one of many cases in which the lack of communication access has failed an individual and has caused them to be

269. *Id.*

270. *Miranda v. Arizona*, 384 U.S. 436, 462 (1966).

271. *Miranda warning*, CORNELL L. SCH., https://www.law.cornell.edu/wex/miranda_warning (last reviewed July 2023) [<https://perma.cc/K7B3-RSRR>].

272. Pumphrey, *supra* note 265.

273. *Id.*

274. *See id.*

275. *See id.*; Author’s original thought.

276. *See* Pumphrey, *supra* note 265; Author’s original thought.

277. *See Interpreting*, NAT’L ASS’N FOR THE DEAF, <https://nationaldeafcenter.org/resources/access-accommodations/coordinating-services/interpreting/> (last visited Dec. 6, 2024) [<https://perma.cc/Y9B3-FBGN>].

278. *Deaf 101: How Do I Get A Deaf Person’s Attention?*, NAT’L DEAF CTR. (Sept. 13, 2019), <https://nationaldeafcenter.org/resource-items/deaf-101-how-do-i-get-a-deaf-persons-attention/> [<https://perma.cc/U3SR-KBB6>].

charged with a crime they did not actually commit.²⁷⁹ In this situation, the police were primed with the information they needed to provide effective communication, but they still failed to do so.²⁸⁰ By choosing to not provide the required auxiliary aids, they ultimately charged an innocent man.²⁸¹

Again, this situation boils down to a lack of education on how to appropriately accommodate for these individuals.²⁸² With the proposed legislation in place, the Deaf man involved in this case could file a grievance to then prompt the education and training for the police officer.²⁸³ The CLE course would allow the officer to learn what he is legally required to provide and how this situation should be approached in the future.²⁸⁴

G. Estate Planning with a Hearing Loss

Overall, as a whole, those who are guilty of any crime must be held accountable, and those with disabilities must not be discriminated against.²⁸⁵ In addition, those who have some type of hearing loss should also be able to properly dispose of their property without fear of their will being contested because of their potential lack of fluent literacy or English skills.²⁸⁶ This highlights the importance of clear and accessible estate planning, thus ensuring that individuals, regardless of their abilities to understand the English language, can make informed decisions about their legacy.²⁸⁷ Properly accommodating the needs of an individual who cannot hear can help protect their wishes and prevent unnecessary disputes.²⁸⁸

1. Illiteracy Does Not Mean Ineligible to Dispose of Property

Illiteracy does not deem a person ineligible to write or create a will.²⁸⁹ However, testamentary capacity can often be questioned when it comes to an illiterate testator.²⁹⁰ For one to have testamentary capacity, they must (1) understand what they are doing; (2) comprehend what they are doing; (3) know the general nature and extent of their property; (4) know the natural

279. See Pumphrey, *supra* note 265.

280. *Id.*

281. *Id.*

282. See *id.*

283. See *id.*

284. See *id.*

285. See discussion *supra* Sections III.E–F.

286. See *id.*

287. See generally, *Blind, Deaf, Mute, and Incapacity*, MORGAN LEGAL GRP. PC, <https://www.morganlegalny.com/blind-deaf-mute-and-incapacity/> (last visited Jan. 10, 2025) (discussing how, when working with those who are Deaf and potentially mute, there are accommodations that must be provided to be able to accommodate such persons) [<https://perma.cc/9S2W-5TY7>].

288. Author's original thought.

289. *In re Estate of Burt*, 169 A.2d 32, 34 (Va. 1961).

290. *Id.*

objects of their bounty; and (5) achieve all four of the previous elements simultaneously.²⁹¹ The inability to read does not mean that a client is not able to meet the elements of testamentary capacity; thus, if a person is illiterate, they are still capable, mentally and legally, of writing write a will.²⁹²

If those who are illiterate or have a lower level of reading skills create a will without the proper support, the will has a higher risk of being contested.²⁹³ There are many cases that serve as examples for contested wills because the person who signed the will was illiterate.²⁹⁴ For example, in *Craig v. Craig*, the deceased was an illiterate man.²⁹⁵ After he died, the defendants contested the transfer of property because they knew the deceased could not read and had to have been unduly influenced to transfer the ownership of his bank accounts.²⁹⁶ Cases like *Craig v. Craig* highlight how easy it is to contest a will that has been written, executed, or signed by someone who is illiterate.²⁹⁷ For individuals with hearing loss, they may require auxiliary aids to be provided so they know what they included in their will.²⁹⁸

