

SETTLEMENT AGREEMENT BY
THE UNITED STATES OF AMERICA,
CLIFFORD B. HEARN, JR.,
AND
CLIFFORD B. HEARN, JR., P.A.

U. S. DEPARTMENT OF JUSTICE COMPLAINT NUMBER 202-15-37

THE PARTIES

1. The parties (Parties) to this Settlement Agreement (Agreement) are the United States of America, Clifford B. Hearn, Jr., and Clifford B. Hearn, Jr., P.A.
2. The United States Department of Justice (United States) is the federal agency responsible for administering and enforcing title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12188.

BACKGROUND

3. This matter was initiated by a complaint filed with the United States against Clifford B. Hearn, Jr. and Clifford B. Hearn, Jr., P.A., complaint number 202-15-37, alleging violations of title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. Specifically, the complainant alleged that in 2000, Clifford B. Hearn, Jr. and Clifford B. Hearn, Jr., P.A. failed to provide a requested sign language interpreter where necessary to provide effective communication for an individual who is deaf.
4. The Attorney General of the United States (Attorney General) is authorized to investigate alleged violations of title III of the ADA, and to bring a civil action in federal court if the United States is unable to secure voluntary compliance in any

case that involves a pattern or practice of discrimination or that raises issues of general public importance, 42 U.S.C. § 12188(b).

5. Clifford B. Hearn, Jr. is a practicing attorney who is the principal of Clifford B. Hearn, Jr., P.A., a professional association organized under Delaware State law for the purpose of practicing law. Clifford B. Hearn, Jr. and Clifford B. Hearn, Jr., P.A. operate a law office located in Wilmington, Delaware. The law office is a place of public accommodation covered by title III of the ADA. 28 C.F.R. § 36.104. Clifford B. Hearn, Jr. and Clifford B. Hearn, Jr., P.A., as operators of the law office, are public accommodations, obligated to comply with the requirements of title III of the ADA. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.
6. The ADA prohibits public accommodations, including those operating the professional offices of an attorney, from discriminating against an individual on the basis of disability in the full and equal enjoyment of its goods and services. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

FINDINGS

7. As a result of its investigation, the United States has determined that Hearn denied the complainant equal access to goods and services within the meaning of 42 U.S.C. § 12182(a), 28 C.F.R. § 36.303.
8. Hearn has cooperated in the United States' investigation and has maintained that Hearn is committed to full compliance with the ADA.
9. The Parties have determined that complaint number 202-15-37 filed with the United States can be resolved without litigation and have proposed and agreed to the terms of this Agreement.

DEFINITIONS

10. The term "appropriate auxiliary aids and services" means qualified sign language or oral interpreters, note takers, computer-assisted real time transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, TTY's, large print materials, acquisition or modification of equipment or devices, and other methods of delivering effective communication that may have come into use or will come into existence in the future.
11. The terms "qualified sign language interpreter," "oral interpreter," or "interpreter" mean an interpreter who is able to interpret competently, accurately and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in an office setting with an individual who

is deaf or hard of hearing. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a “qualified sign language interpreter” under this Agreement. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter.

REMEDIAL ACTION

12. Consistent with the ADA, Hearn will not discriminate against any individual on the basis of disability in the full and equal enjoyment of Hearn’s goods, services, facilities, privileges, advantages, or accommodations by excluding or providing unequal treatment to persons with disabilities. 42 U.S.C. § 12182.
13. Immediately as of the effective date of this Agreement, Hearn will provide to individuals who are deaf or hard of hearing appropriate auxiliary aids and services, including qualified sign language interpreters, where necessary to ensure effective communication unless an undue burden or a fundamental alteration would result.
14. Within thirty (30) days of the effective date of this Agreement, Hearn will adopt and implement the effective communication policy that is attached to this Agreement as Attachment A and hereby incorporated into this Agreement.
15. Hearn will ensure that all of Hearn’s employees and contractors whose duties involve interaction with the public receive a copy of the effective communication policy (Attachment A) within five (5) days of the effective date of this Agreement. Hearn will furnish to the United States, within sixty (60) days of the effective date of this Agreement, documentation confirming the implementation and distribution of the policy to Hearn’s employees and contractors.
16. Within five (5) days of the effective date of this Agreement, Hearn will establish and maintain a list of qualified sign language interpreters or sign language interpreter agencies that employ or arrange the services of qualified sign language interpreters and oral interpreters to ensure that qualified interpreter services are available. Within thirty (30) days of the effective date of this Agreement, Hearn will submit to the United States its list of sign language interpreter providers.
17. Within thirty (30) days of the effective date of this Agreement, Hearn will post and maintain a notice in a conspicuous location in the waiting room(s) of Hearn’s law office where the notice is readily visible. The notice, written in a bold black font at least 18 points in size on a contrasting background, will set out the policies and procedures for requesting a sign language or oral interpreter or other form of auxiliary aid or service. This notice will inform clients, potential clients, their companions, and other individuals who are deaf or hard of hearing of their right under the ADA to request a sign language or oral interpreter or other form of

auxiliary aid or service if needed for effective communication while receiving services from Mr. Hearn or Hearn P.A. The language of the notice attached to this Agreement at Attachment B meets this requirement.

18. Immediately, as of the effective date of this Agreement, Hearn will maintain a log of each request for an auxiliary aid or service received by or on behalf of Mr. Hearn or Hearn P.A., the time and date the request is made, the name of the individual who made the request, the name of the individual for whom the auxiliary aid or service is being requested (if different from the requestor), the specific auxiliary aid or service requested, the time and date of the scheduled appointment (if a scheduled appointment was made), the time and date the auxiliary aid or service was provided, the type of auxiliary aid or service provided if different from what was requested, and, if applicable, a statement that the requested auxiliary aid or service was not provided.

ENFORCEMENT

19. Three (3) months after the effective date of this Agreement, and annually thereafter during the term of this Agreement, Hearn will provide a written report (“Report”) to the United States regarding Hearn’s efforts to comply with this Agreement. Each Report will include a factual description of interactions related to effective communication with any clients, potential clients, companions of clients or potential clients, witnesses, or other individuals who are deaf or hard of hearing with whom Mr. Hearn, Hearn P.A., or any agent or representative of Mr. Hearn or Hearn P.A. communicates in connection with the provision of legal services. The Report need not include information identifying the names of individuals who are deaf or hard of hearing. The Report shall include an explanation of each determination made by Hearn regarding the provision of auxiliary aids or services. In the event that auxiliary aid(s) or service(s) requested by or on behalf of an individual who is deaf or hard of hearing are not provided by Mr. Hearn or Hearn P.A. or if a different aid or service than the one requested is provided, the Report must state (1) the procedure followed by Hearn in making the decision, and (2) all reasons for not providing the auxiliary aid(s) or service(s) requested.
20. During the term of this Agreement, Hearn will notify the United States if any individual brings any lawsuit, complaint, charge, or grievance alleging that Mr. Hearn or Hearn P.A. failed to provide any auxiliary aids and services to any individual with a disability. Such notification must be provided in writing via certified mail within fifteen (15) days of the day when either Mr. Hearn or Hearn P.A. has received oral or written notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the individual making the

allegation, and any documentation possessed by Mr. Hearn, Hearn P.A., or any of his or its agents or representatives relevant to the allegation.

21. Any violation of this Agreement by Mr. Hearn or Hearn P.A. will be deemed a subsequent violation of title III as set forth in 42 U.S.C. § 12188(b)(2)(C)(ii); 28 C.F.R. § 36.504(a)(3)(ii).
22. If at any time Hearn or Hearn P.A. desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, Hearn will promptly notify the United States in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written agreement by the United States to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the United States, which approval shall not be unreasonably withheld or delayed. For purposes of this Agreement, the modification or discontinuation of the effective communication policy adopted pursuant to Paragraph 16 of this Agreement requires advance written agreement by the United States.
23. The United States may review compliance with this Agreement at any time. If the United States believes that Mr. Hearn or Hearn P.A. has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the United States for a modification of the relevant terms, the United States will so notify Hearn in writing, and it will attempt to resolve the issue or issues in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to Hearn, it may institute a civil action in federal district court to enforce the terms of this Agreement or title III and may, in such action, seek any relief available under law.
24. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for Mr. Hearn or Hearn P.A. to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written Agreement with the United States for an extension of the relevant time frame imposed by the Agreement.
25. Failure by the United States to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
26. This Agreement shall be binding on Hearn and Mr. Hearn's and Hearn P.A.'s agents and employees. In the event Hearn or Hearn P.A. seeks to transfer or assign all or part of his or its interest in any entity covered by this Agreement, and the successor or assignee intends to carry on the same or similar use of the entity, as a condition of sale, Hearn shall obtain the written accession of the successor or

assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

27. A copy of this document or any information contained in it will be made available to any person by Hearn or the United States on request.
28. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments), shall be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the continuing responsibility of Hearn to comply with all aspects of the ADA.
29. This Agreement will remain in effect for three (3) years from its effective date.
30. The person signing for Hearn represents that he is authorized to bind Hearn to this Agreement.
31. The effective date of this Agreement is the date of the last signature below.