One of the most common ways to contest a will is lack of capacity.²⁹⁹ If someone who would benefit from a testator dying intestate is aware that the testator wrote their will without the proper auxiliary aids and that without equal communication access the testator would not have been able to fully understand the contents of their will, then they could likely be more inclined to contest the will.³⁰⁰

When a person with hearing loss comes into an attorney's office to write a will, the attorney is legally required to provide the appropriate auxiliary aid that matches the client's needs.³⁰¹ Not only is it legally required but it is also best practice for avoiding a contested will.³⁰² The ultimate goal of a will is

291. GERRY W. BEYER, *EXAMPLES AND EXPLANATIONS FOR WILLS, TRUSTS, AND ESTATES* 30 (8th ed., 2022).

292. *Can You Make A Will If You Can't Read Or Write?*, HOWARD LEWIS & PETERSON PC, <https://provolawyers.com/can-you-make-a-will-if-you-cant-read-or-write/#:~:text=If%20you%20can't%20read%2C%20you%20can%20still%20create%20a,are%20unable%20to%20do%20so> (last visited Nov. 8, 2024) [<https://perma.cc/6U6D-MTHT>].

293. Author's original thought.

294. *See Blind, Deaf, Mute, and Incapacity*, *supra* note 287; *see Craig v. Craig*, No. 110505-U, 2013 WL 2719500, at *1 (Ill. App. 5th Dist., 2013); *see In re Estate of Burnett*, 109 P.2d 26, 28 (Cal. Dist. Ct. App. 1941).

295. *Craig*, 2013 WL 2719500, at *1.

296. *Id.*

297. *Id.*

298. Author's original thought.

299. *See, e.g., In re Estate of Burt*, 169 A.2d 32, 34 (Va. 1961).

300. *See id.; Reasons To Challenge a Will*, FINDLAW, <https://www.findlaw.com/estate/wills/reasons-to-challenge-a-will.html> (Sept. 18, 2023) [<https://perma.cc/M336-UL7F>].

301. *See Court Access for Individuals Who Are Deaf and Hard of Hearing: A Guide*, *supra* note 92, at 14–27 (describing the various auxiliary aid options available).

302. Author's original thought.

for a person to pass knowing their property will be properly distributed as they wish and not pass through intestacy.³⁰³

However, another problem that attorneys may face when handling the estates of clients with hearing loss is undue influence.³⁰⁴ If a client needs an auxiliary aid that requires another person's help, such as an interpreter or CART provider, the attorney must be careful in selecting an interpreter (or other auxiliary aid) who will not skew the message that is being interpreted and cause undue influence.³⁰⁵

If a party attempts to create their will with an attorney and they are discriminated against because the attorney does not want to provide the appropriate auxiliary aid or they fail to provide one, the client shall file the grievance prompting the proposed legislation of the required CLE.³⁰⁶ In this situation regarding will creation, the attorney may find this training very beneficial because they will likely gain understanding of how discriminating against their client by not providing the appropriate auxiliary aid opens their client up for their will to be contested.³⁰⁷

IV. CONCLUSION

Deaf, deaf, and hard of hearing individuals have the law on their side but continually are discriminated against in various legal settings.³⁰⁸ Our society is built upon having open access to the courts and the ability to get legal help when needed, but this class of individuals are not able to freely access this pillar in our government.³⁰⁹ The Federal Government has set up the ADA to help support them, yet many continue to avoid this legal requirement and discriminate anyways.³¹⁰ Proper auxiliary aids are needed to ensure equal communication access, and without them, people with hearing loss are at a severe disadvantage.³¹¹ Overall, if Texas were to implement the proposed legislation and require a CLE course for those with grievances filed against them, more legal professionals would be educated and more aware of how to work with Deaf, deaf, and hard of hearing individuals.³¹²

303. TEX. EST. CODE ANN. § 22.034.

304. Gerry Beyer, *Preparing a will for a client with communication challenges*, ILL. STATE BAR ASS'N 1, 4 (Apr. 2012), https://www.isba.org/sites/default/files/sections/newsletter/%20April%202012_1.pdf [<https://perma.cc/5BYR-E3XM>].

305. *See generally id.* (discussing how the testator's brother unduly influenced the contents of the will by interpreting for his brother).

306. Author's original thought.

307. *Id.*

308. *Id.*

309. *Id.*

310. *See discussion supra* Part III.

311. Author's original thought.

312. *Id.*