For Clifford B. Hearn, Jr. and Clifford B. Hearn, Jr., P.A.:

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

By: _____
Clifford B. Hearn, Jr.
606 Market Street Mall
P.O. Box 1205
Wilmington, Delaware 19899
(302) 575-0220

By: _____
JOHN L. WODATCH, Chief
PHILIP L. BREEN, Special Legal Counsel
JEANINE M. WORDEN, Deputy Chief
Disability Rights Section (NYA)
Civil Rights Division
U.S. Department of Justice

By: _____
NAOMI MILTON, Supervisory Attorney
Disability Rights Section (NYA)
Civil Rights Division
U.S. Department of Justice

By:

SUSAN CRAWFORD, Investigator
Disability Rights Section (NYA)
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-1378

Date: 5/8/08

Date: May 29, 2008

ATTACHMENT A

POLICY FOR ENSURING EFFECTIVE COMMUNICATION

FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING

General Policy. Clients and potential clients who are deaf or hard of hearing will be promptly informed that Clifford B. Hearn, Jr. (Mr. Hearn) and Clifford B. Hearn, Jr., P.A. (Hearn P.A. and, collectively, Hearn) will arrange for appropriate auxiliary aids and services needed for effective communication when requested by, or on behalf of, an individual who is deaf or hard of hearing. Hearn agrees to provide all appropriate auxiliary aids and services including qualified interpreters required under the Americans with Disabilities Act of 1990 free of charge to clients, potential clients, the companions of clients or potential clients, witnesses, and other individuals who are deaf or hard of hearing with whom Mr. Hearn, Hearn P.A., or any agent or representative of Mr. Hearn or Hearn P.A. communicates in connection with the provision of legal services.

General Assessment Criteria. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, in order to ensure effective communication shall be made by Mr. Hearn. Where possible, Mr. Hearn shall make the determination in consultation with the individual who is deaf or hard of hearing based on an individualized assessment. The assessment will

take into account all relevant facts and circumstances, including without limitation the following:

- (a) The nature, length and importance of the communication at issue;
- (b) The individual's communication skills and knowledge;
- (c) The individual's request or statement of need for a specific auxiliary aid or service (e.g., interpreter);
- (d) The availability at the required times of appropriate auxiliary aids and services, including qualified sign language or oral interpreters.

Before determining the type of interpreting service to be secured, Mr. Hearn will consult with the individual requiring interpreter service and recognize the individual's preferred mode of communication (e.g., American Sign Language, Signed English, oral interpreting). In determining what type of auxiliary aid(s) or service(s) are necessary, Mr. Hearn will give consideration to the requests of the individual who is deaf or hard of hearing.

Time for Assessment. An initial assessment of which appropriate auxiliary aids and services are necessary must be made at the time an initial contact with Mr. Hearn or Hearn P.A. is made by or on behalf of an individual who is deaf or hard of hearing. Clifford B. Hearn, Jr., or, in his absence, appropriate personnel who deal with clients or potential clients of Mr. Hearn or Hearn P.A. will perform and document in the client's or potential client's file a communication assessment as part of each initial contact. Mr. Hearn shall reassess which appropriate auxiliary aids and services are necessary, in consultation with the client, potential client, or other individual seeking auxiliary aid(s) or service(s), where possible, in the event that communication during the initial assessment was not effective. Assessing Interpreter Effectiveness. At the beginning of any meeting or legal proceeding where Mr. Hearn or Hearn P.A. is providing interpreting services, Mr. Hearn or the representative communicating with the individual who is deaf or hard of hearing on behalf of Mr. Hearn or Hearn P.A. will ask the individual who is deaf or hard of hearing, through an interpreter, whether the individual is confident that the interpreter's skills ensure an adequate and accurate interpretation of the communication of the meeting or proceeding, and whether the individual is confident in the interpreter's impartiality. If either inquiry is answered in the negative, further efforts will be made to retain a qualified interpreter. If those two inquiries are answered in the affirmative, Mr. Hearn or the representative communicating with the individual on behalf of Mr. Hearn or Hearn P.A. will ask the interpreter whether he or she is able to interpret the meeting or

proceeding. The meeting or proceeding shall continue unless the interpreter becomes unable or unwilling to satisfy the criteria for a qualified interpreter, at which time a qualified interpreter shall be obtained.

Denial of Interpreting Services. If, after consulting with an individual requesting interpreter services, Mr. Hearn determines that the circumstances do not warrant provision of interpreter services, Mr. Hearn shall so advise the person requesting the auxiliary aid or service. Mr. Hearn shall document the date and time of denial, and all reasons for the determination. A copy of this document shall be provided to the individual, shall be maintained with the log described in Paragraph 20 of the Settlement Agreement By the United States of America, Clifford B. Hearn, Jr., and Clifford B. Hearn, Jr., P.A., and shall be placed in the client's or potential client's file.

ATTACHMENT B

Clifford B. Hearn, Jr. and Clifford B. Hearn, P.A. are committed to providing equal access to clients, potential clients, their companions, witnesses, and other persons with disabilities.

To ensure effective communication in connection with the provision of legal services, this office provides qualified sign language and oral interpreters, computer assisted real time transcription services (CART), and other auxiliary aids and services free of charge for clients, potential clients, companions, witnesses, and other individuals who are deaf or hard of hearing.

To request auxiliary aids or services, please speak to Mr. Hearn.

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities. People who are deaf or hard of hearing have the right under the ADA to request auxiliary aids and services to ensure effective communication. For more information about the ADA, call the Department of Justice's toll-free ADA Information Line at 1-800-514-0301 (voice) or 1-800-514-0383 (TTY) or visit the ADA Home Page at www.ada.gov.

